

Barbara Dunn

From: Donna Jill Johnson <clerk@lauderdalecounty.org>
Sent: Monday, June 29, 2015 8:51 AM
To: Donna Jill Johnson
Subject: AG-Jim Hood

The AG's office asked to have this resent to everyone since our email list is more widespread to make sure everyone gets this, this morning.....dj

From: LINDA NESLINE [<mailto:LNESL@ago.state.ms.us>]
Sent: Monday, June 29, 2015 8:25 AM

Clerks,

The statement my assistants sent to you on Friday morning regarding the decision in *Obergefell v. Hodges* seems to have been misinterpreted as prohibiting Circuit Clerks from issuing marriage licenses to same sex couples. The statement was merely meant to explain that an order of the Fifth Circuit would be necessary to lift the stay.

The Fifth Circuit stay order did not stay the Mississippi district judge's order until the Supreme Court decided the issue, but until the Fifth Circuit made a decision. An Alabama District Court stayed its own order pending resolution by the Supreme Court. When the U.S. Supreme Court decision was rendered Friday, the Alabama stay was automatically dissolved without the necessity of further action of the court. In Texas, the district judge issued a stay of its order, but did not expressly make it contingent upon the Supreme Court decision. The Texas district judge ordered the stay lifted on Friday. Georgia was not successfully sued, so its marital law was unconstitutional without any order of a court. Similarly, had Mississippi not been sued, by operation of law there would be no more action required by a court. The Supreme Court only addressed the Sixth Circuit cases and did not consolidate or rule on the cases pending before the Fifth Circuit. Consequently, the Supreme Court did not reverse or address the cases pending before the Fifth Circuit. Since the stay by the Fifth Circuit is still in effect, Mississippi's case remains in the bosom of the Fifth Circuit to interpret the ruling of the Supreme Court.

On Friday, the plaintiffs in the Mississippi case filed a motion to which our office acquiesced asking the court for an immediate order lifting the stay. Since there was no order on Friday or over the weekend, this morning our office will request that the Fifth Circuit expedite its ruling in spite of the 25 day period for the filing of a motion for rehearing before the Supreme Court. If the stay is lifted, Circuit Clerks will be required to issue licenses to same sex couples by striking the gender portion of the application and writing in the sex of each applicant.

Nevertheless, regardless of the status of the case before the Fifth Circuit, *Obergefell* is the law of the land. If a clerk has issued or decides to issue a marriage license to a same sex couple, there will be no adverse action taken by the Attorney General against that circuit clerk on behalf of the State. In such cases, it might be wise to advise same sex applicants that the validity of a marriage licenses issued prior to the stay being legally lifted might be contested in any potential divorce action or in future estate proceedings. On the other hand, a clerk who refuses to issue a marriage license to a same sex couple could be sued by the denied couple and may face liability. Whatever course you decide to take, you should consult with the county board attorney about the issuance of licenses in light of the Supreme Court's opinion on Friday.

If you have questions, please call our office at (601) 359-3680.