

DATE: October 13, 2014

TO: All Circuit Court Clerks

FROM: Office of the Indiana Attorney General

RE: Questions regarding validity of marriage licenses and appropriate responses to court decisions in same sex marriage cases

Please accept this communication as additional guidance regarding the validity of marriage licenses issued to same-sex couples earlier this year and whether clerks should refund licensing fees for unrecorded licenses previously issued to same-sex couples or charge those couples new fees for new licenses.

These questions arise because of the unusual circumstances associated with the June 25, 2014 *injunction* invalidating Indiana's traditional marriage statute, the June 27, 2014 *stay pending appeal* issued by the 7th Circuit Court of Appeals, the September 4, 2014 ruling by the 7th Circuit affirming the district court but staying its ruling, the October 6, 2014 *denial of certiorari* by the U.S. Supreme Court, and the October 7, 2014 *mandate* issued by the 7th Circuit.

Many issues arising from these circumstances are unprecedented. We have prepared this guidance based on our view of the law in light of various statutory and judicial authorities. Our analysis is ongoing and may be subject to future judicial or legislative actions. It is not meant to operate as a definitive legal determination. While the Office of the Indiana Attorney General in its role as state government's lawyer strives to assist your office as you navigate the recent legal developments, your primary legal adviser is your county attorney.

The chart on the following page describes the multiple steps for obtaining a legally valid marriage license along with four categories of couples seeking to marry who may have finalized different numbers of those steps prior to the stays being issued in the cases. It also includes our preliminary view on how courts would likely rule if questions were raised about the validity of the licenses given the circumstances associated with couples falling within these categories.

Please note that license processing decisions may impact liability exposure, and related litigation risk issues should be discussed with your county attorney.

Also please note that this guidance is provided in relation to clerk license issuance and processing obligations and is not intended to address legal obligations of state agencies and other governmental entities to handle matters that involve marital status. Those entities may have additional or distinct legal provisions that impact their duties.

VALIDITY OF MARRIAGE LICENSE BASED ON STEPS TAKEN BY APPLICANTS

If Applicants Obtained Marriage License from Clerk's Office (IC 31-11-4-1)	If Applicants Solemnized Marriage within 60 Days of License being Issued (IC 31-11-4-10)	If Applicants Returned Marriage Records within 30 Days of Solemnization (IC 31-11-4-16)	If Clerk's Office Records the Marriage License (IC 31-11-4-16)	Then Marriage License Status is:
Yes	Yes	Yes	Yes	Valid
Yes	Yes	Yes	No	Likely Valid – Applicants who meet all statutory requirements will likely hold a valid marriage license even if the Clerk's Office does not immediately record the license
Yes	Yes	No	No	Likely Invalid – Applicants who do not meet all statutory requirements will likely not hold a valid marriage license even if marriage was solemnized
Yes	No	No	No	Invalid

This chart illustrates that in other situations, not subject to an injunction or stay pending appeal, a marriage license would be expired for couples who did not (1) solemnize their marriage within sixty (60) days of receiving a marriage license; or (2) return the required marriage records — including a duplicate marriage certificate and license to marry — to the circuit court clerk within thirty (30) days of solemnization. However, one possible legal argument is that the stay granted by the 7th Circuit tolled the statutory deadlines, potentially meaning that the licenses may not be expired, as the order made it appropriate for clerk's to delay processing licenses while the stay was in effect.

Couples falling into the 2nd, 3rd, or 4th categories listed above may wish to obtain new marriage licenses and complete the necessary steps in the process to minimize any potential uncertainty regarding license validity. However, if couples choose to exercise caution and re-apply for a marriage license, they will be required to pay a new license processing fee unless clerks in their discretion determine it is appropriate to refund the fee paid earlier this year.

As separately elected officials, decisions on these matters are within your purview as county court clerk. Please consult with your county attorney. We will continue to communicate with as much certainty as possible under the circumstances and based on any legal developments on these issues.

Please contact Matt Light in this office via email at matt.light@atg.in.gov or phone at 317-232-6333 if you have any questions concerning this communication. Thank you.