

Whitewood Raises Questions for LGBT Couples

By Annie Kelley

EVER SINCE U.S. DISTRICT COURT Judge John E. Jones III struck down Pennsylvania's law banning same-sex marriages and the law refusing to recognize legal same-sex marriages, questions as to the effect on Pennsylvanians have arisen. On Sept. 23, a panel of litigation and family law experts offered their guidance on how to counsel LGBT couples planning to marry and how marriage equality may influence estate planning, divorce and family formation.

John S. Stapleton, who, along with a team of four attorneys, represented the plaintiffs in the now historic *Whitewood* case, began by explaining the background of the case and how it came about through the ACLU. The attorneys' strategy was to build a deep factual record, and to prepare clean and direct claims to go against Pennsylvania's Defense of Marriage Act, which refused to recognize same-sex marriages. Their hope was that the broad rulings would apply both to same-sex couples who want to marry in the Commonwealth and out-of-state couples who married in other states and wanted their marriage recognized in the Commonwealth. In Stapleton's view,

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the goal succeeded and the strategy immediately began winning public opinion to bring marriage equality to Pennsylvania.

Prof. David S. Cohen of Drexel University Thomas R. Kline School of Law discussed his representation of 23 same-sex couples who received marriage licenses from Montgomery County Clerk Bruce Hanes, who is appealing a ruling that he did not have the authority to issue the licenses. Cohen and his team filed a lawsuit to protect the couples' interests and determine their status of

marriage, after *Whitewood*. At the time of the presentation, a joint motion to discontinue the case was pending before the Commonwealth Court, which has since been approved, wherein the state will recognize all plaintiff couples as married as of the date of the *Whitewood* decision, and their marriage records will be updated to reflect that effective date. Noting the clear national and federal trend in marriage equality, Cohen pointed out that, at the time of the presentation, 19 states plus the District of Columbia, recognize same-sex marriage, 16 other states have had laws struck down as unconstitutional and were then on appeal, and 15 more states had pending challenges.

Rebecca G. Levin, co-chair of the LGBT Rights Committee, explained that marriage issues tend to arise when couples are looking to dissolve their relationship. *Whitewood* allows same-sex couples access to Family Court for divorce. Now, when facing a divorce, same-sex couples have the same rights and benefits under Pennsylvania law as heterosexual couples. There remain tough questions related to how this will play out in the future – for instance, when a couple has been in a civil union for 20 years but only “married” for four months – of how to determine the length and relationship status, Levin said.

Tiffany L. Palmer addressed issues between the parentage and marriage link, in particular in determining the parents on a birth certificate when one partner in a lesbian couple gives birth to a child from a sperm donor. According to Palmer, the Pennsylvania Department of Health has not taken a clear position on this issue, and still provides standard forms to be filled out at hospitals that do not anticipate same-sex parents. To protect both parents' interests, Palmer noted that same-sex parents can now do a step-parent adoption, instead of a second-parent adoption, which, in her view, decreases the cost and amount of time waiting for an adoption.

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