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5 (psychotherapist-patient privilege), 1033 (privilege of penitent), 1034 (privilege of clergyman),
6 or 1035.8 (sexual assault victim-counselor privilege) is waived with respect to a communication
7 protected by such privilege if any holder of the privilege, without coercion, has disclosed a
8 significant part of the communication or has consented to such disclosure made by anyone.
9 Consent to disclosure is manifested by any statement or other conduct of the holder of the
10 privilege indicating consent to the disclosure, including failure to claim the privilege in any
11 proceeding in which the holder has the legal standing and opportunity to claim the privilege.

12 (b) Where two or more persons are joint holders of a privilege provided by Section 954
13 (lawyer-client privilege), 994 (physician-patient privilege), 1014 (psychotherapist-patient
14 privilege), or 1035.8 (sexual assault victim-counselor privilege), a waiver of the right of a
15 particular joint holder of the privilege to claim the privilege does not affect the right of another
16 joint holder to claim the privilege. In the case of the privilege provided in Section 980
17 (privilege for confidential marital and domestic partner communications), a waiver of the right
18 of one spouse or domestic partner to claim the privilege does not affect the right of the other
19 spouse or domestic partner to claim the privilege.

20 (c) A disclosure that is itself privileged is not a waiver of any privilege.

21 (d) A disclosure in confidence of a communication that is protected by a privilege
22 provided by Section 954 (lawyer-client privilege), 994 (physician-patient privilege), 1014
23 (psychotherapist-patient privilege), or 1035.8 (sexual assault victim-counselor privilege), when
24 such disclosure is reasonably necessary for the accomplishment of the purpose for which the
25 lawyer, physician, psychotherapist, or sexual assault counselor was consulted, is not a waiver of
26 the privilege.

27
28 §980

29 (a) Subject to Section 912 and except as otherwise provided in this article, a spouse or
30 domestic partner (or his or her guardian or conservator when he or she has a guardian or
31 conservator), whether or not a party, has a privilege during the marital or domestic partner
32 relationship and afterwards to refuse to disclose, and to prevent another from disclosing, a
33 communication if he or she claims the privilege and the communication was made in confidence
34 between him or her and the other spouse, while they were husband and wife, or the other
35 domestic partner, while they were registered domestic partners.

36 (b) For the purpose of this section, "domestic partner" has the meaning provided in
37 Section 297 of the Family Code. Article

38
39 §982

40 There is no privilege under this article in a proceeding to commit either spouse or
41 domestic partner or otherwise place him or her, or his or her property, or both, under the control
42 of another because of his or her alleged mental or physical condition.

43
44 §983

45 There is no privilege under this article in a proceeding brought by or on behalf of either

RESOLUTION 3-12-2002

DIGEST

Confidential Marital Communications: Extension to Registered Domestic Partners

Amends Evidence Code sections 912, 980, 982, 983, 984, 985, and 987 to protect the confidential communications of registered domestic partners.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE (WITH RECOMMENDED AMENDMENT)

Reasons:

This resolution amends Evidence Code sections 912, 980, 982, 983, 984, 985, and 987 to protect the confidential communications of registered domestic partners. This resolution should be approved in principle because registered domestic partners should have the same rights to the privacy of their confidential communications as others in special relationships.

The privilege for confidential communications extends to many specially protected relationships, including attorney-client, doctor-patient, priest-communicant, and married couples. In each case, the law recognizes that there is societal interest in preserving the secrecy of confidential communications made within that relationship.

When domestic partners register, they acknowledge to the world that they are in a special relationship comparable to a marriage. Like married couples, domestic partners have a reasonable expectation of privacy in their confidential communications. And like the societal interest in preserving the confidentiality within marriages, there is a societal interest in preserving the confidentiality within domestic partnerships. The testimonial privilege that protects a spouse from being forced to violate that confidence should be extended to domestic partners.

Because the term “domestic partner” is used throughout the article, the resolution should be amended to change the reference in section 980, subdivision (b), from “this section” to “this article.” (See line 35.)

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Evidence Code sections 912, 980, 982, 983, 984, 985, and 987 to read as follows:

- 1 § 912
- 2 (a) Except as otherwise provided in this section, the right of any person to claim a
- 3 privilege provided in Section 954 (lawyer-client privilege), 980 (privilege for confidential
- 4 marital and domestic partner communications), 994 (physician-patient privilege), 1014
- 5 (psychotherapist-patient privilege), 1033 (privilege of penitent), 1034 (privilege of clergyman),
- 6 or 1035.8 (sexual assault victim-counselor privilege) is waived with respect to a communication
- 7 protected by such privilege if any holder of the privilege, without coercion, has disclosed a
- 8 significant part of the communication or has consented to such disclosure made by anyone.
- 9 Consent to disclosure is manifested by any statement or other conduct of the holder of the
- 10 privilege indicating consent to the disclosure, including failure to claim the privilege in any

11 proceeding in which the holder has the legal standing and opportunity to claim the privilege.
12 (b) Where two or more persons are joint holders of a privilege provided by Section 954
13 (lawyer-client privilege), 994 (physician-patient privilege), 1014 (psychotherapist-patient
14 privilege), or 1035.8 (sexual assault victim-counselor privilege), a waiver of the right of a
15 particular joint holder of the privilege to claim the privilege does not affect the right of another
16 joint holder to claim the privilege. In the case of the privilege provided in Section 980
17 (privilege for confidential marital and domestic partner communications), a waiver of the right
18 of one spouse or domestic partner to claim the privilege does not affect the right of the other
19 spouse or domestic partner to claim the privilege.

20 (c) A disclosure that is itself privileged is not a waiver of any privilege.

21 (d) A disclosure in confidence of a communication that is protected by a privilege
22 provided by Section 954 (lawyer-client privilege), 994 (physician-patient privilege), 1014
23 (psychotherapist-patient privilege), or 1035.8 (sexual assault victim-counselor privilege), when
24 such disclosure is reasonably necessary for the accomplishment of the purpose for which the
25 lawyer, physician, psychotherapist, or sexual assault counselor was consulted, is not a waiver of
26 the privilege.

27
28 §980

29 (a) Subject to Section 912 and except as otherwise provided in this article, a spouse or
30 domestic partner (or his or her guardian or conservator when he or she has a guardian or
31 conservator), whether or not a party, has a privilege during the marital or domestic partner
32 relationship and afterwards to refuse to disclose, and to prevent another from disclosing, a
33 communication if he or she claims the privilege and the communication was made in confidence
34 between him or her and the other spouse, while they were husband and wife, or the other
35 domestic partner, while they were registered domestic partners.

36 (b) For the purpose of this section, “domestic partner” has the meaning provided in
37 Section 297 of the Family Code.

38
39 §982

40 There is no privilege under this article in a proceeding to commit either spouse or
41 domestic partner or otherwise place him or her, or his or her property, or both, under the control
42 of another because of his or her alleged mental or physical condition.

43
44 §983

45 There is no privilege under this article in a proceeding brought by or on behalf of either
46 spouse or domestic partner to establish his or her competence.

47
48 §984

49 There is no privilege under this article in:

50 (a) A proceeding brought by or on behalf of one spouse or domestic partner against the
51 other spouse or domestic partner.

52 (b) A proceeding between a surviving spouse or domestic partner and a person who
53 claims through the deceased spouse or domestic partner, regardless of whether such claim is by
54 testate or intestate succession or by inter vivos transaction.

55
56 §985

57 There is no privilege under this article in a criminal proceeding in which one spouse or

58 domestic partner is charged with:
59 (a) A crime committed at any time against the person or property of the other spouse or
60 domestic partner or of a child of either.
61 (b) A crime committed at any time against the person or property of a third person
62 committed in the course of committing a crime against the person or property or property of the
63 other spouse or domestic partner.
64 (c) Bigamy.
65 (d) A crime defined by Section 270 or 270a of the Penal Code.
66
67 §987
68 There is no privilege under this article in a criminal proceeding in which the
69 communication is offered in evidence by a defendant who is one of the spouses or domestic
70 partners between whom the communication was made.

(Proposed new language underlined; language to be deleted stricken.)

PROPOSER: Bay Area Lawyers for Individual Freedom

STATEMENT OF REASONS

Existing Law: Establishes a confidential communication privilege applicable to only those communications made between spouses while husband and wife, and for the waiver of such privilege.

This Resolution: Provides for the extension of the confidential communication privilege to persons who are registered as domestic partners in the State of California, pursuant to Family Code Section 297, to those same instances in which the privilege is applicable to married spouses.

The Problem: Currently, there is no confidential communication privilege which applies to domestic partners.

IMPACT STATEMENT

This proposed resolution does not affect any other law, statute or rule.

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