

# HARTLEY & MCGEHEE

*Excellence in Family Law*

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## **Are you in need of Family Law advice?**

*We can help!*

**We specialize in all areas of family law, including divorce, child custody, paternity, adoption, and same sex marriage issues.**

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## ***Legal Insights***

by Steven L. Hartley

At the end of 2011, I announced that as a result of the new civil union law that took effect in 2012, the area of family law was about to expand once again. Now, with the legalization of same sex marriage on December 2, 2013, this is undoubtedly true again. So, as I stated in 2011, regardless of one's personal politics and position regarding civil unions and same sex marriage, family law professionals must be ready to address and assist these soon to be new clients.

Those who choose not to accept these new clients will not only be doing a disservice to their own legal practices, but also to the larger ideals of access to justice for all. For these reasons and many more, Hartley & McGehee will be doing everything we can to work with these new clients and do our very best to guide and steer them through the maze of family law in Hawaii.

So, we welcome our new same sex marriage clients and look forward to helping them navigate the family law system in new and innovative ways, from pre-marital agreements to second-parent adoption agreements and everything in between.

Welcome and Aloha.

For more information regarding the Hawaii Marriage Equality Act of 2013 please visit

<http://governor.hawaii.gov/blog/marriage-in-hawaii/>

For more information regarding marriage licenses, please visit the Hawaii Department of Health website <http://health.hawaii.gov/vitalrecords/marriages-civil-unions/>

## **In A Nutshell: Marriage Equality**

In July 2013, the United States Supreme Court, in United States v. Windsor, 133 S.Ct. 2675 (2013), decided that the federal Defense of Marriage Act ("DOMA") was unconstitutional because it violated the "basic due process and equal protection principles applicable to the Federal Government". In short, the Supreme Court found that DOMA unlawfully discriminated against married same-sex couples by prohibiting the federal government from recognizing those marriages and by denying federal rights, benefits, protections and responsibilities to those couples.

As a result of the Supreme Court's decision in the Windsor case, Governor Abercrombie called a special legislative session to address the marriage equality issue in October 2013. On November 13, 2013, Governor Abercrombie signed the Hawaii Marriage Equality Act legalizing same-sex marriage. The law went into effect December 2, 2013 and since that date, there have been more than 700 same-sex marriages in Hawaii. Including Hawaii, same-sex marriage is currently recognized in 17 states.

With the legalization and recognition of same-sex marriage, Hawaii now offers same-sex couples the choice of entering into Reciprocal Beneficiary Relationships ("RBR"), Civil Unions ("CU") or marriages. As such, it is imperative that the family law practitioners understand the nuances of each legal relationship. Here are just a few important considerations under the Marriage Equality Act:

1. RBRs and CUs automatically terminate upon the effective date of a same-sex marriage;
2. RBRs and CUs from other jurisdictions that are "substantially similar" to those formed under Hawaii laws will be recognized in Hawaii;
3. RBR and CU rights, benefits, protections and responsibilities will continue and carry over into the same-sex marriage;
4. The presumption of parenthood will apply to children born during a same-sex marriage.

In addition to the foregoing, the new law also provides a jurisdictional exception to same-sex marriage dissolution cases if the parties married in Hawaii and later moved to another jurisdiction that will not recognize their marriage. Those parties will be allowed to file for dissolution of their marriage in Hawaii without meeting the jurisdictional or domicile requirements otherwise required.

Like everyone who begins a new legal relationship, there are simply no guarantees. And, whether the relationships are being formed or later breaking down, same-sex couples will need the same sound advice and service that we have offered to all of our clients throughout the state. As part of our firm commitment to access to justice and our belief in legal equality, we will stand ready to assist those in need regardless of their orientations.