

From: Lee, Cindy
Sent: Tuesday, October 14, 2014 8:52 AM
To: Judicial Chief District Court Judges
Subject: Magistrates and same-sex marriage

Dear chiefs:

I had to be out of the office for most of Monday and had several voice mails concerning same-sex marriages. It appears that some magistrates would prefer not to perform ceremonies for same-sex couples, and some of you have wanted to talk about how to address those situations.

Although I've not followed the cases closely, my understanding is that the decision of the federal district court in the western district is binding and in effect statewide. My understanding is that the defendants in the case included the proper state officials and that the court invalidated the constitutional amendment prohibiting same sex marriage. So, unless someone in a position of authority can reasonably advise you that the federal court decision is not binding, North Carolina has same-sex marriage.

Given those circumstances, it seems to me that magistrates have a duty to perform marriage ceremonies for same-sex couples if marriages are part of their regularly assigned duties. A magistrate has taken an oath of office to perform the duties of the office and, just like you, does not get to choose which laws to follow and which not. Everyone would agree that it would not be proper for a magistrate to refuse to marry an interracial couple because the magistrate does not approve of such marriages. The same principle would apply to same-sex couples now. No doubt you can think of lots of other examples of laws which a judge might not approve personally but is obligated to uphold.

I cannot imagine matters will get to this point, but note that the grounds for removal of a magistrate are the same as for a judge. Those include willful and persistent failure to perform the duties of the office and conduct prejudicial to the administration of justice that brings the office in disrepute. Refusing to perform a duty just because it is contrary to one's political or social views would seem to fit within those categories for discipline.

This is an issue about which people have strong opinions, and magistrates no doubt are divided just as other citizens are. The difference is that magistrates have taken an oath of office and are public officers. They, like you, are required to put their personal feelings aside when necessary. The judicial system could not work if individual officers acted otherwise.

Depending on the number of magistrates you have in your district and the number of couples seeking to marry, you might consider asking your magistrates to volunteer for a special day or several days dedicated specifically to marriage ceremonies to address the sudden demand. It may be of help to everyone in the courthouse to arrange the ceremonies as soon as possible and reduce the traffic in the courthouse and the distractions to other court business.

I hope this does not sound preachy or heavy handed, but I do think it is important to remind magistrates of the majesty of their position. They, like you, are judicial officials. They should be proud of the public trust that has been placed in them, in the importance of their office, and the need to sustain the rule of law regardless of the discomfort it causes. In the end the one thing that should make them proudest is being judicial.

Michael Crowell