

**COUNTY CLERK
LEGISLATIVE COMMITTEE MEETING
MINUTES**

A regular meeting of the California Association of Clerks and Election Officials-County Clerk Legislative Committee was held on Wednesday, December 5, 2012 at 9:30 a.m. at the Hyatt Regency in Sacramento in conjunction with the association's annual New Law Workshop.

Meeting called to order by co-chair Craig Kramer.

Introductions were held.

In attendance: Craig Kramer, Sacramento County, Kathleen Moran, Colusa County, Committee Co-chairs. Joyce Whitney, Marin County, Terri Irving, Alameda County, Jenny Stasik, San Bernardino County, Victoria Rodriguez, Riverside County, Sheila Harmon, Ventura County, Karen Hong/Kenton Owyang, San Francisco County, Gina Alcomendras/Wardell House, Santa Clara County, Portia Sanders, Los Angeles County, Debi Cooper/ Elizabeth Gutierrez/Frederick Garcia, Contra Costa County, Esperanza Enriguez, Imperial County, Gregory Diaz/Gail Smith, Nevada County, Deva Proto/Carrie Anderson, Sonoma County, Sandra Bagna/Elizabeth Flores/Bernadette Trujillo, San Diego County, Marvin Hackett/Judy Eden/Ron Birchard, Stanislaus County, Dan Harp, San Bernardino County, Les Flemmer, San Joaquin County, Justin Canning, El Dorado County, Cindy McMillan, Sutter County, Kim Weisenberg/Eleigh Schaubmayer/Jeffrey Barry, Yolo County.

Motion by Terri Irving, seconded by Joyce Whitney to approve the minutes: September 20, 2012 regular meeting. Motion carried.

Matt Siverling presented the final County Clerk Legislative Report for 2012 (written report attached).

Matt and Craig reviewed the basic legislative process and statutory deadlines.

Legislative Proposals from CACEO members:

From Los Angeles County re: Process Servers. Proposed amendment to B & P Code 22350(a) to require a separate registration for each individual that registers as a partner, corporate officer or employee of same and makes more than 10 services in one calendar year. Discussion.

Portia spoke to the proposal, noting that the proposal would require employees of a corporation or partnership to meet the same registration requirements as all other registrants, such as disclosing convicted felon status, etc. (Complete text of proposal is attached)

Committee consensus is hold for review and discussion at next meeting.

From Nevada County re: Marriage Licenses. Proposal seeks to eliminate line 29b from the marriage license/marriage certificate (proposal attached). Greg Diaz presented the proposal and explained that line 29b, religious denomination, creates many amendments for his office. He also offered an alternative proposal that would instead eliminate the box for "clergy". He stated that the public is often confused as to exactly what information is required in these two fields thereby causing amendments.

Discussion was held. Craig asked if the issue was discussed with Karen Roth at State Vitals. Greg indicated that it has not, that he wanted to get feedback first from the committee. Greg stated that his staff has informed him that the forms are not being completed properly due, mostly by Universal Life Ministers or officiants who do not have a religious denomination.

Portia stated that removing the boxes would cause greater confusion. Frederick Garcia reminded Greg about the headache of changing the forms, as well as the approval process required by the state. After discussion it was the consensus of those present to not pursue this proposal.

Matt asked if the committee wished to pursue AB 810 (detailed information on AB 810 can be found in Matt's attached report). The committee agreed to take a "wait and see" until or unless it comes back.

Craig, on behalf of the committee noted there will be a minor clean up for AB 1325 as "married couple" needs replace "husband and wife" under signers, that section was overlooked in the original bill.

Committee Membership:

There are currently slots for 11-13 members. A principal must notify the co-chair(s) of their interest or their designee. A notice was sent to every CACEO member.

Committee Meeting Schedule:

In order to coordinate with the Recorder's Leg Meeting schedule, Clerk's Leg meeting will move to Wednesdays. Schedule to follow.

Announcements:

Two of the newly elected assembly members are former County Clerks. Phil Ting (SF) is Democratic Caucus Chair. Tom Daly (Orange Co) isn't chairing a committee but is serving on various committees.

Adjourn 10:20 am

By: Kathleen Moran

November 25, 2012

To: California Association of Clerks and Election Officials

From: Matt Siverling, Legislative Advocate

Re: County Clerk Final 2012 Legislative Report

This is the final Legislative Activity Report for the 2012 Legislative Session on Association legislative matters of interest.

INTRODUCTION

The Legislature adjourned just after 1am on August 31, 2012 and is scheduled to convene the 2013 Regular Legislative Session on December 3, 2012. Under the Constitution, the Governor had until September 30, 2012 to sign or veto bills passed by the Legislature in the regular session. 2012 was the second year of the two-year Legislative Session. This means that all action on Legislative matters is now final.

During this meeting, the Association will be presented with background materials on all measures of interest that were discussed or acted upon by the California Association of Clerks and Election Officials County Clerk Legislative Committee in the 2012 Legislative Session. These bills have either been held in the Legislature, vetoed, or signed into law by the Governor.

I. Sponsored Bills

The County Clerk's Legislative Committee did not elect to sponsor legislation for introduction in the 2012 Legislative Session. The Association had one sponsored measure from the 2011 Session that was held over and active for a short time in 2012:

Assembly Bill 810 (Wagner)

In 2009, the Legislative Committee reviewed a report on "*Statutes Made Obsolete by Trial Court Restructuring*" and identified an issue of concern with the proposal.

Specifically, the report contained an amendment to GC 26806 pertaining to the Courts authority (in counties having a population of 900,000 or over) to employ interpreters to interpret in criminal and juvenile cases, and to translate documents intended for filing in a civil or criminal action, or that need to be recorded by the County Recorder. The Commission tentatively recommended revising GC 26806 to transfer the responsibility to county clerks to employ interpreters to translate documents that need to be recorded by the County Recorder, while relocating the other portions of that section related to the Court employing interpreters to interpret in criminal and juvenile cases & translate for civil or criminal actions to GC 69894.5.

CACEO identified two problems with this proposal and notified the Law Revision Commission about the concerns.

1. It created a major conflict with GC 27293 (translation certificates) - the County Clerk is required to issue a translation certificate on documents that have been translated by either a certified or registered court Interpreter as specified in GC 68561 & found on the Judicial Council website, or an accredited translator registered with the American Translators Association. (CACEO sponsored, AB 349 Ch 231 statutes 2007 - to clean-up the prior shift of this function from Superior Court in AB 145 Ch 75 Statutes 2005).
2. The County Clerk does not employ translators, and would be unable to do so for the sole purpose of translating documents that must subsequently be recorded and certified. The code also is specific to counties having a population of 900,000 or over.

CACEO proposed for the Commission to repeal GC 26806 in its entirety and to relocate the portions related to the Courts to GC 69894.5. The Commission would have also needed to amend GC 27293 to remove the language authorizing the translation to be performed by a court interpreter.

Late in the process, the Association was contacted by the Judicial Counsel, who was also in communication with the Law Revision Commission regarding issues with the same Code Section AB 810 was seeking to resolve. The Judicial Counsel requested that their language be included in the CACEO “clean-up” bill to ensure that the task was not “half-completed”. Judicial Counsel made it clear that they felt the “fix” was unnecessary, due to the fact that they had been operating under the current Code for decades with no issues. When contacted by the Law Revision Commission, they felt that the suggestions made sense, but were not urgent matters to address. Despite this, the language that they had developed was accepted in AB 810, and the measure moved forward.

The bill had yet to receive a “no” vote when it reached the Senate Appropriations Committee. The analysis identified an “implied cost” or “cost pressures” to employ interpreters for civil as well as criminal cases. The language that was added by Judicial Counsel stated that if all translator casework related to criminal court proceedings was satisfied, and there were no labor concerns, translators could be used in civil cases without a statutory fee assessed on the person(s) requiring a translator.

Despite all of the language drafted to avoid a mandate, the Committee viewed the provision as setting a precedent, and opined that the matter would cost the State millions of dollars in future years. By the time the concerns about costs were raised, the measure had passed deadlines for amendments and was forced to be held in the Suspense file until next year.

The Section of Code that was identified by the Law Revision Commission as problematic will remain untouched for the time being. This also includes the language that the Commission proposed to be amended into the Code (authorizing counties to retain translators for the purpose of translating recorded documents). As it reads now, the Section has no reference to county clerks.

CACEO continued to push throughout the year to have the bill heard, and offered to remove the problematic language to jar the bill loose if it continued to derail the efforts. Despite the efforts of the Association, the issues related to interpreters and a defendant's right to the use of a State-funded interpreter during a civil court case continued to cloud the administrative issues contained in the CACEO proposal. The politics of the extended battle between the Judicial Council and the State related to interpreters and responsibility (criminal vs. civil) continued throughout the year and prevented a simple fix from occurring in the Section related to county clerks.

The Session closed without action or movement on AB 810. The impact of this does not have any effect on county clerks for the time being. The Code Section continues to read that the court may employ translators to assist with the translating of documents for recordation. While this language is clearly obsolete, it does not touch the existing process put into place by counties to administer this duty.

In the upcoming year, it may benefit the Association to carefully "test the waters" of the new Legislature to determine if a quick and quiet fix is possible to eliminate the outdated language without infringing on existing processes.

(Status: Held in the Senate Appropriations Committee)

II. **Other Bills of Interest**

Assembly Bill 1325 (Lara)

Position: Oppose to Neutral

The California Association of Clerks and Election Officials (CACEO) initially opposed unless amended Assembly Bill 1325, which required registrants for a fictitious business name to present or provide specified personal identification documents prior to issuance by a county clerk.

CACEO requested that AB 1325 be amended to require that in addition to the new prerequisite to present an acceptable form of identification at the time of filing for a fictitious business name, the applicant also complete and present an “affidavit of identity”. An affidavit is a written sworn statement of fact voluntarily made by an affiant or deponent under an oath or affirmation administered by a person authorized to do so by law. Such statement is witnessed as to the authenticity of the affiant's signature by a taker of oaths, such as a notary public or commissioner of oaths. An affidavit is a type of verified statement or showing, or in other words, it contains a verification, meaning it is under oath or penalty of perjury, and this serves as evidence to its veracity and is required for court proceedings. The county clerk would develop the contents of the form, which would need to be signed under penalty of perjury and be acknowledged by a notary public. The document would not be subject to the Public Records Act, but would be open for inspection upon order of the court issued upon showing of good cause. Additionally, because it is common for third parties to submit applications for fictitious business names on behalf of employers or as a service, CACEO requested that AB 1325 also require third-party agents to present acceptable identification and complete an “Affidavit of Identity” form in order to establish accountability and traceability of applicants. The Association also requested the affidavit requirement to be applied to all applications received by mail. To streamline the process for registration of corporations, limited liability companies and limited liability partnerships, CACEO proposed that these entities obtain and present a Certificate of Status from the Secretary of State rather than their articles of incorporation, certificate of organization, or limited liability partnership statement. This universal document would simplify the filing process for these entities. In addition, the Association urged a delayed implementation date for the program. Educating the public about the new requirements for obtaining a fictitious business name will be a laborious process that will take time and effort by the office and staff of the clerk in each county; and the preferred method would be preemptive communication with applicants during the next year rather than rejecting the applications of uninformed constituents and doubling the workload for county clerks. CACEO proposed that the law become active on July 1, 2013 to facilitate this effort. Lastly, the Association urged the inclusion of language to provide cost-recovery for the development and administration of this new program. The language would not establish any new abilities to the Code, but would specify the variables to be used to determine local cost to include the new processes associated with this mandate.

As reported during the last year, the Author agreed to integrate the CACEO requested amendments into the bill. The measure was amended to **allow** the county clerk to require an affidavit of identity for both mail-in and in-person FBN applications. The

bill also now carries a delayed implantation date to allow counties and clerks to introduce the program requiring an ID over time; rather than right away in January.

The Association removed opposition from the measure with the Author's amendments. Counties will have the option to require the affidavit, if they choose. With no opposition and strong support from public safety advocates, the measure was approved.

The Governor was presented with the bill after it cleared the final steps in the Legislative process with no opposition.

Final Status: Chapter 369, '12

Assembly Bill 2062 (Davis)

Position: Support

CACEO has historically supported a series of bills to establish pilot programs in select counties, and one city, to administer electronic filing of the Form 700 Conflict of Interest form. The pilot counties have been running successful, cost effective programs for several years now, and are preparing to submit a report to the Legislature and the Legislative Analyst's Office (LAO) describing the best practices of the existing programs.

AB 2062 takes the final step to expand the Form 700 E-File Pilot Program statewide; while "grandfathering-in" the existing pilot programs for permanent status.

The sponsors had been working closely with the Fair Political Practices Commission (FPPC) and the Legislative Analyst's Office (LAO) throughout the pilot period in anticipation of a request to expand the program statewide. Last year, the LAO released a positive report on the existing pilot programs that should facilitate a favorable environment for the bill as it moves through the legislative process. The LAO report was a requirement included in the original Form 700 Electronic Filing bill (AB 2607, '08).

The measure required a 2/3 vote on the Floors for passage as a result of the amendments to the Political Reform Act. Despite the strict requirement for passage, the measure was approved unanimously and subsequently signed into law by the Governor. The option to file the Form 700 electronically is now available to any local agency who is interested.

Final Status: Chapter #500, '12

Senate Bill 1002 (Yee)

Position: Oppose to Neutral

SB 1002 would have prohibited a public agency, when responding to a request for disclosure of electronic documents pursuant to the California Public Records Act

(PRA), from charging the requestor for data extraction, compilation programming, or data conversion, as specified. This bill would have established the California Open Data Standard, which would provide open format standards for public agencies that are required to make electronic data available to the public.

CACEO was weighing-in on the bill for the following reasons:

- Most clerks do not have their own development team and would need to send to outside department.
- How would clerks meet the public records request law specified in Gov't. Code 6251?
- With budget cuts, clerks do not have the resources or additional time available for these types of requests
- Would these requests be a priority? These requests would severely impact the already challenging day to day operations with reduced staff.
- Every clerk has different data formats and proprietary systems
- This bill would add costs to county operations
- Most clerks do not have automated records prior to 1980. Records prior to 1980 are in books, film or microfiche and would be very difficult to put in an electronic format at a reasonable cost.

The League of Cities, the California State Association of Counties and numerous other local government advocates, including CACEO, were all opposing the measure. The coalition was working with Legislative staff and Committee staff to either neutralize or stall the measure based on workload and cost issues.

There had been an ongoing argument between the opposition and the proponents whether the bill is a mandate, and whether it caused local governments to perform any work they are not already doing. The Author and proponents contended that the measure only requires locals that are already capable, or are already performing the service, to continue to offer (or offer) public documents in an "open format". The key issue remains to be the definition of "open format".

Senate bill 1002 had also been the recent subject of a number of newspaper articles pushing for the passage of the measure. It is supported by Google, Microsoft and the California Newspaper Publishers Association. SB 1002 is also moving up the list on the CapitolTrack "Top Ten tracked bills" list, which measures activity and interest throughout the year on any bill.

The bill finally succumbed to heavy pressure from local government opposition that steadfastly argued that the measure was unworkable and cumbersome. The Legislature, although aggressively lobbied by Microsoft, Google, and the CNPA, opted to take the easy way out by gutting the bill and amending it into a "study" to determine if the approach may be feasible in the future. The report to the Legislature is due on January 1, 2014. With the amendment, the Association and others went "neutral". The Legislature subsequently approved the bill and sent it to the Governor for consideration.

Despite the consensus that the measure has been effectively amended into a “harmless” form, the Governor opted to reject the measure. In his veto message, he stated:

“I am returning Senate Bill 1002 without my signature. This bill would require the State Chief Information Officer to provide a report to the Legislature on the feasibility of providing public records in a specific electronic format. The role of the State Chief Information Officer is to make sure that state government uses information technology efficiently and effectively including providing public records electronically when possible. Another legislative report on electronic public records isn't necessary. Sincerely, Edmund G. Brown Jr.”

Although the issue is “dead” for now, we can expect another attempt at this proposal in the future. The Author of the bill, Senator Leland Yee, is mounting a campaign for Secretary of State and has indicated that he will be carrying more public records legislation in the upcoming Session.

Final Status: Vetoed

Senate Bill 1110 (Rubio): Public Records

Position: Support

CACEO voted to support Senate Bill 1110, which would have assisted county clerks in the administration of public records requests. The measure was awaiting a policy committee hearing in the Senate Judiciary Committee, but has been held by the Committee.

CACEO was pleased to see the provisions included in the bill which clarified existing law that a public agency may collect a deposit from a constituent who is making a public records request. Since it is a common occurrence to receive a request for a large copying request that is never retrieved and paid for by the requestor, public agencies are, thus, occasionally left uncompensated for the direct cost of duplication of such records in the event of an abandoned request.

The Association was also supportive of the further clarification of existing law that public agencies may include “personnel costs” in the calculation of the direct cost of duplication of public records. SB 1110 would have ensured statewide uniformity in this formula moving forward.

The Senate Judiciary Committee raised numerous concerns about the deposit aspect of the bill, and opined that the universal collection of the deposit would have been burdensome and unnecessary for the vast majority of requests. They were attempting to craft a piece of legislation directed at the “bad actors”, but in the end decided that it was untenable. At that point, the Senator opted to drop the bill.

Final Status: Pulled by Author

Other Issues

Statistics

Every year, the Senate Governance and Finance Committee keeps a detailed tally of the Governor's actions and compiles it into a report entitled "*How Often do Governors Say No?*"

According to the Committee, Governor Jerry Brown vetoed a lower percentage of bills in 2012 – 12 percent — than the 14 percent he vetoed in 2011. However, in both years his veto rates were higher than during his first two terms as governor when he had a 4.4 percent average over the eight years from 1975 to the end of 1982.

Brown's veto percentage in 2012 is the lowest average percentage since Gov. Ronald Reagan's 1967 veto rate of 13 percent.

Adding up Brown's tally for the past two years and the previous eight he was the state's chief executive, he has signed 12,744 bills – 876 this year. That's a higher total than any of his predecessors since 1967. His career-to-date veto total – 773 bills — is the lowest of all governors since Reagan took office in January 1967.

In 1982, Brown set the modern record for lowest number of vetoes – refusing to sign just 30 bills of the 1,674 he considered.

The five years with the fewest chaptered bills have all been since 2007.

Schwarzenegger vetoed over three times as many bills in his seven years as Brown did in his first eight years — and more than twice as many as the 843 bills Reagan refused to sign during his two terms.

Since 1967, the Legislature has sent the governor an annual average of 1,444 bills.

In 2011, the Legislature passed the lowest number of bills in 45 years — 870.

Over its two-year session that ended August 31, the current Legislature sent Brown fewer bills to consider than during any other two-year period since 1967.

**California Association of Clerk and
Election Officials**

**2013/14 LEGISLATIVE SESSION
LEGISLATIVE PROPOSAL**

Submitted by: Emmanuel Anyiwo

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Amend Code section(s): CALIFORNIA CODE, BUSINESS AND PROFESSIONS (B&P)
CODE SECTION 22350(a)

What does this proposal do? This proposal will clarify the law to require a separate registration for each individual that registers as a partner, corporate officer or as an employee of a corporation or partnership and makes more than 10 services in one calendar year. It will provide consumer protection by making available to the consumer, the name, address, age, and telephone number of the individual process server that is serving on behalf of the business that is registered with the County Clerk. This information is important and necessary as we receive many complaints against process servers and need a way to identify the individual serving the process, in the case of a registered Partnership or Corporation. Additionally, this proposal will require employees of a corporation or partnership to meet the same registration requirements as all other registrants, such as disclosing whether they have been convicted of a felony pursuant to B&P 22351(2) and disqualifying them unless they meet the criteria specified in the code in order to register.

What problem(s) will this proposal resolve? The amended verbiage in the legislation would make the County's position clear on the interpretation of the State code, thereby leaving no room for misinterpretation or self-interpretation by the registrant. It would allow for the purpose of the filing of a process server registration to be uniform whether filing as an individual, partnership or corporation.

How will this proposal affect the agency and the public? The fiscal impact shall be minimal as we are already processing registrations in this manner. Although we enforce this requirement, as do many other Counties within the State, without clarity in the law, there is room for self interpretation, which allows the registrant to challenge our policy. The main reason a registrant

**California Association of Clerks
And Election Officials
2013/14 LEGISLATIVE SESSION
LEGISLATIVE PROPOSAL**

would challenge this policy is because they do not want to pay additional fee required for filing and recording.

Are there any other related Code sections that will be affected?

☐ **Yes. Provide them:**

☒ **No.**

Will this proposal save/increase costs? Explain and give estimates:

The changes made as a result of this proposal will not result in additional fees to be charged by the County Clerk as we are currently processing registrations in this manner. The purpose of the proposal is to clarify the language of the code section, leaving no room for misinterpretation of the code by the public.

What other agencies would be affected by this proposal?

This proposal will affect only the County Clerks within the State of California.

Who will support this proposal? Why?

All of the Counties that are a part of the County Clerk Reference Manual Committee will support this proposal as this code section was identified and discussed at length prior to being included in the reference manual as a guideline for the process server registration procedure.

Who will oppose this proposal? Why?

We do not expect any opposition to this proposal.

California Association of Clerks
And Election Officials
2013/14 LEGISLATIVE SESSION
LEGISLATIVE PROPOSAL

CALIFORNIA CODES
BUSINESS AND PROFESSIONS CODE
SECTION 22350-22360

Below is B&P 22350 with the proposed amended language reflected in *italics*.

22350. (a) Any natural person who makes more than 10 services of process within this state during one calendar year, for specific compensation or in expectation of specific compensation, where that compensation is directly attributable to the service of process, shall file and maintain a verified certificate of registration as a process server with the county clerk of the county in which he or she resides or has his or her principal place of business. Any corporation or partnership that derives or expects to derive compensation from service of process within this state shall also file and maintain a verified certificate of registration as a process server with the county clerk of the county in which the corporation or partnership has its principal place of business. ***Any partner, corporate officer or employee of a corporation or partnership who makes more than 10 services of process within this state during one calendar year, shall file and maintain a separate verified individual certificate of registration as a process server.***

**California Association of Clerk and
Election Officials**

**2013/14 LEGISLATIVE SESSION
LEGISLATIVE PROPOSAL**

Submitted by: Gregory J. Diaz

County: Nevada

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Amend Code section(s): Health & Safety Code Section 103175(a)(3)

What does this proposal do?

Remove Line 29B from the License and Certificate of Marriage.

What problem(s) will this proposal resolve?

Reduce amendments and follow-up with our customers. Much easier for our customers to return a corrected marriage license.

How will this proposal affect the agency and the public?

Registration process will be less problematic.

Are there any other related Code sections that will be affected?

☐ **Yes. Provide them:**

☐ **No.** Not to my knowledge.

Will this proposal save/increase costs? Explain and give estimates:

Less amendments=employee cost savings

**California Association of Clerks
And Election Officials
2013/14 LEGISLATIVE SESSION
LEGISLATIVE PROPOSAL**

What other agencies would be affected by this proposal?

California Department of Public Health

Who will support this proposal? Why?

Everyone because it makes the whole process easier for both Clerks and their customers.

Who will oppose this proposal? Why?

At this time, I cannot identify anyone who may oppose this proposal.

Draft language: (Attach additional pages if necessary)

Strike the following phrase from H&S Code Section 103175(a)(3): 'including the denomination if he or she is a clergy or clergyperson'