October 25, 2018

To: California Association of Clerks and Election Officials

 County Clerks Legislative Committee

From: Matt Siverling, Legislative Advocate

Re: Monthly Report

The 2018 Legislative Session concluded shortly after the stroke of midnight on August 31st.

Since 2018 is the second year of the two-year Session cycle, all actions are final and there is no opportunity for measures to move. The Assembly and Senate will return on December 3rd for a one-day swearing-in Session and will begin to introduce bills for consideration in 2019. The swearing-in session will be attended by incumbent legislators who will be joined by the winners of the November election for the first time. At this time, Legislators may also introduce priority bills for consideration in 2019.

The Legislative Committee tracked many bills this year and was politically active on several measures of interest. Our activity and outcomes are detailed below.

**SPONSORED BILLS**

**Senate Bill 1511 (Senate Judiciary) Family Code Section 400 Cleanup**

The Committee opted to sponsor one measure this year. The proposal would have clarified that commissioners of civil marriages and retired commissioner of civil marriages can accept reasonable compensation for solemnizing marriages on Saturday, Sunday, or a legal holiday, bringing Family Code Section 400 in line with Penal Code Section 70.5, as AB 430 Irwin and Low (chaptered #42, ’17) did in accordance with Penal Code 94.5.

The measure would have completed the process of including all necessary cross-references to make sure that the Family Code is compatible and consistent with the Penal Code regarding accepting payment for solemnizing marriages.

Since this action arguably has been taken in a prior urgency bill (AB 430, Irwin, ’17) but seemed to have been inadvertently overlooked, we argued that the Legislature has already spoken on this issue. Since the issue has been universally accepted as an oversight, the Senate Judiciary Committee has agreed to include it in their Omnibus bill.

Very late in the Session, just two weeks prior to adjournment, we received a call from the Assembly Judiciary Committee Chief Consultant indicating that she was going to remove this Omnibus bill from consideration for the year. We chatted about the reasoning, and discovered that she, and some of her colleagues, had a strong opinion about the statutory authority for commissioners of civil marriages (clerks) to collect additional payment for conducting off-hour marriages. She thought that it was inappropriate to leverage your professional standing to financially benefit the person.

We argued about this for some time, but at the end of the conversation she opted to punt the issue and agreed to discuss more next year.

The activity in not explicitly authorized, but it is also not explicitly prohibited or considered a “crime.”

We need to discuss if we want to push this next year or leave “well enough” alone until the timing may be better to push it through again. The downside may be calling undue attention to the matter that could result in a prohibition.

**OTHE BILLS OF INTEREST**

**Assembly Bill 2854 (Patterson) Marriage Licenses: Amendments**

This bill would have required the State Department of Public Health to update its instructions and forms regarding amendments to marriage records to clarify that a marriage record can be amended to add or delete middle or last names when a mistake occurred when the initial marriage certificate was filled out.

We met with the Author’s staff and explained our concerns about offering the option to amend a license after it has already been solemnized. The issue they are trying to address is the situation where immigration attorneys are not accepting paperwork that does not accurately reflect the identity of the applicant. This includes individuals who placed their last name, in the event they have multiple last names, into the middle name field. Since this legally changes your name, it is causing incongruity with the Federal government’s records.

After several lengthy meetings with the author’s office, they determined that their concept and proposed measure was more trouble than it was worth. They informed me that the bill would not be moving forward at this time.

*‘However I’d expected the idea to mushroom again in the future, potentially with a different office. I’d assume the same folks who are frustrated with this process to change their name due to a “mistake” will find a willing Author to pick up the baton and run with it. We should continue to talk with our State and Federal partners to anticipate another effort.’*

Update…we have very recently been contacted by Assemblymember Patterson’s office with a request to discuss this matter again. He has continued to receive complaints about this process from his constituents and wants to resolve the issue if possible. We will meet with them shortly after the Election.

**Assembly Bill 3061 (Gloria) Massage Therapist Registration**

The bill attempts to ensure that unlawful massage therapy establishments will not be able to continue operate in the shadows **by requiring registration with the county**, further prohibiting them from eluding the ordinances in one city in favor of those of neighboring city. This registration process will enable law enforcement agencies to target those human trafficking operations while also helping to legitimize massage therapy establishments in compliance with the law.

The bill requires an owner of a massage establishment to be registered by the county clerk of the county in which the establishment owner operates a business or has his or her principal place of business, and in which the massage establishment owner maintains an office.

There is also unclear language regarding the revocation of a massage therapist’s registration if they are found to be in violation of any local, state or federal law.

I was contacted by the fiscal committee, who asked me to evaluate how the measure affects county clerks. The measure provides for a fee (to be determined by the clerk) not to exceed the cost of performing the registration.

I have also been contacted by a representative from LA County who indicated that the structure of the bill is flawed for the way LA County is structured, since their Treasurer is the office that oversees business licenses. She suggested that, at least, the measure should be less prescriptive as to who the task is assigned to within the county (could be the clerk, treasurer, or an office of business services, etc.).

I was told by the Author that the he and the sponsor have had some disagreements over the direction of the bill and he is likely to park the bill in the Senate once it gets there. As promised, the Author did amend the bill into something of a completely different subject matter not related to massage therapists.

Like prior issues, we should expect this matter to be reintroduced in January.

**Assembly Bill 3250 (Committee on Judiciary**

Existing law requires a legal document assistant or unlawful detainer assistant to be registered in the county in which his or her principal place of business is located and in which he or she maintains a branch office, and provide proof that the registrant has satisfied a specified bonding requirement. Existing law requires an applicant for renewal of registration as a legal document assistant or unlawful detainer assistant to complete 15 hours of continuing legal education courses that meet specified requirements relating to attorneys during the 2-year period preceding renewal.

This bill would specify that a registrant is not required to complete legal ethics education as part of the required 15 hours of continuing legal education courses.

CACEO was instrumental in the crafting of the language that eventually was amended into this bill. It is a direct cleanup of Assembly Bill 285 (Gallagher) which we worked on several years ago. There was some inconsistent interpretation of the CLE requirement and what was required of LDA’s, but this measure clarifies that they are not mandated to complete ethics training as a component of their CLE.

This measure has cleared the Legislature and has been signed into law by the Governor.

**New Issues**

**Assembly Bill 2368 (Calderon) California Online Notary Act of 2018**

This bill is sponsored by the author. According to the author, "Technology and the internet have simplified electronic transactions including mortgages . Consumers can already safely and securely apply for mortgages online, provide documentation through web portals or smart phones, and check the status of their application all over the internet. But when it comes time to closing, Californians are required to personally meet a notary or invite a mobile notary into their home. This can slow down the mortgage process and be a burden for some Californians, including first-time homebuyers, parents and active duty military. As other states move toward remote online notarization, California needs to keep up with this 21st Century innovation and implement this new technology in a safe, secure, consumer-friendly way that ensures the California Secretary of State maintains regulatory control."

Issues have been raised by Committee members that there are no parameters about the new “secure electronic journal” that is planned to be allowed for the online notaries. I think we need to put in some parameters so that we can be sure that we will be able to read them and/or require that they are printed with column headers, page numbers, etc. when being submitted to the County Clerk.

We communicated the issues to the Author and his staff who chose to hold the bill for the year for further discussion. The Secretary of State was also instrumental in slowing this effort down. We will check in with the SOS and Assemblymember Calderon during the interim to make sure we are included in discussions that may take place.