Federal magistrate, authority to solemnize marriage

Number: INFORMAL

Date: September 25, 2008

The Honorable Howard T. Snyder
United States Magistrate Judge
United States Middle District Court
300 North Hogan Street, Suite 5-211
Jacksonville, Florida 32202-4251

Dear Judge Snyder:

You ask whether you are authorized to solemnize marriages within the State of Florida.

Section 741.07(1), Florida Statutes, provides in part that "all judicial officers, including retired judicial officers . . . may solemnize the rights of matrimonial contract, under the regulations prescribed by law." This office has stated that, in the absence of legislative or judicial clarification, a federal district court judge whose court has jurisdiction over a part of the state would appear to qualify as a judicial officer of this state.[1]

Thus, section 741.07(1), Florida Statutes, would appear to permit judicial officers in whom the federal or state judicial power is vested and who have jurisdiction within this state to solemnize marriages within this state. However, whether a federal magistrate is exercising judicial powers under federal law is not a matter upon which this office may comment.[2] Questions involving the interpretation of federal law are generally referred to the federal agency in question.

I would note that in Attorney General Opinion 92-62, this office concluded that a judge of compensation claims was not a judicial officer within the meaning of section 741.07, Florida Statutes, and, therefore, may not solemnize a matrimonial contract. Such a conclusion was based on the provision of Article V, section 1, Florida Constitution, which provides that the judicial power of the state shall be vested in a supreme court, district courts of appeal, circuit courts and county courts, and the fact that judges of compensation were within the then Department of Labor and Employment Security under the secretary of that department which was a part of the executive branch of state government, and were therefore exercising quasi-judicial powers.[3]

Accordingly, a federal magistrate whose jurisdiction is within the State of Florida would appear to constitute a judicial officer if such magistrate is vested with judicial powers under federal law.

I trust that the above informal advisory comments may be of assistance. Thank you for contacting the Attorney General's Office.

Sincerely,

Joslyn Wilson

Assistant Attorney General

JW/t

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[1] *But see* Inf. Op. to the Honorable Hugh Lawson, United States District Court, Middle District of Georgia, dated May 4, 2005, stating that a temporary assignment to a federal district court in Florida, which appears to be for the purpose of enabling the federal judge to perform such a marriage ceremony, would not appear to satisfy the intent of section 741.07, Florida Statutes, which appears to limit the authority of judicial officers to perform marriages within this state to those who have significant ties to this state.

[2] *See* 28 U.S.C. s. 631, authorizing the judges of each United States district court and the district courts of the Virgin Islands, Guam, and the Northern Mariana Islands to appoint United States magistrate judges in such numbers and to serve at such locations within the judicial districts as the Judicial Conference may determine under the chapter.

[3] *Cf.* Op. Att'y Gen. Fla. 72-262 (1972), concluding that a state attorney is not a judicial officer for purposes of solemnizing marriages since he or she is not a judicial officer within the meaning of Article V, section 1, 1885 Florida Constitution.