2011-046

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.STATE.AL.US

March 21, 2011

Honorable Tim Russell
Baldwin County Judge of Probate
Post Office Box 459
Bay Minette, Alabama 36507

Probate Courts – Petitions – Names – Baldwin County

Absent a showing of fraud, misrepresentation, interference with the rights of others, an attempt to hide criminal activity, or some other substantial reason, a probate judge should grant a petition for name change made by an adult person.

Dear Judge Russell:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Are there any restrictions that should be considered when a probate judge is asked to grant a name change?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that a citizen in your county has recently requested that you, as probate judge, grant a name change. You are concerned because this name change is a predicate for the subsequent completion of a gender change.

Section 12-13-1(b)(10) of the Code of Alabama confers on probate judges original and general jurisdiction with regard to name changes by persons residing within the probate judge's county. Specifically, this section states that "[t]he change of the name of any person residing in their county, upon his filing a declaration in writing, signed by him, stating the name by which he is known and the name to which he wishes it to be changed." ALA. CODE § 12-13-1(b)(10) (2006). Based on the language used in this section and subject to the authority

cited below, there seems to be no discretion on the part of the probate judge. There is, however, a statutory prohibition in section 15-20-36 of the Code of Alabama that limits the ability of a criminal sex offender to change his or her name. *See* ALA. CODE § 15-20-36 (Supp. 2010).

Generally, a person may change his or her name as long as there is no fraud, misrepresentation, attempt to hide criminal activity, or interference with the rights of others. 65 C.J.S. *Names* § 22 (2011); *In re A.M.B.*, 997 A.2d 754 (Me. 2010); *Matter of Winn-Ritzenberg*, 26 Misc.3d 1, 891 N.Y.S.2d 220 (App. Div. 2009); *Matter of E.P.L.*, 26 Misc.3d 336, 891 N.Y.S.2d 619 (Sup. Ct. 2009); *Matter of Golden*, 56 A.D.3d 1109, 867 N.Y.S.2d 767 (App. Div. 2008); *Fulghum v. Paul*, 192 S.E.2d 376, 377 (Ga. 1972). A court would be justified in denying a name change for these reasons, or if the name chosen was racist, obscene, or otherwise likely to provoke violence. 65 C.J.S. *Names* § 22 (2011). Accordingly, it is the opinion of this Office that a probate judge, after proper review, should not deny a petition for name change without a substantial reason.

This Office notes, however, that a change in a person's name should not, and does not, automatically change that person's gender. *See, generally*, *Matter of Golden*, 56 A.D.3d at 1111, 867 N.Y.S.2d at 768; *Matter of Anonymous*, 64 Misc.2d 309, 310, 314 N.Y.S.2d 668 (City Civ. Ct. 1970).

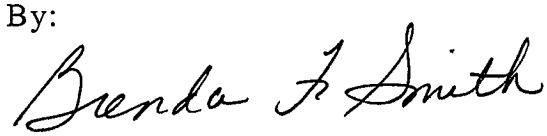
CONCLUSION

Absent a showing of fraud, misrepresentation, interference with the rights of others, an attempt to hide criminal activity, or some other substantial reason, a probate judge should grant a petition for name change made by an adult person.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

LS/MMG
1107174/149190