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ACHIEVING EQUITY FOR ALTERNATE FAMILIES

This June the California Supreme Court decided Norman v. Unemployment Ins. Appeals Bd. (1983) 34 Cal.3d 1, holding that unmarried couples need not be extended the same unemployment benefits as married couples now receive.

Only last year the court indicated its reluctance to mandate "marital" benefits for unmarried couples living in "stable relationships," when it held that prison authorities did not act unconstitutionally by refusing to allow the "common law" wife of a prisoner to participate in the institutions family visiting program. In re Cummings (1982) 30 Cal.3d 870.

Studying these cases carefully and contrasting them with others involving the rights of unmarried couples [Marvin v. Marvin (1976) 18 Cal.3d 660; Dept. of Industrial Relations v. Workers' Comp. Appeals Bd. (1979) 94 Cal.App.3d 72; People v. Delph (1979) 94 Cal.App.3d 411; City of Santa Barbara v. Adamson (1980) 27 Cal.3d 123; Harrod v. Pacific Southwest Airlines (1981) 118 Cal.App.3d 155; Jones v. Daly (1981) 176 Cal.Rptr. 130; Garcia v. Douglas Aircraft Co. (1982) 133 Cal.App.3d 890; Donovan v. Workers' Comp. Appeals Bd. (1982) 138 Cal.App.3d 323; Butcher v. Forte (1983) 139 Cal.App.3d 58] give us more than a hint of what we can expect from the California judiciary in the near future.

The courts will not mandate across-the-board benefits to unmarried couples, including persons living in "stable and significant relationships." Considerable protection will be afforded the right to live with persons of one's choice, and the right to form contracts regarding distribution of wealth accumulated during a relationship. Benefits probably will not be mandated constitutionally, absent a legislatively or administratively recognized method of readily determining whether a couple has entered a formal family relationship in which the parties have assumed mutual legal obligations. Informal relationships may receive some judicial protection, especially where the parties fit into a predetermined legislative or administratrive scheme.

The ramifications of treating a cohabiting couple as a formal family need to be addressed. Criteria and methods for formalizing "domestic partnerships" need to be established. As with other formal family relationships, the rights and legal responsibilities of domestic partners must be proposed, discussed, and legislated. He who seeks equity first must do his homework.

—*T.F.C.*

ACTION ON RECOMMENDATIONS

Legislation

The following bills, which would implement recommendations made by the Commission on Personal Privacy, are pending in the California Legislature:

FAIR EMPLOYMENT: (AB 1) Would add "sexual orientation" to Government Code section 12920 et seq., thus prohibiting such discrimination by private employers and giving the Department of Fair Employment and Housing jurisdiction to investigate and remedy such cases of discrimination. Passed full Assembly (41-36). Assemblyman William J. Filante was the sole Assembly Republican to support the bill. Passed the Senate Judiciary Committee (6-4). Will be heard on Aug. 22 in the Senate Finance Committee. Author: Art Agnos (D-San Francisco) [See Report, p. 426; Executive Summary, p. 76]

FREEDOM FROM VIOLENCE: (AB 848) Adds "sexual orientation," "age," and "disability" to Civil Code section 51.7 which provides $10,000 minimum damages to persons who suffer violence on account of certain characteristics. On May 18 it passed the Assembly Judiciary Committee (7-3) with Lancaster (R-Covina), Mojonnier (R-Encinitas) and Stirling (R-San Diego) voting against the bill. Passed full Assembly (42-19). Next stop is Senate Judiciary Committee on Aug. 16. Author: Tom Bates (D-Oakland). [See Report, p. 385; Executive Summary p. 66]

Litigation

SEX REGISTRATION VOIDED: On May 26, 1983 the California Supreme Court issued its opinion (In re Reed, Crim. No. 22595) declaring sex registration for persons convicted of 647(a) P.C. (lewd conduct) as cruel or unusual punishment. Jay Kohorn successfully argued the case before the court. The Commission recommended elimination of this requirement for such misdemeanor cases. [See Report, p. 269; Executive Summary, p. 63]

"SQUEAL" RULE SQUELCHED: The United States Court of Appeals voided the "squeal" rule promulgated by the federal Department of Health and Human Services. Planned Parenthood Federation of America, Inc. v. Schweiker, D.C. Cir., 83-1232. Under that rule, parents were required to be notified before family planning services were provided to teenagers. The court said that the regulations contravened legislative intent because such forced notice to parents would result in fewer services and thus more pregnancies. [See Report, p. 296; Executive Summary, p. 91]

Administrative Actions

UC REGENTS ADOPT POLICY: On June 17, 1983 the Board of Regents of the University of California adopted new policies regarding sexual orientation nondiscrimination. As a result, sexual orientation discrimination is prohibited in all aspects of the university system, including administration, faculty, student governments, university residence halls, and university programs. The regents agreed to publicize the new policy. All university nondiscrimination policy statements are to be updated to reflect the new policy. Thomas F. Coleman made a presentation to the Regents at the request of the Lesbian and Gay Intercampus Network. Commissioners Jerry Berg and Frankie Jacobs Gillette sent letters of support. Regent Sheldon Andelson made a plea to his colleagues which resulted in the unanimous vote. [See Report, p. 422; Executive Summary p. 73]

CALIFORNIA ATTORNEY GENERAL: Following a Commission recommendation, Milton Marks (R-San Francisco), chair of the Senate Local Government Committee, has requested the Attorney General to issue an opinion regarding the duties of local government employers not to discriminate on the basis of sexual orientation. [See Report, p. 412; Executive Summary, p. 80]

On July 28, 1983, the AG issued a published opinion (No. 82-806) which concluded that public school officials do not have to notify parents when a pupil is excused for a medical appointment, including an abortion.

OTHER PRIVACY-RELATED LEGISLATION

NEW YORK PRIVACY LAW ENACTED: In a cooperative bipartisan effort, the New York Legislature passed the "Personal Privacy Protection Law" on June 25, 1983. The bill (S 6936; A 8176) gives individuals rights to see and correct personal information about them in state agency files. The director of the state Commitee for Open Government is given authority to receive citizen complaints and issue advisory opinions. State agencies must file "privacy impact statements" with the director. The Privacy Project of the New York Civil Liberties Union took an active role in getting the bill passed. Privacy Journal, July, 1983.

ANTI-POLYGRAPH BILL PASSED: West Virginia passed a law (HB 1212), effective June 9, 1983, prohibiting employers from requiring employees or applicants to take lie detector tests, making it the twentieth state to enact such legislation. Privacy Journal, July, 1983.

OTHER PRIVACY-RELATED LITIGATION

EMPLOYMENT PRIVACY: A recent labor arbitration decision rejected a union's contention that an employer's use of an airport type screening device on employees violated the employees' right of privacy. General Paint & Chemical, 80 LA 413.

NEWSPAPER IMMUNITY: The California Court of Appeal has held that a newspaper is not liable in damages for publishing privileged criminal history information ("rap sheet"). If the information published is accurate, the newspaper is not liable for invasion of privacy, because of a statute shielding reporters from liability. McCall v. Oroville Mercury Co., Third Dist. Court of Appeal, 3 Civ. No. 22098, May 9, 1983.

GAY IMMIGRATION CASE: The Ninth Circuit Court of Appeals should issue its opinion soon in the case of Lesbian/Gay Freedom Day Committee v. I.N.S., No. 81-4438. The INS appealed the ruling of the federal district court declaring the gay immigration ban as unconstitutional.

OTHER ADMINISTRATIVE ACTIONS

AMERICAN BAR ASSOCIATION: The ABA House of Delegates took action on two proposals at its annual meeting in Atlanta which are privacy related. Opting for equal opportunity for women and minorities over the rights of privacy and association of members of private clubs, the group voted (183-152) to support an amendment to the federal Civil Rights Act of 1984 to include private business-oriented clubs under the acts' definition of "public accomodations."

Narrowly defeated (134-158) was a proposal offered by the Los Angeles County Bar Association which would have put the ABA on record as supporting the enactment of legislation prohibiting sexual orientation discrimination in employment, housing, and public accomodations.

WEST VIRGINIA AG OPINION: The state Attorney General has issued an opinion concluding that homosexual conduct is immoral in West Virginia even though it is not criminal. Thus, the opinion states, teachers who publicly become known to be homosexuals are subject to dismissal.

GOVERNORS' EXECUTIVE ORDERS: On May 16, 1983, New York Gov. Mario Cuomo announced his intention to issue an executive order barring discrimination against gays by state agencies. He also announced that he had formed an interagency task force to coordinate state programs investigating the AIDS epidemic.

On June 1, 1983, Ohio Gov. Richard F. Celeste issued an executive order proclaiming the month of June as "Ohio AIDS Awareness Month."

PROFILES

JAY KOHORN, special consultant to the Commission, was profiled in the July issue of California Lawyer.

STANLEY FLEISHMAN, Commissioner, was profiled in the April issue of California Lawyer.

GODFREY LEHMAN, Commissioner, was profiled in the July issue of Privacy Journal.

SEXUAL PRIVACY / CONSENTING ADULTS

WISCONSIN DECRIMINALIZES: Now that Wisconsin has passed a "Consenting Adults Act" noncommercial sexual conduct in private between consenting adults is legal in exactly half the states. Last year Wisconsin became the first state to pass comprehensive sexual orientation nondiscrimination legislation.

TEXAS SODOMY LAW IN "LIMBO": On August 17, 1982 a federal district court in Texas declared that state's sodomy law unconstitutional. Baker v. Wade (D.C., N.D. Texas, 1982) 553 F. Supp. 1121. The state appealed and a decision should be made soon by the United States Court of Appeals. The Texas law prohibited only homosexual conduct, subjecting violators to a fine.

ADULTERY LAW UPHELD: The Supreme Judicial Court of Massachusetts has upheld that state's adultery law. Commonwealth v. Stowell (1983) 449 N.E.2d 357. The court said: "Whatever the precise definition of the right of privacy and the scope of its protection of private sexual conduct, there is no fundamental personal privacy right implicit in the concept of ordered liberty barring the prosecution of consenting adults committing adultery in private."

UNITED STATES SUPREME COURT: The New York Court of Appeals declared that state's "loitering for the purpose of soliciting deviate sexual conduct" statute unconstitutional. People v. Uplinger (1983) 447 N.E.2d 62. The district attorney of Erie County petitioned the U.S. Supreme Court for a writ of certiorari. State v. Uplinger, Supreme Court Docket No. 82-1724. Three years ago the New York court declared the state sodomy law unconstitutional but the U.S. Supreme Court declined to take the case. People v. Onofre (1980) 415 N.E.2d 936, cert. den. 451 U.S. 987. If the Supreme Court takes Uplinger it will likely decide if private sexual conduct between consenting adults is constitutionally protected since the loitering statute was voided because "it suffers the same deficiencies as the consensual sodomy statute." The Court will announce in the fall whether it will grant certiorari.

PEACE OFFICER PRIVACY RIGHTS: A married Michigan police officer, fired because he was cohabiting with a woman other than his wife, has been resinstated by a federal judge. Briggs v. North Muskegon Police Department (D.C. W.D.Mich., 1983) No. G80-96 CA6. Because the right of sexual privacy was involved the court held the state had to show a compelling interest in firing the officer because of his off-duty conduct. The court rejected "the notion that an infringement of an important constitutionally protected right is justified because of general community disapproval of the protected conduct."

PRIVACY REPORT CORRECTION: At page 79 of the Report of the Commission on Personal Privacy appears a table of states decriminalizing private sexual conduct. Oregon was mistakenly omitted from that list. Please note the correction.

HONORABLE MENTION

The Commission's Report and some of the Commission's recommendations were mentioned in the following articles:

The Economic Democrat (May 1983) said: "The Report could be considered a 'Magna Carta for Gay Rights.'"

ABA Journal (May 1983) quotes Burt Pines, Jay Kohorn and Thomas Coleman in an article entitled "Privacy in Peril."

CBEMA Privacy and Security Update, (June/July 1983) mentions the Commissions recommendations to create a federal Privacy Board and a state Labor Commissioner Task Force on Private Sector Employment Privacy. Also mentioned are recommendations to expand the operations of the state Office of Information Practices by creating an Informational Privacy Research Center and a Privacy Advisory Council.

COMMISSION DOCUMENTS AVAILABLE

The Report of the Commission on Personal Privacy, the Executive Summary, and four Supplements are available for purchase. For a document description list and order form write to: Privacy Reports, P.O. Box 6383, Glendale, CA 91205.