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ISSUE BRIEF: Marriage Licenses in Michigan Can Be Issued if an Applicant Does Not Have a Social Security Number

Over the last several years, Michigan's families have had to deal with increased scrutiny when members of their families are immigrants to this country. One blatant example of this trend has occurred when a few county clerks in the state imposed requirements to apply for a marriage license that were not based in law. Michigan's immigrant families should soon be free of this unlawful trend – requiring marriage license applicants to have social security numbers – due to a recent Michigan Attorney General opinion that clarifies that the practice is not allowable under the law.

Background

Beginning in 2006, priests in Kent County and Ottawa County reported that the county clerks in those counties were denying the right of couples to marry in cases in which at least one of the parties did not have a social security number (SSN). The justification for the denials was based on the county clerks incorrectly interpreting a state law to require both applicants for a marriage license to possess and present SSN's. Neither county clerk articulated a reasonable explanation for this policy change, considering that the relevant state law had not changed since 1998. Additionally, the clerks' implementation of the new requirement exhibited a lack of understanding of federal immigration law.

Two Michigan statutes require that applications for a marriage license contain the applicants' social security number *in order to comply with federal law*.¹ The Federal law in question is section 466 of the Social Security Act,² which was effective in 1997 and was promulgated in order to assist the government in tracking child support obligations. It provides the following:

“Each state must have in effect laws requiring the use of the following procedures...: Procedures requiring that the social security number of any applicant for a professional license, driver's license, occupational license, recreational license, or marriage license be recorded on the application...”

The federal agency charged with enforcing this provision is the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement. The Office has made it clear that

the requirement that an applicant for a marriage license provide a SSN only applies if the applicant *actually has* a SSN. If he or she does not have a SSN, then an affidavit certifying the absence of a SSN is sufficient.³

Immigration Considerations

In implementing its interpretation of the marriage license procedure, the Kent County Clerk created an “Affidavit for Not Providing Social Security Number on Marriage Affidavit.” At least one other county clerk used a similar document. The Affidavit failed to list accurate reasons why an applicant would not possess a social security number. The first option on the list is “Citizen of another country – proof required – passport with entrance permission.” This is a meaningless category under federal immigration law, as citizens of other countries may or may not have SSN's, regardless of whether they have entrance stamps in their passports. Similarly, “citizenship application pending” (another option on the affidavit) is not determinative of whether an applicant would have a SSN.

Non-citizens who are not authorized to accept employment in the United States are not eligible to obtain social security numbers. Other non-citizens who would not possess a SSN are those who are eligible for employment but who have not yet applied for a SSN and those would have applied but have not yet received the numbers.

Non-citizens in the following statuses would either not be eligible for SSN's, or may not possess them due to recent acquisition of status or other valid reasons: Asylee, Refugee, Temporary Protected Status, Humanitarian Parole, Battered Immigrant/Deferred Action, Pending Asylum Application, Family Unity, Newly approved Legal Permanent Residents, A visa, B visa, C Visa, D Visa, E Visa, F Visa, H1B Visa, H2A Visa, H2B Visa, I Visa, K Visa (including fiancées of American citizens), L Visa, M Visa, N Visa, O Visa, P Visa, R Visa, S Visa, T Visa

³ “Section 466(a)(13) of the Act does not require that an individual have a Social Security number as a condition of receiving a license, etc. We would advise States to require persons who wish to apply for a license who do not have Social Security numbers to submit a sworn affidavit, under penalty of perjury, along with their application stating that they do not have a Social Security number.” Policy Interpretation Question 99-05, found at <http://www.acf.hhs.gov/programs/cse/pol/PIQ/1999/piq-9905.htm>

¹ MCL 333.2813(2)(c); MCL 551.102(1) and (3)

² 42 U.S.C. § 666(a)(13)

(victim of trafficking), U Visa (victim of serious crime), V Visa.⁴

Michigan Attorney General Opinion

On March 19, 2008, the Michigan Attorney General released an opinion⁵ regarding two questions: (1) “*Whether a county clerk may issue a marriage license if an applicant for the license fails to provide a social security number on his or her marriage application*”; and (2) “*Whether a county clerk is obligated to investigate the underlying reason why an applicant for a marriage license does not report a social security number on the application and, if so, whether the county clerk is required to report those findings.*”

As to the first question, the Attorney General found:

“A county clerk may issue a marriage license to an applicant who fails to provide his or her social security number on the application if the person has never been issued a social security number and so states on the affidavit for license to marry or in a separate sworn statement made a part of the application.”

The Attorney General followed the reasoning described above in “Background” to determine that federal law does not require that applicants be denied a marriage license solely for not having social security numbers. Therefore, because Michigan law requires a SSN on a marriage license application *only to the extent to comply with federal law*, the Attorney General found that Michigan law does not require a SSN for a marriage license from an applicant who does not possess one. The applicant has to state that he or she does not have a SSN on the application for marriage license (if using the official “Affidavit for License to Marry”), or on a separate sworn statement.

As to the second question, the Attorney General found:

“Where the applicant for a marriage license does not provide a social security number on the application for the license, the county clerk is not authorized to investigate the underlying reason why the applicant has failed to provide a social security number. However, the Act does not prohibit a county clerk from forwarding significant information to the appropriate authorities where, in the opinion of the clerk, the circumstances warrant that action.”

The Attorney General found that Michigan law does not authorize a county clerk to investigate why a marriage license applicant does not have a SSN. A county clerk’s duties under the Marriage License Act are “ministerial.”

However, the Attorney General Opinion’s last sentence states that Michigan law “does not prohibit a county clerk from forwarding significant information to the appropriate authorities where, in the opinion of the clerk, the circumstances warrant that action.” Presumably the opinion is attempting to imply that county clerks could attempt to refer marriage license applicants to immigration authorities if the county clerk believes that an applicant does not have legal immigration status.

Since certain county clerks have already exhibited an inability to correctly interpret state law, we are skeptical that a county clerk will have sufficient knowledge of both federal immigration law and the applicant’s ability to be lawfully present in the U.S. simply due to not having a social security number. As stated above, a lawfully-present non-citizen could be in any of dozens of immigration categories and yet still not have a SSN. We think a county clerk will be hard-pressed to justify disrupting the lives of Michigan families based on what could be national origin discrimination.

Conclusions:

- An applicant for a marriage license should never put false information on the application. If an applicant does not have a social security number, he or she should state “None” on the appropriate line on the Affidavit for License to Marry, or other similar document used in the county clerk’s office. A county clerk should not question the reasons for not having a SSN, and an applicant should not have to provide a reason.
- When only one person in a couple does not have a social security number, the person who has a SSN should submit the application to the county clerk’s office, since only one person needs to submit the application in person. This may help to avoid unnecessary questions or inappropriate investigation by the county clerk.
- If a couple is still not granted a marriage license due to lack of a social security number, they should contact an attorney. At the time of this writing, local advocates have reported that the Kent County Clerk has not yet decided whether to change its policy to follow the legal reasoning of the Attorney General’s opinion.
- An applicant who may not be in lawful immigration status is not protected from deportation by the Attorney General’s opinion, nor is she necessarily protected by marriage to a U.S. citizen. Everyone has the right to remain silent and should consult an immigration lawyer before answering any questions from county clerk’s office personnel or other government officials regarding immigrant status.

⁴ This list is not intended to be exhaustive.

⁵ OAG 7212, 3/19/2008, found at:

<http://www.ag.state.mi.us/opinion/datafiles/2000s/op10288.htm>