

MEMORANDUM

To: Alabama Clergy
From: The Rt. Rev. Russell Kendrick
Re: Amendments to Alabama Marriage Act effective August 29, 2019
Date: January 7, 2020

The amendments to the Alabama statutes regarding marriage that became effective on August 29, 2019 (the “Act”) provide that, on or after that date, the only requirement for a marriage in Alabama shall be for parties who are otherwise legally authorized be married to enter into a marriage as provided in the Act. Section 30-1-9.1(a) of the Alabama Code 1975. Alabama no longer issues marriage licenses and there is no requirement of a ceremony. This memorandum summarizes research of the Diocesan Chancellor for Alabama, Kathy Miller, in regard to application of the Act in light of the Canons regarding the solemnization of marriage.

Section 30-1-9.1(b) provides that the parties execute a “marriage document” containing the information specified in the Act including a notarized affidavit from each party declaring that the party is not currently married, is at least 18 years of age (or if at least age 16 and under age 18 has the consent of a parent or guardian), is legally competent to enter into marriage, is not related by blood or adoption to the other party such that the marriage would violate Section 13A-13-3; and is entering into the marriage voluntarily and of his or her own free will and not under duress or undue influence.

Section 22-9A-17(a) provides that persons desiring to marry in Alabama must submit the forms, data and affidavits specified in the Act and that “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.”

Section 30-1-9.1(h) provides that the Alabama Law Institute in collaboration with the Department of Public Health shall prepare a form to meet the requirements of the Act. The “Alabama Marriage Certificate” form and form for minors (“Marriage Certificate”), copies of which are attached and are available online, include an affidavit for each party which must be executed and notarized. The form for minors includes an Affidavit of Consent for Marriage of a Minor which must be signed by one parent or guardian of each party who is under age 18 but at least age 16 and must be notarized. The Attorney General of the State of Alabama has given an opinion that the use of the Marriage Certificate form is mandatory. (Opinion issued to the Honorable Don Davis dated August 28, 2019).

Section 30-1-9.1(c) specifically 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 affidavits, forms and data are recorded in the office of the judge of probate within thirty (30) days of the date of the last party’s signature in accordance with Section 22-9A-17.” In other words, a marriage is legally recognized by the State as of the date that the Marriage Certificate has been signed by both parties, if the notarized certificate is delivered to the office of the judge of probate for recording with the filing fee within thirty days after the last party’s signature.

The Act provides that

A civil and independent or religious ceremony of marriage, celebration of marriage, solemnization of marriage, or any other officiation, or administration of the vows of marriage may be conducted or engaged in by the parties by an officiant or other presiding person to be selected by the persons entering into the marriage. The state shall have no other requirement for any ceremony or proceeding and whether or not a ceremony or proceeding is performed or not performed shall have no legal effect on the validity of the marriage.

§30-1-9.1(d)(emphasis supplied).

The Canons of the Episcopal Church provide in part that:

Every Member of the Clergy of this Church shall conform to the laws of the State governing the creation of the civil status of marriage, and also these canons concerning the solemnization of marriage. ...

Canon I.18.1. Canon I.18.3(a) also provides that, prior to the solemnization, the Member of the Clergy shall determine, among other enumerated items, "... that both parties have the right to marry according to the laws of the State..."

While the Act does not require a ceremony and states that whether or not a ceremony is performed or not performed shall have no legal effect on the validity of the marriage, in following the Canons of the Church with respect to "conforming to the laws of the State governing the creation of the civil status of marriage," a Member of the Clergy would appear to need to confirm that (1) the signature of each party on the marriage certificate form has been notarized on or before the date of a ceremony because the date that the last party's signature is notarized establishes the legal date of the marriage and (2) the fully executed and notarized form and recording fee either (a) previously has been delivered to

the office of the probate judge, or (b) will be delivered to the office of the probate judge within thirty days of the last signature.

Some parties may choose to complete the process of recording the Marriage Certificate prior to the ceremony and present a certified copy to the priest. We have been advised that when the completed and notarized Marriage Certificate is delivered to the Probate Court of Mobile County, for example, the parties will be able to obtain a certified copy of the Marriage Certificate on the same day reflecting that the Marriage Certificate has been delivered to the office of the probate judge.

If the parties desire to have the legal date of their marriage be the same date as the solemnization of their marriage, at the discretion of the Member of the Clergy, they could either present a Marriage Certificate form signed by the last party and notarized on the day of the ceremony or, perhaps, could make arrangements for a notary to be present to notarize both signatures in conjunction with the ceremony in the manner that the parties previously signed the marriage license in the presence of the Member of the Clergy. If the parties choose to execute and notarize the last or both signatures on the date of the ceremony, it would appear that the Member of the Clergy would need to mail the completed Marriage Certificate and the recording fee (\$70.00 in Mobile County, payable by cash, money order or credit card) to the office of the probate judge to ensure that the Marriage Certificate and filing fee are submitted within 30 days after the last signature was executed as required for the marriage to be valid. (While the Act does not specify whether or not submission of the form must be in person, the Attorney General's August 28, 2019 opinion issued to Judge

Davis states that the Marriage Certificate and fee may be submitted to the office of the probate judge either personally or through the mail).

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