



Documents received from the Arkansas Department of Health

in response to Arkansas Civil Liberties Union's

Arkansas Freedom of Information Act request of July 23, 2015



Arkansas Department of Health

4815 West Markham Street • Little Rock, Arkansas 72205-3867 • Telephone (501) 661-2000

Governor Mike Beebe

Nathaniel Smith, MD, MPH, Director and State Health Officer

MEMORANDUM

TO: Stephanie Williams, Deputy Director for Public Health Programs
Ann Purvis, Deputy Director for Administration

FROM: Rick Hogan, General Counsel

SUBJECT: Amendment of Parentage for Same-Sex Couples

DATE: May 13, 2014

Question Presented:

What is the legal basis for allowing same-sex couples to amend parentage on birth certificates without a court order?

Answer and Discussion:

Judge Piazza, in his opinion issued on May 9, 2014, held that “Arkansas’s marriage laws discriminate against same-sex couples in violation of the Equal Protection Clause...” *Wright et al. v. Arkansas*, Case No. 60CV-13-2662, pg. 4 (Pulaski County Circuit Court, 2nd Div., May 9, 2014). After this decision was handed down, marriages between couples of the same-sex became legally recognized in Arkansas. The Arkansas Department of Health was a named Defendant in the litigation.

A heterosexual couple who has a child and then chooses to get married may request a new birth certificate amending the child’s parentage to include the father. This is known as a legitimization request and is governed by Rule 5.2 of the Rules and Regulations Pertaining to Vital Records. These heterosexual couples may make this request by completing an affidavit of paternity, signing it in the presence of a notary public, bringing a certified copy of their marriage license to Vital Records, and paying the \$27.00 printing fee. These couples *do not have to seek a court order* unless there is another man’s name listed as the father on the birth certificate. Rules and Regulations Pertaining to Vital Records Rule 5.2; *See also* Ark. Code Ann. § 20-18-406(a)(2) (a new certificate may be established based on the evidence required by regulation that a person has been legitimated).

Same-sex couples who already have children are now similarly situated. Even those same-sex couples who were married in another state prior to the birth of their child did not have their marriage legally recognized in Arkansas until May 9, 2014. Therefore, in Arkansas, their marriage did not exist until after the birth of their child. When they seek to add the second parent's name to their child's birth certificate, they are similarly situated to the newly married heterosexual couple seeking to legitimize their child.

To state that now legally married, same-sex couples must have a court order to add the name of the second parent to the birth certificate is to treat these couples differently than we treat married couples. This would violate the equal protection clause and the spirit, if not the letter, of Judge Piazza's May 9, 2014 ruling. As Judge Piazza said, "the only effect the bans have on children is harming those children of same-sex couples *who are denied the protection and stability of parents who are legally married.*" *Wright*, pg. 9. ADH's decision to allow same-sex couples to add the second parent's name to their child's birth certificate grants the children of those couples the same protections and privileges of children born to heterosexual couples—namely, the right to two loving, *legal* parents who can provide them with insurance, medical care, and inheritance rights.



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Nathaniel Smith, MD, MPH, Director and State Health Officer

MEMORANDUM

TO: Melinda Allen, State Registrar

FROM: ADH Legal Services

SUBJECT: Amendments of Paternity for Same Sex Couples

DATE: May 14, 2014

Same-sex couples that had children in a valid marriage of another state may seek to amend the birth certificate adding both parents' names to the birth certificate.

To state that now legally married, same-sex couples must have a court order to add the name of the second parent to the birth certificate is to treat these couples differently than we treat married couples. This would violate the equal protection clause and the spirit, if not the letter, of Judge Piazza's May 9, 2014 ruling. As Judge Piazza said, "the only effect the bans have on children is harming those children of same-sex couples *who are denied the protection and stability of parents who are legally married.*" *Wright*, pg. 9. ADH's decision to allow same-sex couples to add the second parent's name to their child's birth certificate grants the children of those couples the same protections and privileges of children born to heterosexual couples—namely, the right to two loving, *legal* parents who can provide them with insurance, medical care, and inheritance rights.

To issue a new birth certificate listing a same sex couple as the parents, you must check the following:

1. Both individuals wishing to be listed as parents have signed an affidavit attesting that no other person has legal, parental rights to the child;
2. The child is "of the marriage"—i.e., the marriage took place before the child was born in another state, but the marriage was not legally recognized in Arkansas until May 9, 2014.

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3. No one is listed on the putative father's register as a possible father of the child; and
 4. No one is named on the birth certificate as the father.

Also, it is important to note that the birth certificate "is only prima facie evidence of parentage and does not, in and of itself, confer parental rights that must be recognized." *In re Adoption of Sebastian*, 879 N.Y.S.2d 677 (2009); *see also* A.C.A. § 9-10-108(b) ("the appearance of the name of the father with his consent on the certificate of birth" constitutes a prima facie case of establishment of paternity). We may consider putting language to the effect of "the Arkansas Department of Health, Division of Vital Records is not a court of competent jurisdiction and cannot confer legal, custody rights on any party."

Elizabeth Pitman

From: Melinda Allen
Sent: Monday, May 12, 2014 8:10 PM
To: Ann Purvis (ADH); Stephanie Williams; Robert Brech; John Senner; Susan Wylie
Cc: Rick Hogan; Reginald Rogers; Cathy Flanagan; Elizabeth Pitman; Kerry Krell; Nate Smith, M.D.
Subject: Update on adding the parent of a same-sex marriage to the birth certificate
Attachments: LEGITIMATION FORM-REVISED - Same Sex.doc

After much deliberation, our legal counsel, along with my consent, came up with how we wanted to address same-sex couples coming in the office to add their name as a parent to a birth certificate. The decision is to follow the same procedures that we would follow for our legitimations. The name of the form (attached) has been changed to Affidavit for Amendment of Parentage and we revised certain fields to reflect "Parent One" and "Parent Two".

We will continue to use our legitimation forms for heterosexual marriages and the amendment of parentage forms for the same-sex couples. I interviewed today with channel 4 and he asked me if we will use the new forms from here on out, for all couples – I let him know that we will only be using them for same-sex couples. The following information is what I let him know: 1) Both parents will need to complete the form with a notarized signature and 2) They need a certified copy of the birth certificate 3) the fee is \$27 and \$10 for each additional copy for each child (so if they have two children, they will have to pay \$27 for the first copy). They can also mail them in, but I think everyone is hurrying, since the outcome is uncertain.

We amended nine birth certificates today, adding Parent #2 to the certificate. We will probably have several tomorrow. Please feel free to correct me on anything – I wanted to be sure everyone was in the loop and since it took the whole day for most of us, I know it's easy to forget to update everyone.

Thanks!

Melinda Allen

Vital Records State Registrar
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INSTRUCTIONS FOR AMENDMENT OF PARENTAGE

Our office can prepare a new birth certificate for your child and add the name of the Parent Two, if the father is not listed on the present birth record, and if the mother was not married at the time of conception or birth or anytime in between.

An Out-of-State Marriage License may be dated before the child's birth, since Arkansas did not recognize same-sex marriage until May 9, 2014. In this case, Parent Two can be added, as long as Parent Two is the same parent listed on the Out-of-State Marriage License.

PLEASE SEND:

1. **CERTIFIED COPY** of the parent's marriage license, dated **AFTER** the child's Birth. (You may get a certified copy of the license from the County Clerk where the original license was issued.) Do not send the original license or an un-certified copy.
2. Completed **AFFIDAVIT** signed by **BOTH** parents in the presence of a Notary Public. Use the affidavit form enclosed.
3. \$27.00 for the first copy of the new certificate. Additional copies are \$10.00 each

SEND THE ABOVE MATERIALS TO:

Arkansas Dept. of Health & Vital Records
Amendment Section
4815 W Markham St, SLOT 44
Little Rock AR 72205-3867

YOU MAY CONTACT THIS OFFICE BY CALLING (501) 682-1214.

AFFIDAVIT FOR AMENDMENT OF PARENTAGE

This affidavit must be signed by both parents, in the presence of a Notary Public, and must be accompanied by the parents' marriage license. The marriage license for same-sex marriages was recognized in Arkansas on May 9, 2014, which is **AFTER** the Child's date of birth. The marriage license must be certified from the County Clerk's Office where the license was issued.

State of _____

County of _____

We, the parents of _____, born in
_____ Arkansas, on _____
(TOWN) (COUNTY) (Month) (Day) (Year)

Wish to have our child carry the surname as indicted on the line on the bottom of the page. We also wish for the new birth certificate to show the parent's information as we have listed below and the new name for the child as listed below.

PARENT TWO INFORMATION:

Full name: _____ (Parent one signature)

Race: _____

Date of Birth: _____ (Parent two signature)

Birth State: _____

Occupation: _____
(at the time child was born)

The child's last name is to be _____.

Subscribed and sworn to before me this _____ day of _____ 20_____.

Seal _____
(Notary Public signature)

My commission expires: _____