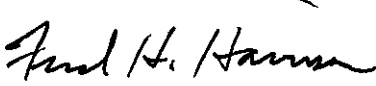


MEMORANDUM

TO: Ann Kemp
Vice President for Administration

Steve Wood, Associate Vice President
Benefits & Risk Management Services

FROM: Fred H. Harrison 
General Counsel

DATE: May 20, 2014

RE: Effect of Arkansas Supreme Court Stay Order in *Wright, et al. v. State of Arkansas, et al.* (Pulaski County Circuit Court)

Since my Memorandum of May 12, 2014 regarding Pulaski County Circuit Judge Chris Piazza's order of May 9, there was a subsequent order on May 15 by Judge Piazza entering a final order. The case was considered by the Arkansas Supreme Court under a Petition for Emergency Stay by the State Defendants – Appellants (“Stay Petition”) filed on May 15 immediately after Judge Piazza's final order.

The afternoon of Friday, May 16, the Supreme Court entered the following order: “State Defendants – Appellants’ Petition for Emergency Stay and Separate White, Washington, Lonoke and Conway County Appellants’ Expedited Motion for Stay are Granted.”

In my Memorandum of May 12, considering the possibility of a stay, I stated as follows: “Same sex couples married in Arkansas before such stay shall be entitled to participate in the University’s plan unless the stay order addresses this issue to the contrary.” (emphasis added). The Stay Petition discussed factors to be considered by the Supreme Court in ruling on the Petition. The State, in part, argued as follows: “...the Court should suspend judicial alteration of the status quo on the important issues at stake in this litigation by staying any order that alters the status quo pending appeal. (citing authority)” Accordingly, I am of the opinion that any same-sex couples married in Arkansas before the Stay and any same-sex couples married in another state recognizing same-sex marriages shall not be eligible for benefits under the

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University of Arkansas Community College at Batesville / Cossatot Community College of the University of Arkansas
University of Arkansas Community College at Morrilton / University of Arkansas at Fort Smith
Arkansas School for Mathematics, Sciences, and the Arts / University of Arkansas Clinton School of Public Service

University's medical benefit plan or other benefits of the University depending upon marital status, until this case runs its course. By granting the Stay Petition, the Supreme Court implicitly suspended judicial alteration of the status quo under Judge Piazza's opinion and final order. The status quo before his May 9 opinion is found in Ark. Code Ann. 9-11-109 which states that a marriage should only be between a man and a woman and a marriage between persons of the same sex is void. Ark. Code Ann. 9-11-208(a) states in part that no same-sex marriage shall be recognized as entitled to the benefits of marriage. Amendment 83 to the Arkansas Constitution is to the same effect.

Based on the above, I believe that it is necessary for the University and its employees who have entered into same sex marriages before the Supreme Court's stay order to maintain the same legal status which existed prior to Judge Piazza's opinion of May 9 and final order of May 15. I also believe that the University should abide by the then-existing law in the State of Arkansas which would prohibit the University recognizing same-sex marriages and granting benefits to employees in such a marriage. Otherwise, both the University and individuals concerned would run the risk of entering into legal relationships about important matters such as health care which later might be overturned. Also, this affords same-sex partners of University employees relying on Judge Piazza's opinion and final order and my Memorandum of May 12 to obtain insurance coverage other than under the University's medical benefit plan. Any premiums which may have been, or will be, deducted for employees enrolling should be refunded. I also note that under University's plan no coverage would begin until June 1, 2014 and current coverage is not affected.