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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

STEVEN T. MARSHALL
ATTORNEY GENERAL

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.ALABAMA.GOV

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Honorable Don Davis
Mobile County Probate Judge
Post Office Drawer Seven
Mobile, Alabama 36601

Probate Judges – Marriages – Recordation of Instruments – Identification Cards – Uniform Electronic Transactions Act

Discussion of how probate judges should administer Act 2019-340 which changes the legal requirements for marriage.

Dear Judge Davis:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

(1) Do the marriage affidavits, forms, and data specified in section 30-1-5 of the Code of Alabama and section 2 of Act 2019-340 (collectively, "Documents") need to be delivered in person to the probate court or can they be submitted by mail or electronically?

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

(3) If electronic transmittal of the Documents is permitted, must the parties submit proof of identification with the Documents?

(4) Must parents/guardians providing consent for a person over 16 and under 18 years of age to marry appear in person as well with the minors?

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

(6) Does the signature of the parent or guardian granting consent have to be dated the same date as the minor's signature?

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

(8) Must the parties be physically present in the state at the time of the execution of the Documents?

(9) If not, may any United States citizen marry a person he or she has never met who resides in another country?

(10) May two citizens of a foreign country submit Documents by mail and be considered married under Alabama law, without ever being physically present in the state?

(11) If the thirtieth day following the execution of the Documents is during a weekend or on a holiday, does the thirty-day deadline extend to the following business day?

(12) When does the thirty-day period for recording the Documents in court commence when the parties execute the Documents on different dates?

(13) May court staff reject Documents that do not contain all of the information required by the act or that are not submitted within thirty days of execution?

(14) Should the court accept handwritten Documents and, if so, should staff reject illegible documents?

(15) Pursuant to section 22-9A-6 of the Code of Alabama, may the court or the State Board of Health require information and documentation not expressly required under section 2(b) of the act?

(16) If "original documentation" in section 30-1-12 of the Code of Alabama and "copy of the form" in section 2(e) of the act are the same form, then should the probate judge send the "original" or a "copy" to the Office of Vital Statistics? If the original is to be sent, does the person presenting the documentation for recording receive only a copy and should it be certified? If a copy is to be sent, does the person presenting the documentation for recording receive the original?

(17) If a court has a policy prohibiting clerks from administering notary acknowledgments on any documents filed in their office, does the act require clerks who are notaries public to administer a notary acknowledgment in regards to an "affidavit" required by the act?

FACTS AND ANALYSIS

Act 2019-340 fundamentally changes the process in which couples are married in the State of Alabama, abolishing the old requirements that a couple obtain a marriage license from a probate judge and participate in a solemnization ceremony. Ala. Acts No. 2019-340. The act repealed sections 30-1-9, 30-1-10, 30-1-11, 30-1-13, and 30-1-14 of the Code of Alabama, amended sections 22-9A-17, 30-1-5, 30-1-12, and 30-1-16, and added section 30-1-21. Under the act, the old requirements are replaced with the recordation of a "marriage document" in probate court. ALA. CODE § 30-1-21 (Westlaw 2019). Your request presents numerous concerns affecting probate judges who are charged with administering the new marriage law.

The requirements for marriage before the effective date of the act were set out in section 30-1-9 as follows:

> ***No marriage shall be solemnized without a license.*** Marriage licenses may be issued by the judges of probate of the several counties. The license is an authority to anyone qualified to solemnize marriage to join together in matrimony the persons therein named. ***Any license issued under the provisions of this section shall be invalid if the marriage for which it was issued has not been solemnized within 30 days from the date of issuance.*** No person now or hereafter authorized by law to solemnize marriages shall perform any ceremony or solemnize any marriage if the license issued for such marriage has become invalid. The license shall have stamped or printed upon it the words: "This license is void after 30 days from date unless the marriage is solemnized within said time."

ALA. CODE § 30-1-9 (2016) (emphasis added).

According to section 2(g) of the act, however, "[a]ll requirements to obtain a marriage license by the State of Alabama are hereby abolished and repealed. The requirement of a ceremony of marriage to solemnize the marriage is abolished." ALA. CODE § 30-1-21(g) (Westlaw 2019). Furthermore, section 2(a) underscores that all previous requirements to obtain a marriage are being abolished, stating that, "[o]n the effective date of this act and thereafter, ***the only requirement for a marriage*** in this state shall be for parties who are otherwise legally authorized to be married to enter into a marriage as provided in this section." ALA. CODE § 30-1-21(a) (Westlaw 2019) (emphasis added).

The act rewrote section 22-9A-17. Section 22-9A-17(a) concisely states the new requirements for couples to marry as follows:

> (a) Two persons desiring to unite in marriage may do so by ***submitting*** the ***affidavits, forms, and data*** specified in Section 30-1-5 and Section 2 of the act amending this section for recording with the office of the judge of probate. The recording of the affidavits, forms, and data establishes legal recognition of the marriage as of the date the affidavits and forms were properly signed by the two parties so long as such documentation was provided to the probate office

> within 30 days of the signatures of the parties. Each marriage filed with the probate office shall be filed and registered with the Office of Vital Statistics.

ALA. CODE § 22-9A-17(a) (Westlaw 2019) (emphasis added).

Section 2(b) of the act sets out the required "minimum information" that must be included in the "marriage document" (in addition to "information to identify the parties as set forth in section 22-9A-6 . . . ."). ALA. CODE § 30-1-21(b) (Westlaw 2019). These requirements are listed as follows:

> (1) The full legal names of both of the parties.
>
> (2) A notarized affidavit from each party declaring all of the following:
>
> a. The affiant is not currently married.
>
> b.1. The affiant is at least 18 years of age; or
>
> 2. The affiant is at least 16 and under 18 years of age and has the consent of a parent or guardian.
>
> c. The affiant is legally competent to enter into a marriage.
>
> d. The parties are not related by blood or adoption such that the marriage would violate Section 13A-13-3, Code of Alabama 1975.
>
> e. The affiant is entering into the marriage voluntarily and of his or her own free will and not under duress or undue influence.
>
> (3) The signatures of the parties.

Id.

In addition, before its amendment, section 30-1-5 required "the consent of the parents or guardians of the minor to the marriage, ***to be given either personally or in writing***, and, if the latter, the execution thereof shall be proved." ALA. CODE § 30-1-5 (2016) (emphasis added). The statute now provides that this consent "shall be in the form of an affidavit signed by a

parent or guardian, notarized, and filed with the probate court." ALA. CODE § 30-1-5 (Westlaw 2019).

You first ask whether the Documents submitted pursuant to section 2 of the act and section 30-1-5 must be submitted to the probate court in person or may they be submitted by mail or electronically. Under the former version of section 30-1-5, the probate judge had the discretion to require the parents or guardians of persons between 16 and 18 years of age to give consent "either personally or in writing . . . ." ALA. CODE § 30-1-5 (2016). As discussed above, however, this provision was abolished and the new provision requires merely a signed affidavit to be filed in probate court. Likewise, section 2(c) of the act only requires that the marriage document be executed by the parties and recorded with the probate judge "within 30 days of the date of the last party's signature. . . ." ALA. CODE § 30-1-21(c) (Westlaw 2019). Whereas the act primarily relies on passive language to explain what needs to done with the Documents, its only required active conduct on the part of marrying couples in relation to the Documents is that they "submit" them to the probate court pursuant to section 22-9A-17(a). ALA. CODE § 22-9A-17(a) (Westlaw 2019).

The term "submit" is broad enough to allow for marrying couples to provide the Documents to the probate court either personally or through the mail. According to Webster's Seventh New Collegiate Dictionary, "submit" is defined as "to make available" or "offer." WEBSTER'S SEVENTH NEW COLLEGIATE DICTIONARY 875 (7th ed. 1976). The requirement that the affidavit be notarized does not preclude the Documents from being mailed, as such mailing would allow for the transmittal of the traditional signature and notary seal. Indeed, as this Office has recognized, notarized affidavits supporting absentee ballots may be delivered by United States mail or hand-delivery. Opinion to Honorable Leland Avery, Hale County Probate Judge, dated June 26, 2000.

The question of whether the Documents may be submitted electronically is problematic because signatures and notary seals may not be transmitted electronically, at least in the traditional sense. The Legislature addressed this concern by passing the Uniform Electronic Transactions Act ("UETA"), codified in section 8-1A-1, *et seq.*, of the Code of Alabama. ALA. CODE §§ 8-1A-1 to 8-1A-20 (2017). The act provides that "[a] record or signature may not be denied legal effect or enforceability solely because it is in electronic form." ALA. CODE § 8-1A-7(a) (2017). The UETA, however, expressly excludes transactions governed by "[a] statute, regulation, or other rule of law governing adoption, divorce, or ***other matters of family law***." ALA. CODE § 8-1A-3(b)(3) (2017) (emphasis added). Because the Comments for the statute clarify that "other matters of family law" include laws governing marriage, the UETA does not

provide a savings mechanism which would allow for the Documents to be submitted electronically. ALA. CODE § 8-1A-3 Alabama Comments to Section 3 (2017). This Office is unaware of any other provision which would allow for signatures and notary seals to be in electronic form. Accordingly, the Documents must be submitted either through mail or hand-delivery.

Because the Documents may be delivered through the mail or personally but not electronically, your second, third, and fourth questions are moot. Regardless, the act does not include any language requiring that the parties deliver the Documents "together" or that the parents and/or minors appear in person. This Office has stated that "the Attorney General may not construe or expand the language of a statute which is clear and unambiguous on its face." Opinion to Honorable Martha A. Elrod, City Clerk/Treasurer, City of Gadsden, dated January 16, 1992, A.G. No. 92-00113 at 2. *See also, Blue Cross & Blue Shield of Alabama, Inc., v. Nielsen*, 714 So. 2d 293, 296 (Ala. 1998) ("Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says."). As pointed out above, the former requirement set out in section 30-1-5 giving the probate judge discretion to require consent "either personally or in writing" has been abolished and replaced with the requirement that consent be given through notarized affidavits filed in the probate court.

You next ask what proof is required as to the parental or guardianship relation to the minor when consent of a parent or guardian is necessary. That question is answered by the plain language of section 30-1-5, which provides that "***[e]vidence of consent shall be in the form of an affidavit*** signed by a parent or guardian, notarized, and filed with the probate court." ALA. CODE § 30-1-5 (Westlaw 2019) (emphasis added). By signing such a consent form before a notary, the parent or guardian must affirm that he or she is either the parent or guardian of the minor and that he or she consents to the marriage of the minor.

You further ask if the signature of the parent or guardian granting consent must be dated the same date as or a date prior to the date of the minor's signature. Section 30-1-5 merely requires that the parent or guardian sign an affidavit to be notarized and filed in probate court and does not specify any timing requirement in relation to when the minor signs the Documents. Your seventh question concerns whether each party is required to declare his or her country of citizenship in the Documents. Because the language of the act does not express any such requirement, this Office will not presume one. It should be noted, however, that section 2(b) provides that "[t]he marriage document required to be executed by the parties shall contain information to identify the

parties as set forth in section 22-9A-6 . . . ." ALA. CODE § 30-1-21(b) (Westlaw 2019). Section 22-9A-6(a) authorizes the State Board of Health ("Board") to require by rule additional information to be included in marriage certificates. ALA. CODE § 22-9A-6(a) (2015). If the Board so requires, such information should be included in the Documents.

You next ask if the parties must be physically present in the state at the time of execution of the Documents. The language of the act includes no such requirement and no requirements that the parties reside in the United States or that they have ever met each other. In fact, nothing in the act prohibits two citizens of a foreign country from submitting Documents by mail and being considered married under Alabama law, nor does it require them to ever be physically present in the state. Though this conclusion may be unforeseen, in interpreting a statute, this Office does not consider the intent or desirability of the Legislature's policy decisions but relies instead upon the text of the law as it is written.

You further ask when the deadline for recording the Documents occurs if the thirtieth day from the date of the last party's signature falls on a weekend or holiday. Section 2(c) of the act provides as follows:

> (c) A marriage conforming to the requirements of this section shall be valid on the date the marriage is executed by both parties, provided the affidavits, forms, and data are recorded in the office of the judge of probate ***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.

ALA. CODE § 30-1-21(c) (Westlaw 2019) (emphasis added).

Section 1-1-4 of the Code of Alabama states as follows:

> Time within which any act is provided by law to be done must be computed by excluding the first day and including the last. However, ***if the last day is Sunday, or a legal holiday*** as defined in Section 1-3-8, ***or a day on which the office in which the act must be done shall close as permitted by any law of this state***, the last day also must be excluded, and ***the next succeeding secular or working day shall be counted as the last day within which the act may be done.***

ALA. CODE § 1-1-4 (1999) (emphasis added). Therefore, if the thirtieth day from the last party's signature (excluding the first day and including the last day) occurs on a Sunday or legal holiday, such day should be excluded and the next working day would be the deadline for recording the Documents. Saturdays, or any other day in which the probate court is closed pursuant to state law, should be treated in the same manner.

Your twelfth question concerns an apparent conflict between section 1 of the act amending section 22-9A-17(a) and section 2(c). Whereas section 22-9A-17(a), as amended, requires the Documents to be "provided to the probate office within 30 days of the ***signature of the parties***" [ALA. CODE § 22-9A-17(a) (Westlaw 2019) (emphasis added)], section 2(c) requires the Documents to be 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***." ALA. CODE § 30-1-21(c) (Westlaw 2019) (emphasis added). Although the reference in section 2(c) to section 22-9A-17 clarifies that its deadline should correspond with the deadline set out in that provision, its language is less specific. Section 2(c) clearly specifies that the deadline runs from the "last party's signature." On the other hand, section 22-9A-17's use of the language "signature of the parties" leaves open multiple interpretations, including two deadlines running from the signature of each party or one deadline running from the date when both parties have signed. Where statutes in pari materia are general and specific, the more specific statute controls the more general statute. *Ex parte Coffee County Comm'n*, 583 So.2d 985 (Ala.1991). Thus, the Documents must be provided to the probate court and recorded within 30 days from the date of the last party's signature.

You next ask if probate court staff is required to review the Documents and reject those that do not contain all of the information required by the act or that are not submitted within thirty days of execution. Section 2(b) provides that "[t]he 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. . . ." ALA. CODE § 30-1-21(b) (Westlaw 2019) (emphasis added). "The word 'shall,' when used in a statute, is mandatory." *Ex parte Nixon*, 729 So. 2d 277, 278 (Ala. 1998). Accordingly, this information is required to be in the Documents and, if not included, must be rejected by the probate judge. This conclusion is consistent with an opinion to Honorable Beth Chapman, State Auditor, dated January 20, 2006, A.G. No. 2006-042. That opinion held that the board of registrars is required to reject an application for voter registration when the applicant submits incomplete or contradictory information regarding citizenship because such information is "material" to demonstrating the right to vote. *Id.* at 5-6. Similarly, because the information required under section 2(b) is

mandatory, a probate court must reject Documents which do not include all of the information.

Because the requirement that the Documents be recorded within 30 days of the last party's signature is mandatory as well, the probate court should reject Documents submitted after the deadline. Both section 22-9A-17 and section 2(c) indicate that legal recognition of the marriage occurs when the Documents are recorded within 30 days of the last party's signature.

You next ask if the probate court may accept handwritten or illegible Documents. Section 2(h) of the act provides that the Alabama Law Institute and the Department of Public Health "shall prepare a form to meet the minimum requirements of this act." ALA. CODE § 30-1-21(h) (Westlaw 2019). While this provision itself does not make use of the form mandatory, Section 2(e) contemplates that the form will be completed by the parties and filed in the probate court. ALA. CODE § 30-1-21(e) (Westlaw 2019). Indeed, by stating that "[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," this provision makes use of the form mandatory. *Id.* (emphasis added). Nonetheless, the act does not specify that it must be filled out in any manner and, as a result, may be done so by hand, typewriter, or word processor. Illegible Documents which do not convey all of the information required under section 2(b), however, should be rejected.

Your next question concerns section 2(b)'s requirement that the Documents include "information to identify the parties as set forth in section 22-9A-6 Code of Alabama 1975. . . ." ALA. CODE § 30-1-21(b) (Westlaw 2019). Section 22-9A-6(a) provides as follows:

> (a) The ***[State Board of Health] shall by rule determine the items or information to be contained on certificates of*** birth, death, ***marriage***, and divorce and on reports of fetal death and induced termination of pregnancy. Each certificate, report, and other document required by this chapter shall be in a format prescribed by the State Registrar.

ALA. CODE § 22-9A-6(a) (2015) (emphasis added). If the State Board of Health exercises its rulemaking authority and requires certain identification information to be included in marriage certificates, then the probate court should require such information to be included in the Documents. As discussed above, not only is information expressly listed in section 2(b) mandatory, but also information the Board requires pursuant to section 22-9A-6(a).

The rulemaking authority of the Board should not be viewed as a mechanism to correct every perceived gap in the new marriage law. An administrative agency cannot usurp legislative powers or contravene a statute. Opinion to Honorable John W. Anderson, Executive Secretary, Alabama Peace Officers Standards and Training Commission, dated April 19, 1996, A.G. No. 96-00187. Any rule of the Board must be consistent with section 30-1-21(b), section 22-9A-6(a), and the other provisions of the act. Many of the concerns you have raised may be matters for the Legislature to address.

Your sixteenth question concerns an apparent conflict between amended section 30-1-12 and section 2(e). Section 30-1-12 now reads that "[t]he 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." ALA. CODE § 30-1-12 (Westlaw 2019) (emphasis added). Section 2(e), however, provides that "[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." ALA. CODE § 30-1-21(e) (Westlaw 2019) (emphasis added). Reading section 30-1-12 in pari materia with section 2(e) indicates that the court should forward the original of the Documents completed by parties to the Office of Vital Statistics. The reference in section 2(e) to a "copy of the form" reflects that the Documents originate from the form provided by the Office of Vital Statistics but, once filled out by the parties, become an "original document" to be later forwarded back to that office by the court. Accordingly, the party presenting the Documents would receive a copy of the original. The act does not require the copy to be certified.

Your last question concerns whether probate court clerks who are notaries are required to notarize Documents presented by parties desiring to be married, especially when the court has a policy of prohibiting clerks from administering notary acknowledgements on documents filed in the office. The act includes no such requirement.

CONCLUSION

The marriage affidavits, forms, and data specified in section 30-1-5 of the Code of Alabama and section 2 of Act 2019-340 may be delivered in person or by mail to the probate court, not electronically.

By signing an affidavit providing consent for a person over 16 and under 18 years of age to marry, the parent or guardian must affirm that he or she is

either the parent or guardian of the minor and that he or she consents to the marriage of the minor.

The signature of the parent or guardian granting consent is valid so long as the parent or guardian signs prior to the Documents being submitted to the court.

The act does not require either party to declare his or her country of citizenship in the Documents, nor that either be physically present in the state at the time they execute the Documents, nor that they even know each other. As a result, any United States citizen may marry a person he or she has never met who resides in another country if they comply with the requirements of the act. Furthermore, the act permits two citizens of a foreign country to submit Documents by mail and be considered married under Alabama law, without ever being physically present in the state.

If the thirtieth day following the execution of the Documents is during a Sunday, holiday, or day in which the court is closed pursuant to state law, the thirty-day deadline extends to the following business day.

The thirty-day period for recording the Documents in court commences when the last party executes the Documents.

Court staff are required to reject Documents that do not contain all of the information required by the act or that are not submitted within thirty days of execution.

Although use of the form provided by the Office of Vital Statistics is required, the form may be filled out by hand, typewriter, or word processor. Court staff should reject illegible documents.

Pursuant to section 22-9A-6 of the Code of Alabama, the State Board of Health may require information not expressly required under section 2(b) of the act.

Because the "original documentation" in section 30-1-12 of the Code of Alabama and "copy of the form" in section 2(e) of the act are the same form, the probate judge should send the "original" to the Office of Vital Statistics and the person presenting the Documents for recording should receive only a copy, which does not have to be certified.

The act does not require court clerks who are notaries public to administer a notary acknowledgment in regards to an "affidavit" required by the act.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact John Porter of my staff.

Sincerely,

STEVE MARSHALL
Attorney General
By:

G. WARD BEESON, III
Chief, Opinions Division

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