

# Lawyers tackle same-sex divorce issues

By Patricia Manson  
Law Bulletin staff writer

To Chicago attorney Joshua P. Haid, it makes sense for Illinois to provide a way for same-sex couples to split up now that it provides a way for them to unite.

"It's important that civil unions have divorce provisions for the same reason that it's important that marriages have divorce provisions," Haid said. "People need to be able to separate and untie the bonds of marriage in an orderly and responsible manner that protects the rights of both parties."

Haid said providing for protection in the event of a breakup is especially important for the less economically advantaged partner in the relationship.

That partner — who often is a stay-at-home parent — needs maintenance or child support payments, Haid said.

Haid, of Women's Divorce & Business Law Group by Haid & Associates LLC, did not waste any time when the Illinois Religious Freedom Protection and Civil Union Act went into effect on June 1.

Haid went to the courthouse in Peoria that morning to file a petition on behalf of a client seeking to dissolve the marriage he and another man entered into in Canada.

Chicago attorney Richard A. Wilson of Grund & Leavitt PC, also was ready on June 1 with paperwork for gay and lesbian clients seeking to dissolve the same-sex partnerships they formed in other jurisdictions.

Wilson said he thinks there currently is "a bit of a wave" of such cases in Illinois.

Many of these divorce petitions are being brought by couples who broke up long ago but were unable to obtain legal recognition of the split in this state until now, Wilson said.

Wilson said the fact that same-sex couples now have the same right to divorce as opposite-sex couples is a step toward equality.

The Illinois statute allows both same-sex and opposite-sex couples to enter into civil unions.

The statute grants the parties in those unions the same rights and responsibilities under Illinois law as the parties to a marriage.

## Dissolution

Continued from page 1

Illinois residents who formed their legal relationships in other jurisdictions may legally end those relationships — whether they are called marriages, civil unions, domestic partnerships or something else — under the state's Marriage and Dissolution of Marriage Act.

Mark E. Wojcik, a professor at The John Marshall Law School, said lawyers need to be aware of the legal issues that can arise when dissolving their clients' same-sex unions in Illinois.

"They want to take care in the final order that they're not just dissolving the Illinois civil union, but they're dissolving the foreign marriage that's treated as a civil union under the Illinois law," said Wojcik, the founder of The Chicago Bar Association's Committee on Legal Rights of Lesbians and Gay Men.

And Wojcik and other experts said federal law and the laws of other states can present additional difficulties when it comes to working out a divorce settlement or a child-custody plan for a same-sex couple who are parting ways.

For example, the federal Defense of Marriage Act defines marriage as a legal union between one man and one woman.

If a spouse in a same-sex marriage dies, his or her property goes to the other spouse without the payment of any federal taxes, Wojcik said.

He said such a transfer of assets would be a "taxable transaction" if the spouses were of the same sex.

"A lot of people don't realize that," Wojcik said. "They think it will be the

same way."

Wojcik said other problems can arise under state laws when same-sex couples who have children together divorce.

Lawyers often advise the nonbiological parent of a same-sex couple's child to adopt the child, Wojcik said.

He said that precaution is needed because the couple "may travel to a jurisdiction where their civil union or same-sex marriage isn't recognized."

Adopting the child of a same-sex union is not always possible, however.

While Illinois law has allowed same-sex partners to adopt children together since 1995, not all jurisdictions have such provisions.

Chicago attorney Jill M. Metz said a state's failure to recognize a same-sex union can lead to a "horrendous situation."

For example, she heard from a Louisiana woman in an abusive relationship with her female partner, said Metz, the board president of the American Civil Liberties Union of Illinois.

Metz said the woman and her partner are each the biological mother of one of the couple's two children.

Because Louisiana does not recognize the women's union, the partner being abused has the choice of staying in the relationship or leaving the state with only one of her children, Metz said.

"It's inhumane," she said. "It's not good for children; it's cruel. And it's unconstitutional."

E-mail: [pmanson@lbpc.com](mailto:pmanson@lbpc.com)

CHICAGO DAILY LAW BULLETIN  
FRI, 9/30/11  
v. 157  
No. 192