

# TO HEIR IS HUMAN: OUR CHANGING CONCEPTIONS OF "FAMILY"

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## Characterization of Family

1. Changing social patterns are complicating the family relationship
2. The notion of a *marital relationship* is being stretched beyond the traditional husband/wife relationship

Can now include same sex relationships--at least it did for a while in CA after the decision in *In re Marriage Cases* (5/15/08) 43 Cal 4th 757/76 Cal Rptr 3d 683/183 P. 3d 384--overturning legislative and initiative measures banning same sex marriage and holding that marriage is a fundamental right under the CA Constitution and further holding that the *Equal Protection Clause* of the CA Constitution prohibits discrimination based on sexual orientation. It is especially noteworthy that the Court noted that CA had overturned anti-miscegenation statutes (banning interracial marriage) in 1948, almost two decades before the U.S. Supreme Court did in *Loving v. Virginia*, 388 U.S. 1 (1967). This holding, as you know, was overturned by Prop 8 in the 11/08 election. Prop 8 was then upheld by the CA SCt., but overturned by Fed. Judge Vaughn Williams of the N. Dist of CA. Jerry Brown, as Attorney General of California, and Arnold Schwarzenager as governor, have refused to defend Prop 8, and thus the Fed 9th Cir Court may ultimately decline to hear the appeal on the interesting procedural ground that the appellants lack standing.

In the meantime. the opponents of Prop 8 will likely try to reverse that Prop with another constitutional reinstating same sex marriage in CA

See generally:

[http://en.wikipedia.org/wiki/California\\_Proposition\\_8\\_\(2008\)](http://en.wikipedia.org/wiki/California_Proposition_8_(2008))

My guess is that one of these tacks will eventually succeed and that same sex marriage will be allowed in CA—and elsewhere. But the process may take another generation

Note ads by gay and lesbian coalitions apparently show pictures of Jeb Bush and his Hispanic wife (and other prominent Republicans married to persons of different races), noting that as recently as **40** years ago such marriages would have been illegal!!

N.B. Per 2000 census: CA had 100,000 households headed by gay and lesbian couples, of which about one quarter had children [http://www.latimes.com/news/local/la-me-gaymarriage16-2008may16,1,4027698.story]

Finally, note that, per one of my lesbian friends, one of the judges who dissented in ***In re Marriages Cases*** [saying the Courts should defer to the legislature on the issue] is herself a lesbian, much to the consternation of the lesbian and gay community

Note also:

- i. In 1993 the **Hawaiian** Supreme Court (in ***Baehr v. Anderson***) ruled that the restriction on civil marriage for same-sex couples violated the Hawaii Constitution--*a decision that was subsequently reversed* by a Constitutional Amendment permitting the legislature to “reserve marriage to opposite sex couples.” Article I Section 23 of the Hawaiian Constitution.

- ii. In 1999 the **Vermont** Supreme Court (in ***Baker v. State***) ruled that same-sex couples can no longer be denied full and equal protections, benefits, and responsibilities under the law and gave the legislature first crack at deciding how to provide equality, and same sex couples can now marry in Vermont per legislation effective 9/1/09
- iii. In 2003 the **Massachusetts** Supreme Court (in ***Goodrich v. Department of Public Health***) ruled that civil marriage can't be limited to different-sex couples
- iv. In 2008 the **Connecticut** Supreme Court decided the ***Kerrigan v. Commissioner of Public Health***, 289 Conn. 135, 957 A.2d 407
- v. In 2008 the **California** Supreme Court decided the ***In Defense of Marriage Cases***, mentioned above
- vi. In 2008 the **Iowa** Supreme Court decided the ***Varnum v. Brien***, 763 N.W.2d 862, (Iowa 2009)
- vii. Effective 1/1/2010 **New Hampshire** adopted legislation approving same sex marriage
- viii. Effective 3/3/2010 **the District of Columbia** adopted legislation approving same sex marriage

See generally: [http://en.wikipedia.org/wiki/Same-sex\\_marriage](http://en.wikipedia.org/wiki/Same-sex_marriage)

b. May include *quasi-contractual relationship* such as

those in the *Marvin*, 18 Cal.3d 660; 557 P.2d 106; 134 Cal.Rptr.815 (1976) and *Carey*, 34 Cal.App.3d 345; 109 Cal.Rptr.862 (1973)cases

*--N.B. Herma Hill Kay filed an amicus brief on behalf of Lee Marvin in the Marvin case.*

c. Has been stretched by the recognition of “*domestic partners*” and other *cohabitation relationships* (both same sex and opposite sex relationships)--culminating in the various cases cited above

i. Note the 2001 adoption of *AB 25* permitting “*Domestic Partners*” to register and granting registered partners extensive rights.

ii. *AB 25* was extended in 2002 so that effective 7/1/03, a “surviving “*domestic partner*” obtained additional right (approaching those granted spouses in traditional marriages)--including the same intestate rights as those of a surviving spouse

iii. §297.5 of the CA Fam C, effective 1/1/05 gives all registered domestic partners the same rights as married couples to the extent that it is possible to do so under CA State law--this includes the right to have and hold community property

-- See generally §§297 *et seq* Family Code; §§37 (Definition), 1813.1 (Conservatorship), 4716 (Health Care Decisions), 6122.1 (Effect of Termination on Wills) 6401 and 6402 (Intestate Rights), 8461 (Appointment as Administrator) of the Prob Code; and §1714.01 Civ Code (Dam-

ages for Negligent Infliction of Mental Distress)

- iii. Only same sex couples over 18 *and opposite sex couples one of whom is over 62 and eligible for Social Security* can register §297 *Family Code*
- iii. Registration is fairly simple, involves a \$10 filing fee and must be filed with the Secretary of State.
- iv. More information can be obtained from:
  - The Secretary of State  
([http://www.ss.ca.gov/business/sf/sf\\_dp.htm](http://www.ss.ca.gov/business/sf/sf_dp.htm))
  - Lambda Legal Defense and Education Fund  
(<http://www.lambdalegal.org>)
  - L.A. Gay & Lesbian Center  
(<http://www.laglc.org>)

d. With all of the hoopla about marriage between same sex v. opposite sex parties and the “*In Defense of Marriage Act*” [see appendix, attached] definition of marriage as between a “man and a woman,” it has come to my attention that the situation is even more complicated than that:

- i. Reading Middlesex (Jeffrey Eugenides) raised fundamental questions of gender determination itself
- ii. I then recalled Norlen Drossel’s apparently lesbian couple where one of the women as the Father of “her children”
- iii. I then heard about the couple Jim Brandley knows in Albany where the male had a sex change operation, but the couple has stayed married and lives

together with their daughter

- iv. I then followed up a lead in Middlesex (which indicated there might be in excess of 100,000 “hermaphrodites” in the US) and looked up the Intersex Society of North America on the web. It actually exists [see <http://www.isna.org/>] and its website raises more questions about gender and identity than I had ever thought possible. A couple years ago a student wrote a great, and very topical, paper in this subject--examining the rights of intersexuals to marry in Texas
- v. So far this year I’ve met with parents whose daughter is now their son, and a couple [with three kids--two, twins born in Jan of this year] in which the husband is in the process of changing gender. *In the latter case, the wife is willing to stay with now transgender husband so long as husband uses a gender neutral name (such as Kim or Sasha or Chris) and--for now--so long as husband doesn’t have sex reassignment surgery (which, I have come to learn, is referred to as “SRS”), ‘tho to all external appearances, husband was a tall, well endowed, and attractive female.* I’ve also heard of a couple whose twin daughters are now their twin sons. The issue

seems to be coming more into the open--especially as gay and lesbian issues seem to have become yesterday's news!

vi. CA Judicial Council Form NC-300 (adopted 7/1/06):

**Petition For Change Gender and Issuance of New Birth Certificate**

vii. Note issues from CLE course I took on *transgender law*: biggest issue is use of women's restroom by males changing gender (men don't seem to care about women transitioning to men using the men's restroom). Also, State Bar's difficulties with privacy issue concerning transgender Bar member with public disciplinary records under their pre-sex change name.

3. The scope of the *parent/child relationship* has been stretched significantly beyond its traditional bounds. The law now defines and recognizes at least SEVEN different types of parent/child relationship *in addition to* the "normal" parent/child relationship created by the birth of a child during the lifetime of its natural, married parents. See gen §§6402 and 6450ff PC See also *Fam C §§7500 et seq*

a. *Nonmarital children*--whose family law/inheritance rights differ:

- i. By parent (always have rights with re: mother)
- ii. Depending upon acknowledgment by father
- iii. Prob C §6452. See also *Fam C §§7610 et seq*

**§6452 PC reads:** If a child is born out of wedlock, neither a natural parent nor a relative of that parent inherits from or through the child on the basis of the parent and child relationship between that parent and the child unless both of the following requirements are satisfied:

(a) The parent or a relative of the parent acknowledged the child.

(b) The parent or a relative of the parent contributed to the support or the care of the child.

b. ***Husband's Wife's children*** (conceived during marriage, but not necessarily with the husband's help)

i. A child conceived while the husband and wife were cohabitant is conclusively presumed to be the husband's ***unless*** the husband was impotent or sterile (**§§7540 and 7611 Fam Code**) ***OR*** a timely determination is made by blood tests that the husband was not the father (**§7541 Fam Code**)

ii. A child conceived during marriage by artificial insemination (with the semen not the husband's) will be considered the child of the husband ***if*** he has consented in writing to the insemination (**§7613 Fam Code**)

iii. To what extent should the ***Husband's Wife's children*** share with children actually sired by the husband?

c. ***Adopted children***

i. ***Six different types of adoption***

(aa) **Agency Adoption** §§8700ff Fam C

- (bb) Independent Adoption §§8800ff Fam C
  - (cc) Intercountry Adoption §§8900ff Fam C
  - (dd) Stepparent Adoption §§9000ff Fam C
  - (ee) Adult Adoption §§9300ff Fam C
  - (ff) Equitable Adoption Cf. §6455 Prob C (can include “*gift*” children)
- ii. Inheritance Issues:
- (aa) May adoptee inherit *through*, as well as *from*, adoptive parents
  - (bb) May adoptive parents and their relatives inherit *from* adoptee
  - (cc) Should child adopted by a *stepparent* (married to the surviving natural parent) be treated differently than other adoptees?  
See Prob C §6451
- iii. There have recently been a number of cases in which adoptive parents have sought to undo an adoption because the child turned out to be “defective” (oftentimes as a result of the gestational mother’s substance abuse during pregnancy)  
--How should we (as a society) handle these problems?
- iv. Big recent area of concern: should same *sex couples* be able to adopt children? Answer in general

seems to be yes--but there is still tremendous variation from state to state, county to county and even judge to judge (tell Sparrow story re: name change)

--Note recent case where genetic mother in a lesbian couple [where the partner was the gestational mother] was denied custodial and visitation rights when the couple split up, based on a literal reading of a genetic material release document [that was likely an adhesion contract] *The decision in this case K.M. v. E.G. was reversed three years ago (on 8/22/05) by the CA Supreme Ct which said same sex couples have the right to be parents with all of the privileges and responsibilities thereto pertaining!*

d. *Stepchildren.* See Prob C §6402(g)

e. *Afterborn children.* See Prob C §6407

- i. Fetus viable at the time of dissolution/death? (“Posthumous Child”)
- ii. Fetus conceived after decedent’s death (“*Extreme* Posthumous Child”)

In 2004 California adopted legislation (in §§249.5 ff PC) dealing with extreme posthumous children. See text in appendix

- iii. *Cf. Calif. Prob. C. §21208* (the possibility of posthumous births is to be disregarded for purposes of applying the Rule Against Perpetuities)

f. *Foster children*

g. *Technotots*

i. *Sperm Donor Dads* (issue raised by technique of artificial insemination) *Cf. §7613 Fam Code*

--*N.B.* Sperm Banks presently are largely unregulated

--*N.B.* Sperm can apparently now be “harvested” even after a man has died. See *Stephen v. Barnhart* 386 F. Supp. 2d 1257, 1259 (M.D. Fla. 2005)--where wife harvested the sperm of her husband of 3 weeks (who died of a sudden heart attack) 30 hours after his demise and got pregnant with that sperm more than 2 years later.

ii. *Surrogate Mom’s*

(aa) Genetic v. Gestational Motherhood

iii. *Test Tube Babies*

iv. *Cryopreservation and post-mortem children*

(conceived through the use of cold storage sperm and, perhaps someday, ova). See *Hecht case* (D&J pp 101-02) and *Stephen case*, supra.

v. The increasing possibility of *cloning*

vi. The increasing possibility of *genetically designed children* (sex selection is the simplest form of selection/native intelligence, appearance, athletic ability, etc. present more complex problems--all of

which the human genome project will require us to confront)

vii. *This whole area is a developing hotbed with increasing attention being paid to the same*

viii. Actual cases illustrating the possibilities:

(aa) The case of *Hart v. Shalala* [No. 94-3944 (E.D.La. 1994)--unpublished opinion] (and reported in Ellen Goodman's column at the top of page A25 in the Thursday, 1/26/95 edition of the S.F. Chronicle) wherein the state of La. held that a child conceived after the father's death with the mother's deceased husband's frozen sperm was illegitimate and thus ineligible for Social Security benefits. The case has since been reversed on appeal!

--Cf. *Woodward v. Commissioner of Social Security* [435 Mass. 536, 541 (2002)], (D&J pp 102ff); *Estate of Kolacy* [332 N.J. Super. 593, 595 (Super. Ct. 2000)]; and *Gillett-Netting v. Barnhart* [371 F.3d 593, 594 (9th Cir. 2004)--interpreting AZ law]--*all of which cases involved applications for Social Security benefits on behalf of an extreme posthumous child whose father donated sperm in anticipation of recovering from cancer after treatments that would render the father sterile.*

In *Woodward* the observed that the question of whether posthumously-conceived children may inherit under the intestate statute implicated three state interests: 1) the best interest of the child, 2) the State's interest in the orderly administration of estates, and 3) the reproductive rights of the deceased parent. The Court in this case (again involving Social Security Benefits) found the existence of a parent child relationship--with implied consent by the deceased sperm donor dad to the conception of the child.

*N.B. Stephen v. Barnhart* 386 F. Supp. 2d 1257, 1259 (M.D. Fla. 2005), above, came out the opposite way because the sperm was "harvested" some 30 hours after the "father" died--and thus could not have given consent (actual or implied) to the posthumous use of his sperm

- (bb) *Dutch case* in which mom impregnated through in vitro fertilization gave birth to "twins" of two different races  
*--Recent case of surrogate delivering biracial child from donated sperm/ova and contractual parents wish to reject the child*
- (cc) *Irvine clinic* implanting women with zygotes from other couples (presumably to enhance its success rate and to increase claims of successfully impregnating older patients)

*There is a great paper to be written about this incident. I have a classmate [John Lundberg] who was the attorney who handled these cases (142 in number!!) on behalf of UC who would be happy to cooperate with anyone who wishes to explore this topic at greater length. All of the cases involved the “theft” of genetic material from young women who sought the assistance of the fertility clinic. The thefts were perpetrated to both: (i) enhance the clinic’s “success rate” helping “older women” to get pregnant, and, amazingly, (ii) to assist Latin American women [who knew they were receiving donated ovum] to have blond haired, blue eyed children!!!! All of the children thus conceived were the natural offspring of the males of the couples that had the kids. All of the cases ultimately settled, for a total of some \$25,000,000. My classmate has enormous insight into these cases [about which he has thought deeply] and the issues and liabilities involved. It is a case that*

*should absolutely be written up. Again, I would be happy to supervise anyone who wished to tackle the subject to satisfy a writing requirement.*

(dd) *“Five Parent”/No-one entitled to custody case in Alameda County*

--genetic mother

--surrogate mother

--sperm donor dad

--adoptive father

--adoptive mother (who ended up as the only one who wanted custody, but who must wait patiently to adopt.

*Q:* what legal responsibilities do each of the foregoing persons have? Especially the adoptive dad who declined to proceed with the adoption after marriage broke up, but before the child was born)

(ee) Israeli parents who joined a young woman and petitioned the Israeli Court to use the sperm of their unmarried, deceased soldier son to impregnate the young woman to give the parents a grandchild the son would never otherwise have

<http://blog.eteacherhebrew.com/israel-news/a-sperm-bank-for-israeli-soldiers/>

--topped by the LA mom who used her unmarried deceased son's sperm to impregnate herself!!!! (is this incest? wise? massive Hollywood fiction?)

*--N.B. Israel apparently permits soldiers to make sperm bank deposits prior to combat*

(ee) Recent case of contractual parents suing surrogate who refused to abort one of twin fetuses and issue of what to do with the second (unwanted) child

Query: how do you determine which child goes to whom? What if one child is "defective?"

(ff) **Hecht v. Superior Court** 16 Cal. App. 4th 836, 20 Cal. Rptr. 2d 275 (1993) See D&J pp 101-02

(gg) Lesbian couple where one donated an ova that was fertilized in a test tube and implanted in the other. The genetic mother signed a contract giving all parental rights to the gestational mother/partner. They later split and the gestational mother sought to deny the genetic mother visitation. *On 8/22/05 Cal Sup Ct said both mom's are entitled to full parental rights including custody, visitation and duty to support. **K.M. v. E.G.***

- (hh) Note: after teaching a class on this issue in Contra Costa County, a lawyer who attended the class told me that he had just completed Wills for a young couple who were about to fly off on vacation and wanted to provide for the child then gestating in the surrogate mother with whom they had contracted a baby
  - (ii) I was also consulted in a recent case of a young man who has just been diagnosed with testicular cancer and wanted to donate sperm to use after he was done with chemo (which would render him sterile). Issue was: what should happen to the donated sperm if he failed to survive the treatment? His parents were adamant that they did *not* want his wife to be able to use the sperm to get pregnant if he died! What rights do the various parties have? Is the sperm a separate or community property asset?
- ix. *Chimeras* (Cross species combinations):
- (aa) When first asked about this possibility at a CLE class a few years ago, I dismissed the questioner as dreaming, as assumed the fellow was either heavily into mythology or science fiction. Upon further investigation, however, I discovered that the possibility is real (see the Article Animal-Human Hybrids Spark Controversy in the 1/25/05 issue of National Geographic:

[http://news.nationalgeographic.com/news/2005/01/0125\\_050125\\_chimeras.html](http://news.nationalgeographic.com/news/2005/01/0125_050125_chimeras.html)

- (bb) The article reports that Mayo Clinic Researchers have created pigs with human blood, and that at the Shanghai Second Medical University, scientists fused human cells with rabbit eggs.
- (cc) Needless to say, this raises incredible complex ethical issues.

***--How much should society permit these relationships to be defined and governed by private contracts?***

--What laws should be adopted to handle these

## §249.5 CALIFORNIA PROBATE CODE

§249.5. For purposes of determining rights to property to be distributed upon the death of a decedent, a child of the decedent conceived and born after the death of the decedent shall be deemed to have been born in the lifetime of the decedent, and after the execution of all of the decedent's testamentary instruments, if the child or his or her representative proves by clear and convincing evidence that all of the following conditions are satisfied:

(a) *The decedent, in writing, specifies that his or her genetic material shall be used for the posthumous conception of a child* of the decedent, subject to the following:

(1) The specification shall be signed by the decedent and dated.

(2) The specification may be revoked or amended only by a writing, signed by the decedent and dated.

(3) *A person is designated by the decedent to control the use of the genetic material.*

(b) *The person designated* by the decedent to control the use of the genetic material has given *written notice* by certified mail, return receipt requested, *that the decedent's genetic material was available for the purpose of posthumous conception.* The notice shall have been given to a person who has the power to control the distribution of either the decedent's property or death benefits payable by reason of the decedent's death, *within four months of the date of issuance of a certificate of the decedent's death* or entry of a judgment determining the fact of the decedent's death, whichever event occurs first.

(c) *The child was in utero* using the decedent's genetic material and was in utero *within two years* of the date of issuance of a certificate of the decedent's death or entry of a judgment determining the fact of the decedent's death, whichever event occurs first. This subdivision *does not apply* to a child who shares all of his or her nuclear genes with the person donating the implanted nucleus as a result of the application of somatic nuclear transfer technology commonly known as human *cloning*.

## DEFENSE OF MARRIAGE ACT APPENDIX

Defense of Marriage Act

From Wikipedia, the free encyclopedia

Defense of Marriage Act

Full title Defense of Marriage Act

Acronym / colloquial name DOMA

Enacted by the 104th United States Congress

Citations Public Law 104-199

U.S. Statutes at Large 110 Stat. 2419 (1996)

\* Introduced in the House of Representatives as H.R. 3396 by Robert L. Barr, Jr. on May 7, 1996

\* Committee consideration by: Committee on the Judiciary (Subcommittee on the Constitution)

\* Passed the House on July 12, 1996 (Yeas: 342; Nays: 67)

\* Passed the Senate on September 10, 1996 (Yeas: 85; Nays: 14)

\* Signed into law by President Clinton on September 21, 1996

Major amendments

The Defense of Marriage Act, or DOMA, is the short title of a federal law of the United States passed on September 21, 1996 as Public Law No. 104-199, 110 Stat. 2419. Its provisions are codified at 1 U.S.C. § 7 and 28 U.S.C. § 1738C. The law has two effects:

1. No state (or other political subdivision within the United States) need treat a relationship between persons of the same sex as a marriage, even if the relationship is considered a marriage in another state.
2. The Federal Government may not treat same-sex relationships as marriages for any purpose, even if concluded or recognized by one of the states.

The bill was passed by Congress by a vote of 85-14 in the Senate[1] and a vote of 342-67 in the House of Representatives[2], and was signed by President Bill Clinton on September 21, 1996.

At the time of passage, it was expected that at least one state would soon legalize same-sex marriage, whether by legislation or judicial interpretation of either the state or federal constitution. Opponents of such recognition feared (and many proponents hoped) that the other states would then be required to recognize such marriages under the Full Faith and Credit Clause of the United States Constitution.

Including the results of the 2006 midterm elections, two states (Massachusetts and California) allow same-sex marriage, five states recognize some alternative form of same-sex union, twelve states ban any recognition of any form of same-sex unions including civil union, twenty-five states have adopted amendments to their state constitution prohibiting same sex marriage, and another twenty states have enacted statutory DOMAs.

On May 15, 2008 the California DOMA was found unconstitutional by the California Supreme Court as a violation of equal protection; the decision came into effect on June 16, 2008.[3][4] A proposed constitutional amendment overriding the Court's decision has been placed on the 2008 California general election ballot.[5][6]

ATTORNEY OR PARTY WITHOUT 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> _____	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF <i>(Name):</i> _____	
<b>PETITION FOR CHANGE OF GENDER AND ISSUANCE OF NEW BIRTH CERTIFICATE</b>	CASE NUMBER: _____

1. Petitioner *(name)*:  
is a resident of 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 in the county where the petitioner presently lives.

### 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 *Application for Waiver of Court Fees and Costs* (form 982(a)(17)); *Information Sheet on Waiver of Court Fees and Costs* (form 982(a)(17)(A)—INFO); and *Order on Application for Waiver of Court Fees and Costs* (form 982(a)(18)).

### 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).

### 5. Filing the Order to Show Cause

Take the completed form 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 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  
Web site: [www.dhs.ca.gov](http://www.dhs.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.

PETITION OF (Name):	CASE NUMBER:
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**DECLARATION OF PHYSICIAN  
DOCUMENTING CHANGE OF GENDER THROUGH SURGICAL 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)