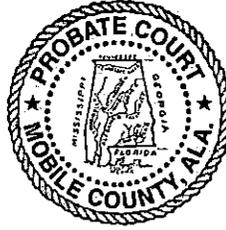


Don Davis
Judge of Probate

C. Mark Erwin
Chief Clerk/Administrator

W. Rushing Payne, Jr.
Chief of Staff/Chief Deputy Clerk



Judicial Division - (251) 574-6001
Recording Division - (251) 574-6040
Records Division - (251) 574-6070
Elections Division - (251) 574-6080
Accounts Division - (251) 574-6101
Facsimile - (251) 574-6003

PROBATE COURT OF MOBILE COUNTY, ALABAMA

July 22, 2019

VIA UNITED STATES MAIL AND FACSIMILE

The Honorable Steven T. Marshall
Attorney General
State of Alabama
11 South Union Street
Montgomery, AL 36130

Re: Request For Advisory Opinion

Issue: Questions Relating To Implementation Of *Ala. Act 2019-340*- [Changes Procedure In Alabama Relating To Documentation Of Marriage Relationships]

Dear General Marshall:

On May 31, 2019, *Ala. Act 2019-340* ("Act"), was enacted. Review of the Act prompts a number of questions regarding how Alabama judges of probate, who are the legal custodians of their respective counties' public records, should implement the Act. By its terms, the Act becomes effective on August 29, 2019. Thus, time is of the essence in regards to this request.

First Question

Under current Alabama law, to obtain a marriage license, both parties to the marriage must appear in person and present identification. This requirement reduces marital fraud.

Do the affidavits, forms and data specified in *Ala. Code § 30-1-5* (1975) and Section 2 of the Act (collectively "Documents") need to be delivered in person to the Court or can they be submitted by mail or electronically?

Second Question

Under current Alabama law, to obtain a marriage license, both parties to the marriage must appear in person and present identification. This requirement reduces marital fraud.

If the Documents must be delivered in person, must both parties to the marriage relationship deliver the documents together?

Third Question

If mailing or electronic transmittal of Documents is permitted, must the parties submit proof of identification with the Documents? If so, what proof must be submitted? If electronic transmittal of Documents is permitted, are electronic signatures of the parties (and any notary) permitted?

Fourth Question

Under current Alabama law, if a person intending to marry is 16 years of age and under 18 years of age and has not had a former wife or husband, the consent of the parents or guardians of the minor to the marriage is required. The practice in this Court is for such parents or guardians to appear in person, along with the minor applicant, to provide the required consent to the issuance of the marriage license. The Act continues to require the consent of a parent or guardian of a minor to a marriage.

Must parents/guardians providing consent appear in person as well with the minors, as is currently required?

Fifth Question

If parental/guardian consent is needed, must proof be submitted as to the parental or guardianship relation to the minor? If so, what proof must be submitted?

Sixth Question

Does the signature of the parent or guardian granting consent have to be dated the same date or prior to the date of the minor's signature in order for the consent to be valid? Or is the consent valid as long as the parent or guardian signs prior to the Documents being submitted to the Court?

Seventh Question

Must each party declare his or her country of citizenship in the Documents?

Eighth Question

Must the parties be physically present in the State of Alabama at the time of the execution of the Documents? If so, what type of proof or attestation must be submitted with the Documents to verify that they were in the State of Alabama at the time of execution?

Ninth Question

If the parties are not required to be physically present in the State of Alabama at the time of the execution of the Documents and if the Documents can be mailed or electronically transmitted to the Court, may an United States citizen in a state, such as Minnesota, marry a person he or she has never met that resides in another country?

Tenth Question

Section 2(a) of the Act states that “the only requirement for a marriage in this state shall be for the parties who are otherwise legally authorized to be married to enter into a marriage as provided in this section.”

May two citizens of a foreign country submit Documents by mail or electronically and be considered married under Alabama law, without ever being physically present in the State of Alabama?

Eleventh Question

Section 2(c) of the Act provides that “a marriage conforming to the requirements of this section shall be valid on the date the marriage is executed by both parties, provided the . . . [Documents] are recorded . . . *within 30 days* of the date of the last party’s signature in accordance with Section 22-9A-17 of the Code of Alabama 1975.”

If the 30th day following the execution of the Documents is during a weekend or on an holiday, does the 30 day deadline extend to the following business day?

Twelfth Question

Section 1 of the Act amends *Ala. Code* § 22-9A-17(a) (1975) to state that recording the Documents “establishes legal recognition of the marriage” so long as “such documentation was provided to the probate office within 30 days of the *signature of the parties*.” Section 2(c) of the Act states that the marriage is valid if the documents are recorded “within 30 days of the date of the last party’s signature in accordance with Section 22-9A-17 of the Code of Alabama 1975.”

For example, if one party executes the Documents on September 1, 2019, and the second party executes the Documents on September 15, 2019, and the Documents are submitted to the Court on October 10, 2019, are the Documents in compliance with the Act (and has a legal marriage relationship been established)? Stated another way, when does the 30 day time period for filing commence? There appears to be conflicting language. If you concur that these two statutory provisions conflict, which one should be followed and utilized?

Thirteenth Question

There is precedence for rejecting for filing purposes legal documents that do not comport with the law. For example, a deed that is presented for recording, but does not contain the required statement reflecting the name and address of the person who prepared the deed, is rejected pursuant to *Ala. Code* § 35-4-110 (1975).¹

Is the staff of the Court required to review the Documents and reject Documents that do not contain all of the information required by the Act or that are not submitted within 30 days of execution?

Fourteenth Question

Should the Court accept handwritten Documents, and, if so, should the Court's staff reject handwritten Documents that are illegible?

Fifteenth Question

The Act consistently refers to the "affidavits, forms, and data" that must be submitted, which may imply that additional information not expressly stated may be required to be filed. Section 2(b) of the Act states that the following information must be included in the Documents:

The marriage document required to be executed by the parties shall contain information to identify the parties as set forth in Section 22-9A-6, Code of Alabama 1975, as well as the following *minimum* information . . ." (emphasis added).

Ala. Code § 22-9A-6 (1975) provides the State Board of Health with rule making authority to determine the content of certificates of marriage.

If the information/documentation referenced in Questions 3, 5, 7 and 8 above are determined to not be automatically required by the Act, may the Court require that this additional information be provided since Section 2(b) of the Act refers to the information required as the "*minimum* information"? Alternatively, may the State Board of Health require that this information-documentation be provided pursuant to its rule making authority provided in *Ala. Code* § 22-9A-6 (1975)? Similarly, does the State Board of Health have discretion to require by rule that parties to a marriage must submit any documentation that the Board deems necessary to establish identification of the parties?

¹ It should be noted that *Ala. Code* § 35-4-110 (1975) explicitly requires rejection.

Sixteenth Question

The last sentence of revised *Ala. Code* § 30-1-12 (1975) states: “The judge of probate shall record, in a permanent record, all marriages presented to the probate court and shall forward the *original* documentation to the Office of Vital Statistics in accordance with Section 22-9A-17.” (emphasis added) What appears to be Section 2(e) of *Ala. Code* § 30-1-16 (1975) states “The affidavits, forms, and data shall be filed in the office of the judge of probate and shall constitute a legal record of the marriage of the parties. A *copy* of the form provided by the Office of Vital Statistics shall be transmitted by the office of the judge of probate to the Office of Vital Statistics and made a part of its record.” (emphasis added)

If “original documentation” in *Ala. Code* § 30-1-12 and “copy of the form” in what appears to be Section 2(e) of *Ala. Code* § 30-1-16 are the same “documentation/form” then should the judge of probate send the “original” or a “copy” to the Office of Vital Statistics?

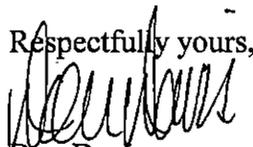
- A. If the original be sent, does the person presenting the documentation/form for recording only receive a copy (and should it be certified)?
- B. If the copy be sent, does the person presenting the documentation/form for recording receive the original?

Seventeenth Question

What appears to be Section 2(b)(2) states in pertinent part “A notarized affidavit from each party declaring all of the following . . .”

If a probate court has an office policy that no clerks administer notary acknowledgments on any documents filed in their office (i.e. deeds, mortgages, petitions, motions, etc.), does the Act require the probate court’s clerks who are notaries public to administer a notary acknowledgment in regards to an “affidavit” required by the Act?

If you desire any additional information, please do not hesitate to contact me. Your prompt advice as to the aforesaid questions would be most appreciated.

Respectfully yours,

Don Davis
Judge of Probate