

# THE SCRIVENER

## What's in a Name?

By Scott Moise

'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.

William Shakespeare, *Romeo and Juliet* (Act II, Scene I, lines 38–49).

Poor Juliet. If Romeo had only been named Romeo Brown or Romeo McGillicuddy or anything but Romeo Montague, he could have married Juliet and lived happily ever after. Instead, well, you know what happened: poison and a dagger, all because of their names. Names do not usually cause such tragic results, but even in our legal profession, they can still create a lot of trouble.

Although it was about three centuries too late to help Juliet, the South Carolina Supreme Court actually defined “what’s in a name”: “The word ‘name’ is thus defined in Century Dictionary: ‘A word by which a person or thing is denoted; the word or words by which an individual person or thing, or class of persons or things, is designated, and distinguished from others; appellational denomination; designation.’” *Koth v. Pallachucola Club*, 79 S.C. 514, 517–18, 61 S.E. 77, 78 (1908) (holding that taxpayers—not county tax officials—are supposed to unravel complicated inheritances that cause errors of property owners’ names on deeds). Later, the supreme court was more specific: “Generally, a person’s name is ‘the designation by which he is known

and called in the community in which he lives and is best known.” *Stevenson v. Ellisor*, 270 S.C. 560, 562, 243 S.E.2d 445, 446 (1978).

### What are the components of a name?

Most people have three names: first, middle, and last. Earlier cases referred to first names as “Christian” or “baptismal” names. *See, e.g., William Alexander & Bros. v. Davidson & Davidson*, 27 S.C.L. 49, 51 (S.C. App. L. 1841). However, as the court of appeals later noted, “[T]here is no union here between Church and State, and no obligation on parents to baptize their children.” *City Council of Charleston v. King*, 15 S.C.L. 487, 489–90 (S.C. App. L. & Eq. 1828). Now, courts just refer to a person’s first name simply as “first name,” “given name,” or “forename.” *See, e.g., Wade v. Luerre*, No. 619CV03576JFAKFM, 2020 WL 6828660, at \*1 (D.S.C. Oct. 27, 2020) (“The letter further sought to re-add Nurse Brezzle as a party if at some point during litigation the plaintiff was able to determine Nurse Brezzle’s **first name**.”); *George Sink PA Injury Lawyers v. George Sink II Law Firm LLC*, No. 2:19-CV-01206-

DCN, 2019 WL 6318778, at \*8 (D.S.C. Nov. 26, 2019) (“While plaintiff promoted Sink Jr. as a lawyer working for Sink PA using his **given name**, it certainly never acquiesced to his use of the GEORGE SINK marks to promote his own independent legal services.”); *Hammonds v. Jackson*, No. 1:13-CV-711-MHS-WEJ, 2015 WL 12867065, at \*1 (N.D. Ga. Mar. 16, 2015) (“Despite the informality, for convenience the Court generally refers to these unrelated persons by their **forenames**.”).

Courts have referred to last names as “last names,” “surnames,” “family names,” and “patronymic” names. *See Washington v. Saul*, No. CV 1:19-1825-SVH, 2020 WL 3428852, at \*1 n.1 (D.S.C. June 22, 2020) (“These records are likely those of another individual with Plaintiff’s first and **last name** . . . .”); *United States v. Haas*, 986 F.3d 467 n.1 (4th Cir. 2021) (“We refrain from providing a **surname** to protect her privacy.”); *City Council of Charleston*, 15 S.C.L. at 490 (“[T]his name may be as often changed as the **patronymic** . . . .”). Note that “patronymic” refers to the name derived from the father. Children may also have the mother’s name, which is called a “matronymic” name, or a hyphenated version of both parents’ last names. I located no case, anywhere in the United States, that used the term “matronymic” when referring to a last name that was derived from the mother, although courts have addressed issues related to a last name that came from the mother. *See, e.g., Wilson v. McDonald*, 393 S.C. 419, 420, 713 S.E.2d 306, 307 (Ct. App. 2011) (“Wilson named their daughter without McDonald’s input, giving the daughter the last name ‘Wilson.’”).

Middle names, to my knowledge, have been called simply “middle names” or—when referring to a woman’s middle name that was her last name before she was married—“maiden names.” See, e.g., *North v. Dorn VA Hosp.*, No. CV 3:20-3952-JMC-SVH, 2020 WL 6802954, at \*3 (D.S.C. Nov. 19, 2020) (“Plaintiff’s **middle name** is sometimes spelled ‘Neil’ in his complaint . . . .”); *Sanders v. Smith*, 431 S.C. 605, 614, 848 S.E.2d 604, 608 (Ct. App. 2020) (“Wife failed to show Husband committed fraud upon the court by suing her in her **maiden name** and misrepresenting her address.”).

Courts have not always treated middle names with the respect they deserve. The United States Supreme Court once stated that “[t]he law knows of but one Christian name, and the omission or insertion of the middle name, or of the initial letter of that name, is immaterial; and it is competent for the party to show that he is known as well without as with the middle name.” *Games v. Stiles ex dem. Dunn*, 39 U.S. 322, 326, 10 L. Ed. 476 (1840); see also *Conrad v. Griffey*, 52 U.S. 480, 489, 13 L. Ed. 779 (1850) (“The middle name forms no part of the Christian name of a party.”).

### **Do nicknames have any legal significance?**

Black’s Law Dictionary defines “nickname” as “[a] short name; one nicked or cut off for the sake of brevity, without conveying an idea of opprobrium, and frequently evincing the strongest affection or the most perfect familiarity.”

In *Stevenson v. Ellisor*, 270 S.C. 560, 561, 243 S.E.2d 445, 445 (1978), a candidate for lieutenant governor, brought a declaratory judgment action to determine whether she was allowed to use the name “Nancy” rather than her given name “Ferdinan” on the general election ballot. The South Carolina Election Commission insisted on “Ferdinan,” but the supreme court disagreed, stating that “[w]e do not believe that the word ‘name’ is synonymous with ‘Christian name’ or ‘given name,’ ” and therefore,

the word “name” in the election statute was not limited to the given name. However, the court did not interpret “Nancy” to be a nickname, but instead determined that it was a “derivative” of Ferdinan: “Respondent’s given name ‘Ferdinan’ contains the first three letters of the name ‘Nan cy.’ It is therefore a derivative, albeit a less common one, just as ‘Ric k’ is a derivative of ‘Ric hard’ and ‘Su e’ is a derivative of ‘Su san.’ ” *Id.* at 563, 243 S.E.2d at 446 (spacing in original). However, the court held that nicknames, unlike derivatives, could not be used on the ballots. Now, the Election Commission allows a candidate to include a nickname “if it does not exceed 15 letters, does not imply professional or social status, is a derivative of your given name properly acquired or bears no relation to your given name but it is used in good faith.” S.C. Election Comm’n, “Candidate Dos and Donts,” <https://www.scvotes.gov/candidate-dos-and-donts> (2019). In the end, Nancy Stevenson won both her lawsuit and the election, becoming the first woman in South Carolina to hold statewide office.

Nicknames most often seem to cause trouble in cases in which a party is trying to keep a nickname from being mentioned at trial. Evidence concerning a defendant’s nickname is not prejudicial when used to prove something at issue in a trial, such as the identification of the defendant. See, e.g., *State v. Day*, 341 S.C. 410, 422, 535 S.E.2d 431, 437 (2000). However, use of a nickname usually cannot be excessive or repetitious. *Id.* at 422, 535 S.E.2d at 437 (holding that prosecutor’s referencing defendant’s nickname of “outlaw” 23 times during closing argument in murder prosecution was excessive and repetitious and deprived defendant of due process of law, as the nickname was not used to prove any matter in controversy.)

In a somewhat related issue, in *Johnson v. McCall*, No. CA 4:08-3840-CMC-TER, 2010 WL 972702, at \*9 (D.S.C. Feb. 9, 2010), *report and recommendation adopted*, No. CA 4:08-3840-CMC-TER, 2010

WL 960335 (D.S.C. Mar. 12, 2010), the defendant asked that the court order parties to use only his birth name, Preston Devron Johnson, throughout the trial rather than his legal name, Abdullah Qawi Mustafa. The court denied his motion because (1) the defendant was indicted using his Muslim name; (2) Mustaffa was his legal name and had been for some time; (3) Mustaffa was his wife's legal name; (4) many witnesses knew him as "Qawi;" and (5) the trial judge understood that "he is not generally known by his name Preston Devon Johnson." The judge then raised the issue of prejudice at voir dire and excused the only juror who indicated any kind of prejudice towards Muslims. Under the circumstances, the federal magistrate judge found that the defendant had not demonstrated that the prosecution's reference to his Muslim name was so prejudicial as to render his trial fundamentally unfair.

#### **Ensure that names in correspondence are correct.**

People want their names to be spelled correctly, and with Google and other internet databases, there is no excuse for failing to take the few extra minutes to check. While you are checking, search the internet for the person's gender and do not assume that Michael, Scott, and Alex are males or that Robin, René, and Kay are women. People also want the names of their businesses spelled correctly. They also expect the punctuation to be correct, as some businesses have a commas before LLC or similar business abbreviations, and—based on personal experience with some of my clients—that matters. Cf. *Lovine v. Goodridge-Call Lumber Co.*, 153 N.W. 517, 517 (Minn. 1915) (addressing whether "Goodridge-Call L'b'r Co." was sufficient notice because the actual name had no apostrophes).

#### **Ensure that names in court documents are correct.**

Although courts may excuse misnaming parties in a complaint and allow them to amend the cap-

tion or complaint, if the misnomer causes prejudice to the defendant, the court may decide to dismiss the pleading. See *Cropp v. Golden Arch Realty Corp.*, No. 2:08-CV-0096-CWH, 2009 WL 10710585, at \*2 (D.S.C. Mar. 31, 2009) (dismissing summons because it named an entity that was no longer in existence, having been merged into another corporation); *Sweeney v. Greenwood Index-Journal Co.*, 37 F. Supp. 484, 485 (D.S.C. 1941), *disapproved on other grounds*, *United States v. A.H. Fischer Lumber Co.*, 162 F.2d 872 (4th Cir. 1947) ("[If a] misnomer or mistake on the part of the Plaintiff constitutes a fatal defect, that is a defect of substance and not merely one of form, the process would be void ab initio and . . . there would be, as recognized by Rule 12(b), both insufficiency of process [under Rule 4(a) and insufficiency of service of process [under Rule 4(b)].").

#### **Protect the privacy of names in court documents.**

Federal courts require redaction, before filing and serving, of the names of minors (only include their initials. See Fed. R. Civ. P. 5.2(a). South Carolina state courts require redaction of the names of minor children. If a minor is the victim of a sexual assault or the victim in an abuse or neglect case, the minor's name must be completely redacted and a term such as "victim" or "child" should be used. In all other cases, only use the minor's first name and first initial of the last name (i.e., John S.), or only the minor's initials (i.e., J.S.)). See *In re Revised Order Concerning Pers. Identifying Info. & Other Sensitive Info. in Appellate Ct. Filings*, 407 S.C. 607, 608, 757 S.E.2d 421, 421–22 (2014).

Neither the state nor federal rules allow a party to proceed anonymously, but in certain cases, a party may be allowed to proceed as "John Doe" or "Jane Doe" or some similar pseudonym. However, courts sometimes allow parties to proceed as "John Doe" plaintiffs or defendants to protect privacy concerns. Although proceeding anonymously is extremely rare,

federal courts have allowed parties even to proceed to trial without being identified by name by looking at the following factors in deciding whether to allow a party to proceed anonymously: See *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993) (reversing trial court's refusal to allow plaintiffs to proceed anonymously in a medical malpractice case); *Doe v. Howe*, 362 S.C. 212, 218–19, 607 S.E.2d 354, 356–57 (Ct. App. 2004) (reversing trial court's denial of motion to allow plaintiff to proceed anonymously because of issues of sexual abuse that were peripheral to legal malpractice case).

Also, an unknown party in state court may be sued by stating in the pleadings that the name is unknown and designating the unknown party by any name (usually referred to as "John Doe" or "Jane Doe") and the words "whose true name is unknown." S.C. R. Civ. P. 10(a)(1); see also S.C. Code Ann. § 38-77-180 (allowing "John Doe" actions against unknown defendants in automobile accidents). When the party's real name is later identified, the plaintiff must amend the pleadings to name the party. S.C. R. Civ. P. 10(a)(1). Federal rules do not explicitly call for John Doe pleading, and some jurisdictions do not allow it, but the Fourth Circuit permits these suits against "real, but unidentified, defendants." See *Schiff v. Kennedy*, 691 F.2d 196, 197–98 (4th Cir. 1982).

#### **Conclusion**

No doubt about it, names are important to people. As the fictional Romeo and Juliet and the real-life Hatfields and McCoys can attest, names can cause real problems. In legal writing, while not as deadly, the problems go beyond just embarrassment for making a mistake—which happens to all of us—but misuse of names can lead to lawsuits over real estate documents; contracts and other transactional documents; and allegations of defamation, violation of copyright, trademark, privacy, and other laws. Take time to get names right. They just might save your lawsuit.