lawful "recreational activity." Off-duty conduct laws in other states tend to be narrowly focused on protecting smokers and persons who drink alcoholic beverages while off-duty.

Hougum is represented by William E. McKechnie of Grand Forks. A.S.L.

Pennsylvania Court Grants Name-Change to Preoperative Transsexual

As Tammy Wynette so aptly observed, "sometimes it's hard to be a woman." This was especially true in the Superior Court of Pennsylvania in the case of _In re Brian Harris a/k/a Lisa Harris_, 1997 WL 793138 (Dec. 11, 1997). Brian Harris, 39, who for the past 22 years has lived as a woman, filed an unopposed petition for a name change from Brian to Lisa.

In accordance with Pennsylvania's Judicial Change of Name Statutory requirements, 54 Pa.C.S. sec. 701, the Court of Common Pleas held a hearing at which the evidence showed that the petitioner for the past 22 years consistently dressed and appeared in public as a female and assumed the name Lisa. In addition to years of intensive psychological counseling, petitioner had undergone a number of medical procedures designed to make herself appear more feminine, including receiving routine estrogen hormone therapy and had permanent reconstructive facial surgeries as well as breast implants. The petitioner desired to have sex reassignment surgery, but its cost was prohibitive. An expert witness, Dr. Constance Sunders, petitioner's counselor of 20 years, testified that "petitioner's desire to live as a woman was permanent and unassailable; hormonal make up was naturally more female than male and often encountered confrontations in public when presenting official i.d. because of the disparity between petitioner's female appearance and the male name appearing on the i.d. which often lead to allegations of deceit." The Common Pleas court denied petitioner's application for the name change from Brian to Lisa and petitioner appealed to a 3-judge panel of the Superior Court.

The court reviewed but did not adopt the narrow bright line test created by the Pennsylvania common pleas courts based on whether the individual had undergone sex reassignment surgery. _In re Dickenson_, 4 D & C 3d 678 (1978), _In re Dowdrick_, 4 D & C 3d 681 (1978), and _In re Richardson_, 23 D & C 3d 199 (1982). Instead, the court adopted the more permissive standard created by New York and New Jersey courts which hold that "absent fraud or other improper purpose a person has a right to a name change whether he or she has undergone or intends to undergo a sex change through surgery, has received hormonal injections to induce physical change, is a transvestite, or simply wants a change from a traditional `male' first name to one traditionally `female', or vice versa." _In re Eck_, 584 A.2d 859 (N.J. Super. 1991), _In re Rivera_, 627 N.Y.S.2d 241 (N.Y.Sup.Ct. 1995).

Writing for the court, Judge Olszewski stated that "a better-reasoned approach in deciding cases in which a petitioner is seeking a change of name commensurate with a change of gender is: each petition must be evaluated on a case-by case basis to determine
whether allowance of the name change would comport with good sense and fairness to all concerned. While proof of reassignment surgery would undoubtedly fulfill this criteria, the absence of such surgery does not automatically doom a petition to failure."

Olszewski concluded by stating that a name change would be fair to the appellant and the public because: it would prevent the daily confrontations which plague the appellant's dealing with the

public; eliminate what many believe to be a fraud; appellant has complied unopposed with all requirements of the statute and in accordance with good sense and fairness to all concerned, should have been granted.

Judge Saylor dissented: "To judicially sanction a pre-operative male transsexual's adoption of an obviously female name would grant legal recognition to a physiological fiction."

Judge Popovich, concurring on different grounds, stated: "This court must determine whether petitioner has complied with the statutory requirements and to ensure that the person has no fraudulent intentions in changing his name. This is where the inquiry ends. Herein, appellant filed an unopposed petition in accordance with the statutory requirements. There is no evidence to suggest that appellant was attempting to change his name to avoid any financial obligation. In light of the statutory language and the legislature's intent, I believe that appellant's petition should be granted without probing into appellant's sex or his desire to express himself in the manner of his choosing. . . . Moreover, if parents have an absolute right to choose to name their male child an obvious `female' name at birth, it is illogical that an adult does not have the same right to change his name in the future if he so desires, whatever the name shall be, provided that the person does not seek the change for fraudulent purposes."
_Leslie Sarah Deutsch_

California Appeal Court Says Attorney Fee Award Under Unruh Act Is Mandatory in Gay Yearbook Photo Case

The issue before the court in _Engel v. Worthington_, No. G016399 (Cal.App., 4th Dist., Dec. 31) (see _Daily Journal_, Daily Appellate Report, Jan. 5, 1998, p. 53), was whether a plaintiff who successfully sues under California's Unruh Civil Rights Act (Cal. Civ. Code sec. 51 et seq.) is entitled to attorney's fees, as a matter of law. The court ruled that the plaintiff was entitled to attorney's fees.

This case is of particular interest because the plaintiff, David Engel, had sued Worthington, a photographer, because Worthington had refused to insert a photo of Engel and his same-sex lover in Engel's high school reunion yearbook. Engel charged that this was an unlawful denial of public accommodation under the statute.

This is the third time that the matter has come before the court of appeal, and the third time that the trial judge was reversed. The court demonstrated that it had lost all patience with Worthington and with the trial court through its dismissive discussion of Worthington's principal points and through its direction that the hearing on attorney's fees be held by a different judge.

Engel first sued in 1987, alleging that he was denied equal access to public accommodations when Worthington refused to include the picture with his lover in the reunion yearbook. The trial court ruled in favor of the defendant after a bench trial in 1992, and Engel appealed. The court of appeal reversed, with instructions for a written decision. (See _Engel v. Worthington_, 19 Cal. App. 4th 43 (Cal.App., 4th Dist., 1993).) The trial court complied, rendering judgment in favor of Worthington again. Engel appealed again, and the court of appeals reversed, directing judgment for Engel, but instructing the trial court to assess damages and attorneys fees. The parties stipulated to damages to Engel in the sum of $250, but agreeing to submit the matter of attorneys fees to the court. The trial court rendered judgment for damages, but failed to render judgment for attorney's fees.