

ALASKA WORKERS' COMPENSATION BOARD
3301 EAGLE STREET, SUITE 304, ANCHORAGE, AK 99503

IN THE MATTER OF THE CLAIM FOR
COMPENSATION AND/OR BENEFITS
UNDER THE ALASKA WORKERS'
COMPENSATION ACT

DEBORAH HARRIS

Claimant,

and

KERRY FADELY (DECEASED)

Employee,

vs.

MILLENNIUM HOTEL,

Employer,

and

NORTHERN ADJUSTERS/CHARTIS/
CCMSI,

Adjuster.

AWCB Case No. : 201116890
Date of Death : 10/29/11

NOTICE OF CONSTITUTIONAL CHALLENGE AND
REQUEST FOR FINAL DECISION AND ORDER

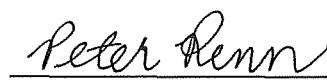
Claimant Deborah Harris is the surviving same-sex partner of decedent Kerry Fadely, who was employed by Millennium Hotel until she was killed by a former employee whom Ms. Fadely had previously terminated. Ms. Harris does not qualify as a "widow" eligible to receive death benefits under the Alaska Workers' Compensation Act, Alaska Stat. §§ 23.30.215 & 23.30.395(40), because she and Ms. Fadely were precluded from marrying each other under Alaska law. The sole legal issue presented here is whether it violates the Alaska and U.S. Constitutions to bar surviving same-sex partners like Ms. Harris from the death benefits to which they would be entitled as spouses if the State of Alaska permitted same-sex couples to marry.

Both the Alaska Workers' Compensation Board ("Board") and the Alaska Workers' Compensation Appeals Commission ("Commission") lack the authority to decide constitutional questions. *Alaska Pub. Interest Research Group v. State*, 167 P.3d 27, 36 (Alaska 2007) (holding that the Commission and other "[a]dministrative agencies do not have jurisdiction to decide issues of constitutional law"). Rather, where the constitutionality of a statute is placed at issue in an administrative proceeding, the agency's duty is to ensure that the record preserves any factual context for later judicial review. *Ben Lomond v. Municipality of Anchorage*, 761 P.2d 119, 122 (Alaska 1988); *Wilson v. Eastside Carpet Co.*, Alaska Workers' Comp. App. Comm'n, Dec. No. 098, 4-6 (May 4, 2009). Consistent with this principle and contemporaneous with this filing, Ms. Harris has submitted declarations and other documentary evidence to preserve the factual context of her constitutional challenge for a later-reviewing court. *See* Decl. of Deborah Harris; Decl. of Hannah Large; Decl. of Lynnette Warren; Decl. of Peter Renn.

The Board is empowered to tailor procedures appropriate for the case before it. Alaska Stat. § 23.30.135 ("The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties."). Ms. Harris therefore respectfully requests a final decision and order by the Board, given that it lacks authority to decide the constitutional issues presented, so that she may appeal to the Commission and thereafter present her constitutional challenge to the Alaska Supreme Court.

Executed on September 19, 2012, in Los Angeles, California.

LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.



Peter Renn

Executed on September 24, 2012, in Anchorage, Alaska.

THE CROFT LAW OFFICE



Eric Croft

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DECLARATION OF DEBORAH HARRIS

I, DEBORAH HARRIS, hereby declare as follows:

1. I am the same-sex surviving partner of Kerry Fadely ("Kerry") and I am the claimant in the above-referenced proceeding. I make this declaration based on my personal knowledge and am competent to testify to the matters stated below.

Relationship with Kerry Fadely

2. Kerry and I were in an exclusive, committed, and financially interdependent relationship for over a decade by the time of her death in 2011. She was 55 years old at the time, and I am now 52 years old. Attached as Exhibit A is a photo of Kerry and me, with Kerry on the left. Both of us worked in the hospitality industry and we met through our work together at a

hotel in the mid-1990s, where I worked in the on-site restaurant and Kerry was a hotel manager.

3. For the vast majority of our ten-plus year relationship, we lived together in Anchorage. Part of the reason we loved Alaska is because we both enjoyed the outdoors and loved to go fishing, kayaking, camping, four-wheeling, and horseback riding. In 2010, we moved to Portland, Oregon for approximately six months, but decided that we missed Alaska too much and came back. We moved back to Anchorage around November 2010 into a small house, which was our primary residence until the time of Kerry's death.

4. Because Alaska bars same-sex couples from marrying, Kerry and I were never able to marry or celebrate a single wedding anniversary, although we had been together for over a decade. But we carved out a day for ourselves each year in order to celebrate our love and commitment to each other and to mark the passage of time. We could never agree on which anniversary that we were celebrating, because we could not pinpoint the same exact moment when our relationship began; but we both agreed that, as of the last anniversary we celebrated in 2011, it had been at least ten years.

5. Around 2005, Kerry and I began to wear matching rings to signify our love and commitment for one another. Kerry surprised me with the rings on a beach in Anchor Point, where we loved to go camping, and asked me if I would be committed to her, to which I said yes. On the very day when Kerry left for work, she left her ring by the soap on our bathroom sink, which I discovered the day after Kerry's death. I now wear both my ring and Kerry's ring.

6. We were open about our relationship and held ourselves out to others as a committed couple, each referring to the other as "partner" or "spouse." Even on Facebook, Kerry listed me as her "spouse" on her profile and stated that we were in a domestic partnership. *See Ex. B.* We both considered ourselves to be the other's immediate family.

7. Like other committed couples, we cared for each other in times of sickness and in times of health. When Kerry had a hysterectomy, for example, I cared for her during and after the medical procedure. Kerry was also mindful of my health. She often took me to the dentist or to the doctor. In order to access health insurance that Kerry received through a prior employer (before her employment with Millennium Hotel), Kerry and I submitted an Affidavit of Domestic Partnership, attached as Exhibit C. That affidavit explained, among other things, that we were in an intimate, committed relationship of mutual caring and support. When Kerry worked for Millennium Hotel, I received health insurance coverage through my own employer.

8. Both of us had children from prior relationships, and both of us raised our children together, sharing parenting tasks and financial responsibility. Kerry had one son, Vincent, who was still living with us at the time of her death, and I had three children. Kerry had a particularly close relationship with my daughter Hannah, who often introduced Kerry as her stepmother. Kerry was also present for the birth of several grandchildren on my side of the family—even serving as the videographer for many of those moments—and those grandchildren only ever knew of Kerry as their grandma.

9. Kerry and I were in a financially interdependent relationship. We had joint credit cards. We shared responsibility for paying household expenses, with Kerry often paying the rent, and me often paying for groceries, dining, cell phone and cable bills, household goods such as the lawn mower and barbeque, and home improvement related expenses such as refinishing the bathroom. In 2004, we jointly obtained a business license to operate a restaurant in King Salmon, which unfortunately lasted only one season. When we temporarily moved to Portland, Oregon, in 2010, we jointly leased an apartment. In the fall of 2011, we were renting a house in Anchorage, but the month before Kerry died, we were began looking for a house to purchase,

which we intended to purchase jointly. *See* Ex. D (email exchange expressing agreement on “going halves” on potential house). The extent of our financial interdependence became particularly acute in the aftermath of Kerry’s death.

10. Kerry and I would have married if we could have done so, and we discussed the issue, even though it was and remains legally impossible for same-sex couples to marry in Alaska. Except for the fact that we were a same-sex couple, we were otherwise eligible to marry (that is, we were unrelated to one another; we were not still married to others; and we were at least 18 years old). Kerry and I also discussed whether we could marry elsewhere in a state or country, such as Canada, that permitted same-sex couples to marry. However, we also understood that, once we got back home to Alaska, our out-of-state marriage certificate would likely not be recognized. It therefore felt futile to us to devote so much time, energy, and cost to obtain an out-of-state marriage certificate—only to have it ignored in our home state of Alaska.

11. Kerry and I had hoped, planned, and intended to remain together our entire lives. We aspired to open up our own lodge together, which will now never come to pass.

Kerry’s Death

12. On Saturday, October 29, 2011, Kerry and I shared a late lunch before she left for work at the Millennium Hotel in Anchorage, where she was employed as the food and beverage manager. Just before she left the house, she kissed me goodbye and told me that she loved me. I told her that I loved her too.

13. Later that day, I went to the grocery store to buy an apple pie, because that is what Kerry wanted when she got off from work. While I was heating up the pie in the oven, our neighbor knocked on our door and asked if Kerry was home, because she had heard that something bad had happened at the hotel. I turned off the oven, got in my car, and began driving

to the hotel. I texted Kerry's cell phone to ask if she was okay, but I received no response.

14. When I arrived at the hotel, the police were on the scene. I told a police officer that I needed to know what was happening because my partner was inside the hotel, but he yelled at me to step back. I asked one of the other people outside what had happened, and he told me that a manager by the name of Kerry Fadely had been shot. I immediately dropped to my knees in the snow, in horror and disbelief. A police officer ultimately drove me to the command center, where it was confirmed that Kerry had died.

15. As I later learned, one of the hotel employees—a man whom Kerry had previously terminated just nine days earlier—had returned to the hotel asking for Kerry. As detailed in the criminal complaint filed against him, attached as Exhibit E, a hotel employee told him that Kerry would return shortly. A short time later, that same employee overheard the man swear at Kerry and then say, "If I'm going down, then you're all going down," followed by several gunshots. Another employee witnessed the man pull out a handgun and fire two shots at Kerry. She turned to run through double doors to the kitchen, at which point he fired another three to four shots. When police arrived, Kerry had died from multiple gunshot wounds.

16. It was unspeakably painful to lose the person that I held most dear in my life. I always felt that Kerry was the "rock" in our relationship and in my life; without her, I am not sure of how to proceed. Not a day goes by that I don't remember or cherish the love that we had, and the many happy memories that we were able to create, during Kerry's all-too-short time on this earth.

Aftermath of Kerry's Death

17. Because Alaska did not allow Kerry and I to marry or to have any means of accessing the rights and responsibilities associated with marriage, I was treated as a legal

stranger to Kerry in the immediate aftermath of her death.

18. There were several members of Kerry's family who were uncomfortable about the fact that Kerry and I were lesbians. They disapproved of our relationship because of their religious views about same-sex relationships and chose not to acknowledge our relationship. Thus, for example, when Kerry's obituary was written by a family member, it did not reference the ten-plus year relationship that Kerry and I had had in any way.

19. I also was informed by a member of Kerry's family that I would not have a role with respect to making funeral arrangements for Kerry. I was told that I could not speak at the funeral. I and other members of my family were excluded from the family seating area because we were not considered part of Kerry's family. We were only allotted a small window of time early one morning to view Kerry's remains at the mortuary and had to leave before other family members arrived. It was as if I was no one to Kerry, when, in reality, Kerry and I meant everything to each other.

20. Kerry's death was financially as well as emotionally devastating. Because Kerry and I were financially interdependent, I knew I would be unable to continue living in our house based on my income alone. Less than a month after Kerry's death, I had to move in with one of my children and abandon the home that Kerry and I had shared.

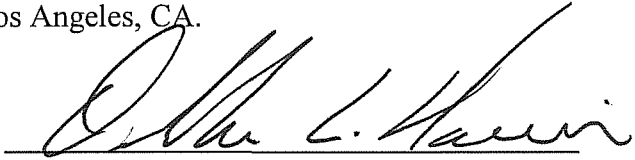
21. I am currently working at a seasonal lodge in Montana, which will conclude after September 2012. I may return to Anchorage after this job ends but have not yet decided.

22. Kerry's employer, Millennium Hotel, is currently paying death benefits to Kerry's son, Vincent Fadely, who is 23 years old. Vincent has attended college for three years and is enrolled as a student at the University of Alaska. I met with Vincent in July 2012 and informed him of this case. I also provided him with a letter, attached as Exhibit F, explaining the nature of

these proceedings. Vincent is supportive of my claim and believes that Kerry would have been supportive as well.

I declare under penalty of perjury under the laws of the State of Alaska that the foregoing statements are true and correct.

Executed on September 1, 2012 in Los Angeles, CA.

A handwritten signature in cursive script, appearing to read "Deborah L. Harris", written over a horizontal line.

DEBORAH HARRIS

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of Los Angeles

On 9-1-12

Date

before me,

CHRISTOPHER P. GARCIA

Here Insert Name and Title of the Officer

personally appeared DEBORAH LYNN HARRIS

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

[Handwritten Signature]

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Declaration of Deborah Harris

Document Date: 9-1-12

Number of Pages: 7

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Deborah Lynn Harris

Signer's Name: _____

Corporate Officer — Title(s): _____

Corporate Officer — Title(s): _____

Individual

Individual

Partner — Limited General

Partner — Limited General

Attorney in Fact

Attorney in Fact

Trustee

Trustee

Guardian or Conservator

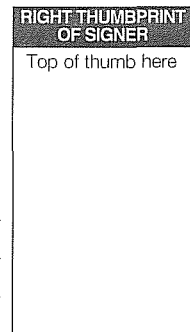
Guardian or Conservator

Other: _____

Other: _____

Signer Is Representing: self

Signer Is Representing: _____



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Adjuster

AWCB Case No. : 201116890
Date of Death : 10/29/11

DECLARATION OF HANNAH LARGE

I, HANNAH LARGE, hereby declare as follows:

1. I am the daughter of Deborah Harris, the claimant in the above-referenced proceeding and the same-sex surviving partner of Kerry Fadely ("Kerry"). I also considered Kerry to be my stepmother. I am 28 years old and currently reside in Redding, California. I make this declaration based on my personal knowledge and am competent to testify to the matters stated below.

2. I met Kerry when I was around 13 years old. She and my mother were working at the same hotel. I went to the hotel in order to get lunch money from my mother, and that is when I met Kerry, who I immediately liked because she was kind and talkative.

3. I regarded Kerry as my stepmother, and Kerry regarded me as her stepdaughter, even though she and my mother were never able to marry. Kerry was always a cheerleader for me when I was growing up and would attend my volleyball and basketball games. Likewise, when I decided that I wanted to quit basketball—which would dash my mother’s hopes that I might one day play in the Olympics—I went to Kerry for advice how now to break the news. Likewise, when I needed advice about how to introduce my then-boyfriend (and now-husband) to my mother, Kerry was there for me. When I needed advice about college, Kerry was there. When I gave birth to my son, Brody, Kerry was there as well. She was a mother to me in every way that mattered.

4. My mother and Kerry were like a married couple, except for the fact that they could not actually marry, and that was reflected in their financial interdependence in parenting. When I was in high school, they both helped with respect to my expenses. Kerry, for example, paid for my clothes and for half of my gas card (the other half of which Kerry told me I needed to pay for, because she wanted to instill a sense of financial responsibility in me). Even after high school, Kerry would help me out with my rent in college when I needed it. When my sister had her second child and needed financial help, Kerry helped her out. My mother similarly helped Kerry in raising Kerry’s son, Vincent. I recall one instance where Kerry went to help set up Vincent’s college dorm room and needed several hundred dollars in cash from my mother, because Kerry was low on cash at that time.

5. Kerry was also like a grandmother to my mother’s grandchildren. Kerry loved children, and she was every child’s dream, because she herself was like a big kid at heart, armed with her own squirt gun. Kerry was especially close to one of these grandchildren, my nephew Blake, who referred to her as “Grandma Kerry.” Blake recently celebrated his fifth birthday. It

was the first birthday at which Kerry could not be present.

6. I believed that Kerry and my mother would be together their entire lives. I would often hear the two of them talk about their future plans together, including their dreams of one day opening up their own business, like a lodge.

7. Kerry and my mother also cared for each other, just like a married couple. Kerry spoke with me about my mother's health and expressed concern that my mother was not very good at taking care of herself. Kerry told me that she felt that my mother would be more likely to take care of herself if she had health insurance. In order to add my mother to Kerry's health insurance, which was offered by Kerry's employer at the time, Kerry had to verify their relationship in writing. Kerry spoke with me about submitting that verification, the gist of which was that the two of them lived together and were dependent upon each other.

8. When Kerry died, my mother and the rest of our family were excluded from making arrangements by members of Kerry's family. At one point, we were told that we would not even have the chance to say goodbye to the remains of Kerry—a woman who had been like a mother to me—because members of Kerry's family who disapproved of same-sex relationships would not permit it. But we were ultimately allowed a small window of time one morning at the mortuary to say our goodbyes. Two days before the funeral, we were also informed our family would be "allowed" to come to the funeral. In advance of the funeral, we had arranged for a large wreath with Kerry's favorite flowers to be on display, but when we arrived, it was nowhere to be found along with the other floral arrangements already on display; we then had to make a special request for the wreath to be brought out. We were not permitted to sit in the first several pews because that section had been roped off for Kerry's family, and we were not considered

part of her family. Throughout Kerry's life, however, we were always part of Kerry's family.

I declare under penalty of perjury under the laws of the State of Alaska that the foregoing statements are true and correct.

Executed on Sept. 5th, 2012 in Redding, California.


HANNAH LARGE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

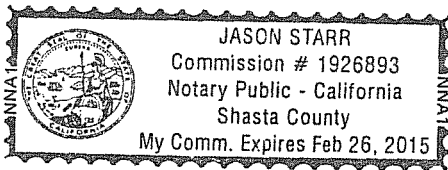
State of California

County of Shasta

On September 5th, 2012 before me, Jason Starr, Notary Public

personally appeared Hannah Large

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: [Handwritten Signature] Signature of Notary Public

OPTIONAL Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Declaration of Hannah Large

Document Date: September 5th, 2012 Number of Pages: 4

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name: Hannah Large

- Corporate Officer - Title(s):
Individual
Partner - Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other:

RIGHT THUMBPRINT OF SIGNER Top of thumb here

Signer Is Representing:

Signer's Name:

- Corporate Officer - Title(s):
Individual
Partner - Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other:

RIGHT THUMBPRINT OF SIGNER Top of thumb here

Signer Is Representing:

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DECLARATION OF LYNNETTE WARREN

I, LYNNETTE WARREN, hereby declare as follows:

1. I am a friend of the claimant, Deborah Harris ("Debbie"), in the above-referenced proceeding and was also a friend of Kerry Fadely, who is now deceased. I make this declaration based on my personal knowledge and am competent to testify to the matters stated below.

2. I met Debbie and Kerry in the late 1990s in Anchorage, shortly after they had just moved to Alaska, and I quickly became friends with both of them. The three of us were very close. We vacationed together, barbequed together, and attended social events together, and I housesat for Debbie and Kerry on occasion when they were out-of-town.

3. Debbie and Kerry were a loving, committed couple. It was rare that I would see

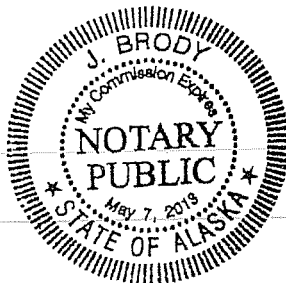
one of them out on the town without the other, as they always did things together. At one point, I asked if the two of them wanted to marry each other, and they said yes. Debbie and Kerry wore matching rings, as a sign of their commitment to one another, and they also celebrated an anniversary for their relationship. They both talked about their future plans, including buying a home together and retiring together.

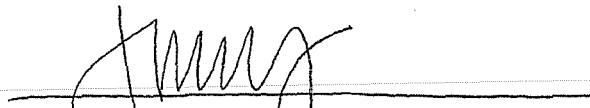
4. Debbie and Kerry were there for each other through thick and thin, supporting each other emotionally and financially, just like a married couple. For example, there was one time when Kerry faced anti-gay harassment at work, and Debbie helped her through that experience. Each person also supported the other if one of them was unemployed at the time. Their relationship appeared resilient to everything, which is why I think they were together up until the time of Kerry's death.

5. I declare under penalty of perjury under the laws of the State of Alaska that the foregoing statements are true and correct.

Executed on SEPTEMBER 18, 2012 in ANCHORAGE ALASKA.


LYNNETTE WARREN




NOTARY PUBLIC

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DECLARATION OF PETER RENN

I, PETER RENN, hereby declare as follows:

1. I am one of the attorneys for claimant Deborah Harris in the above-referenced proceeding. I make this declaration based on my personal knowledge and am competent to testify to the matters stated below.

2. Attached as Exhibit A is a true and correct copy of a table of information (Table 6b) from the 2010 Census, available on line at <http://www.census.gov/hhes/samesex/files/ss-report-tables.xls>, which lists a preferred estimate of 1,228 same-sex couples (or 2,456 individuals in same-sex relationships) in Alaska, based on the 2010 Census.

3. Attached as Exhibit B a true and correct copy of information generated from the

Census Bureau's 2010 American Community Survey, available at <http://factfinder2.census.gov>, which shows that 49.9 percent of the Alaska population over the age of 15—or approximately 278,522 individuals—were married, based on that 2010 survey.

4. Attached as Exhibit C is a true and correct copy of a compilation of excerpted pages from the Alaska Workers' Compensation Annual Reports from 2001 to 2010 showing the number of fatality case files opened each year, as summarized in the following table:

Annual Report Year	Number of Fatalities
2010	28
2009	24
2008	17
2007	29
2006	21
2005	15
2004	27
2003	17
2002	23
2001	39

Total: 240

The full annual reports are available online at the Alaska Division of Workers' Compensation website: <http://labor.alaska.gov/wc/ar.htm>.

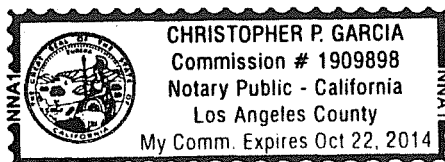
I declare under penalty of perjury under the laws of the State of Alaska that the foregoing statements are true and correct.

Executed on September 19, 2012 in Los Angeles CA.

Peter Renn

PETER RENN

SWORN AND SUBSCRIBED to before me this 19th day of September, 2012



Christopher P. Garcia
Notary Public for the State of California
Commission Expires: 10-22-2014