



Judicial Council of California • Administrative Office of the Courts

455 Golden Gate Avenue • San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 13, 2011

Title	Agenda Item Type
Civil Forms: Petitions for Recognition of Change of Gender	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise forms NC-200, NC-210/310, NC-220, NC-300, NC-320, and NC-330	January 1, 2012
Recommended by	Date of Report
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	November 18, 2011
	Contact
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Executive Summary

The Civil and Small Claims Advisory Committee recommends that the Judicial Council revise all forms for petitioning a court to recognize a person's change of gender to implement the new statutory requirements enacted in Assembly Bill 433 (Stats. 2011, ch. 718). Because the new law goes into effect on January 1, 2012, the advisory committee recommends that these form changes be adopted to be effective that same date, and circulated for public comment after approval.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2012:

1. Revise the following forms, including a title change on form NC-320:
 - *Petition for Change of Name and Gender* (form NC-200);

- *Declaration of Physician Documenting Change of Gender Through Clinically Appropriate Treatment Under Health and Safety Code Sections 103425 and 103430* (form NC-210/310);
- *Order to Show Cause for Change of Name* (form NC-220);
- *Petition for Change of Gender and Issuance of New Birth Certificate* (form NC-300);
- *Setting of Hearing on Petition for Change of Gender and Issuance of New Birth Certificate* (form NC-320); and
- *Order for Change of Gender and Issuance of New Birth Certificate* (form NC-330).

Copies of the proposed form revisions are attached at pages 7–14.

Previous Council Action

In 2003, the Judicial Council adopted a set of forms for persons to petition for recognition of a gender change and issuance of a new birth certificate reflecting that change. In 2006, the council adopted an additional set of forms to petition for a change of gender and issuance of a new birth certificate, without a name change.

Two of the gender change forms, *Petition for Change of Gender and Issuance of New Birth Certificate* (form NC-300) and *Notice of Hearing on Petition for Change of Gender and Issuance of New Birth Certificate* (form NC-320), were revised in January 2011 to reflect the change in venue requirements for petitioners who are California-born transgender individuals residing outside the state—a change in the law based on the holding in *Somers v. Superior Court of San Francisco City and County* (2009) 172 Cal.App.4th 1407. No other substantive changes have been made to the name change forms since the council’s adoption of the forms.

Rationale for Recommendation

The Governor recently signed into law AB 433 (Stats. 2011, ch. 718).¹ Among other things, this legislation changes current law by:

- Providing that a petition to recognize a change of gender and for issuance of a new birth certificate may be filed in the superior court of any county within the state, rather than only in the county of the petitioner’s birth;
- Providing that a person need only show a court that he or she has received “clinically appropriate” rather than “surgical” treatment for the purpose of gender transition for a court to recognize the change in gender; and

¹ The text of AB 433 can be viewed at http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0401-0450/ab_433_bill_20111009_chaptered.pdf.

- Deleting the provisions of existing law that authorize the filing of objections to such a petition and requiring the court to grant the petition if the accompanying doctor's affidavit shows that the petitioner has undergone clinically appropriate treatment for the purpose of gender transition.

When these changes take effect on January 1, 2012, several of the current Judicial Council forms regarding requests for recognition of changes in gender will be incorrect unless revised.

Petitions for change of name and recognition of change of gender

The law continues to permit a single petition to both change the petitioner's name and recognize a change to the petitioner's gender (Health & Saf. Code, § 103435) but has changed some requirements regarding the gender-change portion of these petitions. Hence, the Judicial Council forms for such consolidated petitions, the NC-200 series, should be revised to reflect the changes in the law.

Item 3 of proposed *Petition for Change of Name and Gender* (form NC-200) has been revised to reflect that under the amended statute a person need only show that he or she has received "clinically appropriate," rather than "surgical," treatment. (Health & Saf. Code § 103425(a) (as amended).) The title of the *Declaration of Physician Documenting Change of Gender Through Clinically Appropriate Treatment Under Health and Safety Code Sections 103425 and 103430* (form NC-210/310)² has been revised to reflect this new evidentiary requirement.

The amended statute expressly provides that the order to show cause, if any, as to why petitioner's *name* should not be changed, must not include the petition to recognize the change of gender. (Health & Saf. Code, § 103435 (as amended).) Item 5 of the petition (form NC-200) has been revised to note that the order to show cause addresses only the petition for name change.³ The proposed *Order to Show Cause for Change of Name* (form NC-220) has also been revised to delete all references to the petition for recognition of change of gender.

² This form has two numbers because the identical form is part of both the NC-200 form series (for consolidated petitions for change of name and change of gender) and the NC-300 form series (for petitions for change of gender without a name change).

³ While this change is being made to implement the new statute, the committee recommends that two items in the *Instructions for Filing a Petition for Change of Name and Gender* on the back of form NC-200 be corrected at the same time. Item 4 in the instructions has been revised to correctly identify the fee waiver forms currently in effect, and item 10 has been revised to include the new web address for the State Registrar's office.

Petitions for recognition of change of gender without a name change

The forms for petitions brought solely for recognition of a gender change for the purposes of getting a new birth certificate, without an accompanying change of name, are in the NC-300 form series. Several of these forms should also be revised to implement the amended statute.

The proposed revisions to the *Petition for Change of Gender and Issuance of New Birth Certificate* (form NC-300) delete the first item on the current form, which reflects the current statutory requirement that the petition must be filed within the county of residence, as well as the recent case law that vacated that provision as applied to petitioners who were born in California, but do not currently reside in California. Under the new law, a petition may be filed in the superior court of any county, no matter where the petitioner resides. (Health & Saf. Code, § 103425(a) (as amended).)

Item 1 on proposed form NC-300 (item 3 on the current form) has been revised to reflect the changed requirement that petitioner need only show “clinically appropriate” rather than “appropriate surgical” treatment for the purpose of gender transition.

Item 4 on proposed form NC-300 (the last item on the current form) previously requested an order setting a hearing at which objections to the change of gender on the birth certificate could be heard.⁴ The amended law no longer authorizes the filing of objections, although it still provides for a hearing on the petition and authorizes the court to examine at that hearing the petitioner and any other person having knowledge of facts relevant to the petition. (Health & Saf. Code, § 103430(b) (as amended).) New item 4 deletes the reference to objections and tracks the language of the statute regarding the hearing.

In light of the deletion of any statutory requirement for an order to show cause, the current *Notice of Hearing on Petition for Change of Gender and Issuance of New Birth Certificate* (form NC-320) has been renamed to *Setting of Hearing on Petition for Change of Gender and Issuance of New Birth Certificate* and revised to delete the order to show cause section. The signature block has been changed to allow the form, which simply informs the petitioner of the date and time for the hearing, to be signed by a clerk rather than a judicial officer, to make the process less burdensome on judicial officers. This is an optional form and the court may, if it chooses, use another document to set the required hearing. The change in the form is also reflected in revisions made in the instructions to the petitioner on the back of form NC-300, including the combination of

⁴ This item was based on the following provision in the current statute, which has been deleted from the new statute: “The petition shall be heard at the time appointed by the court and objections may be filed by any person who can, in those objections, show to the court good reason against the change of birth certificate.” (Health & Saf. Code, § 103430(b).)

former items 4 (Requesting a Court Hearing Date) and 5 (Filing the Notice of Hearing) into a single item.

The *Order for Change of Gender and Issuance of New Birth Certificate* (form NC-330) has been revised to remove the items affirming residency of the petitioner and the references to objections to the petition for change of gender.

Timing of change

The legislation enacting these new provisions will take effect on January 1, 2012, and the committee concluded that the forms should be modified as soon as possible to reflect these changes in the law. Although the forms are not mandatory, they are used in almost all actions for recognition of change of gender. Unless they are modified, there will be inconsistencies between the forms and the statutes that may create confusion for litigants and courts. Petitioners requesting decrees of gender change under the new legal standard would not have accurate forms available for submission to the courts. The committee's view is that eliminating confusion and facilitating implementation of the statute by the courts warrants immediate approval of these form changes. The committee therefore recommends that the council adopt this proposal effective January 1, 2012, without circulating it for public comment.

Comments, Alternatives Considered, and Policy Implications

Comments

Because the proposed revisions are noncontroversial and required to implement legislation effective as of January 1, 2012, the committee recommends that the Judicial Council approve the proposed revisions without a prior public comment period to ensure that the forms are available for use by courts as soon as possible. To facilitate future committee consideration of public feedback, the Judicial Council's Rules and Projects Committee will circulate the forms for public comment during the winter. The committee will return to the council with any further recommendations based on comments received.

Alternatives considered

The committee considered the following alternatives to revising the forms:

Option 1: Make no changes to the forms. The committee did not consider this to be a viable option. If the Judicial Council forms are not updated to reflect the new provisions of the statute, the forms submitted by petitioners will be incorrect and there will be confusion concerning where the petitions may be filed and what evidence is needed to support them. In addition, courts will be forced to revise each order form individually to comply with the new law.

Option 2: Recommend circulation and July 1 effective date. The committee considered, but decided against, recommending that the proposed form revisions be sent out for a

public comment period during the winter cycle and then presented to the Judicial Council in April, for adoption effective July 1, 2012. The advantage of this alternate approach is that the council would have the benefit of public comments on the proposal before considering it for adoption. However, courts would face the confusion and added work described above for several months.

Implementation Requirements, Costs, and Operational Impacts

There will be some costs and operational impacts for the courts associated with the use of new order forms, both costs of training staff and potentially for adding the new order forms to computerized case management systems. However, the forms as they currently exist will be incorrect as of January 1, 2012. Providing correct forms should facilitate the court's implementation of the new statutory provisions.

Attachments

Forms NC-200, NC-210/310, NC-220, NC-300, NC-320, and NC-330, at pages 7–14.

PETITIONER OR ATTORNEY (<i>Name, State Bar number, and address</i>): TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY DRAFT Not Approved by the Judicial Council 11-15-2011
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (<i>Name</i>):	
PETITION FOR CHANGE OF NAME AND GENDER	CASE NUMBER:

Before you complete this petition, you should read the *Instructions for Filing a Petition* on the next page. You must answer all questions and check all boxes on this petition that apply to you. You must file this petition in the superior court of the county where the person whose name is to be changed resides.

1. Petitioner (*present name*): _____ is a resident of this county.
 Petitioner requests that the court decree that petitioner's name is changed to (*proposed name*): _____

2. Petitioner requests a decree that the petitioner's gender is changed:
 - (1) from male to female.
 - (2) from female to male.

3. An affidavit or a declaration of a physician documenting the gender change through **clinically appropriate** treatment as provided under Health and Safety Code sections 103425 and 103430 is attached to this petition. (Declaration of Physician (*form NC-210*) *may be used for this purpose.*)

4. Petitioner requests that the court order that a new birth certificate be issued reflecting the gender and name changes sought by this petition.

5. Petitioner requests that the court issue an order directing all interested persons to appear and show cause why **the petition for change of name** should not be granted.

6. Petitioner provides the following information in support of this petition:
 - a. The information contained in the physician's affidavit or declaration.

 - b-f. The information contained in the attachment (*attach a copy of the attachment Name and Information About the Person Whose Name Is to Be Changed (Attachment to Petition) (form NC-110)*).

(Instructions on next page)

INSTRUCTIONS FOR FILING A PETITION FOR CHANGE OF NAME AND GENDER

1. **Where to File**

The petition for change of name and gender must be filed in the superior court in the county where the petitioner presently lives.

2. **Whose Name May Be Changed**

The petition may be used to change one's name and gender.

3. **What Forms Are Required**

You need an original and two copies of each of the following documents:

- a. *Petition for Change of Name and Gender* (form NC-200)
- b. *Name and Information About the Person Whose Name Is to Be Changed (Attachment to Petition)* (form NC-110)
- c. *Declaration of Physician* (form NC-210) (signed by the physician and attached to form NC-200)
- d. *Order to Show Cause for Change of Name* (form NC-220)
- e. *Decree Changing Name and Gender* (form NC-230)

4. **Filing and Filing Fee**

Prepare an original *Civil Case Cover Sheet* (form CM-010). File the original petition and *Civil Case Cover Sheet* with the clerk of the court and obtain two filed-endorsed copies of the petition. A filing fee will be charged unless you qualify for a fee waiver. (If you want to apply for a fee waiver, see *Request to Waive Court Fees* (form FW-001) and *Information Sheet on Waiver of Court Fees and Costs* (form FW-001-INFO).)

5. **Requesting a Court Hearing Date**

You should request a date for the hearing on the *Order to Show Cause* at least six weeks in the future.

6. **Filing the Order to Show Cause**

After the hearing date has been included and you have obtained a judge's signature on the *Order to Show Cause*, file the original order in the clerk's office and obtain filed-endorsed copies of the order.

7. **Publishing the Order to Show Cause**

A copy of the *Order to Show Cause* must be published in a local newspaper of general circulation once a week for **at least four consecutive weeks** before the date of the hearing on the petition. The petitioner selects the newspaper from among those newspapers legally qualified to publish orders and notices. The newspaper used must file a Proof of Publication with the superior court before the hearing. If no newspaper of general circulation is published in the county, the court may order the *Order to Show Cause* to be posted by the clerk.

8. **Domestic Violence Confidentiality Program**

In cases where the petitioner is a participant in the domestic violence confidentiality program, the petition, the order to show cause published in the newspaper, and the decree should, instead of giving the proposed name, indicate that the name is confidential and on file with the Secretary of State.

9. **Court Hearing**

Bring copies of all documents to the hearing. If the judge grants the name and gender change petition, the judge will sign the original decree.

10. To obtain a new birth certificate reflecting the change of gender, file a certified copy of the order within 30 days with the Secretary of State and the State Registrar and pay the applicable fees. You may write or contact the State Registrar at:

**California Department of Health Services
Office of Vital Records
MS 5103, P.O. Box 997410
Sacramento, CA 95899-7410**

**Phone: 916-445-2684
website: www.cdph.ca.gov**

Local courts may supplement these instructions. Check with the court to determine whether supplemental information is available. For instance, the court may provide you with additional written information identifying the department that handles name and gender change petitions, the times when petitions are heard, and the newspapers that may be used to publish the *Order to Show Cause*.

PETITION OF (Name):	CASE NUMBER:
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**DECLARATION OF PHYSICIAN
DOCUMENTING CHANGE OF GENDER THROUGH CLINICALLY APPROPRIATE TREATMENT
UNDER HEALTH AND SAFETY CODE SECTIONS 103425 AND 103430**

Attachment to *Petition for Change of Name and Gender* (form NC-200) or *Petition for Change of Gender and Issuance of New Birth Certificate* (form NC-300)

I declare under penalty of perjury under the laws of the State of California that the information in the foregoing declaration is true and correct.

Date:

(TYPE OR PRINT NAME OF PHYSICIAN)

▶ _____
(SIGNATURE OF PHYSICIAN)

PETITIONER OR ATTORNEY (Name, State Bar number, and address): <hr/> TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY DRAFT Not Approved by the Judicial Council 11-15-2011
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (Name of petitioner): <p style="text-align: center;">FOR CHANGE OF NAME AND GENDER</p>	
ORDER TO SHOW CAUSE FOR CHANGE OF NAME	CASE NUMBER: _____

TO ALL INTERESTED PERSONS:

1. Petitioner (*present name*): _____ has filed a petition with this court for a decree changing petitioner's name to (*proposed name*): _____

2. THE COURT ORDERS that all persons interested in this matter shall appear before this court at the hearing indicated below to show cause, if any, why the petition should not be granted.

NOTICE OF HEARING

a. Date:	Time:	<input type="checkbox"/> Dept.:	<input type="checkbox"/> Room:
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b. The address of the court is same as noted above other (*specify*): _____

3. A copy of this *Order to Show Cause* shall be published at least once each week for four successive weeks prior to the date set for hearing on the petition in the following newspaper of general circulation, printed in this county (*specify newspaper*): _____

4. Other (*specify*): _____

Date: _____

JUDGE OF THE SUPERIOR COURT

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): <hr style="width: 10%; margin-left: 0;"/> TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY DRAFT Not Approved by the Judicial Council 11-18-2011
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (<i>Name</i>):	
PETITION FOR CHANGE OF GENDER AND ISSUANCE OF NEW BIRTH CERTIFICATE	CASE NUMBER:

1. Petitioner (*name*): _____ requests an order for the issuance of a new birth certificate reflecting the change of petitioner’s gender

a. from male to female.

b. from female to male.

2. A declaration by a physician documenting the gender change through clinically appropriate treatment as provided under Health and Safety Code sections 103425 and 103430 is filed with this petition. (*Attach a copy of Declaration of Physician—Attachment to Petition (form NC-310).*)

3. Petitioner has has not already obtained a decree of change of name. (*If petitioner has obtained a decree of change of name, attach a certified copy of the decree to this petition.*)

4. Petitioner requests that the court issue an order setting a hearing on this petition at which time the court may examine petitioner and any other person having knowledge of facts relevant to the petition.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

_____ (TYPE OR PRINT NAME OF PETITIONER)



_____ (SIGNATURE OF PETITIONER)

INSTRUCTIONS FOR FILING PETITION FOR CHANGE OF GENDER AND ISSUANCE OF NEW BIRTH CERTIFICATE

(This instruction page is for the information of petitioners. It is not part of the petition and does not need to be filed.)

1. Where to File

The petition for the issuance of a new birth certificate reflecting a change in gender may be filed in the superior court of any county in California.

2. What Forms Are Required

You will need an original and a copy of each of the following documents:

- a. *Petition for Change of Gender and Issuance of New Birth Certificate* (form NC-300)
- b. *Declaration of Physician—Attachment to Petition* (form NC-310) (signed by the physician and attached to form NC-300)
- c. *Setting of Hearing on Petition for Change of Gender and Issuance of New Birth Certificate* (form NC-320)
- d. *Order for Change of Gender and Issuance of New Birth Certificate* (form NC-330)

In addition, if you have already obtained a decree of change of name, attach a certified copy of the decree to the petition.

3. Filing Fee

Prepare an original *Civil Case Cover Sheet* (form CM-010). File the original petition and *Civil Case Cover Sheet* with the clerk of the court and obtain a filed-endorsed copy of the petition. A filing fee will be charged unless you qualify for a fee waiver. (If you want to apply for a fee waiver, see *Request to Waive Court Fees* (form FW-001) and *Information Sheet on Waiver of Superior Court Fees and Costs* (form FW-001–INFO).)

4. Requesting a Court Hearing Date

You should request a date for the hearing on the *Setting of Hearing on Petition for Change of Gender and Issuance of New Birth Certificate* (form NC-320) from the court clerk. Take the completed form NC-320 to the clerk's office. The clerk will provide the hearing date and location, file the original, and give you a copy.

5. Court Hearing

Bring copies of all documents to the hearing. If the judge grants the petition, the judge will sign the *Order for Change of Gender and Issuance of New Birth Certificate* (form NC-330).

6. New Birth Certificate

To obtain a new birth certificate reflecting the change of gender, file a certified copy of the order within 30 days with the State Registrar and pay the applicable fees. You may write or contact the State Registrar at:

California Department of Public Health
Office of Vital Records
MS 5103, P.O. Box 997410
Sacramento, CA 95899-7410

Phone: 916-445-2684
website: www.cdph.ca.gov

Local courts may supplement these instructions. Check with the court to determine whether supplemental information is available. For instance, the court may provide you with additional written information identifying the department that handles these petitions and the times when petitions are heard.

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY DRAFT Not Approved by the Judicial Council 11-15-2011
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (<i>Name</i>):	
SETTING OF HEARING ON PETITION FOR CHANGE OF GENDER AND ISSUANCE OF NEW BIRTH CERTIFICATE	CASE NUMBER:

Petitioner having filed a petition requesting an order for the issuance of a new birth certificate reflecting the change of petitioner's gender, a hearing will take place at the time and place below, at which time the court may examine the petitioner and any other person having knowledge of facts relevant to this petition.

(To be completed by clerk.)

a. Date:	Time:	Dept.:	Room:
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b. The address of the court is same as noted above other (*specify*):

Date: _____ Clerk, by _____, Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): <hr style="width: 20%; margin-left: 0;"/> TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY DRAFT Not Approved by the Judicial Council 11-15-2011
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (<i>Name</i>):	
ORDER FOR CHANGE OF GENDER AND ISSUANCE OF NEW BIRTH CERTIFICATE	CASE NUMBER:

1. The petition of (*name*): _____ for issuance of a new birth certificate
 reflecting a change of gender came on regularly for hearing on (*date*): _____

THE COURT FINDS

2. a. It appears to the satisfaction of the court that all the allegations in the petition are true and sufficient and that the petition should be granted.
- b. Other findings (*if any*): _____

THE COURT ORDERS

3. The gender of the petitioner has been changed
- a. from male to female.
- b. from female to male.

THE COURT FURTHER ORDERS

4. A new birth certificate reflecting the change of gender described in item 3 shall be issued.
5. A certified copy of this order shall be filed within 30 days with the State Registrar. When the State Registrar receives a certified copy of this order and payment of the applicable fees, the State Registrar shall establish for the petitioner a new birth certificate reflecting the gender of the petitioner as it has been altered.

Date: _____

 JUDICIAL OFFICER

