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Domestic partnership work expands

by **Jane Pribek**

January 22, 2010



Madison attorney Michele L. Perreault used to devote a fairly small part of her practice to her work in the Domestic Partnership and NonTraditional Families group for [DeWitt Ross & Stevens SC](#).

That's changed. Now, she's much busier, typically working with several other attorneys within the firm with diverse expertise — estate planning, family law and business law — to draft domestic partnership agreements.

It's a practice niche that's been rapidly expanding since the Wisconsin Budget Bill, 2009 Wisconsin Act, was signed into law on June 29, 2009. The law created Wisconsin's Domestic Partnership statute, Ch. 770, and amended Ch. 40 to extend eligibility for state employee benefits to domestic partners.

Ch. 770 authorizes a registration procedure for same-sex couples and confers several dozen rights and duties similar to those of married couples. In Milwaukee County alone, 218 domestic partnerships have been registered since the law took effect Aug. 3.

Ch. 40 is limited to state employees and their partners, whether same-sex or opposite-sex, and makes domestic partners eligible for family health and group life insurance, as well as retirement benefits. The change took effect Jan. 1, and thus far, 1,067 of the state's 90,000 employees have filed affidavits of domestic partnership with the Wisconsin Department of Employee Trust Funds.

In November, the Wisconsin Supreme Court declined a petition from the Wisconsin Family Action Council seeking an injunction against Ch. 770's enforcement.

With that hurdle gone, Perreault says she's seeing an uptake in clients seeking domestic partnership agreements.

Milwaukee lawyer Carlton D. Stansbury, of [Burbach & Stansbury SC](#) agrees, noting that his work drafting domestic partnership agreements has "doubled" in recent months, and that he has clients who travel from across the state for these legal services.

Perreault suspects the increase is fueled by people realizing the limitations of the domestic partnership law.

"When you apply for domestic partnership, you get a packet saying, 'These are the rights and obligations that come with it.' When people look at it, they realize how limited it is, and how important it is to deal with the aspects the law doesn't affect," she says. "When they hear that, by virtue of marriage, there are over 200 state rights, and they get a handout explaining that they get only 43, they wonder, 'What are the 150-plus that I'm missing?' That brings people to lawyers' offices."

No cookie-cutter agreements

Domestic partnership agreements vary widely depending upon the couple's needs, says Stansbury. His agreements often focus on the couple's property, their financial responsibilities in the relationship, and what will happen if they break up.

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"It's a really good conversation because with some people, it might be the first time they've actually sat down and talked to their partner about these matters, rather than relying on assumptions. Sometimes they don't like what they hear," he says.

Perreault deals with similar matters, as well as covering estate planning issues in her agreements. A surviving domestic partner can now inherit from an intestate partner. Sometimes that's exactly what someone wants; sometimes it's not. Married couples have likely considered this possibility, but gay couples are now thinking about it for the first time, she says.

Another area that's often addressed in a domestic partnership agreement is child custody and placement, and the rights of children to inherit. Under the law, if an intestate domestic partner dies, his or her property would go to the other partner — someone who may have no legal rights to a child in the absence of a guardianship. There's also no guidance in the law as to whether a domestic partner would have custody or placement rights if the partnership is terminated.

"It's a huge gap in the law," Perreault says. She sometimes recommends initiating a guardianship for the nonbiological/nonadoptive parent in the partnership, and then creating a contractual right to child support and placement within the domestic partnership agreement.

Stansbury notes that it can be risky representing both partners when drafting an agreement, because their interests might conflict.

Madison lawyer Scott Mickelson, a sole practitioner who drafts domestic partnership agreements, handles that problem by withdrawing from a representation if it becomes apparent that the couple's intentions are not the same.

Potential pitfalls

Stansbury says that the law could potentially affect every lawyer in the state. For example:

Tort lawyers will handle domestic partners' wrongful death claims;

Criminal defense attorneys and prosecutors will encounter domestic partners invoking the spousal privilege;

Employment lawyers will file or defend Wisconsin Family and Medical Leave Act cases; and,

Real estate lawyers will be drafting deeds in joint tenancy for domestic partners.

But lawyers who wish to expand their scope of services to include domestic partnership agreements need to be aware of the law's complexities. Not only is Ch. 770 itself new, but it made changes to numerous other statutes – and they aren't all in one place, like the Family or Probate Codes, cautions Stansbury.

Either fully educate yourself, or find co-counsel with experience drafting such agreements, advises Perreault.

"If you don't know what you're doing ... you really can cause harm to the client, and possibly give rise to a malpractice action," she says. "There are many attorneys who work in this area, who are so happy to finally be able to offer protections to their clients, that they really want to spread that to as many others as possible. There's no monopoly; we just want to protect families."

2 Comments on This Article

1 I assume that you aim your discussion at Gay Marriage statutes. The domestic partnership statute referenced in this article does not discriminate between gay or straight couples. It applies to individuals who are not married and who co-habitat.
Comment By Dan
Friday, January 22, 2010 at 11:48 AM

2 Domestic partnerships amounts to odious and unconstitutional discrimination against single and straight people who do not want to be married, but still want to cash in on government benefits. Gay people think it is some great thing. How ironic that in fighting discrimination, they have placed themselves above others who are now being discriminated against. Of course, discrimination against single people is part and parcel of America. Why should sexual orientation allow some to cash in while leaving others out in the cold?

Comment By Sarah
Friday, January 22, 2010 at 11:00 AM

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