

The Transgendered and Marriage: I Wish I Could Just Sing

I recently had a client who was a former Louisiana resident now living in Texas. We will call her "Sarah." Sarah was a male-to-female transgendered woman who had legal concerns about her impending marriage. Her Louisiana birth certificate listed her as "male" and she had been unable to secure a name and gender change on the document from the Louisiana Department of Vital Records. The Department required that she undergo a physical examination by a Louisiana physician in order to obtain "proof" that she had, in fact, completed full sex-reassignment surgery. Sarah had the surgery performed out of the country, and was unable to obtain a copy of her medical records. She chose to not put herself through the trauma and humiliation of having a physician, with whom she had no prior relationship, perform the examination. The following represents the information I relayed to her:

"The issue turns on whether you and your fiancé want to get married as a "male/female" couple, or as a "male/male" couple.

If you were to marry in a state that issues same-sex marriage licenses, then it would not matter what sex your Louisiana birth certificate says you are - because these states allow marriages between male/male, female/female couples. If the state requires your original Louisiana birth certificate (currently listing your gender as "male") then you could marry in one of these states as a "male/male" couple.

Secondly, if any state DOES NOT require your birth certificate as identification for marriage, then you could submit your Texas license and/or U.S. Passport, which reflects your female gender, and you and your fiancé could have a marriage license issued from that state as a male/female couple.

Something else to think about:

If the state that issues your marriage license lists you as female, then it could be argued other states would be legally required to recognize your marriage (regardless of their laws about same-sex marriage). However, if you are married in one of the states allowing same-sex marriage, and you are recorded as a male/male couple, then only a handful of states will recognize your marriage as valid in their state."

After receiving my letter, Sarah called my office and exclaimed, "Gosh, all I want to do is be able to marry my fiancé!"

Sarah's difficulties reminded me of a story I had heard about singer/songwriter Nina Simone. Ms. Simone, an African-American woman, had experienced tremendous difficulties and prejudice throughout her career. As she traveled around the country performing, Ms. Simone, like Billie Holiday and many of her predecessors, never knew if she would be accepted and allowed to share her incredible talent in a particular city. At one point, when questioned about her thoughts after being banned from a Southern city,

Ms. Simone replied, "Man, I just want to sing." Consider the lyrics of the song she wrote following that incident:

I wish I knew how
It would feel to be free
I wish I could break
All the chains holdin' me
I wish I could say
All the things I should say
Say 'em loud say 'em clear
For the whole 'round world to hear.

I wish I could share
All the love that's in my heart
Remove all the doubts
That keep us apart
I wish you could know
What it means to be me
Then you'd see and agree
That every man should be free.

I wish I could give
All I'm longin' to give
I wish I could live like I'm longin' to live
I wish I could do all the things that I can do
And though I'm way overdue
I'd be startin' anew.

Well I wish I could be
Like a bird up in the sky
How sweet it would be
If I found out I could fly
Oh I'd soar to the sun
And look down at the sea
Then I'd sing cause I know how
It feels to be free.

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