

**JUDICIAL COUNCIL OF CALIFORNIA**  
**ADMINISTRATIVE OFFICE OF THE COURTS**  
455 Golden Gate Avenue  
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**Report**

TO: Members of the Judicial Council

FROM: Policy Coordination and Liaison Committee  
Hon. Marvin R. Baxter, Chair  
Civil and Small Claims Advisory Committee  
Hon. Elihu M. Berle, Chair  
Case Management Subcommittee  
Hon. Robert B. Freedman, Chair  
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DATE: October 27, 2005

SUBJECT: Change of Name: Improvement of Procedures and Clarification of Underlying Law (Code Civ. Proc., §§ 1276–1279.5) (Action Required)

Issue Statement

The current procedures for changing a person's name are sometimes problematic. There may be insufficient time to publish the required notice or to serve non-consenting parents of minors. To improve the procedures and clarify the law for changing a person's name, sections 1276 through 1279.5 of the Code of Civil Procedure should be amended.

Recommendation

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend that the Judicial Council sponsor legislation to amend Code of Civil Procedure sections 1276 through 1279.5 concerning petitions and applications for the change of a person's name to increase the time for setting the hearing from 8 to 12 weeks and to provide other procedural improvements and clarifications.

The text of the proposed legislation is attached at pages 5–8.

Rationale for Recommendation

The procedures for changing a person's name are contained in Code of Civil Procedure sections 1275 through 1279.5. The Judicial Council should sponsor legislation to amend these statutes, as described below, to improve the procedures and clarify the law concerning changing names.

First, current section 1276(a) of the Code of Civil Procedure contains general provisions for all name change applications. At the end of this subdivision, there is a somewhat confusing statement that, if neither parent has signed a petition for change of name, the petition shall provide the name and address of the parents or, if neither parent is living, of near relatives. This provision does not currently state that it applies only to the name change of minors although it should include such a statement. To clarify the law, this provision should be placed in a new subdivision (b) and be amended to state explicitly that the requirement applies “if the person whose name is to be changed is under 18 years of age.” This change would be consistent with other provisions in the name change statutes that concern minors. (See Code of Civ. Proc., § 1276(b) (requiring that the petitioner provide certain information about persons whose names are to be changed if they are under 18 years of age).)

Second, under the current statutes, the time for setting of the hearing and publishing the order to show cause for a change of name is short. (See Code Civ. Proc., § 1277(a).) The hearing must be set not less than 4 or more than 8 weeks from the time the order is made. The 4- to 8-week time frame sometimes makes it difficult, as a practical matter, for petitioners to accomplish publication and serve the non-consenting parent, if any, in a timely fashion. Accordingly, the time frame should be changed to allow 6- to 12-weeks for this process, unless the court orders a different time. This change in procedures should make it more likely that a person seeking a change of name will be able to complete the service and publication requirements before the hearing, thereby ensuring that proceedings are completed in a timely and efficient manner.

Third, problems have sometimes arisen with the requirements for service on non-consenting parents, especially when their address is unknown. The name change statutes should be amended to authorize courts (1) to order that notice be given in a manner that the court determines is reasonably likely to give actual notice to the non-consenting parent if the notice of hearing cannot reasonably be given under section 415.10 or 415.40 of the Code of Civil Procedure, and (2) for good cause, to determine that publication of the order to show cause as provided in the name change statutes provides sufficient notice to the non-consenting parent. (See amended Code Civ. Proc., § 1277(a).) This will improve the process of changing the name for a minor where the change is appropriate and notice cannot be achieved under existing statutory requirements.

Fourth, several changes should be made to Code of Civil Procedure section 1277(a). Currently, that section requires the court to “make an order reciting the filing of the petition, the name of the person by whom it is filed and the name proposed, and directing all persons interested in the matter to appear before the court at a time and place specified ... to show cause why the application for change of name should not be granted.” To clarify and improve this procedure, section 1277(a) should be amended to include a provision that any objection must be filed in writing at least two court days before the hearing. Specifically, the statute should be amended to require the court to “direct all persons interested in the matter to make known any objection that they may have to the granting of the petition for change of

name *by filing a written objection*, which includes the reasons for the objection, with the court *at least two court days before the matter is scheduled to be heard* and by appearing in court at the hearing to show cause why the petition for change of name should not be granted. The order shall state that, *if no written objection is timely filed, the court may grant the petition without a hearing.*” (Italics is added.) This amendment will eliminate many unnecessary hearings.

In addition, to make Code of Civil Procedure section 1278 consistent with the previously mentioned changes to section 1277(a), the last sentence of section 1278(a) should be amended to include the following words (shown here underlined): “If no objection is filed at least two court days before the date set for hearing, the court may, without hearing, enter the order that the change of name is granted.”

As a result of these procedural changes, not only would unnecessary hearings be avoided, but also the expense of changing names would be reduced for litigants and the courts.

Finally, some technical changes should be made to the name change statutes to make the references to the “petition,” “application,” and “proceeding” consistent throughout these statutes.

#### Alternative Actions Considered

The name change statutes could be left unchanged. But the advisory committee believed it would be preferable to amend the statutes to improve the procedures and clarify the law on changing a person’s name so that the name change procedures would be easier to follow, courts could avoid unnecessary hearings, and the costs of name changes would be reduced for both litigants and courts.

#### Comments From Interested Parties

This legislative proposal was circulated for public comment in the spring of 2005. Six comments were received on this legislative proposal. The commentators include a judge, a local bar association, and several court administrators. All of the commentators supported the proposal, without any specific comments. A chart summarizing the comments is attached at page 9.

#### Implementation Requirements and Costs

The legislation, if enacted, would require some changes in court procedures and the Judicial Council’s name change forms. Ultimately, the new procedures proposed in the legislation should reduce the costs of changing a person’s name for parties and the courts.

Attachment

Code of Civil Procedure sections 1276–1279.5 would be amended as follows:

1 **§ 1276.**

2 (a) All applications for change of names shall be made to the superior court of the  
3 county where the person whose name is proposed to be changed resides, except as  
4 specified in subdivision ~~(e)~~(e), either (1) by petition signed by the person or, if the  
5 person is under 18 years of age, either by one of the person’s parents, or by any  
6 guardian of the person, or if both parents are dead and there is no guardian of the  
7 person, then by some near relative or friend of the person or (2) as provided in  
8 Section 7638 of the Family Code.

9 The petition or pleading shall specify the place of birth and residence of the  
10 person, his or her present name, the name proposed, and the reason for the change  
11 of name; ~~and~~

12 (b) In a proceeding for a change of name commenced by the filing of a petition, if the  
13 person whose name is to be changed is under 18 years of age, the petition shall, if  
14 neither parent of the person has signed the petition, name, as far as known to the  
15 person proposing the name change, the parents of the person and their place of  
16 residence, if living, or if neither parent is living, near relatives of the person; and  
17 their place of residence.

18 ~~(b)~~(c) In an action a proceeding for a change of name commenced by the filing of a  
19 petition; ~~(1)~~ if the person whose name is proposed to be changed is under 18 years  
20 of age and the petition is signed by only one parent, the petition shall specify the  
21 address, if known, of the other parent if living. If the petition is signed by a  
22 guardian, the petition shall specify the name and address, if known, of the parent  
23 or parents, if living, or the grandparents, if the addresses of both parents are  
24 unknown or if both parents are deceased, of the person whose name is proposed to  
25 be changed.

26 ~~(2)~~(d) In a proceeding for a change of name commenced by the filing of a petition, if  
27 the person whose name is proposed to be changed is 12 years of age or over, has  
28 been relinquished to an adoption agency by his or her parent or parents, and has  
29 not been legally adopted, the petition shall be signed by the person and the  
30 adoption agency to which the person was relinquished. The near relatives of the  
31 person and their place of residence shall not be included in the petition unless they  
32 are known to the person whose name is proposed to be changed.

33 ~~(e)~~(e) All applications for the change of the name of a minor submitted by a guardian  
34 appointed by the juvenile court or the probate court shall be made in the  
35 appointing court.

36 ~~(d)~~(f) If the petition is signed by a guardian, the petition shall specify relevant  
37 information regarding the guardianship, the likelihood that the child will remain  
38 under the guardian's care until the child reaches the age of majority, and  
39 information suggesting that the child will not likely be returned to the custody of  
40 his or her parents.

41 **§ 1277.**

1 (a) Where ~~an action~~ a proceeding for a change of name is commenced by the filing of  
2 a petition, except as provided in subdivisions (b) ~~and (c)-(e)~~, the court shall  
3 thereupon make an order reciting the filing of the petition, the name of the person  
4 by whom it is filed, and the name proposed, and The order shall directing all  
5 persons interested in the matter to appear before the court at a time and place  
6 specified, which shall be not less than ~~four~~ six or more than ~~eight~~ twelve weeks  
7 from the time of making the order, unless the court orders a different time, to show  
8 cause why the application for change of name should not be granted. The order  
9 shall direct all persons interested in the matter to make known any objection that  
10 they may have to the granting of the petition for change of name by filing a written  
11 objection, which includes the reasons for the objection, with the court at least two  
12 court days before the matter is scheduled to be heard and by appearing in court at  
13 the hearing to show cause why the petition for change of name should not be  
14 granted. The order shall state that, if no written objection is timely filed, the court  
15 may grant the petition without a hearing.

16 A copy of the order to show cause shall be published pursuant to Section 6064 of  
17 the Government Code in a newspaper of general circulation to be designated in the  
18 order published in the county. If no newspaper of general circulation is published  
19 in the county, a copy of the order to show cause shall be posted by the clerk of the  
20 court in three of the most public places in the county in which the court is located,  
21 for a like period. Proof shall be made to the satisfaction of the court of this  
22 publication or posting, at the time of the hearing of the application.

23 Four weekly publications shall be sufficient publication of the order to show  
24 cause. If the order is published in a daily newspaper, publication once a week for  
25 four successive weeks shall be sufficient.

26 Where a petition has been filed for a minor by a parent and the other parent, if  
27 living, does not join in consenting thereto, the petitioner shall cause, not less than  
28 30 days prior to the hearing, to be served notice of the time and place of the  
29 hearing or a copy of the order to show cause on the other parent pursuant to  
30 Section 413.10, 414.10, 415.10, or 415.40. If notice of the hearing cannot  
31 reasonably be accomplished pursuant to section 415.10 or 415.40, the court may  
32 order that notice be given in a manner that the court determines is reasonably  
33 calculated to give actual notice to the non-consenting parent. For good cause, the  
34 court may determine that publication of the order to show cause pursuant to this  
35 subdivision is sufficient notice to the non-consenting parent.

36 (b) Where the petition for a change of name alleges that the reason for the petition is  
37 to avoid domestic violence, as defined in Section 6211 of the Family Code, or  
38 stalking, as defined in Section 646.9 of the Penal Code, and the petitioner is a  
39 participant in the address confidentiality program created pursuant to Chapter 3.1  
40 (commencing with Section 6205) of Division 7 of Title 1 of the Government  
41 Code, the petition, the order of the court, and the copy published pursuant to  
42 subdivision (a) shall, in lieu of reciting the proposed name, indicate that the

1 proposed name is confidential and will be on file with the Secretary of State  
2 pursuant to the provisions of the address confidentiality program.

- 3 (c) ~~An action~~ A proceeding for a change of name for a witness participating in the  
4 state Witness Protection Program established by Title 7.5 (commencing with  
5 Section 14020) of Part 4 of the Penal Code who has been approved for the change  
6 of name by the program is exempt from the requirement for publication of the  
7 order to show cause under subdivision (a).
- 8 (d) Where application for change of name is brought as part of an action under the  
9 Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of  
10 the Family Code), whether as part of a petition or cross-complaint or as a separate  
11 order to show cause in a pending action thereunder, service of the application shall  
12 be made upon all other parties to the action in a like manner as prescribed for the  
13 service of a summons, as is set forth in Article 3 (commencing with Section  
14 415.10) of Chapter 4 of Title 5 of Part 2. Upon the setting of a hearing on the  
15 issue, notice of the hearing shall be given to all parties in the action in a like  
16 manner and within the time limits prescribed generally for the type of hearing  
17 (whether trial or order to show cause) at which the issue of the change of name is  
18 to be decided.
- 19 (e) Where a guardian files a petition to change the name of his or her minor ward  
20 pursuant to Section 1276:
- 21 (1) The guardian shall provide notice of the hearing to any living parent of the  
22 minor by personal service at least 30 days prior to the hearing.
- 23 (2) If either or both parents are deceased or cannot be located, the guardian shall  
24 cause, not less than 30 days prior to the hearing, to be served a notice of the  
25 time and place of the hearing or a copy of the order to show cause on the  
26 child's grandparents, if living, pursuant to Section 413.10, 414.10, 415.10, or  
27 415.40.

28  
29 **§ 1278.**

- 30 (a) Except as provided in subdivisions (c) and (d), the petition or application shall be  
31 heard at the time designated by the court, only if objections are filed by any person  
32 who can, in those objections, show to the court good reason against the change of  
33 name. At the hearing, the court may examine on oath any of the petitioners,  
34 remonstrants, or other persons, touching the petition or application, and may make  
35 an order changing the name, or dismissing the petition or application, as to the  
36 court may seem right and proper.  
37 If no objection is filed at least two court days before the date set for hearing, the  
38 court may, without hearing, enter the order that the change of name is granted.
- 39 (b) Where the provisions of subdivision (b) of Section 1277 apply, the court shall not  
40 disclose the proposed name unless the court finds by clear and convincing  
41 evidence that the allegations of domestic violence or stalking in the petition are  
42 false.

- 1 (c) Where the application for a change of name is brought as part of an action under  
2 the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division  
3 12 of the Family Code), the hearing on the issue of the change of name shall be  
4 conducted pursuant to statutes and rules of court governing those proceedings,  
5 whether the hearing is conducted upon an order to show cause or upon trial.
- 6 (d) Where the ~~application~~ petition for a change of name is filed by a guardian on  
7 behalf of a minor ward, the court shall first find that the ward is likely to remain in  
8 the guardian's care until the age of majority and that the ward is not likely to be  
9 returned to the custody of his or her parents. Upon making such findings, the court  
10 shall consider the petition and may grant the petition only if it finds that the  
11 proposed name change is in the best interest of the child.

12  
13 **§ 1278.5.**

14 In any proceeding pursuant to this title in which a petition has been filed to change the  
15 name of a minor, and both parents, if living, do not join in consenting ~~thereto~~, the court  
16 may deny the petition in whole or in part if it finds that any portion of the proposed  
17 name change is not in the best interest of the child.

18  
19 **§ 1279.5.**

- 20 (a) Except as provided in subdivision (b), (c), (d), or (e), nothing in this title shall be  
21 construed to abrogate the common law right of any person to change his or her  
22 name.
- 23 (b) Notwithstanding any other law, no person imprisoned in the state prison and under  
24 the jurisdiction of the Director of Corrections shall be allowed to file ~~an~~  
25 ~~application~~ a petition for change of name pursuant to Section 1276, except as  
26 permitted at the discretion of the Director of Corrections.
- 27 (c) A court shall deny ~~an application~~ a petition for a name change pursuant to Section  
28 1276 made by a person who is under the jurisdiction of the Department of  
29 Corrections, unless that person's parole agent or probation officer grants prior  
30 written approval. Before granting that approval the parole agent or probation  
31 officer shall determine that the name change will not pose a security risk to the  
32 community.
- 33 (d) Notwithstanding any other law, a court shall deny ~~an application~~ a petition for a  
34 name change pursuant to Section 1276 made by a person who is required to  
35 register as a sex offender under Section 290 of the Penal Code, unless the court  
36 determines that it is in the best interest of justice to grant the ~~application~~ petition  
37 and that doing so will not adversely affect the public safety. If ~~an application~~ a  
38 petition for a name change is granted for an individual required to register as a sex  
39 offender, the individual shall, within five working days, notify the chief of police  
40 of the city in which he or she is domiciled, or the sheriff of the county if he or she  
41 is domiciled in an unincorporated area, and additionally, with the chief of police of  
42 a campus of a University of California or California State University if he or she is

1 domiciled upon the campus or in any of its facilities.  
2 (e) For the purpose of this section, the court shall use the California Law Enforcement  
3 Telecommunications System (CLETS) and Criminal Justice Information System  
4 (CJIS) to determine whether or not an applicant for a name change is under the  
5 jurisdiction of the Department of Corrections or is required to register as a sex  
6 offender pursuant to Section 290 of the Penal Code. Each person applying for a  
7 name change shall declare under penalty of perjury that he or she is not under the  
8 jurisdiction of the Department of Corrections or is required to register as a sex  
9 offender pursuant to Section 290 of the Penal Code. If a court is not equipped with  
10 CLETS or CJIS, the clerk of the court shall contact an appropriate local law  
11 enforcement agency, which shall determine whether or not the ~~applicant~~ petitioner  
12 is under the jurisdiction of the Department of Corrections or is required to register  
13 as a sex offender pursuant to Section 290 of the Penal Code.

LEG 05-06

Legislative Proposal: Change of Name (amend Code of Civ. Proc., §§ 1275-1279.5)

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Hon. Thomas Edwards Judge Superior Court of California, County of Santa Cruz San Jose	A	N	No specific comment.	No response required.
2.	Superior Court of California, County of Los Angeles	A	Y	No specific comment.	No response required.
3.	Mr. Stephen Love Executive Officer Superior Court of California, County of San Diego	A	N	No specific comment.	No response required.
4.	Ms. Pam Moraida Court Program Manager Superior Court of California, County of Solano Fairfield	A	N	No specific comment.	No response required.
5.	Ms. Patti Morua-Widdows Court Program Manager Superior Court of California, County of Ventura	A	N	No specific comment.	No response required.
6.	Mr. Dean Zipser President Orange County Bar Association Irvine	A	Y	No specific comment.	No response required.