



# FAMILY LAW

*The newsletter of the Illinois State Bar Association's Section on Family Law*

## Chair's column

*By Rory Weiler*

Greetings from snowy St. Charles. As I write this, the snow is flying and I'm once again reminded how "exhilarating" it is to live in the Midwest during the winter. That said, regardless of the swirling and blowing snow, the Illinois Legislature has delivered a bright beacon of hope that blazes bright through the winter's clouds. As most of you know by now, the Legislature approved a bill establishing "civil unions," a bill that Governor Quinn has promised he will sign into law. By the time you read this, it is likely that Illinois will be one of a handful of states that has (finally) granted recognition to partnerships of unmarried individuals (assuming, that is, that the Governor's promise on this issue is worth a bit more than others made on the campaign trail, but I digress).

When signed into law, the new "Illinois Religious Freedom and Civil Union Act" will place Illinois in the forefront of progressive social action to afford all of its citizens equal protection under the law. This Act was unanimously supported by our Section Council, past and present, and we

are pleased to have been a part of the process which resulted in its adoption. However, while the Act greatly enhances the rights of certain individuals involved in partnerships outside of the traditional state approved marriage, it doesn't completely level the playing field between married parties and those involved in a civil union. The Federal Defense of Marriage Act and other laws still preclude complete equality, and there is still action which needs to be taken to afford unmarried individuals involved in a civil union all of the rights and equal protection that married individuals enjoy.

Clearly, much work needs to be done on a variety of levels before the June 1, 2011 effective date of the Act. County clerks and state and local officials are working on developing and implementing protocols and procedures for the registration of civil unions and other administrative and ministerial matters. The Act itself provides that the dissolution of civil unions will be sub-

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## A first look at the Illinois Civil Union Act

*By Richard Felice and Camilla B. Taylor*

Illinois family law is in the process of changing dramatically for committed couples who are not married under Illinois law and for their children. The Illinois Legislature recently passed the Illinois Religious Freedom Protection and Civil Union Act (the "Act"), which makes available a comprehensive new legal status for same-sex and different-sex couples. Governor Quinn has stated that he will sign the law, which will go into effect on June 1, 2011.

Under Illinois' new law, a civil union is a legally

recognized relationship of two people entered into by applying for and obtaining a state license from a county clerk's office, having a formal ceremony, and then getting a confirming certificate issued by the clerk's office. Both same-sex and different-sex couples will be able to enter into a civil union. A couple in a civil union will receive all the legal benefits and protections, and be subject to the same legal responsibilities, as are pro-

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## Chair's column

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ject to the terms and provisions of the Illinois Marriage and Dissolution of Marriage Act, but a myriad of questions, both substantive and procedural, have been raised as to just how certain aspects of the IMDMA will be applied in the dissolution of a civil union. How for instance, will pension and retirement plan interests be handled, given certain legal prescriptions on the Federal level that prohibit recognition of the rights of "unmarried" individuals? How will the parties be designated in the pleadings? What position will be taken by the Internal Revenue Service with respect to the taxability/deductibility of maintenance? The list goes on and on.

Your Family Law Section Council is already hard at work addressing these issues, and it is likely that questions generated by the Act will continue to arise and require action for a number of years to come. In order to be proactive, and get out in front of the many

issues we are facing on the Family Law front, I have appointed Cook County Judge Nancy Katz and attorney Jennifer Shaw of Edwardsville to co-chair a subcommittee of the Section Council to specifically identify, address and propose necessary changes to existing law and procedures which are needed by the adoption of the Act. Although the legislative process often moves slowly, we will be working diligently to develop and propose legislation that will, we hope, smoothly incorporate the inevitable, albeit unfortunate, dissolution of civil unions into our legal landscape.

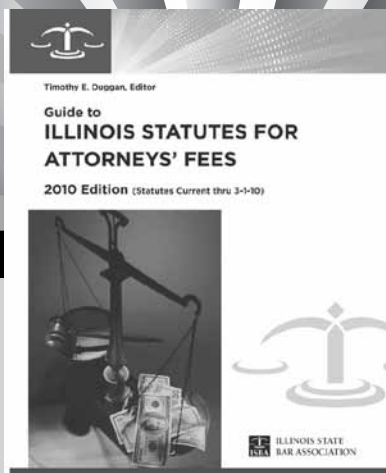
This month in our newsletter we offer for your consideration an extremely informative and well-written article about the Act, which offers an excellent breakdown and analysis of the Act, along with some practice tips which will be of interest to anyone in the Family Law practice. The authors, Attorneys Rick Felice, a Section Council member

and candidate for ISBA Third Vice President, and Camilla B. Taylor, senior staff attorney of Lambda Legal Defense and Education Fund, Inc., offer some excellent insight and suggestions in one of the very first published articles on the adoption and impact of the Act, and how it will affect our practices.

As we eagerly await the Governor's action and the implementation of the Act statewide, all of us need to be mindful of the significant changes that the Act brings to the Family Law practice. The Act promises to be not only a beacon of hope for all unmarried individuals previously denied the legal and human rights afforded to married partners, but a harbinger of significant social and legal change as well. I believe the Act is an exciting, and long overdue, development, and I look forward to working with our Section Council team to oversee and we hope, assist, its implementation in our practices. ■

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## A first look at the Illinois Civil Union Act

*Continued from page 1*

vided under Illinois law to married couples. However, a civil union is not a marriage. Illinois law continues to exclude lesbian and gay couples from marriage. 750 ILCS 5/201, 212(a)(5), 5/213.1.

By enacting civil unions, Illinois joins a growing number of states that provide some form of legal recognition to same-sex couples' relationships. Five states (Iowa, Massachusetts, Connecticut, New Hampshire, and Vermont) and the District of Columbia currently permit same-sex couples to marry, and legislatures in additional states will consider marriage bills this year. Other states (California, Nevada, New Jersey, Washington, Oregon, and now Illinois), while banning lesbian and gay couples from marriage, make available to these families a comprehensive lesser status titled "civil unions" or "domestic partnerships," depending on the state. Four states (Maine, Maryland, Colorado, and Wisconsin) provide more limited recognition to same-sex couples and their families under statutory schemes that accord only a few of the benefits and responsibilities of marriage. A few other states, including New York, New Mexico, and Rhode Island, will respect out-of-state marriages of same-sex couples. However, most states continue to deny legal recognition to same-sex couples' relationships, and in many of these states it remains unclear what respect, if any, an Illinois civil union will receive. Consequently, because Illinois civil union partners may travel outside of Illinois, such couples should continue to work closely with family lawyers and trusts and estates lawyers to perform adoptions and draw up legal documents to protect themselves and their children, as they may not be able to rely on their civil unions to achieve recognition of their status as a family in certain states outside of Illinois.

### The rights and obligations of civil union partners in Illinois

The Act's purpose is to "provide persons entering into a civil union with the obligations, responsibilities, protections, and benefits afforded or recognized by the law of Illinois to spouses." (Section 5.) Consistent with that purpose, the Act states expressly that civil union partners are "entitled to the same legal obligations, responsibilities, pro-

tections, and benefits" as spouses, regardless of "whether they derive from statute, administrative rule, policy, common law, or any other source of civil or criminal law." (Section 20.) Following are just a few examples of the hundreds of bundled rights and obligations associated with marriage under Illinois law that now will apply to parties to a civil union:

#### Family Law Rights and Responsibilities

- Access throughout the state to step-parent and joint adoption on the same terms and using the same procedures as apply to different-sex married couples, and the ability to become licensed jointly as foster parents;
- Legal presumption that both partners are parents of children born into the civil union;
- Duties of joint financial support and liability for family debts arising during the relationship;
- Ability to use spousal name change procedures when entering a civil union
- Dissolution of the civil union by a domestic relations court, including access to equitable division of the relationship assets and debts;
- Right to seek maintenance upon dissolution;
- Access to custody, visitation and support orders concerning children upon dissolution;
- Protection for civil union partners and their children under domestic violence, crime victim, and crisis assistance laws; and
- Enforcement of pre-civil union agreements between civil union partners on the same terms as premarital agreements between spouses.

#### Medical and Death-Related Rights

- Automatic rights of hospital visitation, medical decision-making, and authority to receive information about a partner's medical condition or treatment;
- Automatic ability to authorize anatomical gifts, autopsy, and release of medical records, and to make funeral arrangements for a deceased partner;
- Right to seek money damages for a partner's wrongful death, lost financial support and companionship;

## FAMILY LAW

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- Right to inherit in the absence of a will, and certain financial protections while the estate is being settled;
- Financial protections against the duty to repay public medical and nursing home costs upon death of a partner; and
- Employment-related spousal or family benefits, including spousal health insurance for public employees (although such benefits will still be taxable under federal law as income for the employee).

#### **Other Rights and Responsibilities**

- Right to file joint state income tax returns, and state tax exemption regarding value of partner health insurance;
- Right to hold real property in “tenancy by the entirety” (which offers some protection against creditors);
- Some workplace benefits, including the right to a pension for the surviving civil union partner of a firefighter or police officer, and where work injury causes death, funeral and burial expenses, and death benefits;
- Equal treatment as spouses under certain state insurance laws;
- Right not to testify against civil union partner;
- Right of an incarcerated person to phone a critically ill civil union partner; and
- Veterans’ benefits that are available to spouses under state law

#### **Rights and responsibilities of marriage that remain unavailable to civil union partners**

- All federal rights and responsibilities, including social security survivors’ and spousal benefits, certain federal spousal employment benefits, the ability to file joint federal income tax returns; exemption from income tax on the value of domestic or civil union partner health insurance; exemption from federal inheritance tax; spousal protections in bankruptcy; federal veterans’ spousal benefits; authority to sponsor a spouse to immigrate; and
- Automatic legal status in many other states that purport to deny any recognition to the legal relationships of same-sex couples.

#### **Eligibility to enter into a civil union**

The requirements for entry into a civil union are similar to those for marriage. Same-sex or different-sex couples may enter

into a civil union if:

- Both members of the couple are at least 18 years’ old
- Neither is currently in a marriage or civil union or substantially similar legal relationship; and
- The members of the couple are not closely related to each other by blood or adoption. (Section 25.)

There is no residency requirement to enter into a civil union in Illinois. However, under 750 ILCS 5/217 and Section 35 of the Act, non-resident couples may need to demonstrate that an Illinois civil union would not be prohibited in their home state.

#### **Do same-sex couples have to enter into a civil union if they already married in another jurisdiction or entered into a civil union or registered domestic partnership elsewhere?**

Same-sex couples who have already married each other in a jurisdiction that permits such couples to marry (such as Iowa, Massachusetts, Connecticut, New Hampshire, Vermont, the District of Columbia, California in the summer of 2008, or another country, such as Canada), or who have entered into a civil union or comprehensive domestic partnership in another jurisdiction do not need to enter a new civil union in Illinois; their status will qualify as a civil union in Illinois automatically as soon as the law goes into effect on June 1, 2011. Note that for an out-of-state domestic partnership to receive respect as a civil union in Illinois, the scope of the foreign state’s domestic partnership law must be similar in breadth to Illinois’ civil union law, such as domestic partnership laws in California, Nevada, Washington, or Oregon. In contrast, Wisconsin registered domestic partnerships, for example, which entail far fewer rights and responsibilities, are unlikely to qualify as civil unions in Illinois. With a broad or comprehensive legal status from another state, same-sex couples do not need to take any additional steps to achieve recognition of their relationships as civil unions in Illinois.

#### **What steps should couples take to enter into a civil union?**

Both parties must appear in person to fill out an application for a license to enter into a civil union. Applications are available through any county clerk’s office. The cost

of applying for a civil union license varies by county, and is usually in the range of \$15 to \$40. As is the case for couples applying for marriage licenses, couples applying for a civil union license should bring with them a form of identification, such as a birth certificate, driver’s license, or passport.

If a member of a couple previously has been married or in a civil union, he or she also should bring proof, in case the clerk asks to see it, that he or she is no longer married or in the prior marriage or civil union, such as a copy of the divorce or dissolution decree, or, if applicable, the death certificate of the deceased spouse or partner. (Same-sex couples who have married each other in another jurisdiction likely are ineligible to apply for a civil union license, and do not need to do so in any event, as a same-sex couple’s out-of-state marriage qualifies as a civil union in Illinois automatically, as described above.) If a couple resides outside of Illinois, the clerk may ask the members of the couple to sign an affidavit stating that their home state does not prohibit them from entering into a civil union.

The civil union license is valid for 60 days, and is valid only in the county in which it was issued, which means that the couple’s civil union ceremony must take place within that county. There is a one-day waiting period before the license becomes effective. As is the case for marriages, a court can waive this waiting period for a couple who files a petition showing sufficient cause.

Couples may choose a judge, certain public officials, or a religious official to solemnize a civil union. An officiant must complete the certificate confirming that the ceremony has been performed, and forward it to the county clerk within 10 days of the civil union ceremony. The same rules for spousal name changes on a marriage certificate will apply to a couple in a civil union when filling out the civil union certificate.

A list of county clerks offices can be found here: <[www.idph.state.il.us/vitalrecords/countylisting.htm](http://www.idph.state.il.us/vitalrecords/countylisting.htm)>.

#### **Employer health insurance, pension and other employment-related benefits**

Government employers must provide civil union partners the same health insurance and pension benefits accorded to spouses. It may be more challenging, however, to hold certain private employers to their obligation to treat civil union partners equally

to spouses with respect to health insurance and pensions, depending on what type of plan the private employer uses, and whether state and local nondiscrimination laws apply. Regardless of whether an employee works for a public or private employer, federal law treats the value of spousal health insurance benefits for civil union partners as taxable income to the employee. Putting health insurance and pensions aside for the moment, both government employers and most private employers must treat civil union partners equally when it comes to other employment-related benefits such as bereavement leave, paid parental leave, or spousal relocation policies.

**Why might a couple be advised not to enter a civil union?**

- If a couple wishes to adopt from a state or country that may not approve adoptions by lesbians, gay men, same-sex couples or unmarried different-sex couples;
- If one or both same-sex partners are in the U.S. military (until the complete implementation of the repeal of federal statutes and regulations known as “Don’t Ask Don’t Tell”);
- If either member of the couple depends on public assistance;
- If either is a foreign national without permanent legal status in the U.S.;
- If either or both do not want the state law rights and mutual responsibilities the new law will provide civil union partners, or are concerned about the open questions about how state law will interact with federal laws that do not recognize same-sex couples or unmarried different-sex couples.

**Dissolution of a civil union or divorce following a marriage to a same-sex spouse entered into in another state or country**

Civil union partners (including those in a civil union as a result of an out-of-state marriage to a same-sex spouse) will need to file a petition for dissolution of their civil union using the same procedures that spouses use to file for divorce, except captioning their petition as “In re the Civil Union of ... and ...” (Section 50.) Civil union partners will be eligible for maintenance and court assistance in allocating child custody, awarding visitation and support, and dividing property on the same terms as apply to spouses.

**Couples in civil unions should continue to work with private attorneys to draw up documents to protect themselves and their children when they travel outside of Illinois**

Even though couples in civil unions in Illinois will receive the benefit of all of the legal rights, presumptions, protections, and responsibilities under Illinois law that are available to spouses, civil union partners nevertheless should be diligent in drawing up legal documents to protect themselves and their children because they may not be able to rely on their civil unions outside of Illinois. For example, if a couple in a civil union has a car accident in Nebraska, a state that denies any recognition to same-sex couples’ relationships, the couple may have trouble establishing that they are authorized to receive medical information about each other or make medical decisions for an incapacitated partner. As another example, the couple may have trouble in Nebraska when they try to rely upon their civil union’s spousal presumption of parentage to demonstrate that both parties are parents of children born into their

civil union. Consequently, couples in civil unions (regardless of whether they have Illinois civil union certificates, or whether they are in recognized civil unions as a result of an out-of-state marriage) should continue to work with attorneys to draw up documents such as health care powers of attorney, wills, and other trusts and estates documents. Similarly, even though civil union partners both are presumed parents in Illinois from birth of children born into the civil union, a non-biological parent nevertheless should obtain an adoption decree with respect to each of the couple’s children to ensure recognition of his or her parent-child relationships outside of Illinois.

**The developing law**

Family law practitioners need to be particularly vigilant in following the developments in the law surrounding civil unions and marriages of same-sex couples, both here in Illinois and in other states. As this article demonstrates, the Illinois Civil Union Act requires lawyers dealing with civil unions to be attuned to both the law of other states and the interplay of the civil union with other areas of the law. ■

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### March

**Friday, 3/4/11 – Chicago, ISBA Regional Office**—Dynamic Presentation Skills For Lawyers. Master Series Presented by the Illinois State Bar Association. 12:30-4:45.

**Saturday, 3/5/11- Downer's Grove, Double Tree**—DUI, Traffic and Secretary of State Related Issues. Presented by the Traffic Laws/Courts Section. 8:55-4:00.

**Monday, 3/7/11- Normal, State Farm Building**—Legal Writing: Improving What You Do Everyday. Presented by the Illinois State Bar Association; co-sponsored by the McLean County Bar Association and hosted by State Farm. 12:30-4:00.

**Monday, 3/7/11-Friday, 3/11/11- Chicago, ISBA Regional Office**—40 Hour Mediation/ Arbitration Training. Master Series Presented by the Illinois State Bar Association and the ISBA Alternative Dispute Resolution Section. 8:30-5:45 each day.

**Wednesday, 3/9/11- Webcast**—Developing an Education Plan for your Legal Career. Presented at the 6th Annual Solo and Small Firm Conference. 12-1. <<http://isba.fastcle.com/store/seminar/seminar.php?seminar=6788>>.

**Tuesday, 3/15/11- Chicago, ISBA Regional Office**—Fraudulent Transfers and Piercing the Corporate Veil. Presented by the ISBA Corporation, Securities and Business Law Section. 9:00-12:15.

**Thursday, 3/17/11- Webcast**—Project Management for Lawyers. Presented at the 6th Annual Solo and Small Firm Conference. 12-1. <<http://isba.fastcle.com/store/seminar/seminar.php?seminar=6789>>.

**Thursday, 3/17/11- Chicago, ISBA Regional Office**—Litigating, Defending and Preventing Employment Discrimination Cases: Practice Updates for the Illinois Human Rights Act. Presented by the ISBA Human Rights Section. 1:30-4:45.

**Friday, 3/18/11- Chicago, DePaul University College of Law**—Civility and Pro-

fessionalism in 2011. Presented by the ISBA Bench and Bar Section. 9:00- 4:15.

**Thursday, 3/24/11- Chicago, ISBA Regional Office**—Foundations, Evidence & Objections. Presented by the ISBA Tort Law Section Council. 9-12:30.

**Thursday, 3/24/11- Chicago, ISBA Regional Office**—Fastcase: Introduction to Legal Research Training. Presented by the Illinois State Bar Association. 1:30-2:30.

**Thursday, 3/24/11- Chicago, ISBA Regional Office**—Fastcase: Advanced Legal Research Training. Presented by the Illinois State Bar Association. 3:00- 4:00.

**Friday, 3/25/11- Chicago, ISBA Regional Office**—Medical Marijuana: Workplace Issues. Presented by the ISBA Labor and Employment Section. 8:55-12:00.

**Friday, 3/25/11- Quincy- Quincy Country Club**—General Practice Update. Presented by the ISBA Bench and Bar Section; co-sponsored by the Adams County Bar Association. 8:30-5.

**Wednesday, 3/30/11- Chicago, ISBA Regional Office**—Why International Treaties Matter to Illinois Lawyers. Presented by the International and Immigration Committee. 12-2.

### April

**Friday, 4/1/11- Chicago, ISBA Regional Office**—Military family Law Issues. Presented by the ISBA Family Law Section and the ISBA Military Affairs Section. TBD.

**Thursday, 4/7/11- Chicago, ISBA Chicago Regional Office**—Your Aging Clients, Their Parents and You. Presented by the ISBA Standing Committee on Women and the Law; co-sponsored by the Elder law Section, the General Practice Section and the Senior Lawyers Section. 8:15-4:45.

**Friday, 4/8/11- Bloomington, Holiday Inn and Suites**—DUI, Traffic and Secretary of State Related Issues. Presented by the Traffic Laws/Courts Section. 8:55-4:00.

**Friday, 4/8/11- Chicago, ISBA Chicago Regional Office**—Practice Tips and Pointers on Child-Related Issues. Presented by the ISBA Child Law Section; co-sponsored by the Mental Health Law Section. TBD.

**Friday, 4/8/11- Dekalb, NIU School of Law**—Mechanics Liens and Construction Claims. Presented by the ISBA Special Committee on Construction Law; co-sponsored by the ISBA Commercial, Banking and Bankruptcy Section and ISBA Real Estate Section. 8:55-3:45.

**Tuesday, 4/12/11- Chicago, ISBA Chicago Regional Office**—Recent Developments in IP Law. Presented by the ISBA Intellectual Property Section. 3:00-4:30.

**Thursday, 4/14/11- Chicago, ISBA Chicago Regional Office**—Civil Practice Update. Presented by the ISBA Civil Practice and Procedure Section. 9-4.

**Friday, 4/15/11- Chicago, ISBA Chicago Regional Office**—Liens. Presented by the ISBA Tort Law Section. 9-12:30.

**Wednesday, 4/27/11- Chicago, ISBA Chicago Regional Office (invitation only—do not publish!)**—Faculty Development: Developing Effective Professional Responsibility MCLE Presentations. Presented by the Illinois State Bar Association

### May

**Wednesday, 5/4/11- Chicago, ISBA Chicago Regional Office**—Settlement in Federal Courts. Presented by the ISBA Federal Civil Practice Section. 11:55- 4:15.

**Thursday, 5/5/11- Chicago, ISBA Chicago Regional Office**—Municipal Administrative Law Judge Education Program. Presented by the ISBA Administrative Law Section; co-sponsored by the Illinois Association of Administrative Law Judges. TBD.

**Thursday, 5/12-13/11- Chicago, ISBA Chicago Regional Office**—2011 Annual Environmental Law Conference. Presented by the ISBA Environmental Law Section. 9-5; 9-1. ■

# Save the Date: February 24, 2011

## Family Law Nuts & Bolts—2011

*Presented by the ISBA Family Law Section*

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