



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 29, 2010

Title	Agenda Item Type
Civil Forms: Petitions for Change of Gender and Issuance of New Birth Certificates	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise forms NC-300 and NC-320	January 1, 2010
Recommended by	Date of Report
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	August 2, 2010
	Contact
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Executive Summary

The Civil and Small Claims Advisory Committee recommends that the Judicial Council revise two forms relating to petitions for change of gender and issuance of a new birth certificate to reflect the current state of the law and permit non-California residents to file petitions in California using Judicial Council forms. Although Health and Safety Code section 103425 requires these petitions to be filed in the petitioner's county of residency, the Court of Appeal recently held that venue requirement invalid for California-born transgender individuals residing outside the state who, under the statute, had no valid California venue in which to file a petition.

Other minor revisions are proposed at the same time, to clarify the forms and make them more consistent with rules and statute. These changes include clarifying the instructions concerning the documents to be used for setting a hearing on the petition and eliminating the "optional" notation from the items for counsel's fax number and e-mail address.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council revise the *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), effective January 1, 2011. The revisions would eliminate the venue provision for out-of-state petitioners and clarify the instructions regarding venue, notice of hearing, and new birth certificate requests.

The revised forms also delete the “optional” qualifier from the items for e-mail address and fax number in the box on the top left of the forms.

The proposed revised forms are attached at pages 7 – 9.

Previous Council Action

The two forms were originally approved by the Judicial Council in 2006. The council had previously adopted a set of forms for persons to petition for a name change and a separate set of forms to petition for a name and gender change and issuance of a new birth certificate. The forms here are part of a set to petition for a change of gender and issuance of a new birth certificate without a name change.

The California Rules of Court concerning the format of papers filed with the court (other than Judicial Council forms) were amended in 2000 to provide that a fax number and e-mail address could be included on the first page at the option of the parties. In 2006, the council amended that rule further (then rule 201(f)(1), now renumbered as rule 2.111(1)), to require that the information be included if available. At that time, the Civil and Small Claims Advisory Committee did not recommend that a similar revision be required on all Judicial Council forms but reported to the council that revisions to forms would be considered on an individual basis.

Rationale for Recommendation

Revisions to venue items

California statutes authorize a petition for a new birth certificate reflecting a change of gender. (See Health & Saf. Code, sections 103425–103445.) The gender change forms NC-300 and NC-320 implement these statutes. The forms may be used by transgender individuals who have already legally changed their names or do not want to do so, but who want to obtain an order for issuance of a new birth certificate reflecting a change of gender. Certain items and instructions on these forms differ from those on the combined name and gender change forms because the statute authorizing changed gender on birth certificates does not require publication while the statute authorizing name changes does.

Health and Safety Code section 103425 provides that gender change petitions be brought in the superior court of the county in which the petitioner resides, and this venue provision is reflected on the current forms. Under that provision, however, transgender individuals with California

birth certificates who do not reside in California do not have a venue in which to bring such petitions. In April 2009, the Court of Appeal found the venue requirement in section 103425 invalid as applied to out-of-state residents, on the ground that it denies California-born transgender individuals residing outside California the same rights that California-born transgender individuals residing inside California have under section 103425. (See *Somers v. Superior Court of San Francisco City and County* (2009) 172 Cal.App.4th 1407.¹)

The primary proposed revision to the forms implements the Court of Appeal’s holding in *Somers*, permitting a gender change petition to be brought by a petitioner who does not reside in California. As proposed, the forms could be filed by a California resident in the petitioner’s county of residency (as mandated by the statute) or, if filed by an out-of-state resident, in any superior court in the state. (See item 1 on form NC-300, paragraph 1 in Instructions on back of that form, and item 1 on form NC-320; the revised instructions on form NC-300 also expressly cite the *Somers* decision.)

The statewide venue provision on the form reflects the current law. Because the venue provision in Health and Safety Code section 103425 was invalidated as to petitioners who are not California residents, and because no specific venue statute now exists for such petitioners, they may file anywhere in the state. The relief sought in these petitions is personal, so the claim is a “transitory” claim under the venue statutes. When, as here, no specific statute provides venue for such a claim, the general venue statute applies. (Code Civ. Proc. §395(a).) Generally, venue would be in the county where one or more of the defendants reside, but if no defendants reside in the state, the action may be in any court that the plaintiff designates. (*Ibid.*) Since there are no defendants or respondents named in the gender change actions, and hence none residing in the state, and since no other venue statute applies to out-of-state residents who bring such petitions, petitioners may bring these actions in any superior court in the state.

Revisions to other items in instructions

The proposed forms also include revisions to the instructions on the back of the *Petition for Change of Gender and Issuance of New Birth Certificate* (form NC-300) to clarify the instructions regarding the notice of hearing. The gender change forms differ from the forms involving name changes in part because, unlike in name-change proceedings, no publication of an order to show cause is required in gender change proceedings. The gender change statute does, however, require that that the court set a hearing to consider any objections that may be filed. (Health & Saf. Code section 103430(b).) In order to distinguish the notice for this hearing from the order to show cause that must be published in name change proceedings, the order setting a hearing for a gender change petition is styled as a notice of hearing rather than as an

¹ Following the *Somers* decision, the Legislature passed a bill that would have amended the Health and Safety Code venue provisions to permit filing a petition either in the county in which the petitioner resides or the county in which the petitioner was born. (Assem. Bill 1185 (2009 – 2010 Reg. Sess.)) The Governor vetoed the bill, however, stating: “The California Courts of Appeal have already provided a remedy for this issue, therefore this bill is unnecessary.” (Governor’s veto message on AB 1185, October 12, 2009.)

order to show cause. Compare *Notice of Hearing on Petition for Change of Gender and Issuance of New Birth Certificate* (form NC-320) with *Order to Show Cause for Change of Name* (form NC-120) and *Order to Show Cause for Change of Name and Gender* (form NC-220).

While the first item in the Instructions on the back of the gender change petition correctly identifies the notice of hearing form by title, the form refers to an “order to show cause” in the heading of item 5. (See form NC-300, page two.) According to reports from the Transgender Law Clinic, this difference in nomenclature has caused some confusion among litigants and clerks, who apparently conclude that the order to show cause referenced in item 5 is a different document than the notice of hearing listed in item 1. Because the form must be revised in light of the new case law, the committee recommends clarifying item 5 at the same time, by changing “order to show cause” to “notice of hearing” in the heading and adding the form number.

In addition, the references to fee waiver forms in item 3 have been updated to reflect the correct form names and numbers and the form reference in item 6 has been corrected. The information in item 7 concerning the California Department of Health has been updated, and the reference to filing the order at the California Secretary of State’s office has been removed.²

Revisions to information box items for e-mail and fax addresses

The proposal also calls for revision to the e-mail and fax address items at the top left of each form. As with all traditional Judicial Council forms, these include spaces in which counsel or a self-represented party is to enter an e-mail address and a fax number in addition to a telephone number. Currently, the e-mail and fax items each include a parenthetical indicating that the information is optional. This information *must* be provided on nonform pleadings if available. (California Rules of Court, rule 2.111(a).) As noted at the time the format rule was amended to remove the “optional” qualifier in 2005, fax and, now even more so, e-mail transmissions have become generally available. It is desirable that a fax number and e-mail address be included on the first page of papers filed with the court if the persons filing the papers are capable of receiving fax and e-mail transmissions.

At the time rule 2.111 was amended, there was concern that no blanket rule be developed requiring email addresses on Judicial Council forms. In particular, there were concerns about requiring self-represented litigants to provide such information on protective order forms, such as those in the domestic violence prevention, civil harassment, and elder abuse form groups. This advisory committee noted in its report to the Judicial Council that, rather than making a blanket rule for all Judicial Council forms, the forms should be individually reviewed to determine which should be revised to require fax numbers and e-mail addresses. The committee has concluded that the forms here do not inherently raise the concerns that forms used in obtaining protective

² That requirement occurs only in the statute concerning joint name change and gender change petitions, but not in the statute concerning gender changes alone. (Health & Saf. Code §§103434 and 103435.)

orders do. Hence the “optional” qualifiers have been removed from the e-mail and fax items on the revised forms.

Comments, Alternatives Considered, and Policy Implications

In light of the change in law under the *Somers* case, the committee concludes that there is no alternative to revising the form to permit filing by out-of-state petitioners. If the petition and notice of hearing are left unrevised, the forms will be inconsistent with the law as it currently stands.

This proposal was circulated for public comment in the spring 2010 comments cycle.³ As circulated, the form provided that it could be filed either in the petitioner’s county of residence or, if petitioner is an out-of-state resident, the petitioner’s county of birth. Four commentators, the Superior Courts of Orange and San Diego Counties, the Orange County Bar Association, and an individual superior court judge, agreed with the proposal.

The fifth commentator, the Transgender Law Center (TLC), asserted that the revision as circulated was too narrow in limiting the venue of a nonresident petitioner to the county of birth. That commentator pointed out that in the *Somers* case, the petitioner was a former California resident who had been born in Los Angeles and had filed a gender change petition in Superior Court for San Francisco County. The appellate court reversed the order denying the petition on venue grounds, and mandated the superior court to reconsider it on the merits. TLC asserted that the holding in *Somers* is therefore broader than what is reflected in the form as circulated and that an out-of-state resident should be able to file a petition for gender change anywhere in the state. TLC argues that although the Legislature passed a bill with the narrower rule reflected in the form (providing for venue in either county of residency or county of birth for all petitioners), that bill was vetoed and, hence, there is no legal basis for the Judicial Council to limit the venue for nonresidents to their county of birth.⁴ Following further analysis, as set forth above, the committee agreed with TLC and has modified the proposed forms.

Implementation Requirements, Costs, and Operational Impacts

These forms are generally prepared by litigants, so revisions would have little impact on most courts beyond requiring further education of courts and court staff on the venue issue. The notice of hearing form is issued by the court and revisions may require programming changes in a court’s computerized case management system if that form is within the system.

³ A chart summarizing the comments received and the committee’s responses is attached at page 10.

⁴ The committee also notes that the location of the petitioner’s place of birth, although used as a basis for venue in the vetoed bill, does not have any practical application to gender change actions. All California birth records are maintained by the California Department of Public Health, Office of Vital Records, which is located in Sacramento. The statute provides that once a petitioner obtains a court order affirming that the birth certificate can be amended to reflect a gender change, the petitioner is to file the order with a state office (the State Registrar), which is to issue the amended certificate. The form directs the petitioners to do this and provides the contact information for the Office of Vital Records. Thus, the birth records at issue and the agency that is to implement the ordered change are not located in the petitioner’s county of birth in any event.

Attachments

1. Form NC-300 and Form NC-320, at pages 7 – 9.
2. Chart of comments, at pages, 10 – 13.

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): <hr/> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="border: 1px solid black; padding: 2px;">TELEPHONE NO.:</div> <div style="border: 1px solid black; padding: 2px;">FAX NO.:</div> </div> <div style="border: 1px solid black; padding: 2px; margin-top: 5px;">E-MAIL ADDRESS:</div> ATTORNEY FOR (<i>Name</i>):	FOR COURT USE ONLY DRAFT v.7 08/05/10 NOT APPROVED BY JUDICIAL COUNCIL
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*):
 - a. is a resident of the county where this petition is filed.
 - b. is an out-of-state resident who was born in California.
2. Petitioner 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.
3. A declaration by a physician documenting the gender change through surgical 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).*)
4. 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.*)
5. Petitioner requests that the court issue an order setting a hearing on this petition at which objections may be filed by any person who can show to the court good reason against the change of birth certificate.

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 must be filed in the superior court in the county where the petitioner presently lives or, if the petitioner was born in California but currently lives outside California, it may be filed in the superior court of any county. (See *Somers v. Superior Court* (2009) 172 Cal.App.4th 1407.)

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. *Notice 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 *Notice of Hearing on Petition for Change of Gender and Issuance of New Birth Certificate* (form NC-320) from the court clerk.

5. Filing the Notice of Hearing

Take the completed form NC-320 to the clerk's office. The clerk will provide the hearing date and location, obtain the judicial officer's signature, file the original, and give you a copy.

6. 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-300).

7. 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
Web site: 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 v.5 07/16/10 NOT APPROVED BY JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (<i>Name</i>):	
NOTICE OF HEARING ON PETITION FOR CHANGE OF GENDER AND ISSUANCE OF NEW BIRTH CERTIFICATE	CASE NUMBER:

NOTICE:

1. Petitioner (*name*):
 - a. is a resident of this county.
 - b. is an out-of-state resident who was born in California.

2. Petitioner has filed a petition requesting 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.

3. **THE COURT ORDERS** that any person who can show good reason against the change of birth certificate requested in the petition may appear before this court at the hearing indicated below to file objections.

NOTICE OF HEARING

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

4. Other orders (*specify*):

Date:

JUDICIAL OFFICER

SPR10-18**Civil Forms: Petitions for Change of Gender and Issuance of New Birth Certificates (revise forms NC-300 and NC-320)**

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Orange County Bar Association by Lei Lei Wang Ekvall, President	A	No specific comment.	No response required.
2.	Hon. Mary Fingal Schulte Supervising Judge, Superior Court of Orange County	A	No specific comment.	No response required.
3.	Superior Court of Orange County by Mary Malk, Manager, Probate/Mental Health	A	No specific comment.	No response required.
4.	Superior Court of San Diego County by Michael Roddy, Court Executive Officer	A	No specific comment.	No response required.
5.	Transgender Law Center Matt Wood Staff Attorney	N	The Transgender Law Center (TLC) submits the following comments regarding the proposed modifications of the California Judicial Council Forms for Change of Gender and Issuance of New Birth Certificates (revise forms NC-300 and NC-320). These forms implement California Health and Safety Code §§ 103425-103345 and are being modified to reflect the California Court of Appeal, First Appellate District's decision in <i>Somers v. Superior Court of the County of San Francisco</i> , 172 Cal. App. 4th 1407 (2009), which allows California-born out-of-state residents to petition California courts to change their birth certificates. TLC supports the incorporation of the holding of <i>Somers</i> into the NC-300 and NC-320 and submits these comments to ensure that the	Upon further analysis of the venue statutes and the holding in the <i>Somers</i> case, the committee agreed with commentator and has modified the forms to reflect that an out-of-state petitioner may file a petition under Health and Safety Code section 103425 in any superior court in the state.

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Civil Forms: Petitions for Change of Gender and Issuance of New Birth Certificates (revise forms NC-300 and NC-320)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>changes are consistent the Court’s decision. Specifically, TLC is concerned that the proposed change requiring nonresidents who were born in California to file in the Superior Court of the county in which they were born improperly narrows and is inconsistent with the holding of <i>Somers</i>.</p> <p>Currently, California residents may use the NC-300 and NC-320 to file for a court-ordered gender change in the county in which they reside. State law restricted the use of these forms solely to California residents. However, this venue restriction was overturned by the <i>Somers</i> court, which found that “the requirement that individuals seeking a new birth certificate under the section file their petition in their county of residence acts to deny the rights created under the statute to the classification of California-born transgender individuals who reside outside of California.” <i>Somers</i>, 172 Cal. App. 4th at 1414.</p> <p>In 2009, after the <i>Somers</i> decision, the Legislature passed a bill that would have allowed petitioners to file for gender change either in the county in which they were born or the county in which they reside. Assem. Bill 1185 (2009-10 Reg. Sess.). This bill was vetoed by the governor because of its redundancy with existing state law under <i>Somers</i>. Governor’s Veto Message to Assem. on AB 1185, Oct. 12., 2009. The proposed changes to the Judicial</p>	

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	Commentator	Position	Comment	Committee Response
			<p>forms read this as a veto of the broader provision of the passed bill—namely the choice of venue. Therefore, the new forms reflect “the narrower holding of <i>Somers</i>, [which expanded] venue to the county of birth only for those petitioners who are not California residents.” Invitation to Comment, Civil Petitions: Forms for Change of Gender and Issuance of New Birth Certificates (revise forms NC-300 and NC-320).</p> <p>However, this misreads <i>Somers</i> in excessively narrow terms. The <i>Somers</i> court did not hold that California-born non-residents could only file in the county of their birth. In fact, the case is unambiguous in allowing out-of-state residents to file not just in the county of their birth, but in any county in California: appellant Gigi Marie Somers was born in Los Angeles County, and the San Francisco County Superior Court’s lack-of-venue disposition was reversed by the appellate court. <i>Appellate Brief on behalf of Appellant Gigi Marie Somers</i>, at 1. Appellant Somers was ultimately issued a Court Order recognizing her change of gender from the San Francisco County Superior Court.</p> <p>Although the vetoed 2009 bill would have expanded <i>Somers</i> in one sense—by allowing California residents to file in the county of their birth—it also would have narrowed <i>Somers</i> in another sense—by requiring California-born non-residents to file only in the county of their</p>	

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Civil Forms: Petitions for Change of Gender and Issuance of New Birth Certificates (revise forms NC-300 and NC-320)

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	Commentator	Position	Comment	Committee Response
			<p>birth. Both the narrowing and the broadening of the <i>Somers</i> decision were vetoed by the Governor, who deferred to the existing language of <i>Somers</i> as the state law of California and noted that the current bill was “unnecessary.” Governor’s Veto Message to Assem. on AB 1185.</p> <p>Therefore, the proposed Judicial Council Forms, while a step in the right direction, narrow the holding of <i>Somers</i> improperly and are inconsistent with existing state law. The Transgender Law Center strongly recommends that the NC-300 and NC-320 make clear that an out-of-state petitioner may file his or her petition with the Superior Court of any California county.</p>	