

Invitation to Comment

Title	Civil Petitions: Forms for Change of Gender and Issuance of New Birth Certificates (revise forms NC-300 and NC-320)
Summary	<p>Health and Safety Code section 103425 requires petitions for change of gender and issuance of a new birth certificate be filed in the petitioner’s county of residency. The Court of Appeal recently held that venue requirement invalid as applied to California-born transgender individuals residing outside the state, who, under the statute, had no valid California venue in which to file a petition. This proposal would revise the Judicial Council forms relating to these petitions, form NC-300 and form NC-320, to reflect the current state of the law and permit non-California residents to file the petitions in the county of their birth.</p> <p>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 document 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.</p>
Source	Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair
Staff	Anne M. Ronan, Office of General Counsel, 415-865-8933, anne.ronan@jud.ca.gov

California statutes authorize a petition for a new birth certificate reflecting a change of gender. (See Health & Saf. Code, §§ 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 but 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 statutes authorizing changed gender on birth certificates do not require publication as 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 who were not residing in the state do not have a venue in which to bring petitions, even if they had California birth certificates. In April 2009, the Court of Appeal found that the venue requirement is 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 (*Somers*).

Later in 2009, the Legislature passed a bill that would have amended the Health and Safety Code to permit filing the 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 to Assem. on AB 1185, Oct. 12, 2009.)

The primary proposed revision to the forms would implement the Court of Appeal’s holding in *Somers*, permitting a gender-change petition to be brought either in the petitioner’s county of residency or, if petitioner is an out-of-state resident, the petitioner’s county of birth. See item 1 on form NC-300, paragraph 1 of the instructions on back of that form, and item 1 on form NC-320. The revised instructions on form NC-300 also expressly cite *Somers*. Because the broader provision in the proposed statute (allowing all petitioners a choice of venue, rather than just out-of-state petitioners) was vetoed by the Governor, the revised forms implement only the narrower holding of *Somers*, expanding venue to the county of birth only for those petitioners who are not California residents.

The proposed forms also include revisions on 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 the court set a hearing to consider any objections that may be filed. See Health and Safety Code section 103430(b) (“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.”) 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 order to show cause. Compare *Notice of Hearing on Petition for Change of Gender and Issuance of 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 instructions on the back of the gender-change petition correctly identify the notice of hearing form by title in item 2 (see form NC-300, page 2), the form refers to an “order to show cause” in the heading of item 5. According to reports from the Transgender Law Clinic, this difference in nomenclature has caused some confusion among litigants and clerks, some of whom conclude that the order to show cause referenced in item 5 is a different document than the notice of hearing listed in item 2. 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 item heading and adding the form number to the text of the item.

In addition, the references to fee waiver forms in item 3 have been updated to reflect the current form numbers and the form reference in item 6 has been corrected. The information in item 7 concerning the California Department of Public Health has been updated.

The proposal also calls for revision to the e-mail and fax address items in the information box at the top left of each form. As with all traditional Judicial Council forms, these include items in which counsel or a self-represented party is to enter an e-mail address and 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.” The rule regarding the format of non-form pleadings requires that this information be provided on such pleadings “if available”. California Rules of Court, rule 2.111(a). As noted at the time that format rule was amended in 2005 to remove the “optional” qualifier, fax and e-mail transmissions have become generally available. They provide speedy and economical means of communication. 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 person filing the papers is capable of receiving fax and email transmission.

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 or Dependent Abuse form groups. The Civil and Small Claims Advisory Committee noted in its report to the Judicial Council at that time that, rather than making a blanket rule for all Judicial Council forms, the Judicial Council forms should be individually reviewed to determine which should be revised to require that persons filing the forms provide fax numbers and e-mail addresses, and which should not. The committee has concluded that the forms here do not inherently raise the concerns that forms used by self-represented individuals in obtaining protective orders do. Hence the “optional” qualifiers have been removed from the e-mail and fax items on the revised forms.

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.3 03/11/10 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 the county where this petition is filed.

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 either in the county where the petitioner presently lives or, if petitioner currently lives outside California, in the county where petitioner was born. (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 and Costs* (form FW-001)) and *Information Sheet on Waiver of 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-330).

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 Secretary of State and 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 (Name, State Bar number, and address): TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (Name):	FOR COURT USE ONLY DRAFT v.3 03/11/10 NOT APPROVED BY JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (Name):	
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 this county.

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

Item SPR10-18 Response Form

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

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ Title: _____

Organization: _____

- Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/>

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 18, 2010

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.