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Maryland Legislator, Legal Advocates Hail Attorney General Opinion Clarifying Law on Adultery and Divorce in Era of Marriage Equality for Same-Sex Couples

(Baltimore, August 13, 2015) – Maryland advocates in the areas of family law and lesbian, gay, bisexual, and transgender (LGBT) rights welcomed a formal opinion of the state’s Attorney General, Brian E. Frosh, which concludes that sexual intimacy between a married person and a person who is not their spouse qualifies as adultery, for purposes of Maryland divorce law, regardless of the gender of the parties.

The fifteen-page opinion, dated July 24, 2015, comes in response to a February 2015 request from Del. Luke H. Clippinger (D-Baltimore City, Dist. 46), who is also an attorney. Del. Clippinger stated, “As a sponsor of the 2012 legislation that established marriage equality for same-sex couples in Maryland, I am very pleased with the Attorney General’s conclusion that extramarital sexual conduct should be treated the same for all married couples in Maryland, regardless of sexual orientation.”

In the opinion, the Attorney General reviews Maryland law dating back to 1650, as well as judicial decisions in other states, to determine that “the term ‘adultery’ includes a spouse’s extramarital sexual infidelity with a person of the same sex.” The opinion explains:

In our view, this conclusion is compelled not only by the broad purposes behind the concept of adultery in the family law context, but also by the respect and dignity owed to same-sex marriages as equal to opposite-sex marriages under State law. We see no reason either to define adultery so narrowly as to ignore “the sexual realities of our world” ... or to deny same-sex couples the ability to divorce on the same terms as other married couples.

Statewide advocates applauded the opinion. Jer Welter, managing attorney and deputy director of FreeState Legal, remarked: “This thoroughly researched opinion will be very helpful to Maryland judges and lawyers, as well as divorcing couples, who might otherwise assume incorrectly that Maryland’s legal definition of ‘adultery’ is limited to opposite-sex relations.”

“We’re glad the Attorney General has clarified that the law applies equally to same- and opposite-sex couples. This common-sense opinion dispels outdated notions with thoughtful reasoning that affirms the dignity of all couples regardless of gender,” said Keith Thirion, acting director of Equality Maryland.

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Adultery is one of several long-recognized "fault-based" grounds for divorce under Maryland law (married couples may also divorce on certain "no-fault" grounds, such as a one-year separation). According to the Attorney General's opinion, a married person may obtain a divorce from an unfaithful spouse on the ground of adultery, regardless of whether their spouse's infidelity is committed with someone of the same or the opposite sex.

"Especially in the era of nationwide marriage equality, this opinion is an important clarification that marriage equality means equal treatment in all aspects of marriage," said attorney P. Lindsay Parvis, co-chair of the legislative committee of the Maryland State Bar Association's Family & Juvenile Law Section Council.

In June 2015, the U.S. Supreme Court ruled in the case of *Obergefell v. Hodges* that all states in the nation must legally recognize marriage between same-sex couples, as Maryland has done since 2013.

The Maryland Attorney General issues formal opinions, representing the considered views of the Attorney General on significant questions of Maryland law, in response to questions from Maryland public officials. Opinions of the Attorney General are ordinarily considered strongly persuasive to Maryland judges and lawyers.

The full text of the Attorney General's July 24, 2015 opinion can be reviewed online at <http://www.oag.state.md.us/Opinions/2015/100OAG105.pdf>.

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FreeState Legal is a statewide legal advocacy organization that seeks to improve the lives of low-income lesbian, gay, bisexual, transgender, and queer Marylanders through individual client representation, policy advocacy, and community outreach and education. More information can be found at www.freestatelegal.org.

Equality Maryland is Maryland's LGBT civil rights political advocacy organization, with thousands of members statewide. It lobbies in Annapolis and across the state to create equal protection under the law for LGBT Marylanders and their families, and works to eliminate prejudice and discrimination against LGBT Marylanders through public education, outreach, training and organizing. Its website is at www.equalitymaryland.org.

The Maryland State Bar Association (MSBA) is a voluntary professional membership organization of Maryland lawyers and judges. Its website is at www.msba.org. The MSBA's Family & Juvenile Law Section works to improve the administration of justice in the fields of family and juvenile law by bringing together MSBA members concerned with family and juvenile laws and working toward reforms and improvements in such laws through legislation and other advocacy.