

May 15, 2017; Same-Sex Marriages and Children

There are few moments in a marriage more precious than the birth of a child. The joyous event signifies love, commitment, and hope. For most married couples, life just doesn't get any better – unless you happen to be a female same-sex married couple on Guam. For these couples, their joy soon turns into a nightmare when they go to Division of Vital Statistics to obtain a birth certificate.

Like many heterosexual couples, female same-sex couples frequently turn to the reproductive process of *in vitro* fertilization to begin their family. The sperm from a donor fertilizes one of the spouse's eggs, who then gives birth. What happens next, at least on Guam, is a classic case of discrimination. When the couple goes to Vital Statistics they are given a birth certificate that only lists the birth mother as a parent. The Vital Statistics Registrar, Carolyn Garrido, will tell the other spouse that the only way she can be listed as a parent is to adopt the child.

To understand the full discriminatory nature of this position, let's contrast this outcome with how this situation is handled by Vital Statistics if the married couple is heterosexual. Again, assume the couple has relied upon *in vitro* fertilization to bring about the birth of their child and that the sperm of an anonymous donor fertilized the wife's egg. When this couple goes to Vital Statistics and requests a birth certificate, they will be given one that lists *both* of them as the child's parent. Please note, just like the same-sex spouse in the first example, the heterosexual husband has no biological link to the child.

You may ask, as did I, why are the couples treated so differently? If this matter weren't of such great importance, Ms. Garrido's answer would be comical. She'll pull out a copy of Vital Statistic's birth certificate and point to the fact that the form, created by her office, has a blank to indicate the "mother" and another blank to indicate the "father." Because the husband in a heterosexual marriage is a male, he can be slotted as the "father" even though he isn't biologically related to the child. On the other hand, the female spouse of a female birth-mother isn't a male, so she can't be indicated as the "father."

However, according to Ms. Garrido, all is not lost. The same-sex married couple can remedy this situation by pursuing a costly and time-consuming adoption. Once the adoption process is completed, Vital Statistics works its magic and alters the child's birth certificate form to indicate both same-sex spouses as the child's parents. How interesting that such an alteration can be accomplished so easily after the adoption, but can't be similarly altered at the time of the child's birth. Why is this?

When Ms. Garrido's boss, Department of Public Health and Social Services Director James Gillan is asked this question, he replies with a standard mantra, "the law won't let us." Frustratingly, neither he nor his attorney has ever cited a specific law to back up this position.

Next week, I'll review the laws that clearly require Vital Statistics to list both same-sex married spouses on the birth certificate at the time of birth.