

Christian Clerks Face NYC Same-Sex Marriage License Dilemma

✖ Should New York's clerks be forced to issue same-sex marriage licenses? That's the subject of a legal memo the Alliance Defense Fund circulated Friday.

The memo assures New York State municipal clerks responsible for issuing marriage licenses that the law does not require them to violate their sincerely held religious beliefs. In other words, clerks can delegate the issuance of same-sex marriage licenses to someone else.

"No one should have to choose between their religious beliefs and their job. The law—and New York's highest court—affirms this fundamental principle of freedom," says ADF Senior Counsel Brian Raum. "It's outrageous that officials are threatening criminal prosecution for clerks who exercise their lawful right to delegate the issuing of same-sex 'marriage' licenses, especially when the law requires the accommodation of their religious beliefs. We encourage all clerks to affirm their rights under New York State law."

As Raum hinted, the memo was circulated in response to threats from top officials of the Empire State to charge clerks who decline to issue such licenses with a criminal offense—forcing clerks to decide between their career and their faith. When New York's new definition of marriage takes effect on July 24, many clerks will be confronted with the conflict between surrendering to a new job requirement and adhering to their own religious beliefs.

After New York Gov. Andrew Cuomo signed same-sex 'marriage' into law, he admonished clerks. "You don't get to say, 'I like this law and I'll enforce this law,' or 'I don't like this law

and I won't enforce this law'—you can't do that. So if you can't enforce the law then you shouldn't be in that position.”

Nassau County District Attorney Kathleen Rice reflected a similar stance, declaring that “the law affords no discretion to public officials charged with granting marriage licenses. ... Therefore, any such refusal may be subject to criminal prosecution.”

Even though New York's Marriage Equality Act contains extremely narrow religious exemptions, it is devoid of any individual conscience protections. However, “New York's Human Rights Law requires employers to accommodate those [religious] beliefs unless it places an undue hardship on the employer,” the ADF memo to municipal clerks states.

ADF attorneys contend that delegation is not an undue burden because Executive Law § 296(10)(a) explicitly allows a municipality to delegate a clerk's duties concerning marriage licenses to a deputy clerk or any other municipal employee—giving it no reason to deny a clerk's request.