

Memorandum 96-49

Authority of Administrative Law Judge to Solemnize Marriage

BACKGROUND

During the legislative process on the administrative adjudication bill, Senator Kopp's office received a request from an administrative law judge to add a provision to the bill that would authorize administrative law judges to perform marriage ceremonies. The staff advised Senator Kopp's office that we ought not to do this for a number of reasons, including the fact that our hands were full with the bill as it stood, without burdening the bill with more issues, and tangential ones at that.

This session the request has been renewed in conjunction with the administrative adjudication cleanup bill. See letter from Ralph B. Dash, Administrative Law Judge, Exhibit pp. 1-2. Senator Kopp has responded that the cleanup bill is a technical, urgency bill and therefore inappropriate for that purpose. He has suggested that the Law Revision Commission be given an opportunity to review this matter on the merits and circulate any recommended revisions in the law for comment.

The proposal to authorize administrative law judges to perform marriage ceremonies is not new. Legislation was introduced in 1991 to do this. See Senate Bill 20 (Robbins) of the 1991-92 Regular Session. The measure started as a bill to authorize administrative law judges of the Office of Administrative Hearings to perform marriages, but was amended to include administrative law judges from other offices as well. The bill was passed by the Legislature but vetoed by the Governor because it got caught up in an ongoing controversy within the Department of Industrial Relations concerning the status of Workers' Compensation Judges.

The staff believes this matter is worth consideration by the Commission at this time in connection with our current work on the Code of Ethics for administrative law judges. Any changes in law the Commission might propose

on this matter could appropriately be included in a balanced bill affecting the role and status of ALJs.

SOLEMNIZATION OF MARRIAGE

Marriage is considered under California law to be a civil contract between parties having capacity. To enter into a valid marriage, the parties must obtain from the county clerk a marriage license indicating their identities, ages, and residences. They must present the license to a person authorized to solemnize the marriage and declare in the presence of the person solemnizing the marriage and witnesses that they take each other as husband and wife. If the person solemnizing the marriage has reason to doubt the accuracy of information in the marriage license, the person must be satisfied of its correctness and for that purpose may administer oaths and examine the parties and witnesses. Within 30 days after the ceremony, the person solemnizing the marriage must return the license or a certificate indicating the facts to the county recorder, and issue a marriage certificate to the parties. See Fam. Code §§ 300-425.

The persons authorized to solemnize a marriage are listed in Family Code Sections 400-402. Generally, any person over 18 who is a minister or a judicial officer (active or retired) may solemnize a marriage. The county clerk of each county is also designated as a commissioner of civil marriages and may appoint deputy commissioners to solemnize marriages under the direction of the commissioner. There appear to be no statutory qualifications for a deputy commissioner, including age.

Likewise, there are no particular qualifications to become a minister authorized to solemnize marriages. Anyone can become a minister of the Universal Life Church, for example, by paying a modest fee. It can even be done via computer on-line.

We understand that the practice of appointing deputy commissioners is not uncommon. Typically it may involve a one-day appointment to perform a single marriage ceremony. The person wishing to become deputized must appear personally before the county clerk and take an oath. No fee is charged to become deputized.

It is a misdemeanor for an active judicial officer (but not a retired one) to accept a fee for performing a marriage, except on a weekend or holiday. Pen. Code § 94.5.

RATIONALE FOR AUTHORIZING ALJS

The solemnization function is quite limited — in the nature of administering an oath and completing and filing paperwork. For historical reasons it is performed by ecclesiastical and judicial officials. Its importance is diminishing. In fact, the Uniform Marriage and Divorce Act does not require any official to solemnize a marriage.

The suggestion that administrative law judges be authorized to perform marriage ceremonies derives from their experience that on occasion they are requested by family members and friends to officiate at marriages. The way an administrative law judge accomplishes this today (apart from becoming a minister) is to obtain a one-day appointment as a deputy marriage commissioner. However, Mr. Dash's letter indicates that often an administrative law judge must turn down a request to perform the marriage because the deputation procedure is cumbersome.

It would not be out of line with the character of the solemnization function and the nature of the other authorized persons to extend solemnization authority to administrative law judges. An administrative law judge is authorized by law to administer oaths and certify to official acts, and does so routinely. See Gov't Code § 11528.

STAFF RECOMMENDATION

The staff sees no reason why the solemnization function ought not to be extended to administrative law judges. It would be consistent with our overall objective to encourage hearing officer neutrality in administrative adjudication, by helping to foster the concept of the administrative law judge as a public official rather than as an agency representative. And it might actually prove helpful to achieve a balanced legislative package by combining such a proposal with the proposed Code of Ethics for administrative law judges.

It would be appropriate to preclude the administrative law judge from accepting a fee for performing this service, whether on a weekday or a weekend or holiday. A state employee should not use the authority of the public office for personal gain. But we would not amend the Penal Code to make it a misdemeanor for an administrative law judge to accept a fee. We don't anticipate this will develop into a major problem. Moreover, creating a new crime is an automatic fiscal trigger that impedes enactment of legislation.

The main issue, it seems to us, is whether to limit this authority to administrative law judges in the Office of Administrative Hearings, or to extend it throughout state service. It was the extension throughout state service that caused the veto problem last time around, but it is doubtful that it would cause a problem this time around.

Administrative law judges in all classes, whether employed by the Office of Administrative Hearings or some other agency, have generally the same qualification requirements. Typically this includes five-years legal practice experience, membership in the California State Bar, and judicial temperament.

Part of our rationale for giving ALJs solemnization authority is to foster a public officer mentality. For this reason it would be even more important to extend the authority to the various agency ALJs than to the already neutral ALJs of the Office of Administrative Hearings.

The staff therefore suggests, if we are to grant this authority to administrative law judges, that we do it for all classes and not limit it to Office of Administrative Hearing employees. For this purpose, we could use the definition we are developing in the Code of Ethics context — “‘administrative law judge’ means an incumbent of that position as defined by the State Personnel Board for each class specification for Administrative Law Judge.”

If the Commission approves this proposal, we will convert this memorandum into the form of a tentative recommendation on the matter and circulate it for comment.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

STATE OF CALIFORNIA - STATE AND CONSUMER SERVICES AGENCY

PETE WILSON, Governor

DEPARTMENT OF GENERAL SERVICES

OFFICE OF ADMINISTRATIVE HEARINGS

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May 10, 1996

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File: _____

Daniel B. Friedlander
Office of Senator Kopp
State Capitol, Room 2057
Sacramento, California 95814

Re: Senate Bill 794

Dear Mr. Friedlander:

As you may recall, last year I wrote to you, at the suggestion of Teri Burns, to request that certain additional language be added to what was then Senate Bill 523. I am delighted that the bill passed and find it to be a vast improvement over the current Administrative Procedure Act. It promotes efficient administrative adjudication while at the same time making available statutorily the use of alternative dispute resolution. As I mentioned to you, I tried to implement this informally during the three and one-half years that I was the Presiding Judge of the Los Angeles office of the Office of Administrative Hearings, and have always felt it to be the wave of the future in resolving contested matters fairly, equitably and economically. Senator Kopp had my support on the bill, and I made that known to my fellow judges and, in writing, to ACSA.

The language which I had asked to be included in that bill was to amend Civil Code Section 4205 in order to permit the judges of this office to perform marriage ceremonies. A number of us have, on several occasions, been asked to do so by friends and family members. Quite frankly, I can think of few honors greater than being asked by friends to solemnize their marriage. However, we often had to turn down such requests because the statute did not so authorize us, and the procedure to obtain a one-day appointment as a deputy marriage commissioner was, and is, extremely cumbersome.

I understand that Senator Kopp is sponsoring certain "cleanup" legislation to S.B. 523 in the form of S.B. 794. Would it be possible for Senator Kopp to see his way clear to add language to S.B. 794 which would permit Judges from our office to perform marriages? Civil Code Section 4205 could be amended by adding the words "administrative law judge appointed under the

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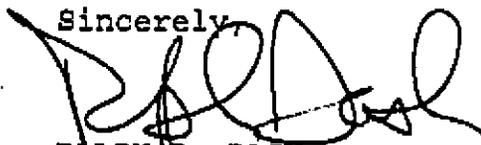
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provisions of Government Code Section 11370.3" (or similar language) to the list of officials who currently are authorized. Inclusion of this language, while perhaps conferring a small benefit on us, also promotes the clearly expressed legislative interest of encouraging family unity.

Any consideration that may be given this proposal would be greatly appreciated. Naturally, should you need any additional information or wish to discuss this matter, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. B. Dash', written over a horizontal line.

RALPH B. DASH
Administrative Law Judge