

TEXAS DEPARTMENT OF STATE HEALTH SERVICES

KIRK S. COLE
INTERIM COMMISSIONER

August 12, 2015

ACTION

MEMORANDUM FOR THE COMMISSIONER

FROM: Lisa Hernandez, General Counsel

SUBJECT: Recommendation for Implementation of procedures regarding issuance of same sex married couples' related vital records in response to the U.S. Supreme Court Ruling in *Obergefell* and U.S. District Court ruling in *DeLeon v. Abbott*

Purpose

To request approval of the implementation of recommendations regarding the issuance of vital records for vital events that occurred in Texas, in compliance with the U.S. Supreme Court ruling in *Obergefell v. Hodges*, No. 14-566 (U.S. 2015) (*Obergefell*), and the U.S. District Court ruling in *DeLeon v. Abbott*, No. SA-13-CA-00982-OLG (W.D. Tex. July 7, 2015) (*DeLeon*), regarding recognition of same-sex marriage.

Background/Summary

DSHS' Office of General Counsel has been working with the Vital Statistics Unit (VSU) and the Office of the Attorney General (OAG) since the day of the ruling in *Obergefell*, specifically, June 26, 2015, to implement changes to forms and practices that enable DSHS to comply with the ruling. On Friday, June 26, 2015, DSHS modified its formal marriage application and informal marriage application for use by local registrars and distributed the form to local registrars for immediate use on that same day. DSHS also accepted hand-modified marriage applications received for filing even after it submitted the revised marriage application to local officials. Since that time, DSHS has received and filed 963 same-sex marriage license applications to date.

With the issuance of *Obergefell*, DSHS also immediately began reviewing vital events forms, identified all vital event areas and records that may be impacted by the ruling, began to assess costs and effort to amend forms, and continued its review with the OAG of the ruling to

Action Memorandum for the Commissioner
August 12, 2015
Page 2

determine the impact on other vital events and records. The other vital events and/or forms that DSHS had identified as potentially impacted by the ruling were birth certificates, death certificates, adoptions and supplementary birth certificates, gestational agreements, burial permits, disinterment, and divorce forms. On July 7, 2015, the U.S. District Court for the Western District of Texas, San Antonio Division, issued a decision in *DeLeon*, consistent with the U.S. Supreme Court's decision in *Obergefell*.

This recommendation is a result of the advice provided by the OAG along with DSHS' evaluation of its forms and processes to enable it to implement the rulings.

Discussion

In consultation with the OAG, DSHS OGC is recommending that DSHS address the issuance of vital event records for the following vital events in response to the *Obergefell* and *DeLeon* rulings as follows:

Birth Certificates: Birth certificates are to be issued/amended for same sex-couples to whom a child was born in Texas when one spouse is the birth mother, if the parents were legally and formally married in Texas or another state at the time of the child's birth and provide documentation to this effect, along with other standard documentation required for birth certificate issuance/amendment. This does not include adoptions or gestational agreements (surrogate birth), which are referenced below.

Death Certificates: Death certificates will be processed and issued/amended to include the name of a decedent's same-sex surviving spouse, when the death occurred in Texas on or after June 26, 2015 for same-sex couples that were formally and legally married in Texas or another state, at the time of the decedent's death. Documentation must be provided to this effect, along with other standard documentation required for issuance/amendment of a death certificate. For decedents who died in Texas prior to June 26, 2015, an amendment to the death certificate, as requested, will be processed recognizing any legal, formal same-sex marriage at the time of death, for same-sex marriages that occurred in another state prior to June 26, 2015, to list the surviving spouse and the decedent's status as "married". Documentation must be provided to this effect, along with other standard documentation required for an amendment to a death certificate.

Adoptions: For any adoption ordered on or after June 26, 2015, supplementary birth certificates for children born in Texas, will be issued/amended for the adopted child to include same-sex couples whose names are listed on the court order or formal certificate of adoption as the adoptive parents. Documentation must be provided to this effect, along with other standard documentation required for issuance/amendment of a supplementary birth certificate for an adoption. For adoptions ordered prior to June 26, 2015, amendments to supplementary birth certificates previously issued, will be processed and issued, as requested, to list the names of

Action Memorandum for the Commissioner
August 12, 2015
Page 3

both persons of the same-sex couple if both are named as parents in the court ordered adoption. Documentation must be provided to this effect, along with other standard documentation required for issuance of an amendment to a supplementary birth certificate for an adoption.

Gestational Agreements (Surrogacy): Birth certificates will be processed and issued/amended for any births occurring in Texas, for which persons that are a same-sex couple are legally authorized to be the intended parents of the child as authorized by Texas Family Code, ch. 160, subchapter I. Documentation must be provided to this effect, along with other standard documentation required for issuance/amendment of records for these vital events.

Burial Permits, Disinterment, Divorce and other Vital Events/Records not listed above: Any additional requests that are received that are not listed above and involve the recording of vital events through vital records will be reviewed and processed to ensure compliance with *Obergefell* and *DeLeon*.

With your approval, OGC will work with VSU to amend existing forms to ensure the proper reflection of terms and status of persons that are listed on vital records as a result of the implementation of these recommendations. While we will work to implement all aspects immediately and process and issue all requests as soon as possible, DSHS has identified some forms that require software modification to properly reflect terminology consistent with the Courts rulings.

All modified forms and instructions will be communicated to local registrars or other entities that may file vital information such as hospitals and funeral homes. Additional information will be provided on DSHS' website and other areas where the public may seek vital records information from DSHS, regarding required documentation or other necessary instructions regarding the issuance of records for the events described above specific to the changes required by the courts' rulings.

For any pending requests, DSHS will reach out to the requestor regarding the status of the request, any need for additional documentation and the anticipated time frame by which the request may be processed.

Recommendation

That you approve the processing and issuance of vital records regarding the vital events described above in compliance with *Obergefell* and *DeLeon*.

Action Memorandum for the Commissioner
August 12, 2015
Page 4

Commissioner's Decision

Approve

 8/12/2015

Disapprove

Modify

Needs More Discussion

Pend for Future Consideration

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CLEOPATRA DE LEON, NICOLE §
DIMETMAN, VICTOR HOLMES, and §
MARK PHARISS, §
Plaintiffs, §

v. §

GREG ABBOTT, in his official capacity as §
Governor of the State of Texas, KEN §
PAXTON, in his official capacity as Texas §
Attorney General, GERARD RICKHOFF, §
in his official capacity as Bexar County §
Clerk, and KIRK COLE, in his official §
capacity as interim Commissioner of the §
Texas Department of State Health Services §
Defendants. §

CIVIL ACTION NO.
5:13-CV-982-OLG

ADVISORY TO THE COURT

Today, the Department of State Health Services issued an Action Memorandum implementing changes to vital records for vital events in compliance with the U.S. Supreme Court ruling in *Obergefell v. Hodges*, No. 14-566 (U.S. 2015), and this Court's July 7 ruling. The memorandum is attached to the declaration that verifies it.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

CHARLES E. ROY
First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Civil
Litigation

ANGELA COLMENERO
Division Chief - General Litigation

/s/ William T. Deane
WILLIAM T. DEANE
Texas Bar No. 05692500
MARC RIETVELT
Texas Bar No. 24043892
Assistant Attorney General
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 936-1534
(512) 320-0667 FAX
bill.deane@texasattorneygeneral.gov
marc.rietvelt@texasattorneygeneral.gov

***ATTORNEYS FOR STATE
DEFENDANTS***

CERTIFICATE OF SERVICE

I certify that on August 12, 2015, I served all parties a copy of the foregoing document via the Court's ECF service.

/s/ William T. Deane
WILLIAM T. DEANE

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

CLEOPATRA DE LEON, NICOLE §
DIMETMAN, VICTOR HOLMES, and §
MARK PHARISS, §
Plaintiffs, §

v. §

CIVIL ACTION NO.
5:13-CV-982-OLG

GREG ABBOTT, in his official capacity as §
Governor of the State of Texas, KEN §
PAXTON, in his official capacity as Texas §
Attorney General, GERARD RICKHOFF, §
in his official capacity as Bexar County §
Clerk, and KIRK COLE, in his official §
capacity as Interim Commissioner of the §
Texas Department of State Health Services §
Defendants. §

DECLARATION OF BARBARA LAUREL KLEIN

My name is Barbara Laurel Klein and I am over the age of 18 and fully competent to make this declaration and state the following:


1. I am a Deputy General Counsel for the Department of State Health Services.
2. On August 12, 2015, the Department of State Health Services issued an Action Memorandum implementing changes to vital records for vital events in compliance with the U.S. Supreme Court ruling in *Obergefell v. Hodges* and the U.S. District Court ruling in *DeLeon v. Abbott*, regarding recognition of same-sex couples.

3. Attached as Exhibit A is a true and correct copy of the Action Memorandum.
4. The Court has ordered Defendants to also submit an advisory by August 24, 2015 regarding pending applications. (Dkt. #113.) With the adoption of the attached Action Memorandum, the Department has begun issuing death certificate amendments.
5. The processing of software modifications by the third-party vendor that hosts the platform for vital records will take additional time, which will impact the issuance of birth certificates. Until that change is made, those requesting a birth certificate listing parents of the same sex may choose either to (1) obtain the standard birth certificate listing "mother" and "father" as well as an amendment to the birth certificate once the software modification is complete; or (2) obtain an original birth certificate allowing for the parents to be identified as "mother," "father" or "parent" once the software modification is complete. The Department has investigated other options, none of which appear viable other than the modifications described above, but will continue to explore other alternatives.
6. The Department has had multiple telephone conferences with the vendor so far, regarding the required changes. The vendor is working toward developing an expected timeline to complete the software modification.

7. For pending requests of which the Department is currently aware, the Department will begin issuing qualifying death records and contact requestors of qualifying birth records, to advise them of their available options to obtain their records.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of August, 2015.


Barbara Laurel Klein