



June 11, 2014

General Notice to all Clerks of the Orphans' Court

The United States District Court for the Middle District of Pennsylvania on May 20, 2014, in *Whitewood v. Wolf*, No. 1:13-cv-1861 (per Jones, J.), ruled that the provisions of the Pennsylvania Marriage Law that prohibit same-sex marriage (23 Pa. C.S. §§ 1102, 1704) violate the Fourteenth Amendment to the U.S. Constitution. Consequently, the court permanently enjoined the Secretary of Health and other government officials from enforcing those provisions of Pennsylvania law.

The decision in *Whitewood* requires every government official who administers the Marriage Law – ***including every clerk of the orphans' court*** – to perform his or her duties in accordance with the court's order.¹ That means that a clerk of the orphans' court must consider applications for the issuance of a marriage license ***without regard to the gender of the applicants***.

The Department of Health by law is responsible to see that the laws providing for the licensing and registration of marriage are uniformly and thoroughly enforced throughout the Commonwealth. See 71 P.S. § 534(c). The Department also is responsible by law to prescribe the forms that are to be used for marriage licenses and the applications for marriage licenses, and to collect and compile statistics relating to marriage licenses issued and marriage certificates filed. See 23 Pa. C.S. §§ 1103, 1106; 35 P.S. § 450.601.

The Department of Health is in the process of preparing revisions to the prescribed forms to conform to the decision in *Whitewood*. In the meantime, the clerks of the orphans' courts should continue to modify the county's marriage forms as necessary to conform with the court's order.

The Department of Health appreciates the clerks' patience as it develops new forms that comply with the Marriage Law and the court's order in *Whitewood*.

¹ Judge Jones stated expressly in the *Whitewood* case that "***all*** Clerks of the Orphans' Court would be subject to [any] legal mandate" entered in favor of the plaintiffs. *Whitewood v. Wolf*, No. 1:13-cv-1861, at 8 (M.D. Pa. Nov. 15, 2013) (emphasis added) (citing *Dep't of Health v. Hanes*, 78 A.3d 676, 688 (Pa. Commw. 2013)).