

No. 2017-9436

In the Supreme Court of the United States

JUAN FRANCISCO VEGA

v.

ROBERT W. GERMAINE

*ON WRIT OF CERTIORARI
FLORIDA SECOND DISTRICT COURT OF APPEAL*

BRIEF FOR RESPONDENT

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QUESTION PRESENTED

MAY A CLERK OF COURT PROPERLY WITHHOLD
ISSUANCE OF A MARRIAGE LICENSE WHERE THERE
APPEARS TO BE AN IMPEDIMENT TO THE
MARRIAGE?

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**RESPONDENT'S RESPONSE TO PETITIONER'S PETITION
FOR WRIT OF CERTIORARI**

STATEMENT OF FACTS

From what can be determined from documents consisting of attachments which will be referred to herein, Petitioner, through his prospective spouse, Nancy Martinez, applied for a marriage license on or about February 3, 2017. The Respondent Clerk of Courts, upon a determination that Petitioner was in fact incarcerated, under a civil commitment in a State of Florida Department of Children and Families facility in Arcadia, Florida, required Petitioner to provide authorization from said facility indicating that the marriage license would in fact be approved.

According to the attached Exhibit 1, Florida Civil Commitment Center, ("FCCC") resident grievance filed by Petitioner, the administrator of the facility in which Petitioner resides determined that the marriage certificate would neither be approved,

nor denied, but no action would be taken. Position was confirmed via email from the facility dated August 18, 2017. (See Exhibit 2 attached hereto).

The Clerk's office then submitted to Ms. Martinez a letter indicating that it could not assist with the request for issuance of a marriage license by correspondence dated March 9, 2017 (see Exhibit 3).

The Respondent has had a long standing policy in which is considers "incarcerated marriages" which include marriages in which one or both parties are incarcerated, or civilly committed to be impediments to the marriage requiring approval by the correctional institution or civil commitment residents' administrator before the license is issued.

Otherwise, the appearance of both parties is required at the clerk's office for execution of the application. The incarcerated marriages' policy is attached hereto as Exhibit 4.

ARGUMENT

Section 741.01, F.S. directs the clerk of the circuit court to issue marriage licenses upon application if there appears to be no impediment to the marriage.

The issue was addressed in an advisory legal opinion from the attorney general's office (AGO-78-07) (copy attached as Exhibit 5). That opinion cites the sole authority in Florida remotely on point, specifically, *Richardson v. Lawrence* 163 So. 231 Fla. 1935. That opinion, relied upon by the attorney general's office in its opinion, stated that a county court judge is authorized and required to issue a marriage license only (*emphasis in original AGO opinion*) in the event that there appears to be no

impediment to the marriage; moreover, it is the duty of the parties seeking a marriage license to demonstrate, if the judge so requires, that there is no impediment to the marriage.

The Clerk determined that the incarceration of the Petitioner herein constituted an impediment to the marriage and pursuant to its long standing policy concerning incarcerated marriages, required the prior written approval of the facility in which Petitioner was incarcerated.

Pursuant to *Richardson supra*, and the attorney general office's opinion the burden then rested upon Petitioner to demonstrate and establish a lack of an impediment. Petitioner was unable to do so because the administrator of the facility in which he is incarcerated refused to provide the approval.

It would appear that Petitioner's claim, if any, does not lie against the Respondent, Clerk of Courts, but should be pursued against the administrator and the facility in which he is incarcerated.

Petitioner has unfortunately sought relief against the wrong party. When only a single party to the prospective marriage appeared before the Clerk and sought a marriage license, the Clerk appropriately determined whether there appeared to be an impediment to the marriage. Upon determination the other party to the marriage was in fact incarcerated, the Clerk investigated with the administrator of the facility whether it would authorize the marriage. Upon a determination that authorization would not be forthcoming, the Clerk determined that an impediment to the marriage existed and pursuant to case law and the Attorney General's opinion cited herein,

declined to issue the marriage license.

It is not within the authority of the Clerk to determine whether the administrator of facility's determination is legal, nor valid. The Clerk of Court is without authority to instruct the administrator of the facility that it's policy is volatile of Federal or State law.

It is in fact incumbent upon the parties seeking the marriage license to demonstrate that no impediment to the marriage exists. Therefore, the proper remedy for Petitioner is not to seek mandamus against the Clerk, but to seek relief against the administrator of the facility of which he is incarcerated.

The Florida Second District Court of Appeal in its order denying the petition for writ of mandamus herein cited *Suarez v. Port Charlotte HMA, LLC* 171 So3d 740 (Fla 2nd DCA 2015). The Court specifically stated and advised Petitioner that he was not barred from seeking relief at law or through administrative proceedings. The Court was advising Petitioner quite clearly that his claim against the Clerk was improper and that his relief lay elsewhere.

The case cited by the Florida Second DCA *Suarez v. Port Charlotte HMA, LLC*, 171 So3d 740 (Fla 2nd DCA 2015) summarizes requirements for the issuance of the writ of mandamus:

“To render the mandamus a proper remedy, the officer to whom it is to be directed, must be one to whom, on legal principles, such writ may be directed; and the person applying for it must be without any other specific and legal remedy.” Citing *Marbury v. Madison* 5 U.S. 137, (1803).

CONCLUSION

Petitioner may well be entitled to issuance of a marriage license if he can establish that the facility's administrator has improperly withheld authorization for the marriage. The burden to establish that fact and remove the impediment lies not on the Clerk, but on the parties seeking the marriage license. The Florida Supreme Court properly declined jurisdiction of this cause. The Florida Second DCA properly denied issuance of a writ of mandamus against the Clerk of Courts for Highlands County, Florida. This Court should also decline issuance of a writ of mandamus against the Clerk, and as did the Florida Second DCA, advise Petitioner that he has alternative legal or administrative remedies.

Respectfully submitted this 6th day of September, 2018.

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jkmpleadings@mllaw.net (Service)
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By: /s/ John K. McClure
John K. McClure
Florida Bar No.: 286958

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CERTIFICATE OF SERVICE

I, JOHN K. McCLURE, counsel for Robert W. Germaine, Clerk of the Circuit Court of the Tenth Judicial Circuit in and for Highlands County, Florida, hereby certify that on this 6th day of September, 2018, I caused a copy of the Brief for Respondent to be served upon:

Juan Francisco Vega
Resident #991353
Florida Civil Commitment Center
13619 S.E. Highway 70
Arcadia, FL 34266
Petitioner

I further certify that all parties required to be served have been served.

McCLURE & LOBOZZO
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Sebring, FL 33870
863-402-1888 Office
863-471-0751 Facsimile
jkmpleadings@mllaw.net (Service)
jvpleadings@mllaw.net (Service)

By: /s/ John K. McClure
John K. McClure
Florida Bar No.: 286958

State of Florida
Department of Children and Families
FCCC RESIDENT GRIEVANCE

Name of Resident: VEGA, JUAN	FCCC ID#: 991353	Date Received: 2-6-17 (office use only)
Date of Incident Occurrence: 2-3-17 (Grievance must be received within 30 days)	Housing Unit: DUBLIN Date Grievance Submitted: 2-4-17	Assigned To: Non-Compliant Grievance # 16454 (office use only)
Due Date: 2-20-17		

Grievance is regarding: ☐ Medical ☐ Food Service ☐ Mail/Package ☐ Account ☐ Behavior Management
☐ Computer Lab ☐ Staff ☐ Clinical Treatment ☐ Canteen/Supply ☐ Maintenance ☒ Other

No Resident shall be retaliated against as a result of filing a grievance

PLEASE DO NOT ALTER FORM

Use only this form to give a BRIEF summary of Grievance: As a civil detainee I have the right to pursue a marriage with any civilian. On February 3, 2017 at approximately 10:00 AM FCCC's Administrator told me that he will not approve or deny my marriage to Nancy Martinez.

Relief Requested: I want the approval or monetary compensation.

Resident Signature: [Signature] Date: 2/4/17

Signature is required Resident keeps pink copy - Submit white and yellow copies in Resident Communication Box

INFORMAL ATTEMPT TO RESOLVE:

(Completed By Division Director or Designee)

Staff Response:

Date Received: 2/6/17

RETURN - LEGAL ISSUE.

FCCC Staff Signature: B.R. Mason

Date: 2/6/17

☒ Accepted ☐ Not Resolved Resident's Signature: _____ Date: _____

Signature of Staff Performing Face To Face: _____

(Resident cooperation required for face to face step or response will be accepted)

(If Accepted, Resident keeps yellow copy. If Not Resolved, Staff to forward yellow and white copy to Grievance Examiner)

FACILITY ADMINISTRATOR'S RESOLUTION:

(if not resolved at informal level)

Decision: ☐ Upheld ☐ Denied

Date Received: _____

Facility Administrator's Signature: _____ Date: _____

Date Returned to Resident by Grievance Examiner: 2-6-17

EXHIBIT

tabbies

Jim V. Lobozzo

From: Germaine, Robert W. <rgermaine@hcclerk.org>
Sent: Friday, August 18, 2017 3:27 PM
To: jlobozzo@mllaw.net
Subject: Fwd: Vega-Martinez Marriage Request

This is the response we received back.

Thanks
Bob

Begin forwarded message:

From: "Rivera, Antonia" <Arivera@hcclerk.org>
Date: August 18, 2017 at 3:21:40 PM EDT
To: "Germaine, Robert W." <rgermaine@hcclerk.org>
Cc: "Kaszubowski, Jerome N." <jkaszubowski@hcclerk.org>
Subject: FW: Vega-Martinez Marriage Request

Dear Sir,

This is what was sent to us.

Thank you.

Antonia Rivera
Director of Official Records
Tax Deeds & Marriage Licenses
Highlands County Clerk of Courts
590 S. Commerce Avenue
Sebring, Florida 33870
#863-402-6596
arivera@hcclerk.org

From: Lavon Cardenas [<mailto:LaCardenas@CorrectCareRS.com>]
Sent: Friday, August 18, 2017 3:20 PM
To: Dodd, Robin L. <Rdodd@hcclerk.org>
Cc: Rivera, Antonia <Arivera@hcclerk.org>
Subject: RE: Vega-Martinez Marriage Request

See below:

FCCC does not support marriages at our facility.

Donald A Sawyer, PhD, MBA



Facility Administrator

From: Dodd, Robin L. [mailto:Rdodd@hcclerk.org]
Sent: Friday, August 18, 2017 8:33 AM
To: Lavon Cardenas <LaCardenas@CorrectCareRS.com>
Cc: Rivera, Antonia <Arivera@hcclerk.org>
Subject: Vega-Martinez Marriage Request

Good Morning Ms. Cardenas,

We have received a marriage license request from Juan Vega to marry Nancy Martinez.
Could you please provide our office with your response to this request as soon as possible.

Thank you and have a great day,

Robin Dodd
Supervisor of Tax Deeds & Marriage License
Highlands County Clerk of Courts
863-402-6586
rdodd@hcclerk.org



ROBERT W. GERMAINE

CLERK OF THE COURTS • HIGHLANDS COUNTY, FLORIDA
OFFICE LOCATION: 430 SOUTH COMMERCE AVENUE
THE COURTHOUSE

CLERK OF CIRCUIT COURT
CLERK OF COUNTY COURT
COUNTY AUDITOR
COUNTY RECORDER
CLERK TO THE BOARD OF COUNTY COMMISSIONERS

PLEASE REPLY TO:

590 SOUTH COMMERCE AVENUE
SEBRING, FLORIDA 33870-3867
PHONE (863) 402-6565
SUNCOM 718-6565
FAX (863) 402-6768

March 9, 2017

Nancy Martinez
PO Box 3215
Fort Myers, Florida 33903

Re: Marriage License of Juan Vega and Nancy Martinez

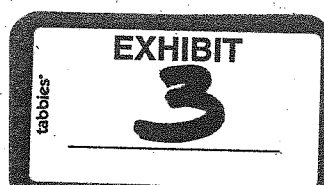
Dear Ms. Martinez,

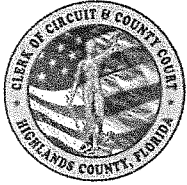
This is to advise you that we are not able to assist you with your request.

Please contact the Clerk's office in your county for assistance.

Thank you.

Antonia Rivera
Antonia Rivera
Director of Official Records
590 S. Commerce Avenue
Sebring, Florida 33870
#863-402-6596





Robert W. Germaine
Clerk of Courts - Highlands County, Florida

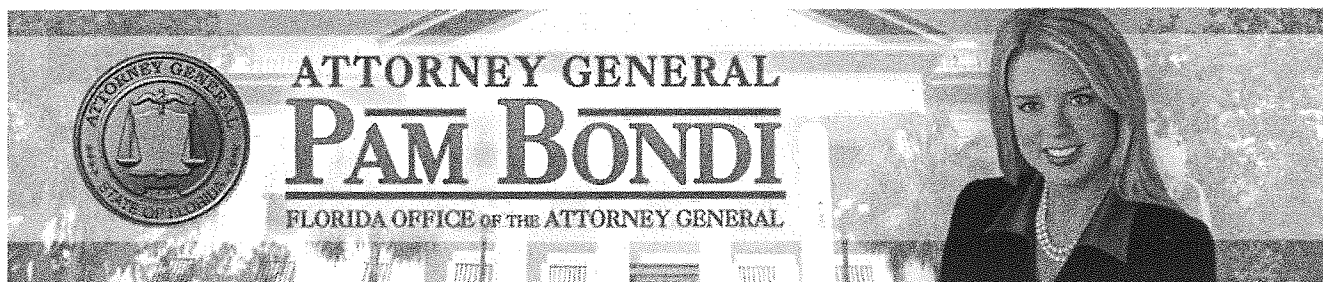
CLERK OF CIRCUIT COURT
CLERK OF COUNTY COURT
COUNTY AUDITOR
COUNTY RECORDER
CLERK TO THE BOARD OF COUNTY COMMISSIONERS

590 SOUTH COMMERCE AVENUE
SEBRING, FLORIDA 33870-3867
PHONE (863) 402-6564
SUNCOM 742-6564
FAX (863) 402-6768

Incarcerated Marriages

1. Must present a statement from facility with the inmate's name authorizing marriage request on prison letterhead
2. We issue license with bride's information only
3. Blackout dates on license for issue and expiration
4. Make copy and give original to bride to take to the facility for groom to complete.
5. Groom's information must be verified and his signature notarized
6. Once we receive the license back again enter the Groom's information into the system
7. Type new issue and expiration dates on original license
8. Return license to bride to take to the facility on that day of the ceremony
9. Once marriage ceremony is complete the license is returned to our office for recording, we will mail 2 certified copies and SS paperwork to bride.





Advisory Legal Opinion - AGO 78-07

[Print Version](#)

Number: AGO 78-07

Date: January 10, 1978

Subject: Impediment to marriage license

MARRIAGE LICENSES--APPLICATIONS FOR ISSUANCE--ACCEPTANCE

To: Arthur H. Beckwith, Jr., Clerk, Circuit Court, Sanford

Prepared by: Joslyn Wilson, Assistant Attorney General

QUESTION:

Should an application for a marriage license be accepted if at the time of application there appears to be an impediment to the marriage?

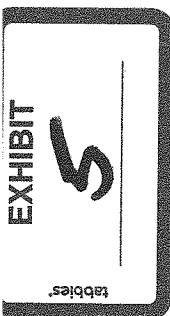
SUMMARY:

An application for a marriage license must be accepted by the county court judge or the clerk of the circuit court. If, however, upon consideration of the application, there appears to be an impediment to the marriage, the judge or clerk, as the issuing officers of marriage licenses, cannot be compelled to issue a license until the applicant, when called upon to do so, has demonstrated that there is no impediment to the marriage.

Section 741.01, F. S., states in pertinent part:

"Every marriage license shall be issued by a county court judge or clerk of the circuit court under his hand and seal. Said county court judge or clerk of the circuit court shall issue such license, upon application therefor, if there appears to be no impediment to the marriage."

This office has previously considered the authority of the Legislature to regulate the marriages of its citizens; see AGO 078-5 in which I stated that the courts possess only such jurisdiction over marriage and its incidents as has been granted by the Legislature. Section 741.01, F. S., represents a delegation of some of the Legislature's power by clearly designating the county court judge and the clerk of the circuit court as the issuing officers of marriage licenses. Section 741.01 does not, however, appear to grant the clerk or the judge any discretion in



accepting or refusing to accept an application for a marriage license. Rather, once the application is on file, it appears that the clerk or judge upon consideration of the application may determine whether there appears to be an impediment to the marriage. In AGO 074-338 I concluded that it is the duty of a judge or clerk to issue a license to marry when, upon consideration of the application, there appears to be no impediment to the marriage and all legal requirements for the issuance of a license have been met. See also AGO 076-60 which sets forth the general procedure in issuing these licenses. The judge or clerk cannot, however, be compelled to issue a marriage license until the applicant, when called upon to do so, has demonstrated to the judge's or clerk's satisfaction that there is no impediment to the marriage; see also *State ex rel. Richardson v. Lawrence*, 163 So. 231 (Fla. 1935) in which the Florida Supreme Court stated that a county court judge is authorized and required to issue a marriage license only in the event that there appears to be no impediment to the marriage; moreover, it is the duty of the parties seeking a marriage license to demonstrate, if the judge so requires, that there is no impediment to the marriage.

Accordingly, I am of the opinion that a county court judge or clerk of the circuit court must accept an application for a marriage license. He is not, however, required to issue a marriage license unless there appears to be no impediment to the marriage. Moreover, he may require a showing by the applicant that no such impediment exists. However, if there does not appear to be any impediment to the marriage, it is the duty of the clerk or county court judge to issue a marriage license upon application therefor, provided all legal requirements for a license have been met.

Florida Toll Free Numbers:

- Fraud Hotline 1-866-966-7226

- Lemon Law 1-800-321-5366