APPENDIX G
DOCUMENTATION LAW WORKSHEETS

Following this are the handouts prepared by Melinda Marie Whiteway that were used in the Documentation Law Workshops:

- Driver's Licenses
- Name Change
- Social Security
- Birth Certificate
- Passport
- Military Records

Following these are additional presentations by Phyllis Randolph Frye:

- The draft legislation to be pushed by It's Time Texas during the next Texas Legislature which convenes in January 1995. The earlier version of this appeared in Appendix A10 of Proceedings II. This has been through three rewrites between Attorney Frye and the Texas Legislative Drafting Committee.
- A order that was ruled on without a hearing
- Cover Letter: Motion for New Trial and Request for Oral Hearing
- A proposed order. Following notification from a district judge that he would not grant a pre-surgical gender identification correction, Attorney Frye presented all evidence and arguments in preparation for an appeal. Following the presentation on the record, Attorney Frye offered this order for the court's consideration.
- A signed order. This is the order that was drafted by the judge and signed refusing the pre-surgicalcorrection of gender identification.
- Client letter with permission to publish.
- Attorney Frye letter to client outlining steps and arguments for an appeal. This client had the will, but she could not generate the funding. When asked by others why Attorney Frye did not follow this up for free, her response was that she can only to do so much for free for almost twenty years. This community has to want it!

THIS OUTLINES THE NEED FOR BASELINE FUNDING OF ICTLEP. WITH AN ADEQUATE AND SUSTAINABLE ANNUAL BUDGET, ICTLEP PLANS TO AND CAN FUND APPEALS AND LEGAL DEFENSES. IT IS UP TO YOU, THE READER. WILL YOU DONATE $25 TO $50 PER MONTH TO ICTLEP?

Driver's Licenses

Legal Authority

Statutory authority and regulation of the issuance of driver's licenses is governed by Division 6 of the California Vehicle Code (sections 12500-15319). Sections of particular interest to transgendered persons are as follows:

- Section 12800 requires every applicant to provide their true name, age, sex, social security number, thumb or forefinger print, and to state whether they have ever previously been issued a license to drive.
- Section 12809 authorizes refusal to issue a license if the information required in the application or "reasonable additional information" is refused, or if the applicant knowingly uses a false or fictitious name or impersonates another person, or knowingly makes a false statement or conceals a material fact.
- Section 12500 requires a valid license to drive a motor vehicle, and Section 12951 requires the license to be in the driver's possession while driving.
- Section 14610 makes it unlawful to possess or display a fraudulently obtained or altered license or to use or permit another to use a license that is not one's own.
- Section 12511 prohibits a person from having more than one driver's license.

A change of *name only* does not require any further documentation. The right to choose one's name is governed by common law principles as codified in Section 1279.5 of the Code of Civil Procedure. The only major restrictions are that the chosen name cannot be patently offensive, likely to defraud, or to designed to avoid legal obligations. Without other documentation, however, a license in the new name will be issued as an AKA of the applicant's former name in the DMV license file, and the sex/gender designation on the license will not be changed.

Procedure

Nothing in the Vehicle Code specifically authorizes a change of *sex or gender designation* on a driver's license. The procedures are handled administratively by the Department of Motor Vehicles. Page 4-38 of the Department's DL TECH Manual sets forth the administrative rules for change of gender, summarized as follows:

- Change of sex/gender designation is almost always (but not required to be) accompanied by a change of name, which is done on the standard license application form DL44 or DL44C.
- The applicant must submit satisfactory documentation of the change of gender, which may be done pre- or non-operatively. This may consist of any ONE of the following:
    1. Certified copy of a birth certificate in the new name and gender.
    2. Valid passport in the new name and gender.
    3. Medical information form DL 328 signed by a medical doctor O R psychologist stating that, in their opinion, the applicant's gender identification and demeanor are consistent with the requested change.
- The applicant may keep the same driver's license number, or have a new number issued.
- The applicant's old license (if any) is surrendered, a new temporary license is issued, and a new photograph is taken. The new license usually arrives in the mail within 30 days.

Tactical Considerations

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Gender presentation and/or choice of wearing apparel is not required by law to be accompanied by any documentation. Therefore, individuals who do not presently wish to change their gender identity or to establish a new gender identity need not attempt any change in their driver's license documentation. In fact, such changes should be avoided under these circumstances. Maintaining more than one driver's license and/or giving false information to a peace officer are misdemeanors which can subject the individual to immediate arrest and incarceration. Such risks far outweigh the embarrassment of presenting a license that does not match one's gender presentation.

A transgendered person who has decided to transition to another gender identity may easily proceed in stages. Both driver's licenses and vehicle registration can be accomplished with a simple change of *name only* with any local office of the Department of Motor Vehicles, and no supporting documentation is normally required. This procedure will reference the new and old names under the same license number in the DMV files. The information is not displayed on the license, but it is available to law enforcement agencies and other authorized personnel who have the required special access privileges.

A change of sex/gender designation on the driver's license requires supporting documentation, and a new license can be issued to reflect that change once the documentation is obtained. The new license can have a different number, and the change of gender designation is confidential, with access only by certain authorized personnel. The prior name and gender is not usually available to routine law enforcement inquiry.

Name Change

Legal Authority

Like many states, California recognizes an informal, "common law," or "usage" method of changing one's name [Code of Civil Procedure, section 1279.5]. Under this scheme, a person is considered to have the right to use any name they choose as long as the name is not patently offensive, likely to defraud, or to designed to avoid legal obligations *Weathers v. Superior Court for Los Angeles County* (1976) 54 C.A.3d 286, 126 Cal.Rptr. 547, *Lee v. Ventura County Superior Court* (1992) 9 C.A.4th 510, 11 Cal.Rptr.2d 763.

A formal court proceeding to legally change one's name was enacted in California in 1872 as Code of Civil Procedure §1276-1279. The primary purpose of the court procedure is to have a formal record of the name change. Although the court has discretion to deny the petition, some substantial reason must exist for its denial. *Application of McGehee* (1957) 147 C.A.2d 25, 304 P.2d 167, *Weingand v. Lorre* (1965) 231 C.A.2d 289, 41 Cal.Rptr. 778, and a denial may be reversed for an abuse of discretion *Id, In Re Ross* (1937) 8 C.2d 608, 67 P.2d 94. In contrast to dissolution of marriage proceedings, the statutes do not provide for any particular length of California residency prior to filing the petition, and the courts have refused to uphold prior residency requirements *Application of Smulevitz* (1951) 101 C.A.2d 70, 224 P.2d 911, *Turesky v. Superior Court* (1950) 97 C.A.2d 838, 218 P.2d 784.

Procedure

There are no legal requirements to effect a common law name change; mere usage is sufficient. More formality can be achieved, however, by using a notarized Declaration of Legal Name Change which is available in many stationery stores. Copies of the declaration can then simply be given or sent to interested persons such as banks, creditors, government agencies, etc.

The procedure for a court-ordered name change is clearly set forth in Code of Civil Procedure sections 1276-1279. In summary, the person seeking a name change begins by filing a Petition for Change of Name in the superior court of the county of their residence setting forth the pertinent facts [C.C.P. § 1276]. Filing fees and court costs can be waived if certain income and financial conditions [Government Code §68511.3] are met upon the filing of a form and showing of good cause [Judicial Council forms adopted pursuant to California Rules of Court 982 and 985]. The application for waiver of fees requires detailed disclosure of financial data, but is kept confidential. The court then sets a hearing date 4-8 weeks later and issues and Order to Show Cause for interested persons to appear at the hearing and give evidence as to why the change should *not* be granted. The O.S.C. is published at least once a week in a newspaper of general circulation or posted in three public places in the county for four weeks [C.C.P. § 1277]. Any person wishing to object to the change must file written objections with the court before the hearing. If no objections are filed, the court may grant the petition without hearing [C.C.P. § 1278]. A certified copy of the decree of the court is then required to be filed with the Secretary of State within 30 days from the date of the decree [C.C.P. § 1279].

If the person seeking a name change also wishes to change a California birth certificate, a combined court procedure is provided by section 10477 of the Health and Safety Code. The procedures are identical to those set out in the Code of Civil Procedure §1276-1279. The individual should also obtain an Application to Amend A Record [form VS 24] from:

State of California Health and Welfare Agency
Department of Health Services
Office of the Registrar of Vital Statistics
Ancillary Records Unit

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304 S Street, P.O. Box 730241
Sacramento, CA 94244-0241
(916-445-2684)

Tactical Considerations

The simplest and least expensive method of changing one's name in California is simply to use the preferred name. This works fine in most social or informal situations. Most government agencies and business institutions will require more formal documentation, however. The next easiest step would be to prepare a formal Declaration of Legal Name Change along with a copy of C.C.P. §1279.5 as legal authority for the change. If this is not accepted, the formal court proceeding will be required and should be accepted by everyone without question.

To simply choose a name and use it can be a very private matter, as no reference is made to the prior name or identity. Records that one has in a previous name will require some satisfactory proof of the *change* of name. A court order is very official, and everyone should be quite confident and comfortable with this method. The court proceeding is quite public, however, as notice must be published in the newspaper, and the court file is a public record. There is, of course, no way to conduct a *change* of identity without evidence of the *old* identity and the *new* identity. It is usually fairly easy to establish an individual's current identity, but it may be more difficult to document the *old* identity or the *change* without a court order. The more important the documents or records are that you seek to change, the more likely it is that you will be required to have a court-ordered change of name.

The most accepted method of documenting a change of name is with a court proceeding. Besides the publicity, there is some cost associated with this procedure. Superior court filing fees are currently $182.00. Publication charges may vary in the $100.00 to $200.00 range, depending upon the county and the newspaper used. An experienced attorney should be able to prepare the paperwork in an hour or so, and if no objections are filed, no court appearance should be necessary. If the individual desires a change of name and/or gender designation on a California birth certificate, the court proceedings may be combined, and this should result in a savings of nearly 50% compared to separate proceedings.

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Social Security Records

The process of changing social security records is primarily one of changing the name to be associated with your existing number. The procedure is straightforward. One begins by contacting any local office of the Social Security Administration or by calling 1-800-772-1213 and asking for form SS-5 and the accompanying instructions. As with drivers' licenses in California, one can either change their name only and keep their existing social security number, or apply for a new number under their new name (but see caution below). In either case, the former social security number and name used must be supplied.

The card itself does not display the bearer's sex/gender, but the application does ask for this information. The instructions indicate that most questions are self-explanatory, so they did not include an instruction for completing Item 4, Sex. Little did they know... This information is presumably for statistical purposes, so it should not present a documentation problem in most cases. A simple explanation should be adequate, although occasionally they may ask for any documentation you may have regarding your sex/gender transition.

The instructions accompanying the application form are quite good. As with most bureaucracies, they must be followed to the letter in most instances. For example, you must use only blue or black ink, and all documents submitted must be originals or certified copies (not photocopies). The application and supporting documents can be mailed, but it is safer to take the paperwork to your local SSA office to avoid risk of loss and to answer any questions they might have.

Documents Required for Change of Name Only

- A single document that identifies you by both your old and new names. For most transgendered individuals, this will be the court decree changing your name, **or**
- Two or more documents that identify you by your old and new names. Examples include driver's license, U.S. or state government ID card, passport, health insurance card, military records, medical records, insurance policies, etc.

Documents Required if You Never Had a Social Security Number

A person born in the United States who has never had a social security card and is over 18 is a rarity. Accordingly, the application must be *made in person.* You will also need documents that show your age, citizenship, and identity. These include the following:

- Age and citizenship are established by your birth certificate (preferably), a hospital record of your birth made before age 5, *or* a religious record of your birth made before age 3 months, **and**
- Some form of identification, as listed in the name change section, above.

Tactical Considerations

The primary purpose of your social security record is to determine your benefits at retirement or in the event of your disability. A surviving spouse and minor children may also be entitled to survivor's benefits at the time of your death. Since social security contributions are mandatory for nearly all employees and self-employed persons, you will be unable to work or operate a legitimate business without a social security number. Even though it was not designed for this purpose, your social security number has taken on the characteristics of a national identification number. As such,

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it is frequently asked for in a wide variety of situations. It is rare, however, for anyone to require the card itself to be presented, and in most cases furnishing the number is all that is necessary.

Some individuals have used the same number during and after a gender transition without notifying Social Security Administration. This is bound to cause a lot of confusion. Most government agencies and an increasingly large number of businesses use a social security number as a means of identification. This is especially true for financial and credit records. An individual with mismatched name and social security number will have difficulty not only in employment situations, but will find it difficult to obtain credit with a jumbled credit history.

More importantly, perhaps, is that your Social security benefits depend on how long you have worked and how much you have made each year as reported to your social security account number. It is therefore extremely important that these records accurately reflect all of your income, at least up to the maximum income level ($57,600 per year as of 1993). Changing your name is unlikely to cause any mixup in your records as long as you keep the same number. This will preserve your earnings history and is the method most likely to result in receiving all of the benefits you may be entitled to.

It the final analysis, most individuals will find it highly desirable, if not absolutely essential, to change their name with Social Security Administration. The easiest way to do this is with a driver's license in your new name and sex/gender and a certified copy of a court order changing your name. To minimize confusion and avoid a lot of problems, the individual should favorably consider maintaining the use of their former social security number.

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Amendment of Birth Record

Legal Authority

Change of ***name only*** a California birth certificate is governed by sections 10470-10472 of the Health and Safety Code. This procedure is appropriate for *any individual* desiring a change of name on their birth certificate, including pre-operative or non-operative transgendered persons. The essential features are as follows:

- Changes *name only,* not sex designation
- Amendment is noted on the *otherwise unaltered original* certificate
- Requires a *court order* from the court of any state
- The amendment is filed with the original certificate
- Application is made on form VS 23

Change of ***sex designation*** (with or without a change of name) on a California birth certificate is governed by sections 10475-10477 of the Health and Safety Code. This procedure is most appropriate for *postoperative* transgendered persons. The essential features are as follows:

- Requires *surgical treatment* and surgeon's affidavit
- *Name* can be changed at the same time
- Requires a *court order* from the court of any state
- Results in a *new certificate* being issued
- Application is made on form VS 24

Procedure

Application is made on simple forms from the State Registrar's office, either form VS 23 or form VS 24, as outlined above. The required affidavit of the applicant is included on the forms. Filing fees are set by section 10617 of the Health and Safety Code and include one certified copy of the new record. Fees for additional copies are set by H&S §10605.

The completed form is mailed with the required fees, a certified copy of the court order(s) for change of name and/or sex, and the original notarized surgeon's certificate (if any) to the State Registrar's office addressed as follows:

State of California
Department of Health Services
Office of the State Registrar of Vital Statistics
410 "N" Street
Sacramento, CA 95814

Tactical Considerations

The first consideration is whether a new birth certificate is needed. The primary purposes of a birth certificate are to establish the individual's *citizenship* and *age*. Proof of citizenship is required for issuance of a U.S. passport, a security clearance, and applications for employment, among other

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things. Proof of age is needed to establish eligibility for certain privileges, such as driving, voting, retirement benefits, etc. Note that in many cases, the individual over 18 years of age with other proper identification documents will not need to change their birth certificate unless or until they contemplate travel outside of the United States, a change in employment, obtaining a security clearance, or retirement.

The next consideration is to decide whether a change of name only will suffice or whether a change of name and sex is required. The former option is the only one available for non-transgendered persons, for transgendered individuals who have decided against sex reassignment surgery or for those who need a birth certificate now but whose surgery will be delayed. In California, however, this procedure results in an altered original birth certificate which shows both the birth name and the preferred name. Virtually all post-operative individuals or those who can wait for the required surgeon's certificate will be benefitted by the combined name/sex change procedure because it results in a new certificate with no reference to the birth name or sex.

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U. S. Passports

The Department of State has written instructions that govern the issuance of passports to U.S. citizens. The State Department is in the process of developing new procedures for dealing with transgendered individuals. Pending the publication of the new procedural instructions, the department is following guidelines issued in *Passport Bulletin 92-22*. The current procedure is as follows:

Procedure

Procedures for all passport applicants:

1. Evidence of U.S. Citizenship (usually a certificate of birth or naturalization).
2. Evidence of identity (usually a driver's license or other government-issued pite identification card).
3. Photographs reflecting the applicant's current, true appearance.
4. Application fee.

Note that a "properly documented" post-operative transgendered individual applying for a *new* passport should have no difficulty in obtaining a passport. Such an person should already have proper official picture identification such as a driver's license or state-issued identification card, military ID, etc. in the name and sex/gender they desire to have on their passport. Such an applicant should also already have a birth certificate showing their current name and sex/gender, if they are fortunate enough to have been born in a state that will modify their original certificate or issue a new one showing the desired changes. In such an ideal case, the procedure should be no different than for any routine passport application.

Procedures for transgendered applicants:

The difficulty arises when the applicant does not have all of the above documentation or already has a passport issued in a different name and/or with a different sex/gender designation. The dilemma faced by the bureaucratic official in such cases is simply to be satisfied that the applicant meets the requirements listed above, namely that the applicant is a citizen, can identify themselves, and that the photographs accurately reflect their true appearance. In other words, the applicant may wish to have a passport issued with a name or sex/gender designation that does not match their documents. The current requirements from the Department of State are similar to those of many other government agencies.

Name Mismatch: In a typical situation, an individual applies for a passport their preferred name but presents a birth certificate and/or ID card in a different name. A certified copy of a court decree changing the name of the applicant will solve the name problem easily. The State Department does not presently require a court order, but without such an order, the applicant will need to work with the issuing officer to provide satisfactory evidence of their present and former identity.

Sex/gender Mismatch: The Department has procedures for either pre-operative or post-operative individuals. A given official might simply accept the sex/gender designation on the government-issued identification card, even though it does not match the designation on the birth certificate. This is more likely if the applicant also presents a court order for change of

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name and sex/gender designation on the birth record. The official procedure set forth in Bulletin 92-22, however, requires *medical* (as opposed to psychological) documentation from either the applicant's attending medical doctor or records from the hospital where the surgery was performed. In the case of a pre-operative applicant, the bulletin requires "at the very least, ... a detailed statement from the attending medical physician or surgeon outlining the applicant's past medical history relating to the gender disorder, such as past psychological and hormonal treatment, the treatment state the applicant currently is in, and the approximate date of the sexual reassignment surgery." Note that this current guideline does not specifically provide for non-operative persons, but this is presumably due to their lack of information on this category.

Tactical Considerations

As always, the first consideration is whether a passport is needed at all. A passport is a document that provides evidence of both the bearer's identity and citizenship. A passport is, of course, designed and used to establish the bearer's right to enter and exit the United States while travelling to foreign countries. Although a passport can be used for routine identification, other documents are in much more common usage and generally easier to obtain. A passport could also be somewhat helpful in registering to vote, or applying for employment, but the same comments apply here as well. If no travel outside of the United States is contemplated, or if travel will be limited to nearby countries such as Canada, Mexico, Puerto Rico and the like, there is little to be gained by having a passport. However, in light of the minimal cost and fairly simple procedures, an otherwise well-documented individual should not be hesitant to apply for a passport if one is desired for any reason.

One significant advantage to a non-traveller having a passport would be in the case of an individual who does not have or cannot get a "newly-minted" birth certificate showing their preferred name and sex/gender designation. Providing copies of an original and/or altered birth certificate to prove citizenship might prove embarrassing or at least awkward at times, but citizenship can often be proved with a passport instead. Once the old documentation is produced to the Department of State resulting in a passport being issued in the preferred name and/or sex/gender, however, the passport itself could then be used to cleanly provide evidence of citizenship (as well as name and sex/gender) without further reference to old "ugly" documents.

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Military Records

The subject of military law as it pertains to transgendered individuals is one of the subjects covered in more detail in the *Your Rights* section of I.C.T.L.E.P. There are few military documentation issues that are of concern to transgendered persons due to the discussion that follows.

As a preface to this discussion, we must keep in mind that the military is not "gender friendly" and will most often proceed with great reluctance to change. It is presently unrealistic to expect that they will make any sweeping changes to an individual's military service records. At best, they will simply acknowledge your preferred name as an alias or a.k.a. in your master record. It should be possible, however, to obtain ID cards, services and retirement paychecks is the preferred name.

Active Duty Personnel

Military personnel on active duty or on reserve status will almost never encounter documentation issues except perhaps during an involuntary separation from the service. The reason for this is, of course, because transgendered status or behavior is not currently acceptable while in the military service. Discovery of any such matters usually results in prompt involuntary discharge proceedings.

Dependents of active military personnel are normally treated as civilians in most respects. Military dependent ID cards are often needed to provide physical access to military facilities and to obtain certain benefits. Routine change of name procedures using methods similar to those for changing social security records should be sufficient to cause a new photo ID card to be issued showing the preferred name, sex/gender, and current photograph. The agency issuing the ID card should be contacted for procedural guidance.

Former Military Personnel

Individuals with prior military service who are *not* eligible for benefits would normally have no need to make any alterations in their military records. Retired personnel or others who *are* entitled to benefits, such as Veterans Administration services, medical services, disability or retirement pay, etc. will need to have their preferred name, social security number, and perhaps sex/gender designation changed. A retired military ID card, if issued, will require revision. There may be no standardized procedures, so contact each involved agency for forms and instructions for change of name. If other documentation in the new identity is available, the process should be simplified. If the agency is unsure how to process the request and has no established guidelines of their own, they may feel comfortable following the procedures used by other federal government agencies such as the Social Security Administration or U.S. Department of State. If the request is by mail, one can begin with a Standard Form 180 *Request Pertaining to Military Records*, setting forth your request in Section II, item 1, and then following the bouncing ball.

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