Legal Issues Associated with Extending Benefits to Military Personnel with Same Sex Partners

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I. A quick history
   A. Don’t Ask Don’t Tell repealed on September 20, 2011.
      1. Servicemembers able to serve openly without fear of career reprisal.
         a. The personal quickly becomes public
            i. Denial of death Benefits to same-sex spouse.
               1. Military
               2. Veterans
         b. Notification of same-sex spouse killed in action.
            i. Transportation of same-sex spouse’s remains.
            ii. Return of spouse’s wedding ring and personal effects.
         c. Base access to same-sex spouse for commissary or MWR usage.
   B. Secretary Panetta’s February Memorandum
      a. Benefits Servicemembers were already able to direct.
      b. Benefits the directive provided.
      c. Benefits the directive cannot provide currently.
         i. Implementation timeline
            1. Not currently in effect.
            2. By August 31, 2013 but no later than October 1, 2013.
      d. Proposed declaration of domestic partnership
         i. See Attachment

II. Impact on RDP status in California
   a. California Family Code 297 states:
      A. Two adults in an intimate and committed relationship.
      B. Must file a Declaration of Domestic Partnership with Secretary of State. (See Attachment)
      C. At the time of filing must meet all of the requirements:
         1. Not married to or in a registered domestic partnership of another.
         2. Not related by blood in a way that would prevent marriage.
         3. At least 18 years old.

III. Military specific issues
A. Security Clearances
B. Notification of command

IV. Defense of Marriage Act
A. Passed by Congress in 1996.
   1. Defines marriage as a marriage between one man and one woman.
   2. Spouse is to refer only to an opposite sex partner.
   3. Explicitly allows states the option of refusing to recognize the lawful actions of a sister state.

B. DOMA before the Supreme Court
   1. United States v. Windsor
      a. (1) Whether Section 3 of the Defense of Marriage Act (DOMA) violates the Fifth Amendment's guarantee of equal protection of the laws as applied to persons of the same sex who are legally married under the laws of their State;
      b. (2) whether the Executive Branch’s agreement with the court below that DOMA is unconstitutional deprives this Court of jurisdiction to decide this case;
      c. And (3) whether the Bipartisan Legal Advisory Group of the United States House of Representatives has Article III standing in this case.

V. What happens next
A. DOD intent: “In the event that the Defense of Marriage Act is no longer applicable to the Department of Defense, it will be the policy of the Department to construe the words “spouse” and “marriage” without regard to sexual orientation, and married couples, irrespective of sexual orientation, and their dependents, will be granted full military benefits.”

B. The 18 State solution
   1. Elevate the states that have granted civil unions/RDP to their citizens to Marriage.

C. Marriage in states that recognize Marriage
   1. Servicemembers married in nine states and the District of Columbia would be Married for Federal purposes.
ATTACHMENT 3

DECLARATION OF DOMESTIC PARTNERSHIP

For purposes of this declaration, the following definitions apply:

DOMESTIC PARTNER means a person in a domestic partnership with a Service member of the same sex.

DOMESTIC PARTNERSHIP means a committed relationship between two adults, of the same sex, that meets all of the requirements below.

We attest/declare that the following statements are true and correct:

1. We are each other’s sole domestic partner, in a committed relationship, and intend to remain so indefinitely;
2. Neither of us is married (legally or by common law), joined in civil union with, or domestic partners with anyone else;
3. We are at least 18 years of age and mentally competent to consent to contract;
4. We share responsibility for a significant measure of each other’s common welfare and financial obligations;
5. We are not related in a way that, if we were of opposite sexes, would prohibit legal marriage in the State in which we reside; and,
6. With regard to a common residence:
   a. We have a common residence and intend to continue the arrangement; or
   b. We would have a common residence but for the requirements of military service.

We also agree to, and understand that:

7. We must inform my Service not later than 30 days after (a) the date of dissolution of the domestic partnership, (b) the date the partnership no longer meets the eligibility requirements, or (c) termination of the domestic partnership by death;
8. The dissolution of the relationship may result in the termination of benefits; and,
9. Falsification or failure to inform Service:
   a. Willful falsification of information within this declaration or failure to abide by its terms may lead to disciplinary action or constitute a criminal violation under the Uniform Code of Military Justice and/or title 18, U.S.C., section 1001. Falsification of information may also lead to the loss of benefits and/or the recovery of the cost of benefits received related to such falsification.
   b. Failure to inform my Service not later than 30 days after (a) the dissolution or termination of the domestic partnership, or (b) the date the partnership no longer meets eligibility requirements, may lead to disciplinary action or constitute a criminal violation under the Uniform Code of Military Justice. Such failure may also lead to the recovery of the cost of benefits received after the date of dissolution or
termination of the domestic partnership, or the date the partnership no longer meets eligibility requirements.

Printed Name of Service Member

Last Name

First Name

MI

Social Security Number

Signature of Service Member/Grade/Service

Date Signed

Printed Name of Domestic Partner

Last Name

First Name

MI

Social Security Number

Signature of Domestic Partner/Grade/Service

Date Signed

Domestic Partnership Information

Date Domestic Partnership was formed: ___ / ___ / ___

Common Residence:

Address

City State Zip

If no common residence, explain why:

__________________________

__________________________

__________________________
DECLARATION OF DOMESTIC PARTNERSHIP

Please read instructions on reverse side before completing form.

We the undersigned, do declare that we meet the requirements of Family Code section 297, which are as follows:

- Neither person is married to someone else or is a member of another domestic partnership with someone else that has not been terminated, dissolved, or adjudged a nullity.
- The two persons are not related by blood in a way that would prevent them from being married to each other in this state.
- Both persons are at least 18 years of age, OR if one or both persons are under 18 years of age, a certified copy of the court order(s) granting permission to the underage person(s) to establish a domestic partnership is attached.
- Both persons are members of the same sex, OR one or both of the persons is over 62 years of age and one or both meet the eligibility criteria under Title II of the Social Security Act as defined in United States Code, title 42, section 402(a) for old-age insurance benefits or Title XVI of the Social Security Act as defined in United States Code, title 42, section 1381 for aged individuals.
- Both persons are capable of consenting to the domestic partnership.
- Both persons consent to the jurisdiction of the Superior Courts of California for the purpose of a proceeding to obtain a judgment of dissolution or nullity of the domestic partnership or for legal separation of partners in the domestic partnership, or for any other proceeding related to the partners' rights and obligations, even if one or both partners ceases to be a resident of, or to maintain a domicile in, this state.

The representations are true and correct, and contain no material omissions of fact to the best of our knowledge and belief. Filing an intentionally and materially false Declaration of Domestic Partnership shall be punishable as a misdemeanor. (Family Code section 298(c)).

PARTNER 1

Printed Name (Last) (First) (Middle)

Signature of Partner as Stated Above

OPTIONAL Name Changes

New Last Name

New Middle Name

Date of Birth (required for name change)

PARTNER 2

Printed Name (Last) (First) (Middle)

Signature of Partner as Stated Above

OPTIONAL Name Changes:

New Last Name

New Middle Name

Date of Birth (required for name change)

Mailing Address City State Zip

State of California

County of

NOTARIZATION IS REQUIRED

On , before me, , Notary Public, personally appeared who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

[Seal]

SEC/STATE NP/SF DP-1 (Rev 01/2012)
INSTRUCTIONS FOR COMPLETING THE DECLARATION OF DOMESTIC PARTNERSHIP (FORM NP/SF DP-1)

For easier completion, this form is available on the Secretary of State’s website at www.sos.ca.gov/dpregistry/. It can be viewed, filled in and printed from your computer. If you do not complete this form online, please type or legibly print in black or blue ink. Do not alter this form.

Statutory filing provisions are found in California Family Code sections 297 and 298. All statutory references are to the California Family Code, unless otherwise stated.

Complete the Declaration of Domestic Partnership (Form NP/SF DP-1) as follows:

- Both persons must meet all of the requirements of Section 297, as stated on the front of the Declaration of Domestic Partnership form.
- Both persons must sign and affix their signatures to the same Declaration of Domestic Partnership form.
- Both persons must print their names legibly. The names must be printed in the order requested: Last name, First name, Middle name. If there is a suffix, i.e. Jr., Sr., etc., include this as part of the last name.
- One or both persons to a registered domestic partnership may change the middle or last names by which that person wishes to be known after registration of the domestic partnership by entering the new name and including their date of birth in the spaces provided on the Declaration of Domestic Partnership form. A person may adopt any of the following middle or last names: the current last name of the other domestic partner; the last name of either domestic partner given at birth; a name combining into a single last name all or a segment of the current last name or the last name of either domestic partner given at birth; or a hyphenated combination of last names. (Section 298.6.)
- A complete mailing address is required (address, city, state, zip code.) Print legibly. Do not abbreviate city names.
- The signature of both persons must be notarized with a certificate of acknowledgment. The Declaration of Domestic Partnership must be signed using the name of the individual prior to the name change, if any, listed on this form.

The completed form can be mailed to Secretary of State, Domestic Partners Registry, P.O. Box 942877, Sacramento, CA 94277-0001 or delivered in person to the Sacramento office, 1500 11th Street, 2nd Floor, Sacramento, CA 95814 OR can be hand delivered for over-the-counter processing to the Los Angeles regional office. Please refer to the Secretary of State’s website at www.sos.ca.gov/dpregistry/ for office locations and phone numbers.

FEES:
- The fee for filing Form NP/SF DP-1 is $10.00.
- For same-sex partners, an additional $23.00 fee must be paid at the time of filing the form, for a total of $33.00.
- There is an additional $15.00 special handling fee for processing a document delivered in person to the Sacramento office or to the Los Angeles regional office.

Payments for documents submitted:
- by mail to Sacramento can be made by check or money order.
- over-the-counter in Sacramento can be made by check, money order, cash, or credit card (Visa or MasterCard).
- over-the-counter in the Los Angeles regional office can be made by check, money order, or credit card (Visa or MasterCard). The Los Angeles regional office is not able to accept cash.

Checks or money orders should be made payable to the Secretary of State.

The additional $23.00 fee will be used to develop and support a training curriculum specific to lesbian, gay, bisexual, and transgender domestic abuse support service providers who serve that community in regard to domestic violence, and to provide brochures specific to lesbian, gay, bisexual, and transgender domestic abuse. Brochures developed by the State Department of Public Health will be available upon request from the Secretary of State, as funding allows.