

Memorandum 2014-17

Fish and Game Law: Penalty Terminology

The Commission¹ is presently studying a proposed recodification of the Fish and Game Code.² At its last meeting, the Commission decided to standardize the terminology used in the Fish and Game Code to refer to administrative and court-imposed civil penalties.³ The staff's recommendations on how to achieve this are discussed below.

Unless otherwise indicated, all statutory references in this memorandum are to sections of the existing Fish and Game Code, or to sections of the proposed Fish and Wildlife Code.

Prevailing Terminology

In considering what terms to use to refer to and distinguish between penalties that are imposed administratively and those imposed judicially, the staff looked for examples in other codes. What we found was instructive. The terminology used is fairly standard.

In most codes, a civil penalty imposed by an administrative agency after an administrative proceeding is referred to as an "administrative penalty."⁴ A non-criminal penalty imposed by a court in a court proceeding is typically referred to as a "civil penalty."⁵

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See Memorandum 2012-41.

3. Memorandum 2014-7, pp. 1-3; Minutes (Feb. 2014), p. 13.

4. See, e.g., Bus. & Prof. Code § 5116; Civ. Code § 1632.5(h)(1); Corp. Code § 25252; Food & Agric. Code § 18932.2; Fin. Code §§ 4977(a), 12105(c); Health & Safety Code §§ 1280.1, 1368.04, 42410, 43023, 118330; Ins. Code §§ 789, 10199.7; Lab. Code § 4610(i); Pub. Res. Code §§ 25402.11, 42885(f); Water Code § 8704.1.

5. See, e.g., Bus. & Prof. Code §§ 1625.4(a)(1)(E), 21140.3, 22452(d); Civ. Code § 1189(a)(2), 1798.93(c)(6); Corp. Code § 25535; Educ. Code § 67361(c); Elec. Code § 2173(b); Fin. Code § 4977(b); Fish & Game Code §§ 1615, 2014(f), 2125, 2587, 5650.1; Health & Safety Code

Recommendation

In the Fish and Game Code, the term “civil penalty” is used to refer to both administratively *and* judicially imposed civil penalties.⁶ This is potentially confusing.

Consistent with the prevailing practice in other codes, **the staff recommends that in the proposed law, the term “administrative penalty” be consistently used to refer to administratively imposed penalties.**

Incorporating this practice, the staff further recommends that **existing Section 12014, which has already been presented to the Commission as proposed Section 3320, be revised as follows:**

3320. After the expiration of the time period to appeal an administrative penalty imposed pursuant to Section 2301, 2302, 2582, or 2583, or any other provision of this code, the department may apply to the clerk of the appropriate court for a judgment to collect the administrative ~~civil~~ penalty. The application, including a certified copy of the order imposing the ~~civil~~ administrative penalty, a hearing officer’s decision, if any, or a settlement agreement, if any, shall constitute a sufficient showing to warrant issuance of the judgment. The court clerk shall enter the judgment immediately in conformity with the application. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

Comment. Section 3320 continues former Section 12014 without change, except as indicated below.

The following nonsubstantive changes are made:

....

- Use of the term “administrative penalty” is standardized.

Finally, consistent with the prevailing practice in other codes, **the staff recommends that the term “civil penalty” be used in the proposed law to refer to court imposed civil penalties.** As that is already the practice in the existing Fish and Game Code, no revisions would be needed to implement this second recommendation.

§§ 25270.12, 42403; Ins. Code §§ 10119.3(c), 15006; Mil & Vet. Code § 999.5(d)(4); Penal Code §§ 261.5, 13300(j); Pub. Cont. Code §§ 3006(c), 12140; Pub. Res. Code §§ 25967, 42885(f); Rev. & Tax. Code § 30101.7(g); Veh. Code §§ 4463.3, 32053; Water Code § 8704.

6. For example, compare existing Sections 2583, 2584, and 12014 (Department imposed “civil penalty”) with existing Sections 1615, 2014(f), 2125, 2587, and 5650.1 (court imposed “civil penalty”).

Is the approach described above acceptable? If so, we will follow that course in all future drafts.

Respectfully submitted,

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