

## To Amend or Not Amend, That is the Question

I recently taught in a course for clerks on proceedings involving minors. One of the sessions related to proceedings to establish facts of birth set forth in [G.S. 130A-106](#) and [G.S. 130-107](#). Both proceedings are discussed in more detail in Chapter 141 of the [NC Clerk of Superior Court Procedures Manual](#). The session was included on the course agenda in part to highlight the areas where clerks have jurisdiction to enter judgments and orders related to facts of birth and where clerks do not. The two proceedings set forth in G.S. 130A before the clerk provide a mechanism for a person born in NC, whether an adult or a minor, who **does not have a recorded birth certificate** (G.S. 130A-106) or has **unknown parentage and unknown place and date of birth** (i.e. the person was abandoned at birth) (G.S. 130A-107) to obtain a judgment from the clerk establishing facts of birth. If the clerk enters a judgment, the clerk then (i) certifies the judgment to the State Registrar, a person appointed by the Secretary of NC Department of Health and Human Services to run [NC Vital Records](#), and (ii) sends a copy to the local register of deeds.

These proceedings are different from a proceeding where a person has a birth certificate and wants to *change information on the existing birth certificate*. Essentially, the person is seeking to obtain an amended birth certificate because information on the birth certificate is incorrect or new information is known such as the person's parentage. People often end up in the clerk's office seeking an order to amend a birth certificate because they have been told by Vital Records in Raleigh or a local register of deeds that a court order is needed for the State Registrar to amend the birth certificate.

### The Clerk's Authority to Enter an Order

Parties seeking an order from the clerk to amend a birth certificate will cite [G.S. 130A-118](#) as authority for the clerk to enter an order to amend a birth certificate. **This statute does not grant the clerk jurisdiction to enter such an order.** It sets forth the grounds when the State Registrar will amend an existing birth certificate to correct an error or add new information. See G.S. 130A-118(a). It also provides when the State Registrar will issue a new birth certificate upon receipt of notification or satisfactory proof of a court order from **a court of competent jurisdiction** that discloses different or additional information regarding parentage. See G.S. 130A-118(b). It does not itself create the authority in the clerk to enter an order to amend a birth certificate. For a clerk to enter any order that results in an amendment to or issuance of a new birth certificate, there must be a separate statute (recall: [Show Me the Statute](#)) granting the clerk that authority. The clerk has such jurisdiction to enter an order that results in a change to a birth certificate or new birth certificate in connection with:

- a legitimation proceeding under G.S. 49.10 or G.S. 49.12.1,
- a name change proceeding under G.S. 101-5, and
- an adoption proceeding under G.S. 48-9-107.

Another court, such as a district court in a paternity action, may also have the authority to enter an order that will result in an amended or new birth certificate issued by the State Registrar, but that is beyond the scope of this post.

## **Amendment to Birth Certificates/Issuance of New Birth Certificates**

Requests to amend birth certificates or to issue a new birth certificate are made to the State Registrar. The State Registrar is charged with adopting the rules that govern the form of requests and the type and amount of proof required. These rules are set forth in [Title 10A NC Administrative Code Subchapter 41H](#). Two types of relevant requests that come before the State Registrar include (1) a request to correct a minor or more substantial error on a birth certificate by amendment, and (2) a request to change the surname or parentage on a birth certificate or issue a new birth certificate as a result of the entry of an order or judgment from a court of competent jurisdiction.

### **1. Corrections without a Court Order or Judgment**

The rules prescribe the grounds for when the State Registrar will make minor corrections to a birth certificate upon application to the State Registrar (not the clerk) from the person on the birth certificate or one or both parents or guardians of a minor child. These include, in part, any obvious clerical error as well as corrections to addresses, occupation, birth order, or the spelling of a child's name within four years of birth. 10A NCAC 41H .0902.

The rules also prescribe the grounds for other more substantial types of amendments that require documentary evidence. These include, in part, changes to the birthplace of parents, the county of birth, the spelling of a child's name after four years of birth, the spelling of the father's or mother's name, the sex of the child, or the date or hour of birth. 10A NCAC 41H .0903. There are other rules applicable to amending a birth certificate to add a given name (.0904), if perhaps the child has indecisive parents and was not given a name at birth, and rules for correcting falsified certificates (.0905).

### **2. Amendments with a Court Order or Judgment**

There are two types of amendments that the State Registrar will generally not make without a court order: (i) an amendment to a person's surname, or (ii) a change in the person's parentage. 10A NCAC 41H .0909. One exception to this rule is in cases of legitimation by subsequent marriage. See 10A NCAC 41H. 1102; G.S. 49-12. In connection with a legitimation by court order under G.S. 49-10 or G.S. 49-12.1 or an adoption under G.S. Chapter 48, the State Registrar will issue an entirely new birth certificate rather than simply an amended certificate. 10A NCAC 41H .1001; 10A NCAC 41H .1002.

## **Appeal of the State Registrar's Decision**

If a request for an amendment is submitted and rejected by a representative of the State Registrar, whether based on a request to correct or a court order, the rules establish an appeal process. 10A NCAC 41H .0910. The applicant may request a meeting to present data in support of the amendment and may be represented by legal counsel in the meeting. *Id.* The Head of the Vital Records Section then reviews the evidence presented and issues a written decision within 45 days. *Id.* If denied, the applicant may then request an administrative hearing under the North Carolina Administrative Procedure Act in [G.S. Chapter 150B](#). *Id.* Appeals from an administrative hearing decision then go to the judicial branch and the proper division to hear the appeal is the superior court. G.S. 7A-250(a); G.S. 150B-43.

Ultimately, the clerk does not have a role in or the jurisdiction to enter an order that would result in the amendment or issuance of a new birth certificate by the State Registrar unless there is a statute which gives the clerk that authority. Those statutes as noted above are found in proceedings related to legitimations, adoptions, and name changes. If a petition is filed requesting that the clerk enter an order to amend or issue a new birth certificate solely on the basis of G.S. 130A-118, the clerk should dismiss the petition for lack of jurisdiction. If a person has made a request and been denied an amendment from the State Registrar, they may consider following the appeal process set forth in the administrative code.