

## RESOLUTION ELF-03-2007

### DIGEST

#### Termination of Spousal Support

### TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommend that legislation be sponsored to amend Family Code Section 4337 to read as follows:

- 1 §4337
- 2 Except as otherwise agreed by the parties in writing, the obligation of a party under an order
- 3 for the support of the other party terminates upon the death of either party or either the
- 4 remarriage of the other party, or the other party's registration as a Domestic Partner.

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

PROPONENT: Orange County Bar Association

### STATEMENT OF REASONS

Existing Law: Does not take into account a party's status as a Registered Domestic Partner as it does a re-married spouse in the termination of spousal support statute.

This Resolution: Would modify the Family Code to treat a former spouse turned Registered Domestic Partner, the same as that same former spouse getting remarried, in the termination of spousal support statute.

The Problem: When the Domestic Partnership statute, Family Code, §297.5, was created, the statute that we seek to amend, should have been amended simultaneously because that statute affords Domestic Partners the same rights of support from each other, as does the statutes related to married couples. Accordingly, when there is a divorce, and the supported ex-spouse remarries, in the absence of an agreement to the contrary, spousal support automatically terminates. The same should be true of an ex-spouse who has now become a Registered Domestic Partner. Without the amendment, you have double-dipping, in that the Registered Domestic Partners have a duty to support each other, and they can still get spousal support from their ex-spouses. This would actually afford Registered Domestic Partners with greater rights than that of married partners. It does not make logical sense. This proposed amendment is extremely ripe at this time, as this same issue is now before the Court of Appeals, and will probably end up before the California Supreme Court. The underlying case was an Orange County case entitled, In re the Marriage of Garber. In that case, Mr. Garber agreed to pay his ex-wife spousal support, however, Mr. Garber's ex-wife failed to disclose that she was now a Registered Domestic Partner. Unfortunately, the way Family Code, §4337 is currently written, it makes no provision for this scenario, thus Mr. Garber continues to be on the hook for spousal support pending appeal.

## IMPACT STATEMENT

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

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