Concerning Changes in Alabama Law

In May 2019, the Alabama legislature passed, and the Governor signed Alabama Act 2019-340. This Act amends various sections of current Alabama Law related to marriage and will go into effect on September 1, 2019. Our Chancellor has reviewed the act and advises that the new law removes the requirement for a marriage to be solemnized by a ceremony performed by a clergy member or other licensed official and removes the requirement for the Probate Judge to issue a marriage license. Couples will now be required to complete, sign, and file a form, affidavit, and data request. The parties are presumed married when the documents are signed, provided the documents are filed with the Probate Court within 30 days. The new law does not change the general laws as to who has the right to marry, or the current law concerning same sex marriages.

The paperwork called for by the new law requires the parties to declare the following:

- (a) They are not currently married;
- (b) They are at least 18 years of age, or if under 18 and at least 16, they are joined with the consent of the parent or guardian;
- (c) They are legally competent to enter into a marriage;
- (d) The parties are not related by blood or adoption, such that the marriage would violate other applicable Alabama law; and
- (e) The parties are entering into the marriage voluntarily and of their own free will and not under duress or undue influence.

Through premarital counselling the clergy member will have likely gathered this information from the couple, the completion of the required Alabama form provides confirmation that the clergy member has determined “that both parties have the right to marry according to the laws of the State and consent to do so freely, without fraud, coercion, mistake as to the identity of either, or mental reservation” as required under the Canons.

So, the question is now when should the couple sign the paperwork, and what should the clergy member do to ensure that he or she fulfills the requirements of the Canons? These two options offer the best practice:

1. Prior to the ceremony day, the couple may complete and file the required paperwork, and then provide a file stamped copy to the clergy member. This ensures that all the civil legal requirements have been met prior to the ceremony in the church; OR
2. On the day of the ceremony, the couple completes the required paperwork in the presence of a notary. This may be done prior to or after the ceremony.
couple will then need to file this paperwork with the Probate Court and pay the required fees within 30 days.

The first option means that the couple will be civilly married on a date different than the church ceremony. The second option means the civil marriage and the ceremony in the church occur on the same date but requires the couple to arrange for a notary to be present and to remember to file the paperwork within 30 days.

Both options create the possibility that the couple will be civilly married prior to the church ceremony. If this is the case, unless the couple specifically requests the service to be one that blesses their civil marriage, the clergy member and couple should use one of the authorized rites for the celebration of a marriage.\(^1\) While the clergy member is no longer a part of the solemnization of the civil marriage, the sacramental rite of marriage, and the grace and blessing received by the couple, is not dependent on that secular function.

The Rt. Rev. Kee Sloan  
Bishop of the Diocese of Alabama

\(^1\) The current authorized rites include the “Celebration and Blessing of a Marriage” and “An Order for Marriage” in the *Book of Common Prayer*; and the rites authorized by General Convention for trial use: “The Witnessing and Blessing of a Marriage,” “The Celebration and Blessing of a Marriage 2,” and “An Order for Marriage 2.”
In addition to the 2018 or later Canons on Marriage, the following are guidelines from the Bishop of Alabama regarding Episcopal Clergy serving as officiants in weddings within the Diocese of Alabama.

I. Please allow the bishop 30 days to respond to your marriage petition. Understanding that there may be extreme and unusual cases, this request is reasonable given the bishop’s schedule. *(See requirements below)*

II. It is assumed that before a petition for remarriage is submitted you have sufficiently counseled with the couple to form an opinion of the marriage. Approval of the petition should not be the signal to begin the counseling process. Certainly, no date for the marriage should be set prior to receiving consent.

III. If it is a third marriage for either party, it is **required** that they see a professional counselor at least two times and have a letter from the counselor sent to the bishop with your request. This is helpful for anyone who has been divorced and plans to be remarried and required in the case of two divorces. It is very unlikely that the bishop will be able to give approval for the remarriage in the church of a person who has been divorced three times or more.

IV. Every parish is requested to publish, prominently display, or circulate our teachings and procedures on this subject at least once a year.

V. It is strongly recommended that you consider the use of the Sacrament of Reconciliation during your counseling process. This seems to be suitable means of helping a person deal with the scars of a failed marriage before a new one begins.

VI. During pre-marital counseling, the content and implications of Title I, Canon 19, Sec. 1 should be forthrightly addressed.
A letter from the cleric, who will be solemnizing the vows, stating the facts regarding the first marriage should contain the following information:

1. The date of the divorce decree along with the name and location of the court that issued the decree. (The bishop expects you to have seen a copy of this decree, but please do not send your copy to the bishop’s office). If the divorced person was separated from the spouse or was living outside of the household before the divorce was granted and you believe that information is pertinent, please so indicate. Except in rare circumstances, a period of not less than 1 year from the date of the final decree should have elapsed before remarriage will be permitted.

2. Specific name and location of the church to which each of the betrothed belongs. Indicate their status as to whether or not they are baptized, confirmed, and active or inactive. If they are communicants of another parish within The Episcopal Church, indicate that you have received the consent of that priest.

3. The status and disposition of children, if any, from the former marriage. If either member of the betrothed couple does not have custody of his or her children, please indicate what responsibilities he or she might have towards those children and whether or not such responsibilities are current (child support, etc.).
   
   a. Your evaluation as to the reasons the former marriage(s) failed.
   
   b. Your strong recommendations concerning the proposed marriage.
   
   c. A signed copy of the Declaration of Intention should be included with your letter. This copy will not be returned.
   
   d. Assuming consent is given, please indicate to the bishop by letter the date and place of the service after the marriage has been solemnized. Make sure the service is properly entered in your parish register.
   
   e. It is within your discretion to refuse to solemnize any marriage. It is likewise within the discretion of the bishop to refuse consent.

These guidelines are applicable only to members of The Episcopal Church. If neither party is a member, the application will be received only if at least one of them has indicated a clear intention to be confirmed or received no later than the next confirmation date set for your parish.
Canon 18: Of the Celebration and Blessing of Marriage

**Sec. 1.** Every Member of the Clergy of this Church shall conform to the laws of the State governing the creation of the civil status of marriage, and also these canons concerning the solemnization of marriage. Members of the Clergy may solemnize a marriage using any of the liturgical forms authorized by this Church.

**Sec. 2.** The couple shall notify the Member of the Clergy of their intent to marry at least thirty days prior to the solemnization; *provided* that if one of the parties is a member of the Congregation of the Member of the Clergy, or both parties can furnish satisfactory evidence of the need for shortening the time, this requirement can be waived for weighty cause; in which case the Member of the Clergy shall immediately report this action in writing to the Bishop.

**Sec. 3.** Prior to the solemnization, the Member of the Clergy shall determine:
  a. that both parties have the right to marry according to the laws of the State and consent to do so freely, without fraud, coercion, mistake as to the identity of either, or mental reservation; and
  b. that at least one of the parties is baptized; and
  c. that both parties have been instructed by the Member of the Clergy, or a person known by the Member of the Clergy to be competent and responsible, in the nature, purpose, and meaning, as well as the rights, duties and responsibilities of marriage.

**Sec. 4.** Prior to the solemnization, the parties shall sign the following Declaration of Intention:

  *We understand the teaching of the church that God's purpose for our marriage is for our mutual joy, for the help and comfort we will give to each other in prosperity and adversity, and, when it is God's will, for the gift and heritage of children and their nurture in the knowledge and love of God. We also understand that our marriage is to be unconditional, mutual, exclusive, faithful, and lifelong; and we engage to make the utmost effort to accept these gifts and fulfill these duties, with the help of God and the support of our community.*

**Sec. 5.** At least two witnesses shall be present at the solemnization, and together with the Member of the Clergy and the parties, sign the record of the solemnization in the proper register; which record shall include the date and place of the solemnization, the names of the witnesses, the parties and their parents, the age of the parties, Church status, and residence(s).

**Sec. 6.** A bishop or priest may pronounce a blessing upon a civil marriage using any of the liturgical forms authorized by this Church.

**Sec. 7.** It shall be within the discretion of any Member of the Clergy of this Church to decline to solemnize or bless any marriage.
Canon 19: Of Regulations Respecting Holy Matrimony: Concerning Preservation of Marriage, Dissolution of Marriage, and Remarriage

Sec. 1. When marital unity is imperiled by dissension, it shall be the duty, if possible, of either or both parties, before taking legal action, to lay the matter before a Member of the Clergy; it shall be the duty of such Member of the Clergy to act first to protect and promote the physical and emotional safety of those involved and only then, if it be possible, to labor that the parties may be reconciled.

Sec. 2 (a) Any member of this Church whose marriage has been annulled or dissolved by a civil court may apply to the Bishop or Ecclesiastical Authority of the Diocese in which such person is legally or canonically resident for a judgment as to his or her marital status in the eyes of the Church. Such judgment may be a recognition of the nullity, or of the termination of the said marriage; provided that no such judgment shall be construed as affecting in any way the legitimacy of children or the civil validity of the former relationship.

(b) Every judgment rendered under this Section shall be in writing and shall be made a matter of permanent record in the Archives of the Diocese.

Sec. 3. No Member of the Clergy of this Church shall solemnize the marriage of any person who has been the husband or wife of any other person then living, nor shall any member of this Church enter into a marriage when either of the contracting parties has been the husband or the wife of any other person then living, except as hereinafter provided:

a. The Member of the Clergy shall be satisfied by appropriate evidence that the prior marriage has been annulled or dissolved by a final judgment or decree of a civil court of competent jurisdiction.

b. The Member of the Clergy shall have instructed the parties that continuing concern must be shown for the well-being of the former spouse, and of any children of the prior marriage.

c. The Member of the Clergy shall consult with and obtain the consent of the Bishop of the Diocese wherein the Member of the Clergy is canonically resident or the Bishop of the Diocese in which the Member of the Clergy is licensed to officiate prior to, and shall report to that Bishop, the solemnization of any marriage under this Section.

d. If the proposed marriage is to be solemnized in a jurisdiction other than the one in which the consent has been given, the consent shall be affirmed by the Bishop of that jurisdiction.

Sec. 4. All provisions of Canon I.18 shall, in all cases, apply.