Defense of Marriage Act limits immigration status

By Gregory Eck

Marriage allows a United States citizen to sponsor his or her foreign national spouse for lawful immigration status. If a U.S. citizen marries a foreign national of the opposite sex, and if that foreign national is not otherwise ineligible, he or she may seek lawful status in this country as the spouse of a U.S. citizen. Likewise, if a foreign national seeks a temporary visa to visit the U.S. as a worker or tourist, his or her opposite-sex spouse is usually granted derivative status and may enter this country as well. Not so with same-sex couples in which one of the spouses is a foreign national; there are no derivative benefits for same-sex couples.

Even if a bi-national, same-sex couple was legally married in a country that recognizes same-sex marriage, such as Canada, and wishes to live in a state that recognizes same-sex marriage, the Defense of Marriage Act (DOMA) makes it impossible for the U.S. spouse to “sponsor” his or her partner in the immigration process largely because of the Defense of Marriage Act.

The Defense of Marriage Act (DOMA), 1 U.S.C. § 7 and 28 U.S.C. § 1738C, was signed into law in 1996 by President Clinton. Under DOMA the federal government defines marriage as a legal union between one man and one woman. Also under the law, no state (or other political subdivision within the United States) is required to recognize same-sex marriage from another state. Because DOMA prevents the federal government from recognizing the validity of same-sex marriages, a host of other privileges enjoyed by bi-national heterosexual couples are denied to bi-

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Message from the chair

By Leo Dunn

The first edition of Open Court was definitely a hit. It generated very positive comments from the Pennsylvania Bar Association’s president and president-elect, as well as many other committee chairs. Most importantly, it is serving to help re-energize our committee. I received two emails from people who have never been actively involved in the Gay and Lesbian Rights Committee (GLRC), but they read the newsletter and now want to do more. Their interest inspired me to agree to join the planning efforts for the PBA Diversity Summit scheduled for Oct. 27 in Harrisburg. I’ve agreed to plan and moderate a session on Gay, Lesbian, Bi-sexual and Transgender (GLBT) inclusion from the perspectives of both law firm managing partners and law school students. It should be fun and interesting.

I hope the newsletter inspires others to get more involved as well. We need more writers and more committee members, both from the GLBT community and straight attorneys. As evidenced in this edition’s profile of retired Judge Lawrence W. Kaplan, it is likely that we all have friends or family in the GLBT community that want and need our support. We need all who are willing to help and do some work to join our committee. We still have a long way to go before the GLRC fulfills its mission and purpose. Please call me if you want to discuss how you could be more involved.

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Having been born and growing up in Uniontown, Pa., retired Court of Common Pleas Judge Lawrence W. Kaplan considers himself a “small town boy.” He is married for 58 years to the same woman and he has three children. His younger son is gay. Judge Kaplan joined the PBA Gay Lesbian Civil Rights (GLR) Committee because he has friends and family who are gay. He considers his friends who are gay practicing lawyers as valuable contributors to the legal profession, and it bothers him when he hears about discrimination. Judge Kaplan believes there is a need for an active GLR Committee because discrimination continues.

Judge Kaplan believes lawyers should step up and advocate for equal rights when it comes to the gay, lesbian, bi-sexual and transgender (GLBT) community. He believes it is an obligation of every lawyer to promote equality. He personally joined organizations that promote equality, and he has represented GLBT couples in sensitive family law matters and adoptions.

Judge Kaplan started his legal career after graduating from the University of Pittsburgh Law School in 1953 and being sworn into the District of Columbia Bar. He was commissioned as a First Lieutenant in January 1954. He was assigned to the Judge Advocate General Corps (JAG) in 1954 and attended JAG school at the University of Virginia School of Law. He worked at the Pentagon for three years. While serving his tour of duty at the Pentagon he returned to school at George Washington University Law School for additional training in tax law.

In 1956 Judge Kaplan returned to Pittsburgh and spent the next 10 years as a bank trust officer with a bank in McKeesport, Pa. After leaving the bank, he was in private practice for the next 12 years with an emphasis in wills, estates, zoning and general practice. Judge Kaplan’s private practice took a hiatus when Gov. Milton J. Shapp called him back to public service and appointed him to a judicial vacancy in 1978.

Judge Kaplan began his service as a judge on the Allegheny County Court Bench in the Family Division. Family law was a new area of practice for Judge Kaplan. Even though he could have transferred to another division of the court, Judge Kaplan sought to remain on the family court bench for the duration of his 30 years of service. While serving on the family court bench he learned a lot about families and the impact the law has on everyone, including gay and lesbian families. Judge Kaplan retired from the bench in 2008 at age 80, the mandatory age of retirement for Pennsylvania judges.

When asked what advice he offers to those actively advocating for equal rights for GLBT individuals he responded, “Don’t get discouraged.” He believes that as...
GLR Committee Report from PBA Diversity Team

By Mike Viola

Based on the recommendation of the Pennsylvania Bar Association’s Diversity Task Force, the PBA Board of Governors established the PBA Diversity Team on Nov. 17, 2010. Each member of the Diversity Team, referred to as Diversity Ambassadors, is to work with the sections and committees of the PBA and PBA-affiliated groups to promote and enhance their existing diversity initiatives and/or assist with creating new opportunities. The Diversity Team consists of representatives of various sections and committees, including the Gay and Lesbian Rights Committee (GLRC). Mike Viola, a former co-chair of the GLRC, currently serves as our ambassador. GLRC member Sharon Lopez is the ambassador on behalf of the Conference of County Bar Leaders.

At its Aug. 9 meeting, the Diversity Team had its first opportunity to meet with Janis M. Leftridge of Harrisburg, the association’s first diversity officer. During that meeting, the ambassadors had the chance to express their hopes and expectations for the future work of the Diversity Team. The Diversity Team recognized that strengthening relationships between the PBA, the various county bar associations and the affinity bar associations is an important component of any future diversity plan. The Diversity Team encouraged PBA members of differing backgrounds to become more active in PBA leadership, including serving on the Board of Governors.

The Diversity Team discussed a variety of next steps and goals: Survey the PBA membership; consider issues related to self-identification that may limit participation in a survey; promote greater transparency for paths to leadership; assess barriers to leadership opportunities and devise strategies for ameliorating the obstacles; and develop an assessment tool so that we can measure our success and challenge areas. The work is just starting, and it is clear there is much work to be done, but the Diversity Team and Leftridge are ready to take on the work!

As the ambassador from GLRC, Viola welcomes suggestions from other members of this committee to help expand the diversity of the PBA on the basis of race, gender, sexual orientation, sexual identity and geographic location. Viola can be contacted at MLViola@shainberg.com.

Mike Viola is a partner with the Philadelphia firm of Shainberg & Viola P.C. and is the family law staff attorney with Philadelphia VIP, which provides low-income individuals with legal advice and representation. He is a member of the PBA Gay and Lesbian Rights Committee, Alternative Dispute Committee and Family Law Section.

Profile: Judge Kaplan

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long as a person works toward being a good citizen and has a good moral objective in life, that person will succeed in achieving equality for all of our children – gay or straight. On a more personal note he advised parents not to hide the fact they have a gay child. As a retired judge he wants to influence other lawyers to keep the doors of equality open. Get involved with other organizations that promote and protect the gay community, run for elective office and join the American Civil Liberties Union. Judge Kaplan admonished that all lawyers have an obligation to get involved in promoting equality under the law.

He looks forward to the day when discrimination is not a factor that limits a person’s potential, whether the discrimination is based on race, gender or sexual orientation. However, while discrimination still negatively impacts the opportunities of qualified individuals, the need for the GLR Committee will continue to exist.

In addition to serving on the GLR Committee, Judge Kaplan serves on the board of directors of the Pennsylvania Bar Institute (president, 1996-97) and previously on the Association of Family and Conciliation Courts (president, 1988-89). He also served on the Judicial Advisory Committee of the Office of Child Support Enforcement of the U.S. Dept. of Health and Human Services and the Pennsylvania Futures Commission and currently serves on the Pennsylvania General Assembly’s Joint State Government Commission’s Advisory Committee on Domestic Relations Law.

Judge Kaplan continues his legal interests as a private mediator and of counsel with Rothman Gordon, a mid-sized firm that specializes in labor and employment law, estates and trusts, and real estate in Pittsburgh, Pa., which he continues to call home.
Defense of Marriage Act

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national same-sex couples. Over the past two years, advocates filed six court cases challenging the constitutionality of DOMA, but none directly challenge the application of DOMA to immigration proceedings. For more information about the pending constitutional challenges to DOMA in the Golinski v. U.S. Office of Personnel Management, et al, case see http://www.scotusblog.com/2011/03/a-split-decision-on-dom

President Obama’s administration is supporting efforts to repeal DOMA. On July 19, 2011, the Obama administration announced it will support congressional efforts to repeal DOMA. Five months earlier the president instructed Attorney General Eric Holder to stop defending DOMA. On Feb. 23, 2011, the attorney general announced that the Department of Justice would no longer defend Section III of DOMA from challenges predicated on the equal protection component of the Fifth Amendment’s Due Process Clause. See Letter from Eric Holder, Attorney General, to John A. Boehner, Speaker of the House (Feb. 23, 2011) (“Holder Letter”). See http://www.justice.gov/opa/pr/2011/February/11-ag-223.html

In one instance, the Board of Immigration Appeals (BIA) held that an Ireland national, Paul Dorman, could not be sponsored by his husband under New Jersey law; however, Holder stopped Dorman’s deportation and remanded the case to the BIA and directed the BIA to consider whether the couple were married under state law. Despite this action on the part of the administration, DOMA remains the law of the land with respect to federal action, and Holder explained in his letter to Boehner that the administration will continue to enforce DOMA. For immigration practitioners, and those clients who seek recognition of a same-sex marriage performed in a jurisdiction that recognizes such marriages, we can expect no change in the current policy, which is to deny immigration benefits to same-sex couples. It is also important to note that even where, as in the Dorman case (above), a deportation may be suspended, no immigration status is thereby conferred: the foreign national remains in a kind of limbo. He has not been deported, but neither is he granted permanent resident status, and must request authorization to work.

Internationally, the legal landscape of same-sex marriage has shifted dramatically over the 15 years since DOMA’s passage in 1996. Currently, same-sex marriage is recognized and/or performed in Argentina, Belgium, Canada, Iceland, Netherlands, Norway, Portugal, South Africa, Spain, Sweden, Mexico, Israel and the Netherlands Antilles. Additionally, some states in Australia perform same-sex marriage, and civil unions are recognized in 22 countries. For a complete list, last updated on June 4, 2011, see, http://en.wikipedia.org/wiki/Status_of_same-sex_marriage. At the state level same-sex marriage is recognized or performed in Connecticut, Iowa, Massachusetts, New Hampshire, Vermont, California (conditional), Maryland, New York and Washington, D.C. Id.

While to the north of us same-sex marriage is protected in several states, and legal challenges to DOMA are promising developments, here in Pennsylvania, same-sex marriage and/or domestic partnerships are not protected, with the notable exceptions of city employees in Philadelphia and Pittsburgh. Although the Pennsylvania constitution has not yet been amended to ban same-sex marriage, the law does define marriage as between one man and one woman. Pa.C.S.A. § 1704. Also, efforts have been undertaken to amend the state constitution to ban same-sex marriage, the most recent in May 2009 by Sen. John Eichelberger, R-Blair County. State Sen. Daylin Leach, D-Montgomery County, introduced legislation in May 2009 that would extend marriage protection to same-sex couples, but the legislation has been stalled. (Note: The PBA opposes amending the state Constitution to define marriage as occurring only between one man and one woman and to preclude the recognition or creation by the commonwealth or any of its political subdivisions of any legal relationship that is identical or substantially equivalent to that of marriage for unmarried individuals.)

Despite the Attorney General’s position on the enforcement of DOMA in the immigration context, there are instances in which same-sex marriage could be a basis for some protection (for example, in an asylum case). However, if a U.S. citizen enters into a same-sex marriage with a foreign national, this could negatively affect his or her foreign national spouse, who, for instance, would have to demonstrate “non-immigrant intent” if he or she seeks a tourist visa. As practitioners, it is always advisable to encourage national same-sex couples to seek the advice of an immigration attorney.

Gregory Eck is a 2009 graduate of the University of Miami School of Law in Coral Gables, Fla. Prior to joining Marcia Binder Ibrahim, Eck worked with noted immigration attorney and author Gloria Roa Bodin and studied under Ira Kurzban. He also worked as a certified intern with the Florida Immigrant Advocacy Center in Miami, where he assisted in the unaccompanied minors program. Before embarking on a legal career, Eck was a high school teacher and administrator at Georgetown Preparatory School in Rockville, Md., where he taught social studies, religious studies and English as a second language. Eck studied foreign service at Georgetown University and holds a master’s degree in philosophy from Fordham University, a master’s degree in education from Boston College, and a master of divinity degree from the Jesuit School of Theology in Berkeley, Calif. He speaks both Spanish and German and has spent significant periods of time working, studying and traveling abroad.

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Message from the chair

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Hopefully I will see you at the Diversity Summit.

Leo Dunn, chair of the PBA Gay and Lesbian Rights Committee, is a Pennsylvania State University undergraduate who graduated cum laude from Widener School of Law in Harrisburg. He is assistant director for policy, legislative affairs and communications at the Pennsylvania Board of Probation and Parole. Dunn also has a private practice that focuses on estate planning and elder law. He also serves as an adjunct professor at Harrisburg Area Community College’s Starting Seeds program, where he teaches about GLBT and non-traditional couples issues each year. In the fall of 2010, Dunn also served as adjunct faculty at Widener, teaching a course on GLTB legal issues. He is a member of the GLRC; Solo and Small Firm Practice; Corrections Systems; Statutory Law; Administrative Law; Real Property, Probate and Trust Law; and Government Lawyers committees and sections.

Save the dates for these upcoming events

PBA Women in the Profession Fall Retreat
October 21-22
The Hotel Hershey, Hershey

PBA Minority Bar Committee Diversity Summit
October 27
Hilton Harrisburg, Harrisburg

PBA Committee/Section Day
November 17
Holiday Inn East, Harrisburg

Pennsylvania Bar Foundation Night Out
November 17
Sheraton Harrisburg Hershey Hotel, Harrisburg

PBA House of Delegates Meeting
November 18
Sheraton Harrisburg Hershey Hotel, Harrisburg

PBA Family Law Section Winter Meeting
January 13-16
Renaissance Vinoy Resort & Golf Club, St. Petersburg, Fla.

PBA Midyear Meeting
January 25-29
Caribe Hilton, San Juan, Puerto Rico

PBA Conference of County Bar Leaders
February 23-25
Marriott Lancaster at Penn Square, Lancaster

PBA 2012 Midyear Meeting
Caribe Hilton • San Juan, Puerto Rico
Mark your calendars and watch for more information.