

Having trouble viewing this email? [Click here](#)



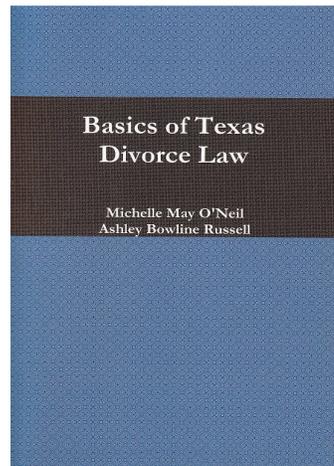
**News Letter**  
January 13, 2011

**Latest Firm  
News...**



We are proud and excited to share with you all that I have co-authored a book with Ashley Bowline Russell, another attorney at the firm. This book provides essential information about a Texas divorce, including the four stages of a [Texas divorce proceeding](#), the difference between a no-fault divorce and a fault divorce, how to approach dividing property in a Texas divorce, and the four issues that relate to children in a Texas divorce. It is available for purchase at this link: [Basics of Texas Divorce Law](#). You can also find more information on our blog at [www.dallastxdivorce.com](http://www.dallastxdivorce.com).

Sincerely,  
Michelle May O'Neil  
O'Neil Attorneys



[Basics of Texas Divorce Law](#)

## From the Blog....

### Same-Sex Divorce in Texas: Austin Court of Appeals Opens the Door

Posted on January 10, 2011 by  
Ashley Russell

Last Friday the Third Court of Appeals at Austin affirmed a Travis County trial court's ruling granting a same-sex divorce in Texas, [State v. Naylor and Daly](#). The appeal from the divorce judgment was brought not by either of the parties, as they had agreed upon the division of property and the child custody modification included in the decree the trial court approved, but by the State of Texas.

Appellees Naylor and Daly were married in Massachusetts in 2004. After their marriage they returned to their home state of Texas, adopted a child and started a real estate business together. The couple separated in 2009 and Naylor filed a SAPCR action. They settled their child related issues and the trial court entered an agreed order. Then, Naylor filed a petition for divorce. After a contested hearing lasting two days and a warning from the trial court that the parties had a "legal mess" that they might be better off settling than submitting to the court, Naylor and Daly reached a final settlement. The parties proved up their divorce and the trial court rendered judgment at that time. Only after rendition of the final judgment did the State file their intervention. The trial court denied the petition as untimely and entered the decree over the State's objection.

### Attorney Spotlight



[Ashley Bowline Russell](#) co-authored a book with Michelle May O'Neil this year. This is her first publication!

### Testimonials

"Divorces are very difficult and painful. Don't make matters worse by hiring the wrong attorney. My "donkey was in a ditch" and Michelle May O'Neil not only got me out, but put me back on track to obtain my desired results. She is well respected in her field, very knowledgeable, and will fight for your rights. If you want things done right, do them right the first time, have Michelle May O'Neil represent you."  
~A.Y.

### CBS 11 Interview

CBS 11 is looking for a client to interview. If you are getting divorced or have been divorced and are interested in participating in an interview with CBS 11, please contact our office at 972-852-8000 for more information.

On appeal, the State argued that the trial court lacked subject matter jurisdiction over the parties' divorce according to Section 6.204 of the Texas Family Code (prohibiting state agency or political subdivision from giving effect to "right or claim to any legal protection, benefit, or responsibility asserted as a result" of same-sex marriage). But the Austin Court of Appeals, like the trial court, found that the AG's intervention after rendition of the final judgment came too late. Further, the State failed to meet the requirements for application of the "virtual-representation doctrine", so this exception to the rule that an appeal is only available to the parties of record did not apply.

The Austin Court's opinion emphasizes the fact that this was a private divorce proceeding - not a challenge to the constitutionality of a statute (which would have allowed the State to intervene); it is not a suit to declare the statute unconstitutional or to enjoin its enforcement. As noted, there are interpretations of TFC §6.204 that would allow the trial court to grant the divorce without findings the statute unconstitutional, thus the issue of the statute's constitutionality is not reached in the opinion.

Practically speaking as [Texas divorce attorneys](#), we think this opinion opens the doors for trial courts here in Dallas and across Texas to grant [same-sex divorces](#) provided the State does not intervene before rendition. Provided same-sex couples agree on the division of property, or use some means of alternative dispute resolution or collaborative law to reach an agreement, they can conceivably file a petition for divorce (possibly under initials instead of their full names) then proceed with the prove-up. If the trial court signs off before the attorney general can intervene, then they are divorced under the laws of our State. But, keep in mind that the parties must agree and keep a low profile for this strategy to succeed. Should the parties seek media attention inviting State intervention prior to rendition of the divorce judgment, then the outcome will likely be very different, like [In re J.B.](#), from the Dallas Court of Appeals last year.

Hat tip to the Jennifer Cochran for her January 7, 2011 post "[Same Sex Divorce Upheld in Texas](#)".

## About Our Law Firm

Dallas divorce lawyers & attorneys of O'Neil Attorneys, offering services related to child custody, child support, community property, appellate law, family law, marital estates, SAPCR, parent child, pre-nuptial agreements, possession, real estate, homestead, marriage, annulment and adultery, serving clients in Dallas, Fort Worth, Park Cities, Southlake, Trophy Club, Colleyville, Preston Hollow, North Dallas, Highland Park, University Park, Plano, Frisco, Allen, McKinney, Flowermound, Lewisville, The Colony, Addison, Carrollton, Farmers Branch, Las Colinas, Irving, Coppell and across Texas.

Check out our recently published [Texas Lawyer article](#)

O'Neil Attorneys  
Two Lincoln Centre  
5420 LBJ Freeway, Ste. 500  
Dallas, TX 75240  
Tel: 972-852-8000  
Fax: 972-852-8001

**Free book at  
Consultation!**

Call today to set up a consultation appointment with one of our attorneys. Bring this coupon with you and received a FREE copy of our new book, *Basics of Texas Divorce Law*. Feel free to print this coupon out and give it to a friend or family member. Thank you for your referrals!

Offer Expires: March 31, 2011