Florida Marriage Law

Number: INFORMAL

Date: March 18, 2008

Mr. Paul E. Novak, Jr.
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Attn: Robert P. Davison, Jr., Esq.
Supervisory Adjudications Officer

Dear Mr. Novak:

The Office of Florida Attorney General Bill McCollum has received your letter asking about this state's recognition of foreign marriages. Attorney General McCollum has asked me to respond to your inquiry.

Florida follows the general rule that the validity of a marriage, as far as it depends on the preliminaries and the manner of its contraction or celebration, is to be determined by referring to the law of the place where it was entered into or celebrated. Therefore, a marriage which is valid where it is contracted or celebrated is generally regarded as valid in this state unless it is contrary to the statutes or public policy of Florida.[1] However, Florida law does not recognize marriages between persons of the same sex entered into in any jurisdiction or relationships between persons of the same sex which are treated as marriages in any jurisdiction. Section 741.212, Florida Statutes, provides:

"(1) Marriages between persons of the same sex entered into in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, or relationships between persons of the same sex which are treated as marriages in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, are not recognized for any purpose in this state.
(2) The state, its agencies, and its political subdivisions may not give effect to any public act, record, or judicial proceeding of any state, territory, possession, or tribe of the United States or of any other jurisdiction, either domestic or foreign, or any other place or location respecting either a marriage or relationship not recognized under subsection (1) or a claim arising from such a marriage or relationship.
(3) For purposes of interpreting any state statute or rule, the term "marriage" means only a legal union between one man and one woman as husband and wife, and the term 'spouse' applies only to a member of such a union."

Florida law prohibits incestuous marriages, that is, those between persons within a certain

relationship to each other. Section 741.21, Florida Statutes, provides:

"A man may not marry any woman to whom he is related by lineal consanguinity, nor his sister, nor his aunt, nor his niece. A woman may not marry any man to whom she is related by lineal consanguinity, nor her brother, nor her uncle, nor her nephew."

In Florida, such marriages are not void but are merely voidable.[2]

Florida generally requires that parties to a marriage contract be 18 years old but recognizes certain circumstances when a marriage license may be issued to persons under the age of 18. Section 741.0405, Florida Statutes, states:

"(1) If either of the parties shall be under the age of 18 years but at least 16 years of age, the county court judge or clerk of the circuit court shall issue a license for the marriage of such party only if there is first presented and filed with him or her the written consent of the parents or guardian of such minor to such marriage, acknowledged before some officer authorized by law to take acknowledgments and administer oaths. However, the license shall be issued without parental consent when both parents of such minor are deceased at the time of making application or when such minor has been married previously.
(2) The county court judge of any county in the state may, in the exercise of his or her discretion, issue a license to marry to any male or female under the age of 18 years, upon application of both parties sworn under oath that they are the parents of a child.
(3) When the fact of pregnancy is verified by the written statement of a licensed physician, the county court judge of any county in the state may, in his or her discretion, issue a license to marry:
(a) To any male or female under the age of 18 years upon application of both parties sworn under oath that they are the expectant parents of a child; or
(b) To any female under the age of 18 years and male over the age of 18 years upon the female's application sworn under oath that she is an expectant parent.
(4) No license to marry shall be granted to any person under the age of 16 years, with or without the consent of the parents, except as provided in subsections (2) and (3)."

While Florida law does not deal directly with proxy marriages, case law in this state would indicate that a marriage may be invalid by reason of having been entered into under duress.[3] Such a marriage is voidable only and thus, is binding on the parties until annulled by a court of competent jurisdiction.[4]

Finally, the validity of creating a common-law marriage was well recognized in Florida until common-law marriages were abolished by statute. *See* section 741.211, Florida Statutes. However, the statute affects only those relationships entered into, or proof of such relationships by conduct engaged in, after January 1, 1968, and does not render void common-law marriages in existence on this date.[5] The general rule in Florida is that a common-law marriage carries with it the same rights and incidents of a ceremonial marriage.[6]

If you wish to monitor legislative activity regarding any of the statutes discussed, the Florida Legislature maintains an on-line database of Florida statutes at: http://www.leg.state.fl.us. Any of the cases I have referred to may be updated using Shepard's Citations.

I trust these informal comments will be helpful. Thank you for contacting the Florida Attorney General's Office for assistance.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] *See* 25 Fla. Jur. 2d *Family Law* s. 35.

[2] *See Johnson v. Landefeld*, 189 So. 666 (Fla. 1939).

[3] *State ex rel. Foster v. Anders*, 184 So. 515 (Fla. 1938), *rehearing denied,* 185 So. 321 (Fla. 1938); *Cooper v. Cooper* 163 So. 35 (Fla. 1935); *Tyson v. State* 90 So. 622 (Fla. 1922).

[4] *In Re Estate of Ruff,* 32 So. 2d 840 (Fla. 1947). *And see Arnelle v. Fisher,* 647 So. 2d 1047 (Fla. 5th DCA 1994).

[5] *See Sacks v. Sacks*, 267 So. 2d 73 (Fla. 1972), *conformed to* 269 So. 2d 425 (Fla. 3d DCA 1972); *Burke v. Burke,* 447 So. 2d 944 (Fla. 3d DCA 1984); *Witham v. Warren,* 427 So. 2d 347 (Fla. 1st DCA 1983); *In Re Estate of Bragg*, 334 So. 2d 271 (Fla. 3d DCA 1976).

[6] *Rotwein v. Gersten,* 36 So.2d 419 (Fla. 1948); *Budd v. J. Y. Gooch Co.,* 27 So. 2d 72 (Fla. 1946); *McClish v. Rankin,* 14 So. 2d 714 (Fla. 1943).