**NAME CHANGE ACTIONS - EPISODE NOTES**

Hello everyone and welcome back to the Good Judge-Ment Podcast. I am Wade Padgett

*And I am Tain Kell.*

While we always welcome episode topic ideas from our loyal listeners, there are times when something we handle in court generates a new topic idea.

*Now that I am retired, I still have ideas, just not related to cases that I hear.*

Yeah, Tain’s ideas range from which Chick-Fil-A to visit to which beach to visit…

*ANYWAY, back to today’s episode*

We are frequently asked, as Superior Court judges, to consider name change requests

*And these sorts of actions can ask to change the name of an adult or a minor.*

Because these come up with some frequency and there are different rules for the cases, depending upon the age of the moving party, we thought it might be a good idea to kick the tires on this topic. Also, we have recorded some rather long episodes in the recent past so we thought a shorter episode might be a welcomed relief.

*Kick the tires? Really? Regardless, let’s get to the episode*.

***OPENING***

People seek to have their name changed or to change the name of their child for a variety of reasons

Most of valid reasons and the petition “makes sense” on its face

But, occasionally, name changes are filed when the petitioner is seeking to change his/her gender identity

Minor name changes frequently are a “shortcut” to an adoption or legitimation[[1]](#endnote-1) (discuss)

Interestingly, people who get married sometimes assume the “surname” of their spouse – that situation does NOT require the filing of any name change petition

One more general thing about name changes – and this is largely misunderstood by legislators and others – in connection with a divorce action, if requested in writing by a party, the judge has the authority to restore a party’s name to their “maiden” name or to a prior “married name.” We cannot enter a wholesale name change – usually confined to a change of the party’s surname[[2]](#endnote-2)

Georgia law also gives the trial court the authority to change a child’s name in connection with a legitimation petition (separate episode on legitimation actions).[[3]](#endnote-3)

Regardless of the motivation behind the filing, the only way to legitimately have a name changed is to follow the statute that allows for name changes to be granted

***THE STATUTE***

O.C.G.A. § 19-12-1 is the name change statute.

* Any person desirous of changing his/her name ***or*** his/her child’s name may present a petition to the superior court of the county of his/her residence. The petition shall set forth fully and particularly the reasons why the name change is being requested.
* Such petition shall be verified by the petitioner.
* ~~Except when an order has been issued as provided in subsection (c), within seven days of filing the petition~~, the petitioner shall cause a notice to be published once a week for four consecutive weeks in the legal organ of the county in which such petition is pending.

As always, our authority to do most of the things we do as judges comes from a statute – this statute requires:

Petition to Superior Court

Petition must be verified (signed and notarized as being true)

Except where petitioner is a victim of family violence or human trafficking, it must be published in the “legal organ” of the county once a week for 4 weeks

These are mandatory requirements – even if the petition is only seeking to fix a spelling error or something “simple”

***WHERE PETITIONER IS VICTIM OF FAMILY VIOLENCE OR HUMAN TRAFFICKING***

There is an exception available where the court finds that the petitioner was victim of family violence or human trafficking

**discuss:**  The judge does not usually see one of these petitions until after the case if filed and assigned. How does the court go back and order the case filed under seal?

O.C.G.A. § 19-12-1(c) provides that a name change can be filed under seal if:

1. The court determines the petitioner is a victim of family violence or human trafficking, the requirement of publication can be waived AND the case can be filed under seal

2. IF the judge finds that the petitioner is NOT a victim of family violence of human trafficking, the petition is not dismissed – it just cannot be granted until the statute is complied with as set forth above

***NAME CHANGE OF MINOR***

It is fairly common for people to file a name change petition, seeking to change the name of a minor (someone under the age of 18 by statutory definition)

And there are different rules relating to name changes for minors – maybe more accurate to say that there are ADDITIONAL rules relating to name changes for minors

The most notable change is that the parent(s) must be served with a copy of the name change petition[[4]](#endnote-4)

Interestingly, this statute does not differentiate between “legal parent” or “biological parent” – it just says “parent”

The statute provides that if the address of the parent is known and that address is located within the state, the parent must be personally served with the petition. If the parent’s address is not known service is accomplished by the publication that is required anyway

To be clear, the petition for the name change of a minor has to be published (except where the petitioner is found to be the victim of domestic violence or human trafficking) - the statute simply makes an additional requirement of personal service on the parent(s) if the parent(s) reside in Georgia and the address is known to the petitioner

If the parent(s) reside outside of Georgia, they must be served via certified mail or statutory overnight delivery if the parent(s)’ address is known

If the address is not known, the publication requirement satisfies the service requirement

There is one other requirement that frequently results in litigation relating to the name change of a minor: CONSENT

The statute requires that the parent(s) consent to the name change of a minor in writing (assuming the parent(s) is living) UNLESS the parent(s) has been deemed to have abandoned the child.

Failure to require consent by a parent is reversible error[[5]](#endnote-5)

Denying a name change petition without affording the party a hearing is also reversible error[[6]](#endnote-6)

***WHAT CONSTITUTES ABANDONMENT?***

In the definition section of § 19-12-1, the term “abandoned” is defined “as set forth in O.C.G.A. § 15-11-2.”

Because we know that reading statutes on a podcast is not awesome, we are not going to read the contents of § 15-11-2

But it is important to know that this statute changed in 2021!

Prior to 2021, a child was deemed abandoned if the parent had not contributed or provided support for the child for 5 years immediately preceding the filing of the petition

As of 2021, that statute changed – now a child is deemed abandoned if the parent has not contributed or provided support for the child for six months immediately preceding the filing of the petition

So you may be asking yourself why it is important whether the child has been deemed abandoned or not?

It is important because if the child is found to have been abandoned, the parent(s) consent to the name change is NOT REQUIRED.

The next thing you may be asking is how a court determines whether the child has been abandoned?

This judge requires a hearing where the petitioner gives sworn testimony, under oath, as to the facts relating to support of the child or lack thereof (did Tain do the same?)

***PROCEDURE FOR GRANTING PETITION***

Unless you are dealing with a case involving domestic violence or human trafficking:

After publication has met the statutory requirement, if there is no objection filed, the court may grant the petition in chambers (without a hearing) after the following time periods have passed:

Adult: 30 days from filing of petition

Minor child: 30 days from date of service upon a parent if the parent resides within the state

Minor child: 60 days from date of service if parent resides outside the state and service was accomplished by mail[[7]](#endnote-7)

***BASIS TO GRANT OR DENY THE PETITION***

There are a few appellate cases on this topic where the court granted/denied a name change petition and the decision was taken up on appeal. We really do not intend to go through each factual scenario that has been appealed but, instead, want to point out the “big trees in the forest”

If a timely, written objection is filed, the court “shall proceed to hear the matter at chambers”[[8]](#endnote-8)

But note the appellate case discussed previously where it was found to be error to deny a party a request for a hearing.[[9]](#endnote-9)

The law provides that no name change shall be granted (adult or minor) if filed “with a view to deprive another fraudulently of any right under the law.”[[10]](#endnote-10)

Let’s give a couple of examples:

Where an inmate files a name change following conviction, it was not an abuse of discretion for the trial court to deny his petition for a name change. The appellate court noted that a change of name in this scenario “might result in confusion, and allow inmate to disassociate himself from his prior criminal record.”[[11]](#endnote-11)

Where a transgender petitioner sought a name change from traditionally female names to more gender neutral names and/or traditionally male names, this is not fraud – the procedures were followed, there was no evidence to suggest the petitioner was acting with any improper motive against any specific person or to defraud anyone and no objections were filed. The name changes should have been granted and it was reversed on appeal.[[12]](#endnote-12)

At the end of the day, if the proper procedures are followed, the only question for the judge to decide is whether the requested name change is being sought “with intent to defraud” or for some other improper purpose.

On appeal, the standard is “abuse of discretion.” “A trial court ‘has broad discretion ... to change the name of a child, and the court's decision will not be reversed unless it clearly abuses its discretion by ignoring the best interests of the child.’”[[13]](#endnote-13)

***TAKE AWAY***

If dealing with a name change, consult O.C.G.A. § 19-12-1.

*If the petition seeks to change the name of a child, understand that consent of the parent(s) must be obtained unless the court finds that the parent(s) has abandoned the child*

Even in cases where abandonment is alleged, the parent(s) must be served – whether personally, via mail if outside the state, or via publication if the whereabouts of the parent(s) is unknown

*Publication of the requested name change is required even where service is required.*

That’s all for today’s episode

*If you would like to hear your idea discussed by Thing 1 and Thing 2, reach out to us at goodjudgepod@gmail.com*

This outline that is full of citations to authority can be found on our website, goodjudgepod.com

*Our music trivia ending this week deals with a great band and lots of tragedy. The Allman Brothers Band was based in Macon, Georgia and they created truly great music. The band’s namesakes were the bothers Allman, Duane and Gregg. Duane and Gregg’s father was in the Army and he was murdered by a hitchhiker in 1969 when Duane and Gregg were only toddlers. Duane died in a motorcycle crash in October 1971 that has been pretty well chronicled. The band’s original bassist, Berry Oakley, also died in a motorcycle accident, almost exactly one year after Duane’s death. Those two fatalities occurred within an area only 3 blocks apart and both men were 24 years old when they died. They are buried in Rose Hill Cemetery in Macon. Not the most lighthearted factoid you will get from this podcast – but now you know.*

1. *Brittingham v. Dattilio*, 317 Ga.App. 548 (2012). [↑](#endnote-ref-1)
2. O.C.G.A. § 19-5-16 “In all divorce actions, a party may pray in his pleadings for the restoration of a maiden or prior name. If a divorce is granted, the judgment or decree shall specify and restore to the party the name so prayed for in the pleadings.” [↑](#endnote-ref-2)
3. *Palmer v. Pinkston*, 228 Ga.App. 514 (1997). “Best interests standard” when deciding whether to grant name change in legitimation. *Denney v. Denney*, 300 Ga. 622 (2017). [↑](#endnote-ref-3)
4. O.C.G.A. § 19-12-1(f). [↑](#endnote-ref-4)
5. *Wearn v. Wray*, 139 Ga.App. 363 (1976); *Brown v. Waters*, 208 Ga.App. 866 (1993). [↑](#endnote-ref-5)
6. *In re Scott*, 288 Ga.App. 374 (2007). [↑](#endnote-ref-6)
7. O.C.G.A. § 19-12-1(h). [↑](#endnote-ref-7)
8. O.C.G.A. § 19-12-2. [↑](#endnote-ref-8)
9. *In re Scott*, 288 Ga.App. 374 (2007). [↑](#endnote-ref-9)
10. O.C.G.A. § 19-12-4. [↑](#endnote-ref-10)
11. *In re Parrott*, 194 Ga.App. 856 (1990); *In re Redding*, 218 Ga.App. 376 (1995). [↑](#endnote-ref-11)
12. *In re Feldhaus*, 194 Ga.App. 856 (1990). [↑](#endnote-ref-12)
13. *Brittingham v. Dattilio*, 317 Ga.App. 548 (2012). [↑](#endnote-ref-13)