

From: Lewandowski, Dona

Sent: Wednesday, October 15, 2014 5:28 PM

To: Judicial Magistrates

Subject: Responding to inquiries about modified language for performing marriages of same-sex couples

Hello to all magistrates! It's been an exciting week, hasn't it? I and my colleagues at the School of Government and the AOC have been showered with questions related to the change in North Carolina law allowing same-sex couples to marry. I think it will take a while for things to settle down, legally-speaking, in terms of whether various specific legal provisions are affected by the change, and if so, in what way. In the midst of so many uncertainties, I'm seizing an opportunity to respond to a question many of you have asked to which I DO know the answer.

By now you all know the answer to last week's #1 question: what should a magistrate do when a same-sex couple presents a marriage license and asks the magistrate to marry them? The answer, of course, is to marry them, just as you would any other couple presenting you with a license. The usual rules apply: witnesses, signatures, collecting the fee, all those by-now-familiar legal requirements for performing a marriage ceremony in keeping with North Carolina law.

Several of you, however, have asked about the wording of the ceremony, and for most of you that's something that has changed. NCGS 51-1, which addresses the creation of "a valid and sufficient marriage," sets out two legal requirements relevant to the content of a marriage ceremony: (1) the parties must "freely, seriously, and plainly express" their consent to be married, and (2) the person performing the ceremony must declare the persons to be married. Regardless of whether the ceremony is short or long, is civil or contains religious references, involves a ring or not, etc., any ceremony containing language that satisfies these two basic criteria is legally sufficient.

The SOG has traditionally furnished new magistrates with several versions of a marriage ceremony, along with a reminder that these suggestions are merely that—examples of ceremonies, used by some magistrates, that satisfy the legal requirements. Some of these examples appear in the book authored by my predecessor, Joan Brannon, titled Small Claims Law. The only modifications necessary to adapt these or other common ceremonies to use for marrying same-sex couples is the substitution of "spouse" for gender-specific terms such as "husband" and "wife," and a declaration that the parties are "married," rather than pronouncing them "husband and wife." Here are some examples of this modified language, taken from some ceremonies in common use:

" {Name of Party #1}, will you have {Name of Party #2} to be your spouse, and will you love, comfort, honor and keep (him/her) in sickness and in health . . . so long as you both shall live?"

"We are gathered here in the sight of God, and in the presence of these witnesses, to join together this couple in holy matrimony. . . . {Name of Party #1}, wilt thou have {Name of Party #2} to be thy wedded spouse . . . ?"

"Now, by the authority vested in me by the State of North Carolina, I pronounce you to be lawfully married."

"Forasmuch as { Name of Party #1} and {Name of Party #2} have consented together in holy wedlock, and have given and pledged their troth, each to the other, . . . by virtue of the power vested in me as a magistrate of _____ County, North Carolina, I do pronounce you to be married."

I believe you will find these changes simple to make in whatever ceremonies you are accustomed to using. As always, I hope you won't hesitate to let me know if you have additional questions or concerns. And as always, I thank you for your service to the citizens of North Carolina.

With warm regard,

Dona

Dona Lewandowski
Lecturer in Public Law and Government
Knapp-Sanders Building
Campus Box 3330
University of North Carolina at Chapel Hill
Chapel Hill, NC 27599-3330
lewandowski@sog.unc.edu
919-966-7288

E-mails sent to or from this e-mail address that relate to the School of Government's work are public records and may be subject to public access under the North Carolina public records law.