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Grandparent Visitation

Part One of a Two-Part Article

By Barry Abbott and Alton L. Abramowitz

A client comes to your office and explains that her husband died recently and that she is the mother of school-age children. After expressing your condolences, you learn that your client's mother-in-law has demanded a regular schedule of visitation, but the client doesn't trust her. She believes, from past experience, that the grandmother is intrusive and will be more intrusive now that her son has died, and she is most concerned that her mother-in-law will undermine her role with her children. During the interview you learn that the mother-in-law has had a divisive influence on members of her own family.

The client, although sad and understandably upset, is educated, intelligent, and clearly a caring, fit parent (the latter term having significant implications in the analysis to follow). She begins to cry, reaches for her bag and removes some papers that she spreads out on your desk — a family court visitation summons and petition that she was recently served. She's due in court in a week.

The client tells you, in no uncertain terms, that she does not want a regular schedule of visitation between her mother-in-law

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Windsor Leads to Multiple Benefits for Same-Sex Married Couples Nationwide

By Janice G. Inman

When the U.S. Supreme Court ruled earlier this year, in *Windsor v. U.S.*, that Section 3 of the Defense of Marriage Act — which states that no matter whether any state permits same-sex couples to marry, the United States cannot recognize that marriage as valid — is unconstitutional as applied to couples who are legally married in a state that sanctions same-sex marriage, questions arose from many quarters. Would federal government agencies apply their policies differently, depending on whether a same-sex couple resided in Oklahoma (where same-sex marriage is not recognized) or in New York (where it is)? What if the couple were married while living in a state that sanctions their union, yet later moved to one that didn't, or vice versa?

The answers are now coming, in a piecemeal manner, as the federal government announces to agency after agency that they must treat same-sex married couples as they do opposite-sex married couples. And it makes very little difference what a couple's home state says: The federal government apparently intends to recognize their marriages, even if their state will not.

Military Benefits

The U.S. Department of Defense (DOD) announced Aug. 14 that it is making spousal and family military benefits available to same-sex married military members starting Sept. 3. Also, civilian personnel working for the military will get federal benefits for their same-sex spouses, themselves and their eligible family members.

While entitlements, like health insurance coverage, housing allowances and family separation allowances will start being given to same-sex married military members and their spouses at least by Sept. 3, this will not be the first day of coverage. The DOD plans to pay these benefits retroactively, to the date of the *Windsor* decision, which was June 26, 2013. Any military member married to his or her

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same-sex spouse between June 26 and Sept. 3 will receive these benefits retroactive to the date of their marriage.

The federal government went even one step further to promote marriage equality — or, it might be argued, inequality in favor of same-sex couples — when it announced that any military member wishing to enter into a same-sex marriage who is currently stationed in a state or country that does not permit such unions may request leave to travel to a state or country that does, if such state or country is more than 100 miles from the duty location. He or she will be entitled to up to seven days of uncharged leave (if stationed stateside) or ten days of uncharged leave (if stationed overseas). "This will provide accelerated access to the full range of benefits offered to married military couples throughout the department, and help level the playing field between opposite-sex and same-sex couples seeking to be married," the DOD stated in a release.

One thing not mentioned in the press releases announcing the new same-sex married partners' military benefits is divorce. Now that the federal government and its military branch are required to treat these couples as they would opposite-sex married couples, the Uniformed Services Former Spouses' Protection Act (USFSPA), 10 U.S.C. 1408, will apply.

The USFSPA has two main prongs. First, it gives state courts the power to distribute a portion of the military member's current or future retirement pay to a military spouse within the context of a divorce, separation or annulment proceeding. The state courts have discretion to work out the percentages awarded to each spouse.

Second, it creates a method for enforcing through the DOD retirement pay distribution orders issued in conjunction with family law proceedings. In order for the divorced spouse to collect his or her share of the military member's retirement pay through this mechanism, the parties must have been married for at least 10 years that overlapped with at least 10 years during which the member performed military service creditable toward retirement eligibility. This is known as the 10/10 rule.

The percentage of distribution attainable through this garnishment means is limited, however, to just 50% of the military member's disposable retirement pay (65%, if child support is also owed), even if the state court awarded the spouse a greater proportion. (Disposable retired pay is the retired pay minus allowable deductions. For a list of these deductions, see the Defense Finance and Accounting Service's explanation of "disposable retired pay" at http://bit.ly/181sJXw.)

Family lawyers should also be aware that, like their opposite-sex military family clients, same-sex divorced military spouses will only get a share of their ex-spouse's retirement pay cost of living adjustments (COLA) if the state court's award is expressed as a percentage of retirement pay. If the order states a fixed-dollar amount instead, COLA will not be given to the ex-spouse, even if the court specifically orders COLA adjustments.

These and other federal policies and provisions will now be applicable to all married military members and their spouses, regardless of their gender. The only exception is the special allowance of uncharged leave for those needing to travel in order to marry a same-sex partner in a jurisdiction that allows such unions. And the 10/10 rule will not come up in practice until at least June 26, 2023 — 10 years after the *Windsor* decision.

As always, when a divorcing client, or one seeking child support, annulment or legal separation, has a connection with the American military, inquiries should be made about the special laws and rules that apply.

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Janice G. Inman is Editor-in-Chief of this newsletter.

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Women Breadwinners and Hidden Assets

By Anastasia Wincorn

In our investigation firm's experience conducting asset searches in matrimonial cases, a clear pattern has emerged that breaks down strictly along gender lines: Women hire us to find money their husbands have hidden, while men hire us to find evidence of their wives' infidelity. This trend puzzled us, since studies have shown that women are increasingly out-earning their husbands, and that both genders are equally likely to lie to their spouses about finances. We set out to explore the causes of this pattern and whether we should expect it to change in the future, given the growing number of marriages that elide traditional gender roles.

Breadwinner Wives (and Their Divorce Rates) Are on The Rise

The percentage of women breadwinners is growing. According to a recent study released by the Pew Research Center, women earn more money than their husbands in nearly 25% of marriages. Pew Research Center, Breadwinner Moms, May 29, 2013. Astonishingly, these breadwinner wives are a whopping 40% more likely to get divorced than women who earn less than their husbands.

The trend of increasing numbers of high-earning wives, combined with their surprisingly high divorce rate, has been reflected in matrimonial courts across the country. According to a survey by the American Academy of Matrimonial Lawyers, 56% of top divorce attorneys have seen an increase in mothers who pay child support, and 47% of those lawyers have noted an increase in the number of women paying alimony to their former husbands. American Academy of Matrimonial Lawyers, Press Release, May 8, 2012.

With the recent wave of divorces of high-power women such as Kim Kardashian, Sandra Bullock, Jennifer Lopez and Bethenny Frankel, just to name a few, even the media has taken note of what the *New York Post* dubbed the "women's divorce cur$e." Theories abound as to why women breadwinners are more likely to get divorced than other women. Some conjecture that financially independent women have more freedom to leave bad marriages. Some commentators, most notoriously a fulminating all-male panel on Fox News' "Lou Dobbs Tonight," have suggested that women breadwinners destroy marriages by upsetting "natural" gender roles.

Several recent academic studies have shown that gender stereotypes do, in fact, play a part in this trend of increased divorce rates for breadwinner women. A May 2013 study conducted by faculty from the Booth School of Business concluded that it boils down to the fact that men just plain don't like the idea of their wives earning more than they do. Marianne Bertrand, et al., Gender Identity and Relative Income Within Households, National Bureau of Economic Research, NBER Working Paper No. 19023, May 2013. Even in this post- Lean-In world, husbands can't get past traditional notions of the man bringing home the bacon, and feel emasculated by their wives' big paychecks.

Women, on the other hand, feel guilty for upsetting their husbands. To compensate, women take on an increasingly large share of the housework and childrearing duties as they begin to earn more than half of the household income. So, not only are these women fulfilling the responsibilities of the historically male provider role, but they are also taking on the lion's share (or, perhaps, the lioness' share) of the homemaker role, as well. This trend could explain why the Pew study found that both men and women report being dissatisfied with their marriages when wives out-earn their husbands.

If Women Earn the Money, Why Don't They Hide It?

The fact that our social and economic realities have outpaced Americans' old-fashioned ideas about gender roles may explain why breadwinner women are more likely to get divorced, but it does not tell us why, in our experience, men are still more likely to hide assets when that eventuality comes to pass. Are men just more prone to lying about money? It turns out the answer is "No." A 2011 Forbes poll showed that 31% of men and women who do not maintain separate finances admit to financial infidelities. Jenna Goudreau, Is Your Partner Cheating on You Finanically? 31% Admit Money Deception, *Forbes*, January 13, 2011. However, the survey also revealed that women are more likely to hide minor purchases, while men are more likely to lie about major financial issues, such as the amount of money they earned or debt they owed. This gendered discrepancy in the types of lies men and women tell may find its source in yet another traditional division of labor that persists in most marriages: women control household spending, men control the family investments.

Women and men relate to money differently. A study by Prudential explains that, while women are overwhelmingly responsible for handling the household finances, they have little confidence when it comes to investing. Prudential, Financial Experience and Behaviors Among Women, 2012-2013 Prudential Research Study. Women tend to save rather than invest, and they often let their husbands make big financial decisions. While only 8% of women admit to asking their spouse to control financial decision-making, 38% of men say that they take control of financial decisions. Oddly, women breadwinners are less likely than other women to see themselves as

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Anastasia Wincorn is a case manager with Charles Griffin Intelligence LLC in New York City. She received her J.D. from the Benjamin N. Cardozo School of law and, prior to joining Charles Griffin, she served as a law clerk in the Commercial Division of the New York State Supreme Court, and as an associate clerk in the U.S. District Court for the Eastern District of New York.

Breadwinners

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primary financial decision-makers, even though they are more likely to keep separate finances from their husbands. No matter how smart or successful women are, they are still prone to leaving the big financial decisions up to their husbands.

We thus suspect that the differences we see in the kind of lies that men and women tell about money comes down to a question of access: Men control major assets like retirement and brokerage accounts, so they can hide the big stuff.

We have seen this first-hand in countless cases. Smart, successful women come to us looking for money they helped to earn, but which their husbands have magically made disappear. When we ask about bank accounts and other finances, the women admit that they left all of their financial decisions to their husbands, and have never so much as glanced at a bank statement.

We do, however, expect this to change as women's earnings continue to increase, but only if women become more confident making decisions about money. The Prudential study showed that women breadwinners are three times more likely than other women to hide financial accounts from their spouses. It also found that breadwinner wives are far more likely than other women to maintain separate finances, and hence, retain control over those finances. As with men who hide large assets simply because they control them, women who out-earn their husbands may eventually be more likely to hide money, simply because they can.

Same-sex Marriages

None of the studies we found addressed the next big issue we see on the horizon: hidden assets in same-sex marriages. With the end of DOMA and the legalization of gay marriage in a growing number of states, we expect to see an uptick not just in marriages, but in divorces, as well. There is no reason to think that same-sex spouses will be any more truthful with one another than any other married couples. However, when traditional gender roles go out the window, many questions arise: Who manages the money? Who stays home with the kids? Who stashes the couple's savings in secret offshore accounts in anticipation of a divorce?

Although we have had some experience in this area, our anecdotal evidence is far from sufficient to provide generalizable answers to these questions. It is clear, however, that same-sex couples have to work together to come up with workable solutions for getting the bills paid, the housework done and the kids fed because they cannot fall back on gender stereotypes in the way that heterosexual couples do. A study by faculty at the University of Washington showed that gay and lesbian couples deal more fairly with one another than straight couples, with lesbians going to painstaking lengths to be egalitarian. Philip Blumenstein and Pepper Schwartz, American Couples, Money Work, and Sex, WM. Morrow Publishers, 1983.

The study also found that in marriages of gay men, money talks. In straight marriages, men often control the family finances even if the wife makes the lion's share of the money. When two men are in the relationship, the one with the higher income is far more likely to have more financial decision-making power. This was less the case with lesbian couples than with straight couples or gay men.

Nonetheless, early data suggests that one trend in heterosexual marriages — women initiating divorce — is magnified in same-sex couples. A study in Norway and Sweden, which have recognized a form of marriage for same-sex couples for nearly 20 years, found that lesbians are twice as likely as gay men to divorce. G. Andersson, et al., The Demographics of Same-Sex Marriages in Norway and Sweden, *Demography*, 43(1):79-98, February 2006.

Finding Hidden Marital Property

We expect a sea change in the type of marital asset searches we are asked to perform. As the number of women breadwinners who maintain separate finances from their spouses continues to increase, we anticipate a greater number of husbands approaching us to help find their wives' hidden money. As same-sex marriages become more commonplace, some of those couples will eventually get divorced and certain among them will inevitably conceal assets. We have already begun to see an increase in the number of same-sex divorce cases we handle. What we have found is that, regardless of who is hiding marital assets, we continue to successfully find those assets using the same time-tested approach we have always used.

Whether or not your client is involved in making decisions about the family finances, he or she likely has information that can prove useful in unearthing hidden assets. We go through a meticulously detailed briefing process with all of our clients, even those who say they have never seen so much as a bank statement. This is because crucial information can come from the unlikeliest of sources.

For example, in a large percentage of our asset search cases, we find that a spouse has created secret companies. A savvy spouse will know not to name these companies after himself if he wants them to remain undiscovered, but most people are not all that creative when choosing a company name. Ask your client the names of the spouse's children or pets, the street he grew up on, or his hobbies. We once had a client whose husband named everything (including his secret companies) after classical composers. Also ask your client for the names of any companies she knows about. People are often lazy, and will repeat company names or repeat the name with a slight variation (*i.e.*, Clearwater, Inc., Clearwater I, Inc., Clearwater Corp., etc.)

Other crucial questions to ask your client include whether her spouse has ever been involved in litigation, and in what jurisdiction; the names of the spouse's business partners and those business partners' spouses' names; the spouse's e-mail or social media handles; where and how frequently the spouse travels; and the names of family members

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NJ & CT NEWS

NEW JERSEY

Same-Sex Civil Union Law Is Challenged

Mercer County Assignment Judge Mary Jacobson heard arguments Aug. 16 in *Garden State Equality v. Dow*, MER-L-1729-11, in which the plaintiffs are seeking a summary order declaring New Jersey's Civil Union Act an illegal infringement on gay citizens' rights to equal protection under the law. The suit, which has been ongoing for many years, originally argued that that same-sex partners in New Jersey civil unions are denied equal protection because they are still not treated by all government entities in the same way that married people are treated. But this latest motion for summary judgment argues that because the U.S. Supreme Court decision in *U.S. v. Windsor* (*see* article on page 1, *infra*) recently declared that the federal government must recognize the validity of marriages sanctioned by state law, New Jersey's system of restricting gay couples to civil unions rather than marriages obviously renders them second class citizens; unless they are married, they are not eligible for the federal law-based marriage benefits that *Windsor* said are due to legally married same-sex couples. The State was represented by Assistant Attorney General Kevin Jespersen, who argued that New Jersey treats those in marriages and civil unions the same. Only the name of the relationship is different. This being the case, he asserted, the State is not depriving anyone of equal rights, and the New Jersey court system has no authority to order remedies for improper actions the federal government may or may not take.

CONNECTICUT

New State Child Advocate Appointed

Connecticut's new state child advocate is Sara Eagan of West Hartford. She is an attorney specializing in the protection of abused children's rights who, prior to her appointment to her new post by Gov. Dannel P. Malloy, served as director of the Child Abuse Project with the Hartford-based Center for Children's Advocacy for seven years. Among her duties as state child advocate are reviewing how state services are provided to children, and heading a panel that investigates the deaths of children who are in foster care. Eagan takes the place of outgoing child advocate Jamey Bell, who is moving on to the position of executive director of the Greater Hartford Legal Aid.

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Grandparents

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and her young children who, you learn, are suffering the recent loss of their father in different ways. What do you tell the client? Can she resist the grandmother? Should she offer visits in the meantime? Will the court mandate visits over her objection?

This article focuses on analyzing the rights of a fit parent, and explains the New York statutory scheme that provides a grandparent with a qualified right to visitation.

The Fit Parent

The starting point for this analysis is to appreciate the rights of a fit parent and the circumstances that must be present before the State is allowed to intrude upon family life and require a parent to do something she does not want to do.

Barry Abbott is a partner at Mayerson Abramowitz & Kahn, LLP. **Alton L. Abramowitz**, a senior partner at the firm and a member of this newsletter's Board of Editors, is also President of the American Academy of Matrimonial Lawyers and Vice-Chair of the Family Law Section of the New York State Bar Association.

The U.S. Supreme Court has held: "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Stanley v. Illinois*, 405 U.S. 645, 651 (1972), citing *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944). The constitutional protection of the rights of a parent has been found to reside within the Due Process Clause of the Fourteenth Amendment, the Equal Protection Clause of the Fourteenth Amendment, and the Ninth Amendment. *Stanley*, *supra*, at 651.

The hypothetical client in this case is clearly a "fit parent," in that she is competent and capable. A parent's right to make significant decisions concerning the custody of her child is constitutionally protected, and the state may not interfere in a fit parent's right absent "extraordinary circumstances." The latter are defined by the U.S. Supreme Court as "grievous cause or necessity." *See Matter of Bennett v. Jeffreys*, 40 NY2d 543, 545-546 (1976), citing the Court's decision in *Stanley v. Illinois*, *supra*, at 655.

Examples of circumstances of "grievous cause or necessity" include acts of commission or omission by a parent that seriously affect the welfare of a child, the preservation of the child's freedom from serious physical harm, illness or death, or the child's right to an education and the like. *See, e.g., Wisconsin v. Yoder*, 406 U.S. 205, 213-215; *Pierce v. Society of Sisters*, 268 U.S. 510, 535.

The courts have cautioned the State against interfering unless circumstances justify intervention; to that end, the State must not interfere with a parent's right to make decisions merely because it could make a better decision. In response to that caution, the legislature has enacted a statutory scheme that provides standards that the State must adhere to and due process of law for parents whose rights have been interfered with by the State. Examples include the limits placed on the State before it may intervene on behalf of children allegedly neglected by their parents prior to court intervention (see the Social Services Law) and before judicial intervention on behalf of children allegedly neglected by their parents (*see* Article 10 of the Family Court Act), among others.

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Same-Sex Benefits

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Federal Taxes

The U.S. Treasury Department and the Internal Revenue Service (IRS) issued a release on Aug. 29 announcing that, that day, they had ruled that married same-sex couples are henceforth to be treated equally to their opposite-sex counterparts for federal tax purposes "including income and gift and estate taxes" and "all federal tax provisions where marriage is a factor, including filing status, claiming personal and dependency exemptions, taking the standard deduction, employee benefits, contributing to an IRA and claiming the earned income tax credit or child tax credit." *See* http://1.usa.gov/17UzbkZ. The ruling applies no matter where a couple lives, as long as their marriage was entered into in a place where such marriages are legally recognized. Those joined through civil union or registered domestic partner provisions will not, however, enjoy the benefits bestowed by the Aug. 29 ruling.

Those who are married by the end of this year must file a joint or married-filing-separately return for the 2013 tax years. In addition, those who want to file amended returns for past tax years that are not beyond the statute of limitations

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Grandparents

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A Qualified Right to Seek Visitation

Given the primacy of a parent's right to make decisions concerning her child's care and custody, a grandparent's "right" to visitation over the objection of a parent is a qualified one. A grandparent may seek visitation through the New York Supreme Court (under Domestic Relations Law (DRL) Section 72) or the Family Court (under Family Court Act (FCA) Section 651). The statutes, which are identical, require that a petitioning grandparent meet his first burden by establishing that he has a right to be heard — a threshold requirement — in order for the court to consider the grandparent's request for visitation in the "best interests" phase of the litigation.

To satisfy the standing requirement, a grandparent must first plead and prove that either one or both of the child's parents have died or, in the absence of that tragic circumstance, that there are other circumstances — in fact "extraordinary circumstances," *see Bennett*, *supra* — where "equity would seek to intervene." These "extraordinary circumstances" play a role in the argument for standing when both parents are alive, as well as in the proof that a grandparent must provide the court in the "best interests" phase of the litigation in order to rebut the presumption in favor of a fit parent who has decided not to allow access or agree to an imposed access schedule.

The first possible basis for standing — the death of a parent — is easily proven, but the second is not: Under what circumstances would "equity seek to intervene" when both parents are alive? Courts of this State have intervened where a "special relationship" existed between the grandparent and the child, which relationship exceeded what is accepted as the typical, or perhaps traditional, grandparent relationship. These "special relationships" must entail characteristics and responsibilities that a parent normally enjoys with his or her child. Examples include extended periods of time in which the child lived with the grandparent, and the like.

To illustrate, in *E.S. v. P.D.*, 8 NY3d 150 (2007), the grandmother was found to have a special relationship with her grandchild that gave her standing to seek visitation over a parent's objections (although standing was achieved by virtue of the death of a parent). Evidence showed that the grandmother essentially took over the mother's household and child-rearing duties while the mother lay ill and dying. Following the mother's death, the father invited the grandmother to continue to help out with these chores and with the care of the now four-year-old grandchild. This she did for three and a half years.

The court noted, "During that time, grandmother comforted, supported and cared for the motherless child. She got him ready for school, put him to bed, read with him, helped him with his homework, cooked his meals, laundered his clothes and drove him to school and to doctor's appointments and various activities, including gym class, karate class, bowling, soccer, Little League baseball and swimming class. She arranged and transported him to away-from-home or supervised at-home play dates; she took him to the public library and introduced him to the game of chess. From 1998 through 2001, the child and father spent entire summers at grandmother's home in East Hampton, where the child's maternal first cousins and other family members were frequently present as well."

By the fall of 2001, the father and grandmother's relationship had become strained, apparently due to the grandmother's tendency to be permissive with the child, while the father wanted to be more strict. He felt the grandmother was imposing her child-rearing philosophy on him, undermining his authority and coming between him and his son. In February 2002, the father abruptly evicted the grandmother from the house while the child was away on a play date. For approximately two months afterward, he forbade any contact between the boy and his grandmother, then began allowing short supervised visits and occasional phone calls.

The grandmother sought judicial intervention after what she described as the "last straw," when she was kept waiting for four hours for one of these scheduled visits. She commenced a proceeding pursuant to DRL § 72 and Family Court Act § 651 for an order granting reasonable visitation with the child. The father opposed the grandmother's motion, and cross-moved for an order prohibiting the grandmother from having any contact with the child.

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may do so. That means that if they file the amended claim within three years of filing their original tax return, or within two years of paying the tax (whichever is later), they may be entitled to a refund. Refund claims can thus be filed for tax years 2010, 2011 and 2012.

Taxes paid by same-sex spouses for the value of health care benefits offered through their spouses' employers are also refundable. "Additionally," states the Aug. 29 release, "employees who purchased same-sex spouse health insurance coverage from their employers on an after-tax basis may treat the amounts paid for that coverage as pre-tax and excludable from income."

Estate taxes for the non-wealthy, like those at issue in *Windsor*, will not be collected from a same-sex spouse who takes from her deceased spouse.

Gift taxes, which are usually owed if one gives a gift worth more than $14,000 in a tax year, will not be applied to same-sex married parties who gift to each other. If gift taxes were paid in the past, a refund may be available if the statute of limitations for seeking a refund has not yet run.

Form 1040X (Amended U.S. Individual Income Tax Return) should be filed for income tax refund claims, while those seeking return of gift or estate taxes should file Form 843 (Claim for Refund and Request for Abatement).

Veterans' Benefits

On Sept. 4, U.S. Attorney General Eric Holder sent a letter to Speaker of the House John Boehner informing him and Congress that, going forward, all marriage-based veterans' benefits will be provided to lawfully married couples, no matter whether these couples are opposite-sex or same-sex. These benefits include survivor benefits, disability benefits, and entitlement of a spouse to be buried in a veteran's cemetery with the veteran spouse.

Same-sex married veterans were not given veteran's benefits previously because the statute dealing with those benefits defines the terms "surviving spouse" and "spouse" (in 38 U.S.C. §§ 101(3) and 101(31), respectively), as a person of the opposite sex who is or was married to the veteran through whom benefits are sought. The definitions in Title 38 are separate and independent of DOMA's definition of "spouse," so that the holdings in *Windsor* — which dealt only with the constitutionality of DOMA — did not directly bear on their constitutional recognition.

Nevertheless, Holder's letter made clear that the Supreme Court's *Windsor* rulings were at the heart of the change in policy, as the definitions in both statutes are substantially the same, and the Supreme Court has declared the DOMA definition of "spouse" unconstitutional under the Fifth Amendment. The Attorney General cited also to the letter he sent to Congress in February 2012 expressing his and President Obama's conclusions that Title 38's classifications were unconstitutional. Because of this, he informed Congress a that time that the justice department would no longer attempt to defend these provisions against judicial attack, yet said the executive branch would uphold the law until such time as it was judicially declared invalid.

And, finally, he discussed the very recent decision in *Cooper-Harris v. United States*, No. 2:12-00887-CBM (C.D. Cal. Aug. 29, 2013), in which a U.S. District Court concluded that the definitions in Title 38 that exclude same-sex married partners from receiving veteran's benefits are contrary to the protections of the Fifth Amendment to the Constitution. With the *Cooper-Harris* decision now in place, the *Windsor* decision mirroring it (despite it's not being directly on point), and Congress's own Bipartisan Legal Advisory Group's (BLAG's) withdrawal from the defense of the Title 38 provisions following *Windsor*, the latest Holder letter explained that the Executive Branch must now discontinue its enforcement of the restrictions imposed by the Title 38 provisions. "[C]ontinued enforcement would likely have a tangible adverse effect on the families of veterans and, in some circumstances, active-duty service members and reservists, with respect to survival, health care, home loan, and other benefits," Holder explained.

Conclusion

As many speculated would happen, the U.S. Supreme Court's *Windsor* decision is changing the way the federal government conducts business, even in ways not directly addressed by the Court. In less than a month's time, the three major policy announcements discussed here have begun to whittle away at the list of laws and regulations that were once applied only to opposite-sex married people. We can expect more of the same in the coming months.

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Breadwinners

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with whom the spouse does business or has frequent contact.

A thorough initial briefing is important, but it is crucial that you conduct subsequent follow-up interviews with your client. As you begin to find information about the subject of your search, be sure to run it by your client. You may find names connected to the spouse's hidden companies that mean nothing to you. Your client, on the other hand, may recognize those names, and may be able to give you information about them that leads you straight to the spouse's hidden money. In short, you will have the best chances of finding the assets your client has asked you to find by asking lots of questions, keeping the lines of communication open, and, most importantly, by being a good listener.

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DECISIONS OF INTEREST

Indian Adoption Case Drags On

The Supreme Court of South Carolina ordered its state's family court to finalize the adoption of the child at the center of the drawn-out custody proceedings in which the U.S. Supreme Court determined that the Indian Child Welfare Act (ICWA) does not give superior custodial rights to a Native-American parent who has voluntarily relinquished his rights to custody of his child. *Adoptive Couple v. Baby Girl*, 2013 S.C. LEXIS 176 (S.C. 7/17/13).

The child in question in this adoption proceeding was born in Oklahoma to a man who is a member of the Cherokee Nation and a non-Indian mother. The father voluntarily gave up all claim to the baby, both before and after her birth, and offered no support. The mother opted to place the child with a potential adoptive couple living in South Carolina. When the birth father learned of the adoption, he sought custody of the child, arguing that the ICWA required that custody be given to him based not only on his biological bond, but also on the child's right to be raised in the Cherokee culture. The South Carolina State Supreme Court concluded that under South Carolina law, a father who gave up his rights to his child could not change his mind and automatically get her back. A best-interests inquiry would be used to determine her placement. However, it found that the ICWA trumped this state-law inquiry, so custody must be given to the father. The U.S. Supreme Court reversed, holding that the father never had custody of the child and that the ICAW therefore did not apply.

After the South Carolina family court finalized the adoption, another wrinkle developed. The father, who has been living in Oklahoma with his daughter for several years, refused to give up. He is seeking relief from the courts of Oklahoma and of the Cherokee Nation. South Carolina authorities have issued an arrest warrant against the biological father for interfering with custody. In the meantime, the child's future permanent placement remains uncertain.

Hague Convention: Relationship with Sibling Is A Factor to Consider

The U.S. Court of Appeals for the Second Circuit has affirmed a district court ruling that denied a father's petition for return of his son to Mexico, because the court agreed with the lower court that the boy had become acclimatized to his U.S. home, and found no error in that determination's being made based in part on the lower court's desire to keep the boy with his older sibling. *Broca v. Giron*, 2013 U.S. App. LEXIS 14489 (2d Cir. 7/18/13).

The children in *Broca* were taken from Mexico in July 2010 by their mother. This mother, daughter and son settled in Brooklyn. They were still living there in late 2011 at the time the father filed a petition seeking the return of the children in accordance with the Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11,670, 1343 U.N.T.S. 89, as implemented by the International Child Abduction Remedies Act, 42 U.S.C.S. §§ 11601-10.

The evidence presented showed that the older child, the daughter, was well-settled in her new home, but that the son was less so. The district court found that there was adequate reason to deny return of the children based on their acclimatization, even though the boy was not settling into his new country as easily as was his older sister. In making its ruling, the district court specifically noted that it would be very disruptive to both children if they were separated from each other.

The father appealed only that part of the district court's decision concerning the return of his son. He argued that the district court erred by considering the importance of keeping the boy with his sister when it should have determined instead if he had acclimatized to his new country of residence. The Second Circuit turned to its own previous decision in *Lozano v. Alvarez*, 697 F.3d 41 (2d Cir. 2012), which lists some of the factors that courts should consider when assessing a child's acclimatization to his new home. One of these is "whether the child has friends and relatives in the new area." The Second Circuit then concluded that the boy's "consistent school attendance, involvement in church, and strong relationships with friends and relatives in the area, in particular his mother and sister, all support a conclusion that

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Grandparents

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The Court of Appeals found that the grandmother had established "an extraordinarily close relationship [with the child] during the nearly five-year period that she lived with him and [father]." *E.S.*, *supra*, at 157.

The court went on to consider the factors in making a best interests determination, including the presumption in favor of the fit parent's wishes. We will discuss these subjects in the second part of this article.

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