



# MEMORANDUM

TO: Maryland County Clerks Responsible for Issuing Marriage Licenses

FROM: Alliance Defending Freedom

DATE: November 9, 2012

RE: Ensuring County Clerks Have Freedom to Follow their Religious Beliefs When Same-Sex Couples Request Marriage Licenses

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In light of Maryland's recent redefinition of marriage to include same-sex couples, some county circuit-court clerks might believe that they face a serious dilemma: either resign their positions or violate their sincerely held religious beliefs by issuing marriage licenses to same-sex couples. But county clerks, as explained herein, can readily resolve this potential religious conflict.

County circuit-court clerks in Maryland are legally required to issue marriage licenses. *See* Md. Code Ann., Fam. Law § 2-405(a); Md. Code Ann., Fam. Law § 2-401(a). The clerks “may appoint a chief deputy clerk,” who “serves at the pleasure of the clerk.” Md. Rule 16-301(a)(1)-(2). But “[t]he appointment, retention and removal of a chief deputy clerk shall be subject to the authority and approval of the Chief Judge of the Court of Appeals, after consultation with the County Administrative Judge.” Md. Rule 16-301(a)(3).

“The law does not contemplate that the clerk, in his own person, shall be constantly in attendance at his office[.]” *Harris v. Register*, 16 A. 386, 391 (Md. 1889); *see also Chester v. State*, 32 Md. App. 593, 609, 363 A.2d 605, 614 (1976) (“In

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no clerk's office in the State would it be possible for the clerk unaided to perform all the clerical work when and as it should be done"). So the deputy is appointed to act on the clerk's behalf. *See Harris*, 70 Md. 109, 16 A. 386, 391 (1889) ("[The deputy clerk's] act is the act of the clerk.").

Some county clerks might hold sincere religious beliefs that prevent them from issuing marriage licenses to same-sex couples. If those clerks have already appointed a deputy clerk, they may instruct the deputy to perform all acts necessary to issue, administer, and process the marriage licenses of same-sex couples. But if those clerks have not already appointed a deputy, they will need the "approval of the Chief Judge of the Court of Appeals" for the deputy they select. *See* Md. Rule 16-301(a)(3). Once the deputy has been appointed and approved, the clerk then may instruct the deputy to issue, administer, and process the marriage licenses of same-sex couples. Taking these steps should fully resolve the clerk's religious conflict.

Even if county clerks encounter resistance in their efforts to resolve this religious conflict, the protection afforded by the First Amendment to the United States Constitution ensures that neither state officials nor county officials may thwart this legitimate attempt to preserve the clerks' free exercise of religion. The First Amendment prohibits any government officials from "penaliz[ing] or discriminat[ing] against individuals . . . because they hold [particular] religious views." *Sherbert v. Verner*, 374 U.S. 398, 402 (1963); *accord Employment Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872, 877 (1990) (the First Amendment prohibits the government from "impos[ing] special disabilities on the basis of religious views"). Thus higher-ranking government officials may not prevent county clerks' reasonable and legitimate efforts to resolve their limited religious conflict.

If county clerks face this crisis of conscience and want assistance in resolving their religious conflict, please contact Alliance Defending Freedom at 1-800-835-5233.

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