

ADMINISTRATIVE DIRECTIVE NO. 179

This 22nd day of December, 2011:

IT APPEARS THAT:

- (1) In 1996, 13 *Del.C.* § 106 was amended to provide that current and former judges of the Supreme Court, Court of Chancery, Superior Court, Family Court, Court of Common Pleas, and Justice of the Peace Court, may solemnize marriages. The person performing the marriage ceremony is required to return the marriage certificate to the issuing clerk of peace within four days of performing the ceremony and will be assessed a \$50 late fee by the clerk of peace if they fail to return the certificate within 15 days after the ceremony. 13 *Del.C.* §§ 114 and 118. They must also retain the original or copy of the marriage license for not less than 1 year after the ceremony. 13 *Del.C.* § 117. Consistent with those record-keeping requirements, Supreme Court Administrative Directive No. 108, with subsequent amendments, was issued requiring that judges file a report of all marriage ceremonies performed by that judge with the Administrative Office of the Courts within 30 days of the ceremony and that the Administrative Office of the Courts maintain a docket of marriages performed by the judges of this state.
- (2) On January 1, 2012, the Civil Union and Equality Act of 2011, set forth in Chapter 2 of Title 13 of the Delaware Code, goes into effect, thereby creating the legal relationship of civil union between two individuals of the same sex. Similar to their authority with regard to solemnizing marriages, current and former judges of the Supreme Court, Court of Chancery, Superior Court, Family Court, Court of Common Pleas, and Justice of the Peace Court, will have the authority to solemnize civil unions. 13 *Del.C.* § 205. Within 15 days of that ceremony, the person performing the ceremony must return the form to the issuing clerk of court or be assessed a \$50 late fee for failure to do so, and must retain the original or copy of the civil union license for not less than one year after the ceremony. 13 *Del.C.* § 209.
- (3) Concurrent with this initiative, the record-keeping procedures implemented by Administrative Directive 108 were reviewed. The review indicated that there is no need to continue to require judges to file forms with the Administrative Office of the Courts related to marriage ceremonies that they have performed since there has never been a request to view or copy marriage records maintained by the Administrative Office of the Courts since 1996, multiple government entities maintain the records, and judges maintain their own records related to the ceremonies that they have performed.

- (4) Section 214 of Title 13 of the Delaware Code provides that references to “marriage,” “spouse,” or similar terms, in the Delaware Code or other Delaware laws, including court rules, with limited exceptions, shall be deemed to also refer to a civil union or to a party of a civil union. This provision would extend references to “spouse” to include a party of a civil union in the Delaware Judges’ Code of Judicial Conduct. Similarly, the provision of Section 3.12 of the Delaware Judges’ Code of Judicial Conduct, which states that a judge solemnizing a marriage should not solicit or accept a fee, reimbursement of expenses, or a gift, except for a non-monetary gift, if the gift is fairly commensurate with the occasion and the judge’s relationship with the persons involved, would also apply to a judge’s solemnization of a civil union.

NOW, THEREFORE, IT IS DIRECTED, with the unanimous concurrence of the members of the Supreme Court, pursuant to DEL. CONST. art. IV, § 13, that:

Effective immediately, Administrative Directive No. 108, Third Amendment, issued on April 11, 2003, is hereby rescinded. A Judge is no longer required to file a report of marriage ceremonies performed by that judge with the Administrative Office of the Courts. A Judge officiating a marriage or civil union ceremony is responsible for maintaining a copy or the original of the marriage or civil union form, pursuant to 13 *Del.C.* §§ 114 and 209.



Chief Justice

c: The Honorable Jack A. Markell
The Honorable Randy J. Holland
The Honorable Carolyn Berger
The Honorable Jack B. Jacobs
The Honorable Henry duPont Ridgely
Members of the Judicial Conference
Justices of the Peace

The Honorable Joseph R. Biden, III
The Honorable Brendan O’Neill
State Court Administrator
Clerk of the Supreme Court
Counsel to the Governor
Chair Senate Judiciary Committee
Chair House Judiciary Committee