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October 19, 2007

Mr. Timothy Boyer  
c/o Mr. Ismaa'eel Hackett  
North American Islamic Foundation, Inc.  
2215 N. Washington Street  
Wilmington, DE 19802-4000

Ms. Naomi Irvin  
Mr. Thomas (Junny) Barnhart  
2412 North Market Street  
Wilmington, DE 19802

Mr. James Washington  
309 West 29th Street  
Wilmington, DE 19802

Mr. Ernest M. Congo, Sr.  
Mr. Ernest M. Congo, II  
Congo Funeral Home  
2901 West 2nd Street  
Wilmington, DE 19801

Re: Boyer, et al. v. Irvin, et al.  
C.A. No. 3304-VCN  
Date Submitted: October 19, 2007

Ladies and Gentlemen:

The Court writes separately to elaborate upon the grounds set forth in its bench ruling during this morning's expedited telephonic hearing on Plaintiff Timothy Boyer's application for an immediate order to enjoin the funeral services planned by the Defendants for the decedent, Jeanea Irvin, then scheduled for

11:00 a.m. today. Mr. Boyer's application to enjoin this morning's funeral services was received by the Court early last evening, October 18, 2007. All of the named parties in this case, except for Mr. Boyer, participated in the teleconference this morning and had an opportunity to be heard in this matter.<sup>1</sup> Although the Court acknowledged that it would have been preferable if the parties had had more time to develop the facts and their legal arguments, given the need to bring prompt closure, the Court denied Mr. Boyer's application for emergency relief because he has failed to demonstrate any probability of success on the merits of his claim to be declared Jeanea Irvin's surviving spouse and, therefore, his claim of right to control the final disposition of Jeanea Irvin's remains and the ceremonial arrangements.

A. THE PARTIES

Plaintiff Timothy Boyer claims to be the surviving spouse of the decedent, Jeanea Irvin. Mr. Boyer therefore claims the right, as the decedent's surviving spouse, to arrange her funeral services in accordance with his (and, allegedly, the

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<sup>1</sup> Plaintiff Timothy Boyer is presently incarcerated in the Howard R. Young Correctional Institution and was unable to participate in the teleconference. Under the circumstances, the Court permitted Isma'eel Hackett, Director and Religious Advisor of Plaintiff North American Islamic Foundation, Inc., to represent Mr. Boyer's interest and to speak on his behalf, even though Mr. Hackett is not a licensed Delaware attorney. The Court also permitted the Clerk of the Peace for New Castle County to participate in the teleconference.

decedent's) Islamic faith. Plaintiff North American Islamic Foundation, Inc. ("NAIF") is a religious rights advocate for Muslims in Delaware and throughout the United States. Given the expedited nature of this proceeding, the Court permitted both Mr. Boyer and NAIF to be heard through its representative.

Defendant Naomi Irvin is the decedent's biological mother. Defendant James Washington is the decedent's biological father. Defendant Thomas Barnhart is Naomi Irvin's longtime companion and is alleged to be the decedent's "adoptive father."<sup>2</sup> Defendant Congo Funeral Home has arranged Jeanea Irvin's funeral service on behalf of the other named Defendants, but, otherwise, it has no real interest in this action.<sup>3</sup> The Defendants deny the validity of the marriage between Mr. Boyer and the decedent because no marriage license, as required under Delaware law, was ever obtained. As such, the Defendants claim the right to control the disposition of the decedent's remains and to arrange a funeral service in accordance with their (and, as they allege, the decedent's) Christian faith.

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<sup>2</sup> Naomi Irvin, Thomas Barnhart, and James Washington are all united in their view that the funeral service scheduled for Jeanea Irvin was the proper manner in which to lay the decedent to rest. As such, the Court need not resolve the precise nature of Mr. Barnhart's status or rights as a purported adoptive parent of the decedent.

<sup>3</sup> As used in this letter, "Defendants" refers to Ms. Naomi Irvin and Messrs. James Washington and Thomas Barnhart.

## B. FACTUAL BACKGROUND

The relevant facts in this action are largely undisputed. Mr. Boyer and the decedent entered into a marriage contract in the State of Delaware on April 23, 2006 that appeared to be in accordance with the tenets of the Islamic faith. Mr. Boyer and the decedent did not, however, obtain a Delaware marriage license before participating in the marriage process. Nevertheless, the marriage is evidenced by a written contract of marriage signed by the parties and witnessed by two (presumably competent) individuals. Thus, the April 23 marriage ceremony appears to have constituted a valid contracted marriage under Islamic tenets.<sup>4</sup>

At some time after April 23, 2006, Mr. Boyer was incarcerated. The Plaintiffs represented to the Court that Jeanea Irvin continued to be an active participant in the Islamic faith after Mr. Boyer was incarcerated. The Defendants, on the other hand, maintain that she ceased practicing her Islamic faith and had returned with her children to a Christian faith. The Court does not, and need not, resolve this particular factual dispute in order to resolve this case.

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<sup>4</sup> That conclusion does not necessarily determine whether the April 23, 2006 marriage was also valid under the laws of the State of Delaware.

### C. ANALYSIS

The Court was called upon to resolve a dispute between the Plaintiffs and the Defendants as to who has the right to control the final disposition of the decedent's remains and her funeral ceremony. The Delaware General Assembly recently prescribed in 12 *Del. C.* § 264(a) the order in which those rights will vest among various interested parties. The first two statutory categories are (1) the declaration prepared by the person and (2) the designation of a personal representative of the estate, neither of which occurred.

The right to control the disposition of the decedent's remains and her funeral ceremony next devolves to the decedent's surviving spouse.<sup>5</sup> The statute does not define the phrase "surviving spouse"; however, given the statutory scheme governing marriage in this State, the Court concludes that "spouse" in this context must mean a decedent's spouse pursuant to a lawful marriage as defined in Title 13, Chapter 1 of the Delaware Code (the "Marriage Statute").<sup>6</sup> If there is no surviving spouse, the right to control the disposition of remains and her funeral ceremony would next move to the decedent's adult children, and, if there are no adult children,

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<sup>5</sup> 12 *Del. C.* § 264(a)(3).

<sup>6</sup> See 13 *Del. C.* §§ 101, *et seq.*

as is the case here, then to the decedent's surviving parents or legal guardians.<sup>7</sup> Thus, the resolution of this matter turns on whether Mr. Boyer and the decedent entered into a lawful marriage under Delaware law on April 26, 2006. If they did not, then Mr. Boyer is not the surviving spouse of the decedent, and the Defendants would then have the right to determine the final disposition of remains and the funeral ceremony for the decedent.

The Court concludes, on the necessarily limited record, that Mr. Boyer and Jeanea Irvin were not lawfully married pursuant to the laws of the State of Delaware, or of any other jurisdiction which would oblige the State of Delaware to recognize their purported marriage. The Delaware General Assembly has carefully set forth the procedure by which persons may enter into a lawful marriage in this State. In short, the acquisition of a marriage license is a mandatory condition precedent to a lawful marriage under the laws of Delaware.<sup>8</sup> The Plaintiffs concede

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<sup>7</sup> The statute continues on to state the priority rights of other interested parties, but the Court need not look further as the rights of the parties in this action are determined at the point when the right rests with her surviving parents.

<sup>8</sup> The mandatory nature of the licensing requirement is clear. *See* 13 *Del. C.* § 106(a) (“No marriage *shall* be contracted or solemnized without the production of a license issued pursuant to this chapter.”) (emphasis added); *see also* 13 *Del. C.* § 107(a) (“Persons intending to be married in this State *shall* obtain a marriage license. . . .”) (emphasis added); 13 *Del. C.* § 107(b) (“The license *must* be delivered to the person who is to officiate *before* the marriage can be *lawfully* performed.”) (emphasis added).

that Mr. Boyer and the decedent never obtained a marriage license before entering into their April 23, 2006 marriage. As such, Mr. Boyer and the decedent never entered into a lawful marriage under Delaware law,<sup>9</sup> and, therefore, Mr. Boyer cannot be deemed the decedent's surviving spouse for the purposes of applying 12 *Del. C.* § 264(a) in this case.

Nevertheless, there are two arguments concerning the validity of the April 23, 2006 marriage ceremony that need to be addressed. The first argument, which was not specifically articulated by the Plaintiffs, is a statutory construction argument suggested by 13 *Del. C.* § 126 and two Delaware Superior Court cases. The second argument is a constitutional argument under the free exercise clause of the First Amendment to the United States Constitution and Article I, § 1 of the Delaware Constitution. The Court will address each of these arguments in turn.

Section 126 of Title 13 provides that nothing in the Delaware Marriage Statute “shall be construed to render any common-law or other marriage, otherwise

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<sup>9</sup> The Court assumes that the marriage contract entered into by Timothy Boyer and Jeanea Irvin on April 23, 2006 was a valid marriage contract under the tenets of the Islamic faith. Application of Delaware's Marriage Statute would accept the validity of that contract, if supported by a duly issued marriage license. Indeed, 13 *Del. C.* § 106(a) recognizes that marriages can be “solemnized or contracted according to the forms and usages of any religious society,” provided, however, that a marriage license is obtained prior to the marriage ceremony.

lawful, invalid by reason of the failure to take out a license as provided” in the statute. Thus, one could argue that a marriage is “otherwise lawful” under Delaware law so long as it is not prohibited by 13 *Del. C.* § 101 and is solemnized by some type of public marriage ceremony. The Delaware Superior Court arguably recognized this argument in two principal cases, *Wilmington Trust Company v. Hendrixson*<sup>10</sup> and *In re Parson’s Estate*.<sup>11</sup> Both cases arguably stand for the proposition that an otherwise valid marriage is not void under Delaware law due to the failure to obtain a marriage license. Both cases are distinguishable from this case, however, and neither case conclusively stands for the proposition that individuals desiring marriage need not comply with the Delaware Marriage Statute.

*Hendrixson* involved a couple who cohabitated and held themselves out to the public as husband and wife. Delaware does not recognize common law marriage, and the couple never obtained a marriage license or solemnized their relationship with a formal ceremony. Thus, the Delaware Superior Court concluded that no valid marriage existed between the parties. In dictum, however, the Superior Court stated its supposition that the Delaware General Assembly intended Section 126 to

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<sup>10</sup> 114 A. 215 (Del. Super. Ct. 1921) (en banc).

<sup>11</sup> 59 A.2d 709 (Del. Super. Ct. 1949).



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recognize a valid Delaware marriage where a couple failed to obtain a marriage license but nevertheless had solemnized their relationship with some type of marriage ceremony. In other words, so long as a marriage is evidenced by some type of ceremony, *i.e.* something more than a mere common law marriage, the failure to obtain a marriage license is not fatal to the validity of the marriage. Unlike the court in *Hendrixson*, the Court in this case is actually called upon to determine the validity of a marriage duly “contracted according to the forms and usages” of Islam, but lacking the necessary marriage license required by Delaware law. Although *Hendrixson* suggests one possible resolution of this case, the conclusion reached by the Superior Court is dictum and is therefore not determinative of this Court’s resolution of this matter.

Focusing on the speculative dictum in *Hendrixson*, the Superior Court in *In re Parson’s Estate* found a valid marriage where the parties had solemnized their marriage with a ceremony but failed to obtain the necessary marriage license. *In re Parson’s Estate* is distinguishable from this case, however, because there was testimony and evidence in that case that a marriage license may have been obtained by the couple, even though no such license existed in the public records. In this

case, the record is clear that no marriage license was ever obtained by Mr. Boyer and the decedent either in Delaware or in any other jurisdiction. Thus, *In re Parson's Estate* similarly cannot be read as holding that Section 126 vitiates the requirement of obtaining a license in advance of a marriage under Delaware law.

The better reading of 13 *Del. C.* § 126 is not that it applies to save Delaware marriages from the lack of a marriage license, but instead that it is intended to sustain marriages that are lawful in other jurisdictions when confronted with the requirements of the Delaware Marriage Statute. In essence, Section 126 exempts couples who are “otherwise lawfully” married in some other jurisdiction from the requirements of the statute and permits them to reside in the State of Delaware as a married couple without first obtaining a Delaware marriage license. A contrary reading of Section 126 as suggested by *Hendrixson* and *In re Parson's Estate* would completely undermine the painstaking legislative effort to require a marriage license for a marriage to be lawful under Delaware law. Indeed, if Section 126 recognized Delaware marriages solemnized by a ceremony (or contracted for) but lacking a marriage license, then all of the mandatory language requiring a marriage license in the preceding sections of the Delaware Marriage Statute would be rendered mere

surplusage without any legal effect.<sup>12</sup> As a matter of statutory construction, therefore, such a reading of Section 126 should be avoided.

The reading of Section 126 possibly suggested by the referenced cases creates an internal contradiction in the Delaware Marriage Statute; on the other hand, the reading suggested here would harmonize Section 126 with the remainder of the Delaware Marriage Statute and the evident legislative intent. The Court's reading of Section 126 is supported by the appropriate legislative purpose behind a licensing requirement. An adequate public record will avoid disputes about who is married to whom; in a complex society, the predictability resulting from a licensing requirement is necessary.

In sum, Mr. Boyer is not the surviving spouse within the meaning of 12 *Del. C.* § 264. Accordingly, that statute grants no rights to him. The decisions which he seeks to make are, as a matter of legislative policy and directive, conferred upon the decedent's parents.

Next, the Court turns to the Plaintiffs' constitutional claim that 13 *Del. C.* § 106(a) violates Mr. Boyer's free exercise of religion under the First Amendment to

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<sup>12</sup> It could be argued that the sanctions upon those who officiate at weddings without a license is all that the General Assembly contemplated. Such a reading, however, ignores the scope and detail of the various provisions of 13 *Del. C.* ch. 1.

the United States Constitution.<sup>13</sup> The Plaintiffs contend that the Islamic faith recognizes marriage as a contract only entered into by and among the betrothed and God, and therefore, requiring those of the Islamic faith to obtain a marriage license for their unions to be recognized under Delaware law would cause them to violate precepts of their faith. The free exercise clause, made applicable to the states by its incorporation through the Fourteenth Amendment,<sup>14</sup> states that “Congress shall make no law respecting an establishment of religion, or *prohibiting the free exercise thereof . . .*.”<sup>15</sup> The most germane pronouncement by the United States Supreme Court regarding the proper interpretation of the free exercise clause as presented under the facts of this case occurred in *Employment Division v. Smith*.<sup>16</sup> In *Smith*,

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<sup>13</sup> A similar argument and a similar outcome would also result under Del. Const. art. I, § 1. See *East Lake Methodist Episcopal Church, Inc. v. Trs. of the Peninsula-Delaware Annual Conference of the United Methodist Church*, 731 A.2d 798, 805 n.2 (Del. 1999) (“Although the controlling standards of judicial deference to religious disputes have evolved primarily from interpretations of the First Amendment to the United States Constitution, art. I, § 1 of the Delaware Constitution, enjoining ‘any magistrate . . . in any case’ from interfering with the free exercise of religious worship is of equal force.”).

<sup>14</sup> See *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).

<sup>15</sup> U.S. Const. amend. I. (emphasis added).

<sup>16</sup> 494 U.S. 872 (1990). In *Smith*, two Native Americans challenged the Oregon Employment Division’s decision to deny them unemployment benefits because they had been terminated for work-related “misconduct.” Namely, the two had been terminated because they tested positive for the hallucinogenic drug peyote, a drug the Oregon criminal code made illegal to possess without prescription. The Plaintiffs undisputedly ingested the drug for sacramental purposes at a Native American church, of which they were members. See *id.* at 874. The Court upheld the Employment Division’s decision. See *id.* at 890.

the Court held that “if prohibiting the exercise of religion . . . is not the object of [the law] but merely the incidental effect of a generally applicable and otherwise valid provision, the First Amendment has not been violated.”<sup>17</sup> Rephrased, “the right of free exercise does not relieve an individual of the obligation to comply with a ‘valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).’ ”<sup>18</sup> Because 13 *Del. C.* § 106(a) is a facially neutral statute, not seeking to prohibit the free exercise of any faith,<sup>19</sup> and one of general applicability, applying to all couples seeking to have their marriages in Delaware recognized by the State, the provision’s mandate that a marriage license be obtained before entering into a valid marriage under Delaware law does not offend the First Amendment.

#### D. CONCLUSION

The Court concluded that Mr. Boyer failed to present a viable claim under Delaware law to establish he is the surviving spouse and, therefore, has the right to control the final disposition of Jeanea Irvin’s remains and her funeral ceremony

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<sup>17</sup> *Id.* at 878.

<sup>18</sup> *Id.* at 879 (quoting *United States v. Lee*, 455 U.S. 252, 263 n.3 (1982)).

<sup>19</sup> In fact, 13 *Del. C.* § 106(a) encourages free exercise, providing, “Marriages may . . . be solemnized or contracted according to the forms and usages of any religious society.”

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under 12 *Del. C.* § 264(a). Accordingly, the Court denied his application for emergency relief. Because there is no other more rightful claimant under 12 *Del. C.* § 264(a), the Court concluded that Defendants Naomi Irvin, James Washington, and Thomas Barnhart, as Jeanea Irvin's surviving parents, have the rights conferred by that statute. Accordingly, the Court allowed the funeral ceremony planned by the Defendants to proceed as scheduled.

Very truly yours,

*/s/ John W. Noble*

JWN/cap

cc: Brenda James-Roberts, Esquire  
Kenneth W. Boulden, Jr., Clerk of the Peace  
Register in Chancery-K