

RESOLUTION 10-06-2008

DIGEST

Family Law: Fee Collection from Opposite Sex Domestic Partner Registrants

Amends Family Code section 298 to collect fees to support the prevention of elder abuse and domestic violence against seniors from opposite sex domestic partner registrants.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Family Code section 298 to collect fees to support the prevention of elder abuse and domestic violence against seniors from opposite sex domestic partner registrants. This resolution should be disapproved because it fails to demonstrate why there should be two separate funds created by the fees imposed on domestic partner registrants.

Family Code section 298, subdivision (b)(3) currently charges a \$23 fee for registration only from lesbian, gay, bisexual and transgendered registrants. By statute, the monies collected for registration are intended for the development and support of a lesbian, gay, bisexual, and transgender curriculum for training workshops on domestic violence, and for the support of a grant program to promote healthy nonviolent relationships in the lesbian, gay, bisexual, and transgender community. This fee is not imposed on domestic partner registrants of opposite sexes, who are eligible to register as domestic partners only when one or both of the partners is 62 years of age or older. This fee was imposed on all registrants until 2005 when the legislature expressed a need for utilization of these funds to address the lesbian, gay, bisexual and transgendered community which then resulted in the imposition of the fee only on registrants who self-identified themselves as belonging to this community.

This resolution imposes a \$23 fee on opposite sex domestic partner registrants, and provides that those fees are to be used to establish the Prevention and Services for Domestic Abuse of Seniors Fund which will be used to support the prevention of elder abuse and domestic violence against seniors. However, there is no stated nexus between opposite sex registrants and the domestic abuse of seniors to support the creation of this new fund with the opposite sex registrants' fees. While collecting fees from only one class of domestic partner registrants (those that are not opposite sex couples) appears to be facially discriminatory, creating this new, apparently unrelated fund, does not solve any identified problem.

SECTION/COMMITTEE REPORTS

FAMILY LAW SECTION

NO POSITION TAKEN

The Family Law Section Executive Committee has reviewed the proposed resolution and has elected to take no position on this resolution. This resolution would amend Family Code §298 to support domestic violence prevention by equalizing the fees charged to all persons registering as domestic partners and would mandate that the funds shall be deposited and administered by the Department of Aging. Admittedly, this resolution may have very laudable goals; however, this Committee considers this resolution to be a fiscal matter for which this Committee has no expertise or special knowledge. Accordingly, this Committee takes no position in either approving or disapproving this resolution.

This position is only that of the Family Law Section of the State Bar of California. This position has not been adopted by either the State Bar Board of Governors or overall membership and is not to be construed as representing the position of the State Bar of California.

Membership in the Family Law Section is voluntary, and funding for section activities, including all legislative activities, is obtained entirely from voluntary services.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend California Family Code section 298 to read as follows:

1 § 298

2 (a)(1) The Secretary of State shall prepare forms entitled "Declaration of Domestic
3 Partnership" and "Notice of Termination of Domestic Partnership" to meet the
4 requirements of this division. These forms shall require the signature and seal of an
5 acknowledgment by a notary public to be binding and valid.

6 (2) When funding allows, the Secretary of State shall include on the form notice
7 that a lesbian, gay, bisexual, and transgender specific domestic abuse brochure is available
8 upon request.

9 (b)(1) The Secretary of State shall distribute these forms to each county clerk.
10 These forms shall be available to the public at the office of the Secretary of State and each
11 county clerk.

12 (2) The Secretary of State shall, by regulation, establish fees for the actual costs of
13 processing each of these forms, and the cost for preparing and sending the mailings and
14 notices required pursuant to Section 299.3, and shall charge these fees to persons filing the
15 forms.

16 (3) There is hereby established a fee of twenty-three dollars (\$23) to be charged in
17 addition to the existing fees established by regulation to persons filing domestic partner
18 registrations pursuant to Section 297 for development and support of a lesbian, gay,
19 bisexual, and transgender curriculum for training workshops on domestic violence,
20 conducted pursuant to Section 13823.15 of the Penal Code, and for the support of a grant
21 program to promote healthy nonviolent relationships in the lesbian, gay, bisexual, and
22 transgender community. This paragraph shall not apply to persons of opposite sexes filing
23 a domestic partnership registration and who meet the qualifications described in
24 subparagraph (B) of paragraph (5) of subdivision (b) of Section 297.

25 (4) The fee established by paragraph (3) shall be deposited in the Equality in
26 Prevention and Services for Domestic Abuse Fund, which is hereby established. The fund
27 shall be administered by the Office of Emergency Services, and expenditures from the fund
28 shall be used to support the purposes of paragraph (3).

29 (5) Persons of opposite sexes filing a domestic partnership registration who meet
30 the qualifications of subparagraph (B) of paragraph (5) of subdivision (b) of Section 297
31 will be charged a fee of twenty-three dollars (\$23) in addition to the existing fees
32 established by regulation to persons filing domestic partner registrations pursuant to
33 section 297, which will support the prevention of elder abuse and domestic violence
34 against seniors.

35 (6) The fee established by paragraph (5) shall be deposited in the Prevention and
36 Services for Domestic Abuse of Seniors Fund, which is hereby established. The fund shall
37 be administered by the Department of Aging, and expenditures from the fund shall be used
38 to support the purposes of paragraph (5).

39 (c) The Declaration of Domestic Partnership shall require each person who wants to
40 become a domestic partner to (1) state that he or she meets the requirements of Section 297
41 at the time the form is signed, (2) provide a mailing address, (3) state that he or she
42 consents to the jurisdiction of the Superior Courts of California for the purpose of a
43 proceeding to obtain a judgment of dissolution or nullity of the domestic partnership or for
44 legal separation of partners in the domestic partnership, or for any other proceeding related
45 to the partners' rights and obligations, even if one or both partners ceases to be a resident
46 of, or to maintain a domicile in, this state, (4) sign the form with a declaration that
47 representations made therein are true, correct, and contain no material omissions of fact to
48 the best knowledge and belief of the applicant, and (5) have a notary public acknowledge
49 his or her signature. Both partners' signatures shall be affixed to one Declaration of
50 Domestic Partnership form, which form shall then be transmitted to the Secretary of State
51 according to the instructions provided on the form. Filing an intentionally and materially
52 false Declaration of Domestic Partnership shall be punishable as a misdemeanor.

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

PROPONENT: Bay Area Lawyers for Individual Freedom

STATEMENT OF REASONS:

Existing Law: Currently, persons of the same sex filing a domestic partnership registration in the State of California are required to pay an additional fee of \$23 in addition to the base fee of \$10. The \$23 fee supports grants to organizations that promote healthy nonviolent relationships in the lesbian, gay, bisexual, and transgender community; development of a lesbian, gay, bisexual, and transgender curriculum for training workshops on domestic violence; and provision of brochures specific to lesbian, gay, bisexual, and transgender domestic abuse. Opposite sex couples filing a domestic partnership registration in the State of California (who are eligible to register as domestic partners only when one or both of the partners is 62 years of age or older) are exempted under existing law from the \$23 fee that supports domestic violence prevention. (Note: when the legislation adding the \$23 additional fee was initially proposed, opposite sex couples were also required to pay this fee. However, prior to the law's passage, the requirement that opposite

sex couples registering as domestic partners also pay the \$23 fee was removed from the bill.) In addition, since 1992, California law has provided that fees charged by a county for marriage licenses include \$23 for domestic violence centers. Therefore, persons of opposite sexes registering as domestic partners are currently the only couples are not contributing to domestic violence prevention services when they apply for domestic partnership or a marriage certificate.

This Resolution: This resolution would support domestic violence prevention by equalizing the fees charged to all persons registering as domestic partners in the State of California, and would mandate creation of a fund to be administered by the Department of Aging into which the additional funds shall be deposited.

The Problem: The problems of elder abuse and domestic violence in California are of serious and increasing magnitude. Preventing elder abuse and domestic violence are important state goals, whether it is preventing abuse of spouses, partners, or seniors. Existing elder abuse and domestic violence services are underfunded and some areas of the state are unserved or underserved. Removing the exemption from the \$23 fee for opposite sex domestic partner registrants would create additional revenues for the state, and would specifically designate the funds for use in preventing elder abuse and domestic violence against seniors.

IMPACT STATEMENT:

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

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RESPONSIBLE FLOOR DELEGATE: