

IN AND FOR THE CIRCUIT COURT OF ORANGE COUNTY, FLORIDA
NINTH JUDICIAL CIRCUIT

HONORABLE TIFFANY MOORE RUSSELL,
ORANGE COUNTY CLERK OF COURTS,
ORANGE COUNTY, FLORIDA,

CASE NO.:

2014-CA-13275.

Petitioner.

EMERGENCY PETITION FOR DECLARATORY JUDGMENT

The Honorable Tiffany Moore Russell, Orange County Clerk of Courts, in and for Orange County, Florida, by and through her undersigned attorneys files this Emergency Petition for Declaratory Judgment and asserts:

1. This is an action for an emergency petition for declaratory judgment pursuant to Chapter 86, Florida Statutes.
2. Venue for this action is properly in the Circuit Court of Orange County, Florida.
3. The Honorable Tiffany Moore Russell, Orange County Clerk of Courts, Orange County, Florida is the petitioner. As the Clerk of the Courts, the petitioner has taken an oath to include but not be limited to complying with the laws of the State of Florida.
4. That the petitioner is a member of the Florida Bar, licensed to practice law in the State of Florida. As a Florida Bar licensed attorney, petitioner has taken an oath to uphold and comply with the laws of Florida.
5. The petitioner is a Florida elected public official obligated to comply with the Florida code of ethics for public officials and all Florida laws.
6. That Florida Statute 741.01, specifically provides in pertinent part that

County court judge or clerk of the circuit court to issue marriage license; fee.—

(1) Every marriage license shall be issued by a county court judge or clerk of the circuit court under his or her hand and seal. The county court judge or clerk of the circuit court shall issue such license, upon application for the license, if there appears to be no impediment to the marriage.

Section 741.01, Fla. Stat. (2014)(emphasis added.)

7. That on or about August 2, 2014, a Federal District Court Judge in the Northern District of Florida, issued a ruling finding Florida's same sex marriage laws unconstitutional. Brenner v. Scott, 999 F. Supp. 2d 1278 (N.D. Fla. 2014.) This decision takes effect on January 6, 2014. Attached hereto as exhibit "A" is a copy of the decision

8. Both the Federal Eleventh Circuit Court of Appeals and the U.S. Supreme Court declined a request to stay the effect of the Court's decision. Attached as Composite Exhibit "B" is a copy of the December 3, 2014 Order of the Eleventh Circuit Court of Appeals Denying Motion to Extend Stay Pending Appeal and the December 19, 2014 Order of the United States Supreme Court Denying Application to Stay Preliminary Injunctions.

9. Relevant to the decision rendered in Brenner v. Scott, petitioner received legal opinions dated July 1, 2014 and December 15, 2014 from the attorneys for the Association of Florida Clerks of Courts interpreting the application of the decision to any clerk outside the named party and on December 23, 2014 an opinion from the National Center for Lesbian Rights and Equality Florida addressing the same issue. The opinions of the attorneys for the Clerks of the Courts Association and the National Center are conflicting and are attached hereto as Exhibit "C".

10. That a motion has been filed this past week with the federal judge who rendered the Brenner decision, asking the judge to clarify the applicability of the decision to clerks outside the named Washington County Clerk of the Courts. As of the filing of this Emergency Petition no clarification has come from the federal judge.

11. That immediately prior to her election as the Clerk of Courts, the petitioner served as a member of the County Commission for Orange County Florida and while on the Commission specifically moved for and obtained approval of a motion for Orange County to sign on to an amicus curiae brief in the federal court action described herein. This brief supported a finding of unconstitutionality of Florida's same sex marriage ban.

12. That notwithstanding the personal advocacy undertaken by the petitioner as a legislative body member, the role of Clerk of Court's requires ministerial adherence to the laws and to the opinions of the courts, rendering a lack of clarity that cannot be resolved absent a determination by this Court.

13. That due to the lack of clarity as to the petitioner's right to issue a same sex marriage license to an applicant on January 6, 2015, the petitioner would be exposed to one or more of three adverse actions described hereinafter if said license was issued and it was determined it was not within her authority to do so:

- A. A criminal complaint;
- B. A Florida Bar complaint; and/or
- C. A Florida Commission on Ethics complaint.

14. In addition to the petitioner, all Orange County Court judges would be exposed to a criminal complaint; Florida Bar complaint and judicial qualifications complaint if they issued a same sex marriage license and it was determined to violate the law.

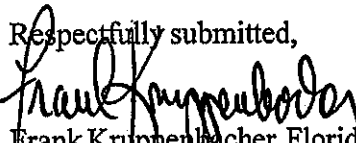
15. Moreover, the taxpayers of Orange County would be subject to reimbursement of potentially large awards of attorneys' fees if litigation ensues from numerous same-sex couples seeking to enforce their equal protection rights asserted under the Brenner decision, supra.

16. That the petitioner desires to issue the same sex marriage licenses applied for by any individuals in Orange County, Florida on January 6, 2015 and in so doing desires to assure she will not be exposed to a criminal, Florida Bar and/or Florida Commission on Ethics complaint and that in issuing said license the legal integrity of the couple's union would be protected.

17. That the Honorable Jeff Ashton has been provided notice of the filing of this Emergency Petition for Declaratory Judgment. Mr. Ashton has previously publicly stated he would not prosecute the clerk for issuing such a license on January 6, 2015.

18. Because Florida Statutes also provide for pre-requisites to be met prior to a valid marriage license being issued, including either completion of a premarital course or abiding by a three-day waiting period, a ruling on an emergency basis on or prior to January 3, 2015 is required to properly allow the Clerk and the citizens of Orange County to be meaningfully advised of their rights in advance of January 6, 2015.

WHEREFORE, the petitioner, the Honorable Tiffany Moore Russell, respectfully requests this Court enter an order determining that she is within her legal right to issue same-sex marriage licenses on January 6, 2015.

Respectfully submitted,

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