

Of Typos, Clerical Errors, and Change of Name: The Implications of R.A. 9048

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I. INTRODUCTION	983
II. WHAT'S IN A NAME?	984
A. Given, Middle and Surnames	
B. Nickname	
III. THE SANCTITY OF RECORDS IN THE CIVIL REGISTRY	986
IV. REVISITING THE PROCEDURE UNDER THE CIVIL CODE AND THE RULES OF COURT	988
A. Art. 376 and 412 of the Civil Code	
B. Rule 103 and 108 of the Revised Rules of Court	
V. AN OVERVIEW OF THE PROCEDURES UNDER R.A. 9048	989
A. Who May File the Petition	
B. Examination of the Petition by the Civil Registrar	
C. Finality of Judgment and Right to Appeal	
D. Length of Time and Costs of the Procedure	
VI. BUILT-IN SAFEGUARDS TO PREVENT AN ABUSE OF R.A. 9048	992
A. Strict Requirements on Form	
B. Posting and Publication Requirement	
VII. LEGAL IMPLICATIONS OF R.A. 9048	994
VIII. A QUESTION OF SUBSTANCE	995
IX. DIFFERENTIATING A COMPLETE CHANGE OF NAME AND A CHANGE OF NAME UNDER R.A. 9048	996
A. The Nature of a Change of Name	
B. Change of Name Under R.A. 9048	
C. Rule 103's Adversarial Proceedings for a Change of Name	
X. CONCLUSION	998

I. INTRODUCTION

'Tis but thy name that is my enemy; thou art thyself, though not a Montague.
What's Montague? It is nor hand, nor foot, nor arm, nor face,
nor any other part belonging to a man. O, be some other name!
What's in a name? That which we call a rose by any other name would
smell as sweet;
So Romeo would, were he not Romeo call'd, retain that dear perfection
which he owes without that title. Romeo, doff thy name,
And for that name which is no part of thee take all myself.
- Romeo and Juliet (William Shakespeare, 1595)

This passage from *Romeo and Juliet*, romantic as it may be, fails to recognize in certain respects the importance of one's name. To detach one's name from one's person may retain one's soul but the community's recognition of him shall be thrown to utter confusion. Alas, Shakespeare was no Portia.

As the Supreme Court has declared:

A name is said to have the following characteristics: (1) it is absolute, intended to protect the individual from being confused with others; (2) It is obligatory in certain respects, for nobody can be without a name; (3) It is fixed, unchangeable, or immutable, at least at the start, and may be changed only for good cause and by judicial proceedings; (4) It is outside the commerce of man and, therefore, inalienable and intransmissible by acts inter vivos or mortis causa; (5) It is imprescriptible.¹

In view of these pronouncements, the Supreme Court has provided, under Rules 103 and 108 of the Revised Rules of Court, specific procedures for a change of name and a change of entries in the civil registry with respect to the true identity of the person. Having been placed under the title of Special Proceedings, these rules provide for "a remedy . . . to establish a status, a right or a particular fact."² Thus, a party in this case is seeking to prove his right to the use of a specific name, or to establish specific facts reflected in the Civil Registry, or to demonstrate his true identity. The passage of Republic Act No. 9048,³ which establishes one's right to a change of name and the correction of entries in the civil registry, has provided varying effects to the Civil Code and the rules forming part of Remedial Law. To what extent the law affects the Rules is the main focus of this paper.

Consider this if by some strange circumstance, a child who was named "Kurt" by his parents had a misplaced "o" typed into his name by the Civil

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1. Republic v. CA, 209 SCRA 189, 194-95 (1992).

2. Rules of Court, Rule 132, § 23.

3. Republic Act no. 9048, An Act Authorizing the City or Municipal Civil Registrar or the Consul General to Correct a Clerical or Typographical Error in an Entry and/or Change of First Name or Nickname in the Civil Register without Need of a Judicial Order, amending Articles 376 and 412 of the Civil Code of the Philippines (2001).

Registrar's employee who is suffering from acute arthritis; how troublesome the innocent "o" could become. Kurt might lead a life of embarrassment and ridicule since his name reads "kurot" (pinch) due to the inserted "o." According to Article 376 and 412 of the Civil Code, no person can change his name or correct any entry in the civil registrar without a judicial order. The procedure for obtaining such an order is outlined in Rules 103 and 108.

To correct such innocuous and harmless mistakes without the need for a judicial order, R.A. 9048 was enacted. It is submitted that by the express provisions of the new law, R.A. 9048 now covers the summary proceedings previously under Article 376 and 412 of the Civil Code. These proceedings may now be pursued through an administrative proceeding in the Office of the City or Municipal Registrar. The need for judicial confirmation, however, subsists where the petition contemplates substantial changes to the entries in the civil registry or the names of the petitioner. In these cases, the need for an adversarial proceeding remains. Hence, court action is necessary.

This discussion shall center on the provisions of Rules 103 and 108, as well as the jurisprudence dealing with them. These shall be discussed and eventually juxtaposed with the basic provisions of R.A. 9048, as implemented by Administrative Order No. 1, series of 2001.

II. WHAT'S IN A NAME?

A man's name is the designation by which he is known and called in the community in which he lives and by which he is best known. It is the word or combination of words by which a person is distinguished from other individuals and the label or appellation which he bears for the convenience of those addressing, speaking or dealing with him. Names are used merely as one method of indicating the identity of persons. They are descriptive of persons for identification since identity is essential. It has frequently been held that, when identity is certain, a variance in or a misspelling of the name is immaterial.⁴

A. Given, Middle and Surnames

Modern names are comprised of three basic parts: the given name, the middle name, and the surname. The given name or first name is, by law, denominated as the "proper name" and has been used from early times to distinguish a particular individual from his fellows. It is ordinarily selected for a child by his parents and is usually conferred upon a person at birth or baptism.⁵ Under early common law tradition, which is presently recognized by some states, a middle

4. III MANUEL MORAN, COMMENTARIES ON THE RULES OF COURT 818 (1995).

5. 57 AM JUR 2d Name § 4 (1988).

name or initial is not given importance and is generally disregarded unless only the initial of the first name is known or where a dispute is involved, or when it appears that two persons each have the same first name and surname and can be distinguished only by the middle name or initial of each. However, middle names and initials have been generally viewed as not essential.⁶ In earlier times, there was no need for surnames or family names; people were identified only by their given or Christian names. Yet due to insufficiency in distinguishing a particular individual from other persons, the need for surnames arose as descriptive terms; more frequently applied to individuals who had the same baptismal name. Eventually, surnames became a required part of a person's legal name.⁷

Presently, the use of a specific surname by an individual is determined by law. Thus, a legitimate child or an adopted child bears the surname of the father while an illegitimate child bears the name of the mother.⁸ In the case of *Manuel v. Republic*,⁹ the Court held that a person should not be allowed to use a surname which he is otherwise not permitted to employ under the law.

B. Nickname

A nickname, on the other hand, is not an essential part of a person's name although it has been defined as:

[a] short name, one nicked or cut off for the sake of brevity. Certain standard nicknames for the more common first names are interchangeable with full names. Nicknames may be used, on the one hand, as an opprobrious appellation, contemptuously or derisively, or, on the other hand, to express affection or familiarity, as in the "Little Corporal," "Old Hickory," or "Rough and Ready." Nicknames may bear no relation to a person's given name, unlike a derivative of the name by which a person is usually and commonly known, and frequently purport to state some characteristic, such as "Crazy Nolan."¹⁰

A name's importance, under the law, as well as for practicality, is that it establishes and distinguishes one individual from another. To the name we bear shall all our actions and declarations attach, establishing forthwith our reputation throughout our lifetime. It is to this basic significance of one's name that jurisprudence directed that "a change of name is a privilege and not a matter of right, so that before a person can be authorized to change his or her name given either in his or her certificate or in the civil registry, he or she

6. 57 AM JUR 2d Name § 5 (1988).

7. 57 AM JUR 2d Name § 2 (1988).

8. New Civil Code, R.A. No. 386, art. 364-70 (1950).

9. 1 SCRA 836, 838 (1961).

10. 57 AM JUR 2d Name § 8 (1988).

must show proper or reasonable cause or any compelling reason which may justify such change."¹¹

III. THE SANCTITY OF RECORDS IN THE CIVIL REGISTRY

Under the Rules of Evidence, public records are received by the Courts with a certain degree of reliance as to their genuineness and authenticity, and in certain instances, even to the truthfulness of the facts therein stated.¹² The Best Evidence Rule¹³ specifies that "[w]hen the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself except in the following cases: x x x (d) when the original is a public record in the custody of a public officer or is recorded in a public office."¹⁴ Meanwhile, Sec. 7 of the same Rule provides that, "[w]hen the original of a document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof."¹⁵

Public documents are *prima facie* evidence of the facts therein stated.¹⁶ Therefore, it is incumbent upon the party assailing the facts stated in the said public document, if properly presented to the court, to provide proof that it is false. The sanctity of such documents is, further, protected insofar as the Rules

11. *Yu Chi Han v. Republic*, 15 SCRA 454 (1965).

12. Rules of Court, Rule 130, §44 and Rule 132, §23.

13. Rules of Court, Rule 130, § 3.

14. *Id.*

15. Rules of Court, Rule 130, § 7.

16. § 3, Rule 132 of the Rules of Court provides: "Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter."

§ 24, Rule 132 of the Rules of Court provides: "The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office."

§ 25, Rule 132 of the Rules of Court provides: "Whenever a copy of a document or record is attested for the purpose of the evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court."

of Court provide that the said public record should not be removed from the office in which it is kept.¹⁷

Records in the Civil Registry, being public records, are afforded the same consideration by the Courts.

Civil registry records are acts, events, and judicial decrees concerning status of persons entered in the civil register. These include matters concerning births, marriages, deaths, legal separations, annulment of marriage, judgments declaring the nullity of marriages, legitimations, adoptions, acknowledgment of natural children, naturalization, loss or recovery of citizenship, civil interdiction, judicial determination of filiation, voluntary emancipation of a minor, and change of name. These are public documents and are accepted as *prima facie* evidence of the facts therein contained. For this purpose, changes or corrections in civil registry records shall not be allowed without a judicial order and every civil registrar shall be civilly responsible for any unauthorized alteration to any person suffering damages thereby. It is for this reason that civil registrars almost always object to changes that any person may request to introduce into civil registry records.¹⁸

It is for this reason that the court has strictly interpreted Articles 376 and 412 of the Civil Code with respect to Rules 103 and 108 of the Rules of Court. In the case of *Yu v. Civil Registrar*,¹⁹ the Supreme Court affirmed the decision of the lower court in denying the petition for a change of entries in the civil registrar since the correction being sought by the petitioner was clearly substantial, not only clerical, affecting as it did not only their names but also their identities. In differentiating errors which are purely clerical and those involving substantial changes, the court had pointed out that, "the first category [includes] . . . harmless and innocuous changes, such as correction of a name that is clearly misspelled, occupation of parents or one that is visible to the eyes or obvious to the understanding,"²⁰ and "the second category of errors [include] . . . those which affect the civil status or citizenship or nationality of a party."²¹ It was based on such differentiation that the Court, citing the case of *Ansaldo v. Republic*, declared that:

[t]he reason why non-clerical mistakes cannot be corrected under the summary proceeding set by Article 412 of the New Civil Code "lies in the fact that the books making up the Civil Registrar and all documents relating thereto shall be considered public documents and shall be *prima facie* evidence of the facts therein contained and if entries in the civil register could be corrected or changed through a mere summary proceeding, and not through an appropriate action, wherein all parties who may be affected by the entries are notified or represented, we would set wide open the door

17. § 26, Rule 132 of the Rules of Court provides: "Any public record, an official copy of which is admissible in evidence must not be removed from the office in which it is kept, except upon order of a court where the inspection of the record is essential to the just determination of a pending case."

18. SEVERINO TOBIAS, *Mechanics of Corrections of Civil Registry Records*, 141 SCRA 479 (1986).

19. 121 SCRA 873 (1983).

20. TOBIAS, *supra* note 18, at 481.

21. *Id.*

to fraud or other mischief the consequences of which might be detrimental and far reaching.²²

IV. REVISITING THE PROCEDURE UNDER THE CIVIL CODE AND THE RULES OF COURT

A. Art. 376 and 412 of the Civil Code

Before an examination of R.A. 9048 may be undertaken, it is necessary to discuss Articles 376 and 412 of the Civil Code, as well as Rules 103 and 108 of the Rules of Court. Article 376 of the Civil Code provides that the change of name cannot be had without judicial confirmation. It is completely adversarial and implemented by Rule 103 of the Rules of Court. In contrast, Article 412 had been recognized by the Court in different cases as one contemplating a summary procedure, the changes therein limited to clerical errors. However, in all of the cases where the errors involved substantial changes, the Supreme Court has uniformly held that the summary proceedings under Art. 412 of the New Civil code cannot be availed of as the corrections sought should be threshed out in an appropriate action wherein all parties who may be affected by the entries are notified and represented.²³

B. Rule 103 and 108 of the Revised Rules of Court

Rule 103 and Rule 108 can be distinguished by contrasting the provisions as to who may file the petition, the venue, the grounds and the necessary parties who must be notified of the petition.

Under Rule 103, only the person desiring to have his name changed can present a petition with the Regional Trial Court.²⁴ In contrast, in a case for cancellation or correction of entries in the Civil Registry, any person interested in any act, event, order or decree concerning the civil status of persons which has been recorded in the civil register may file with the RTC.²⁵ In the case of *Republic v. Marcos*,²⁶ the Supreme Court ruled that Pang Cha Quen, the mother of one Mary Pang, *alias* Mary Sia, could not be allowed to file a petition for a change of name in behalf of her child (from Mary Pang to Mary Pang De la Cruz) because filing such petition is a personal decision that the child should make when she reaches the age of majority.

22. *Yu v. Civil Registrar*, 121 SCRA 873, 877 (1983) *citing* *Ansaldo v. Republic*, 102 Phil 1047 (1958). *See contra* *Republic v. Valencia*, 141 SCRA 462 (1986).

23. TOBIAS, *supra* note 18, at 482.

24. Rules of Court, Rule 103, § 1.

25. Rules of Court, Rule 108, § 1.

26. 182 SCRA 223 (1990).

The venue requirements are also different. Rule 103 requires that the petition may be filed in the place where the petitioner is residing.²⁷ In Rule 108, the venue where the petition may be filed is the RTC where the corresponding civil registry is located.²⁸

As to the grounds that may be alleged, the Supreme Court has recognized the following for a change of name:

- (a) when the name is ridiculous, dishonorable or extremely difficult to write or pronounce; (b) when the change results as a legal consequence as in legitimation; (c) when the change will avoid confusion; (d) having continuously used and been known since childhood by a Filipino name, unaware of her alien parentage; (e) a sincere desire to adopt a Filipino name to erase signs of former alien lineage, all in good faith and without prejudicing anybody; and (f) when the surname causes embarrassment and there is no showing that the desired change of name was for a fraudulent purpose or that the change of name would prejudice public interest.²⁹

Under Rule 108, the correction or cancellation of entries in the civil registrar may be availed of if there is a clear and convincing cause, *e.g.*, a person was identified to be of "Chinese" nationality when in fact he is Filipino; or if the status of the petitioner had been designated as one being legitimate or illegitimate; or for typographical errors that are harmless and innocuous.

A pestering question with regard to the two rules is the presence of "a change of name" under Section 2 (o) of Rule 108 as one of the entries in the civil registrar which may be cancelled or corrected. In what situation can we differentiate the change of name under Rule 103 and Rule 108? It is submitted that the difference lies in the allegations made in the petition contemplating the cause for which the remedy is sought. If the petitioner alleges that the name in the records of the Civil Registry is wrong or there is a mistake, Rule 108 shall apply. However, if the petitioner seeks to change his or her name without an allegation of error but based on other causes, *e.g.*, the name is embarrassing or hard to pronounce, or for other similar grounds recognized by jurisprudence, Rule 103 shall apply.

V. AN OVERVIEW OF THE PROCEDURES UNDER R.A. 9048

R.A. 9048, being an administrative proceeding, is in many respects less tedious than a judicial proceeding. A run-through of the procedures under R.A. 9048, as further elucidated in the Rules and Regulations Governing the Implementation of R.A. 9048 (IRR), may provide a general overview of the law's intricacies.

27. Rules of Court, Rule 103, § 1.

28. Rules of Court, Rule 108, § 1.

29. III MORAN, *supra* note 4 at 822.

A. *Who May File the Petition*

Any person of legal age, having direct and personal interest in the correction of a clerical or typographical error in an entry and/or change of first name or nickname may file the verified petition³⁰ with the concerned civil registrar (in the city or municipality) where the record to be corrected is kept.³¹ If the petitioner has migrated to another place within the Philippines and it would not be practical for such party to appear before the "record-keeping Civil Registrar," the petition may be filed where the migrant petitioner currently resides. Where the petitioner is domiciled in another country, the petition may be filed with the nearest Philippine Consulate.³²

B. *Examination of the Petition by the Civil Registrar*

The Civil Registrar then examines the completeness of the requirements and supporting documents and determines whether the record to be corrected is indeed in his custody.³³ If after examination he finds that the records are not in his custody, he shall transmit the petition to the Civil Registrar who has custody of the records.³⁴ He shall receive the petition upon payment of the required fees and record the petition in an appropriate record book.³⁵

The Civil Registrar shall act on the petition within five working days after the completion of the posting and/or publication requirement. If he approves the petition, he shall render a decision in triplicate³⁶ and transmit a copy of the decision to the Civil Registrar General within five working days from the rendering of the decision.³⁷ Within ten working days from receipt thereof, the

30. Rules and Regulations Governing the Implementation of R.A. 9048, Administrative Order no. 1, series of 2001, Rule 3 [hereinafter IRR] provides: "Any person of legal age, having direct and personal interest in the correction of a clerical or typographical error in an entry and/or change of first name or nickname in the civil register, may file the petition. A person is considered to have direct and personal interest when he is the owner of the record, or the owner's spouse, children, parents, brothers, sisters, grandparents, guardian, or any other person duly authorized by law or by the owner of the document sought to be corrected: Provided, however, that when a person is a minor or physically or mentally incapacitated, the petition may be filed on his behalf by his spouse, or any of his children, parents, brothers, sisters, grandparents, guardians, or persons duly authorized by law."

31. *Id.* Rule 4.

32. *Id.*

33. *Id.* Rule 5.

34. *Id.* Rule 6.

35. *Id.* Rule 5.

36. *Id.* Rule 5.7.

37. *Id.* Rule 10.5.

Civil Registrar General may then impugn or maintain the decision of the local civil registrar.³⁸

C. *Finality of Judgment and Right to Appeal*

If the local Civil Registrar does not grant the petition, the petitioner has two remedies. He may appeal to the Civil Registrar General within ten working days from receipt of the decision or file the appropriate petition in court.³⁹

The petitioner may file a notice of appeal with the Civil Registrar General within ten days and the concerned local Civil Registrar shall in turn submit the petition and supporting document of the petitioner to the Civil Registrar General within five working days after the receipt of the notice of appeal. The Civil Registrar General shall render the decision on the appeal within thirty calendar days after receipt thereof and its decision shall be transmitted to the local civil registrar within ten working days after the decision. Within ten days after receipt of the decision, the local civil registrar shall inform the petitioner of the decision.

If the petitioner decided not to appeal, the dismissal made by the Civil Registrar shall not preclude the petitioner from seeking a judicial remedy under Rules 103 and 108 of the Rules of Court. It is submitted that the dismissal of his petition by the Civil Registrar does not have the effect of *res judicata* and can still be the subject of the proper judicial proceeding. This notwithstanding the fact that the decision becomes final and executory if the Civil Registrar General fails to impugn the decision of the local civil registrar⁴⁰ or the petitioner fails to seasonably appeal within the ten-day period.⁴¹

D. *Length of Time and Costs of the Procedure*

Considering the periods provided by law, a simple correction of entries in the civil registry can be done within 30 days while a change of name would require 30-60 days. Throughout the proceedings, a petitioner can proceed on his own and the only time that a lawyer would be necessary is when the petition is being prepared and when it has to be verified.

The costs of filing fees are also quite reasonable. It is limited to give or take P1,000 for typographical or clerical errors and P3,000 for change of first name or nickname. For migrant petitioners, an additional P500 for typographical errors and P1000 for change of name is charged. If the petition is filed with the Consular General, the filing fees are \$50 for typographical errors and \$150.00

38. *Id.* Rule 11.

39. *Id.* Rule 13.

40. *Id.* Rule 15.

41. *Id.* Rule 14.

for change of first name or nickname. These fees are subject to ratification by the local legislative body.⁴²

VI. BUILT-IN SAFEGUARDS TO PREVENT AN ABUSE OF R.A. 9048

The main safeguard under Articles 376 and 412 is the need for judicial confirmation. The courts are tasked to ensure that changes are proper. In his commentaries on the Rules of Court, Moran cites specific doctrines by which a court shall be guided in determining if a petition for the change of name should be granted. First, citing the case of *Ong Peng v. Republic*,⁴³ he asserts that, "[b]efore a person can be authorized to change the name given him either in his certificate of birth or civil registry, he must show proper or reasonable cause or any compelling reason that may justify such change." Second, Moran points out, "[t]o justify a request for change of name, the petitioner must show not only some proper or compelling reason therefore but also that he will be prejudiced by the use of his true and official name."⁴⁴

Under R.A. 9048, having the procedure for a change of name or typographical errors reliant on the civil registrar rather than the courts, safeguards in the conduct of such changes have not been abandoned. In practice, administrative agencies with specialized functions have been efficient in fulfilling its tasks to the benefit of judicial process. The new law has its own safeguards to curb possible abuse such as a strict requirement on the form and contents of the petition, as well as, the necessary documents attached to the petition.

A. Strict Requirements on Form

Under Sec. 5 of R.A. 9048,

The petition shall be in the form of an affidavit, subscribed and sworn to before any person authorized by law to administer oaths. The affidavits shall set forth facts necessary to establish the merits of the petition and shall show affirmatively that the petitioner is competent to testify to the matters stated. The petitioner shall state the particular erroneous entry or entries which are sought to be corrected and/or the change sought to be made.

In petitions filed under R.A. 9048, it is necessary that the petition be verified. Verification had been defined as "an averment by the party making the pleading that he is prepared to establish the truth of the facts which he has pleaded."⁴⁵ In the law, it is required that the petitioner file the verified petition with the concerned civil registrar's office. It is submitted that with such a

42. *Id.* Rule 18.

43. III MORAN, *supra* note 4 at 821-22.

44. *Id.*

45. SULPICIO GUEVARA, LEGAL FORMS 46 (1991).

pronouncement, it can be said that unlike Rule 103 which does not require verification as a jurisdictional requisite but rather a formal requisite,⁴⁶ R.A. 9048 requires verification before the civil registrar can take cognizance of the petition. Thus, the courts pronouncement in *Oshita v. Republic*⁴⁷ does not apply to R.A. 9048 with respect to the verification requirement. The requirement that the petition be sworn and subscribed to is meant to ensure that the petitioner be held responsible for whatever he avers in the petition, subjecting him to liability for perjury if he falsely misrepresents himself or misinforms the Civil Registrar.

To support the petition, the IRR of R.A. 9048 provides for a detailed list of documents. When any of these documents are missing, the civil registrar is directed by law not to accept the petition or to dismiss it. Thus, it was stated in the IRR that "the C/MCR, CG or D/CR shall not accept a petition unless all requirements and supporting documents are complied with by the petitioner."⁴⁸ There are four documents required under Rule 8.2 of the IRR for a petition for the correction of clerical or typographical error, namely: (a) a certified true machine copy of the certificate of the page of the registry book containing the entry or entries sought to be corrected or changed; (b) at least two public or private documents showing the correct entry or entries upon which the correction or change shall be based; (c) notice or certification of posting; and (d) other documents which the petitioner or the local civil registrar or the consul general may consider relevant and necessary for the approval of the petition. These documents are necessary in order to establish jurisdictional facts, *i.e.*, there is an entry in the civil registry that needs to be corrected and proof that certain documents bear the correct entry or entries. The notice or certification of posting ensures that any or all persons who have objections to the correction of entry or change of name may properly present his objections against the petition before the Civil Registrar.

In case of change of first name or nickname, other than the requirements already mentioned, it is necessary that the petitioner present a certification that no administrative, civil or criminal case is pending before any court or administrative agency for which he is a defendant or respondent. The IRR also requires that a clearance or certificate from (a) the employer, if employed; (b) the National Bureau of Investigation (NBI); and (c) the Philippine National

46. III MORAN, *supra* note 4 at 819.

47. 19 SCRA at 704. In this case, it was held that "the jurisdiction of the court was not affected by the absence of the proper verification of the petition. It may be stated here, though, that the lower court should have required appellee to have her petition verified before setting the case for hearing, in order to have the petition conform with the rule."

48. City or Municipal Civil Registrar (C/MCR), Consul General (CG) or District or Circuit Registrar (D/CR) IRR, Rule 8.3.

Police (PNP)⁴⁹ must be obtained by the owner of the document to show that he has no pending administrative, civil or criminal case, or no criminal record.

B. Posting and Publication Requirement

Another safeguard is mandatory posting and publication. For a correction of entries, the posting shall be done by the concerned civil registrar for ten consecutive days at a conspicuous place provided for that purpose.⁵⁰ For a change of first name, the law provides that the concerned civil registrar should publish the petition at least once a week for two consecutive weeks in a newspaper of general circulation. To show compliance with this publication, an affidavit of publication from the publisher and a copy of the newspaper clipping is required by the IRR.⁵¹

VII. LEGAL IMPLICATIONS OF R.A. 9048

The Preliminary Statement of the IRR states that: "Republic Act No. 9048 amended Articles 376 and 412." Section 1 of this amendatory law provides: "[n]o entry in a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and change of first name or nickname which can be corrected or changed by the concerned city or municipal civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations."

It should be noted that although it is only those two specific provisions of the Civil Code which R.A. 9048 amends, its effect on Rules 103 and 108 of the Rules of Court is clear. The differentiation between Rules 103 and 108 must be considered for it is under the same vein that this writer will view the legal implications of R.A. 9048. The law provides a clarification as to the extent changes of name or corrections of entries in the Civil Registry may be pursued under the context of what is proper in an administrative proceeding and what needs to be done under a judicial proceeding.

R.A. 9048 provides for an alternative means for seeking a change of name. The grounds covering a change of name under Section 4 of R.A. 9048 may be undertaken in an administrative proceeding to be confirmed by the local Civil Registrar and not by the Courts under Rule 103. The difference between the change of name contemplated under R.A. 9048 and Rule 103 in applying Art. 376 of the Civil Code are to be further discussed in the latter part of this paper.

Rule 108 is affected since it is primarily the correction of those clerical mistakes or typographical errors in entries in the Civil Register which may be

49. *Id.* Rule 8.2.2.

50. *Id.* Rule 9.

51. *Id.* Rule 8.2.3.

considered as the main focus of the law. Certain errors in the Civil Registry are so innocuous and inconsequential that to require correction through judicial confirmation would further obligate the courts to use their valuable time in a matter that does not need the application of their legal knowledge and judicial discretion. Under R.A. 9048, it can now be pursued in an administrative proceeding filed with the Civil Registrar. Nevertheless, this is a process limited to typographical and clerical errors. Under Section 2 of R.A. 9048, a clerical or typographical error is defined as:

[a] mistake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth or the like, which is visible to the eyes or obvious to the understanding and can be corrected or changed only by reference to other existing record or records: *Provided, however, that no correction must involve the change of nationality, age, status or sex of the petitioner.* (Emphasis supplied)

Therefore, Rule 108 of the Rules of Court subsists as the proper procedure when the changes sought are not mere clerical errors but are substantial matters.

VIII. A QUESTION OF SUBSTANCE

Throughout the years, the Supreme Court has consistently ruled that on matters dealing with substantial changes in a person's name or entries in the civil registry the proper proceeding should be through an "appropriate adversarial proceeding." However, what an "appropriate adversarial proceeding" entails is an altogether different story.

This issue was, nevertheless, laid to rest by the Supreme Court in the case of *Republic v. Valencia*.⁵² *Valencia* reversed the previous doctrine,⁵³ recognizing that Rule 108 is the proper adversarial proceeding where a person may seek to have substantial changes in his records at the Civil Registry. In the beginning of the *Valencia* case, it seemed that the Court would have ruled similar to its previous declarations, stating that "if the subject matter is a change that is more than clerical but substantial, then the proceeding should not be summary but adversarial." However, in the same case, the Supreme Court defined an appropriate adversary proceeding as, "one having opposing parties." From this definition, it pointed out that if the trial court had conducted proceedings where all relevant facts have been fully and properly developed, where opposing counsel has been given opportunity to demolish the opposite party's case, and where the evidence has been thoroughly weighed and considered, the suit or proceeding should be considered as an "appropriate" one. Even if the petition was filed under Rule 108, a proceeding generally summary in nature, it becomes adversarial if the court had notified all persons that must be

52. 141 SCRA 462 (1986).

53. See *Republic v. Bartolome*, 138 SCRA 442 (1985); *Yu v. Civil Registrar*, 121 SCRA 873 (1983).

made parties to such proceeding. The trial court must also issue an order setting the time and place for the hearing of the petition and the cause and order for hearing to be published once a week for three consecutive weeks in a newspaper of general circulation in the province. If all these procedural requirements were followed, the said proceeding can no longer be said to be summary but adversarial.⁵⁴

As discussed, those in the nature of substantial changes remain within the ambit of Rule 108, requiring adversarial proceedings for which the petitioner must account for the facts alleged and the remedy sought. Also, under Section 7 of R.A. 9048, it is provided that: "where the petition is denied by the city or municipal registrar or the consul general, the petitioner may either appeal the decision to the Civil Registrar General or file the appropriate petition with the proper court." By express provision, R.A. 9048 still recognizes the judicial alternative whenever the administrative proceedings in R.A. 9048 fail or are insufficient.

IX. DIFFERENTIATING A COMPLETE CHANGE OF NAME AND A CHANGE OF NAME UNDER R.A. 9048

A. *The Nature of a Change of Name*

A change of name, as ruled by the Court in the case of *Calderon v. Republic*,⁵⁵

does not by itself define, or affect a change in one's existing family relations, or in the rights and duties following therefrom; nor does it create new family rights and duties where none before were existing. It does not alter one's legal capacity, civil status, or citizenship. What is altered is only the name, which is distinguished from others and which he bears as the label or appellation for the convenience of the world at large in addressing him, or in speaking of or dealing with him. The situation is no different whether the person whose name is changed by a citizen or an alien.⁵⁶

Calderon speaks of the very nature of a change of name. It simply alters a person's designation in the community but does not affect either his capacity or status under Civil Law.

However, a change of name may be used to perpetuate fraud or avoid liability by allowing an individual to hide behind a new appellation and to escape responsibilities he had incurred while using an old name. To this, the law furnishes sufficient safeguards in both its provisions and implementing rules.

54. *Id.* at 468-69.

55. 19 SCRA 701, 725-26 (1967).

56. *Id.*

B. *Change of Name Under R.A. 9048*

The change of name contemplated under R.A. 9048 is limited by its express provisions to occasions where: (a) first names or nicknames sought to be changed are ridiculous or tainted with dishonor or extremely difficult to write or pronounce; (b) the new first name or nickname sought to be adopted has been habitually and continuously used by the petitioner, and he has been publicly known by that first name or nickname in the community; or (c) there is confusion to be avoided or created with the use of the registered first name or nickname of the petitioner.⁵⁷

It can be culled from the said provision that the change of name here is generally applied only to a change in the nickname or first name; it does not cover surnames. Perhaps, lawmakers had recognized that the designation of a first name or nickname are matters of choice by the parents of the petitioner. Thus, granting such a right to an individual within the context of R.A. 9048 is proper and utmost harmless.

C. *Rule 103's Adversarial Proceedings for a Change of Name*

Rule 103 which provides for the procedure for a change of name remains effective only on specific grounds that in certain respects must be "adversarial" as where the change of name would be so extrinsically different that the public would be faced with an almost complete change of identity. In the case of a change of surname, that situation contemplates a serious change in the identity of the individual. The Supreme Court has held:

The names of individuals usually have two parts: the given name or proper name, and the surname or family name. The given or proper name is that which is given to the individual at birth or baptism, to distinguish him from other individuals. The name or family to which he belongs and is continued from parent to child. The given name may be freely selected by the parents for the child; but the surname to which the child is entitled is fixed by law.⁵⁸

A change of surname is not covered by R.A. 9048. Whether the cause for the change is that the surname is ridiculous or embarrassing; or to conform with alien parentage; or a sincere desire to adopt a Filipino name to erase signs of this alien lineage, such changes constitute a radical change of identity rather than a mere correction of a mistake in the civil registry. Of course, a misspelled surname in the civil registry can be applied for as a typographical error under the second situation covered by R.A. 9048 because, as what had already been said, a surname is determined not by choice of the parent but by law. So if the surname is "de la Cruz" but was typed into the birth certificate as "de la Cruz," then the change may be covered by R.A. 9048.

57. Republic Act 9048, § 4.

58. Republic v. CA, 209 SCRA 189, 194 (1992).

In the case of *Batbatan v. Office of Local Civil Registrar*,⁵⁹ Eligia Batbatan, in behalf of her two minor children whose registered name in the Civil registry were Jorge Batbatan Ang and Delia Batbatan Luy, filed a petition for the correction of these entries since said entries were erroneous. The children were those of the petitioner from Ang Kiu Chuy alias Sioma Luy (so the surnames appearing in the records came from their putative father). According to Eligia, Mr. Ang was married to another woman at the time their children were born. An elder daughter carried the name Jane Batbatan. The lower court denied the petition. On certiorari, the Supreme Court held that they had been strict in applying Rule 108 to avoid this summary proceeding from being unlawfully utilized as a shortcut method to bring about a change of citizenship, paternity, status or other substantial attribute or qualification. However, where justice and equity dictate and where no such change is contemplated the court will readily sustain its use. The entries do not affect the citizenship or status of the individuals involved as the errors committed by the clerk resulted in entries contrary to law. The changes sought, if granted, would bring about a compliance with Article 368 of the Civil Code which provides: "Illegitimate children referred to in Article 287 shall bear the surname of the mother." Since the petitioners were born to a married man with a woman not his legitimate spouse and are thus spurious, they should bear the mother's name.⁶⁰

X. CONCLUSION

Those whose records in the Civil Registrar are true and correct, the value and convenience brought by R.A. 9048 will remain unappreciated. For those whose entries were accidentally misentered, and whose application for a job, a visa or passport, or entry to a school hang in the balance, however, R.A. 9048 provides a practical and effective remedy, and a speedy opportunity to set the record straight.

The benefits reaped from R.A. 9048's passage are simple but significant. It affords a person an easier opportunity to correct the record of his identity in the civil registry from human error. After all, can we blame the Civil Registrar for such typographical errors that may cause trouble in the future or is it the fault of parents who were remiss in not ensuring that the name they wanted was the name their child received? By hastening the process of amending entries in the civil registry, public records concerning one's identity may immediately be corrected. Thus, R.A. 9048 facilitates resolution of disputes arising from misspelled names or typographical errors in the civil register.

An administrative proceeding and its summary nature would remove the procedure from the tedious and intimidating system underlying every judicial

59. 118 SCRA 745 (1982).

60. *Id.* at 748 (1982).

proceeding. The reliance of individuals on affidavits as to their identity rather than correcting the entry itself through judicial confirmation may be attributed to the fact that people view court processes as cumbersome, slow, and expensive. The need to hire lawyers to cope with existing protocols of the court hampers the efficacy of using either Rule 103 or 108 as a remedy. Also, who better to correct the entries than the agency which made the mistake in the first place? The Civil Registrar should be held accountable and responsible for such mistakes and be given the opportunity to correct them.

R.A. 9048 also serves to help relieve the clogged court dockets of unnecessary cases. Individuals can now seek correction of clerical or typographical errors in entries in the civil registry through the civil registrar rather than the court. This would save judges from having to rule on matters that require minimal legal knowledge and judicial discretion, allowing them to focus on matters far more important.