



HISTORY OF THE COUNTY CLERK

California Association of Clerks & Election Officials Conference

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HISTORY:

The County Clerk's office is a key spot in County government where citizens first come to seek information, voice opinions, and register their complaint. The only commodity the County Clerk provides is service.

Have you ever encountered records of by-gone days in your office and wondered what to do with them? Have you been puzzled by the different format of the record, its title, age, or relevance to present time? Have you ever asked yourself what a particular record was even doing in your office or when, why and how the transition took place from the former record to its modern day counterpart?

Inasmuch as the Constitution of 1849 provided only for the county offices of clerk, district attorney, sheriff, coroner, and supervisors, it was not unusual for the County Clerk to perform duties that today are associated with the offices of auditor, treasurer and recorder. The latter offices were among the new ones required or allowed by the 1879 Constitution.

The County Clerk served as sealer of weights and measures, ex officio, from 1850 to 1858 and from 1860 to 1891. You should keep in mind that county offices and combinations thereof varied back then much as they do today.

Although uniformity of record keeping may have been a goal, it did not – in the early days – exist in actual practice. This was true for a variety of reasons. Differing offices and differing needs, vagueness of state statutes, shortage of trained administrators, varying monetary and physical resources, lack of regular coordination and communication between state and local offices were a few of the reasons. This, I think, helps explain why each county is unique in the extent and condition of its early records.

The earliest act prescribing the duties of the county clerk was passed by the first legislature on April 18, 1850 and stated "He was ex official clerk of the district court of sessions and probate court of his county; he was empowered to administer oaths and receive bonds; he was required to attend each term of the county court and the other courts of the county; to keep an office at the county seat; and, take charge of and safely keep or dispose of according to law all books, papers and records, which may be filed or deposited in his office". A further section set forth that he was to issue all writs, enter all orders, judgment and decrees proper to be entered in the minutes; to keep a docket of each court, in which he was to make certain specified entries and was to keep such other books and records as might be prescribed by law or by rules of the court.

A few unimportant amendments were made before 1872, when the duties of the clerk were outlined in the Political Code. The first paragraph reiterated a provision regarding the safekeeping of all records, books and papers filed or deposited in his office; the second declared that he was to act as the clerk of the board of supervisors, district, county and probate courts and attend each term for them and upon the judges in their chambers when required; third, that he was to issue all processes and notices required to be issued and to keep for each court a docket; fourth, he was to keep an index of all suits in the district and county courts. Among his duties were also included the keeping of such other records and duties as might be described by law.

Between 1872 and 1919 changes made in the code were of little importance. In 1907 the code was rearranged and the sections cited replaced by sections 4171 and 4179 of the Political Code, but these did little more than to incorporate old provisions. With the adoption of the 1879 Constitution, the older courts gave way to the superior court with a consequent change in the title of the clerk's records.

Charter vs. General Law Counties: The California Constitution – Article XI – outlines requirements of local government. Counties – and their structures – are established pursuant to either a county charter adopted by the voters of that county, or the general law of the State of California (normally under specifics outlined in the CA Govt. Code). That determines which county officers perform which functions, and how the county government itself is structured. Larger counties are usually charter counties that have outlined their local government structure in a charter adopted by their voters. Most counties are general law counties, so their local government structure is governed by the authority given to the local county by the state legislature or by the state constitution. That determines whether someone is elected or appointed and whether the County Clerk currently performs all the ex-officio duties originally performed by the County Clerk. Ex-officio duties refer to those that are the responsibility of the office holder based on the election or appointment to the office of County Clerk. Examples are: Clerk of the Superior Court, Clerk of the Board of Supervisors and Registrar of Voters.

The California Constitution of 1849 originally required each county to have an elected County Clerk, District Attorney, Sheriff, Coroner, and "other officers" as necessary. County Clerks at that time did everything not specifically reserved to the above officers or to the Circuit Judge or Board of Supervisors. That included issuing welfare checks, issuing dog licenses, issuing bingo permits, registering docked horses, summoning jurors, purchasing and tracking county expenditures, etc., and generally keeping all county records of any sort. Included was the requirement that County Clerks were first Clerks of the District Court (1849), then Clerks of the Courts of Record (1862), and finally Clerks of the Superior Court (1879). As counties and government got larger, some of the specialized functions broke off over time and were assigned to specific separate offices until approximately the middle of the twentieth century. By that time, in general law counties County Clerks largely performed the following functions because of their election to the office of County Clerk.

Ex-officio functions:

Clerk of the Superior Court

Clerk of the Board of Supervisors

Registrar of Voters

CLERK OF THE SUPERIOR COURT – (originally a County Clerk function pursuant to California Constitution, Article 6, Section 4)

The statutory duties exercised by County Clerks as Clerks of the Superior Court were originally codified in Government Code 69841 et seq. In 1971, Government Code 69898 was enacted, allowing Superior Courts to appoint a Court Executive Officer. Following an amendment in 1976 allowing Superior Courts by local rule to assign that Officer the duties of the County Clerk as Clerk of the Court, a variety of local rules were adopted in various counties to implement this provision. Some affected County Clerks filed suit challenging the rules (and the statute allowing them) as a violation of the Constitutional provision assigning those responsibilities to the County Clerk. Two early appellate court cases testing the rules and law were *St. John vs Orange County Superior Court* (1978) 87 Cal.App.3d 30, 150 Cal.Rptr.697 and *Price vs Superior Court of Madera County* (1985) 186 Cal.App.3d.156 C/A No 5th CW.F 005893. The deciding case resulted when Robert Zumwalt, County Clerk of San Diego County, contested the actions of the San Diego Superior Court in assigning his court-related responsibilities to their Executive Officer. In that case -*Zumwalt vs San Diego Superior Court* (July 31, 1989) Case # S001618 – 198 Cal.App.3d - the California Supreme Court Case upheld the constitutionality of Government Code 69698 and ruled in favor of the Superior Court actions. Within the next few years, all California Superior Courts had implemented that rule. A Constitutional amendment (Proposition 220, June 2, 1998) formally shifted the duties to the Court Executive Officers and removed the language in the Constitution that had previously designated the County Clerk as the ex-officio Clerk of the Court. That proposition also allowed for consolidation of Superior and Municipal Courts into a

single countywide Superior Court with all trial court and limited appellate jurisdiction. This change also included responsibility for the Jury Commissioner function as well. Effective January 1, 2003, (Chapter 784, 2002 - SB 1316) the statutory references to County Clerks in their prior role as Clerks of the Superior Court were largely clarified in a major revision by the California Law Revision Commission. Some of that "clean up" will continue for years as overlooked references are found and fixed.

Originally under this umbrella were a variety of duties that are not uniformly exercised in the state. In some counties the duties remained with the courts, in other counties the duties shifted with the County Clerk when they separated from the courts. These include responsibility for Grand Jury filings (Penal Code 888 et seq), Naturalization proceedings (U. S. Code, Section 8), and the acceptance of Passport applications (Section 51.21 of Title 22 of the Code of Federal Regulations). Effective January 1, 2002, another area of confusion was resolved when the filing of Private Professional Conservatorships, Private Professional Guardians and Private Professional Trustees were explicitly reserved for the courts (Chapter 176, 2001 - SB 210).

CLERK OF THE BOARD OF SUPERVISORS (Government Code 25100 et seq outlines duties)

Originally an ex-officio role of County Clerks of general law counties (Government Code 26801 and 25100). Over half of California counties now appoint a separate Clerk of the Board of Supervisors under the authority of Government Code 25100.5, authorizing such appointment and relieving the County Clerk of that responsibility. For the rest of the counties the County Clerk, wearing this hat, maintains the records of the county Board of Supervisors, prepares the Board Agendas, attends sessions of the Board and takes minutes and provides clerical and/or administrative support to the local Board of Supervisors. They also serve as Clerk to the Board sitting as either a Board of Equalization or the appointed Assessment Appeals Board.

REGISTRAR OF VOTERS (Government Code 26802, Elections Code outlines duties)

One of the original ex-officio roles of the County Clerk (Government Code 26802). In the larger counties, particularly charter counties, most Registrar of Voters positions are held by a separately appointed independent officer selected by the Board of Supervisors or County Administrator or General Services director. In most general law counties the County Clerk continues to serve in this role. Responsibilities include: The conduct of all elections in the county (Federal, State, County, School and Special District) except Municipal elections which many conduct by contract. It also includes the maintenance of the voter rolls, the processing of various petitions, maintaining campaign statement filings, the recruitment and training of precinct officers, the preparation and mailing of sample ballots, the production of official ballots, and the counting of votes.

COMMISSIONER OF CIVIL MARRIAGES (Family Code 401)

In the early 1980's an additional role was added. County Clerks became ex-officio Commissioners of Civil Marriages, initially in large counties upon a request by the Superior Court and a designation by the Board of Supervisors, and ultimately, in all counties automatically. They could perform marriage ceremonies in California, and could deputize commissioners to also perform them.

FUNCTIONS OF COUNTY CLERK (AS COUNTY CLERK):

Appointments
CA Public Records Act
Certification of Public Official; Notary Public; Certificates of Aliveness
Department of Insurance
Fictitious Business Name Statements
Fish & Game
Grand Jury
Humane Officer Appointments
Legal Document Assistant Registrations
Marriage Licenses
Miscellaneous Court Orders
Naturalization (A Superior Court function, some counties retained by County Clerk)
Notary Oaths
Oath of Office
Passports (requires special designation as acceptance agent by U.S. Dept. of State)
Power of Attorney by Surety
Process Server Registrations
Professional Photocopier Registrations
Proof of Publication Notices
Public Official Bonds
Roster of Public Agencies (aka Statement of Facts)
Statement of Economic Interests (aka Conflict of Interest)
Statutory Fees
Unlawful Detainer Assistant Registrations

Statutory references to the above listed functions are separately listed alphabetically by function.

To search California Statutes on-line, visit the following website:
<http://www.leginfo.ca.gov/calaw.html>



CALIFORNIA LAW

California Law consists of 29 codes, covering various subject areas, the State Constitution and Statutes. Information presented reflects laws currently in effect.

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1195	Diversion of salary or fees by superior
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24100	Deputy included in principal's name
24101	Appointment; number of deputies
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24104	Appointment; salary restrictions
24105	Discharge of principal's duties

CALIFORNIA PUBLIC RECORDS ACT

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6252	Definitions
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6253	Public records open to inspection; agency duties; time limits
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CALIFORNIA PUBLIC RECORDS ACT Con't

Government Code

- 6253.5 Initiative, referendum, recall petitions, and petitions for reorganization of school districts or community college districts deemed not public records; examination by proponents
- 6253.6 Bilingual ballot or ballot pamphlet requests not deemed public records
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- 6254.2 Pesticide safety and efficacy information; public disclosure; limitations; procedures
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CALIFORNIA PUBLIC RECORDS ACT Con't

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CERTIFICATES ISSUED BY THE COUNTY CLERK (Hague Convention)

Certification of Public Official

Certificates of Aliveness

Certification of Notary Signature

APOSTILLE – In 1961 many nations joined together to create a simplified method of "legalizing" documents for universal recognition. Members of the conference, referred to as the Hague Convention, adopted a document referred to as an Apostille that would be recognized by all member nations.

Documents sent to member nations, completed with an Apostille at the state level, may be submitted directly to the member nation without further action.

Documents sent to non-member nations requiring a Certification of the signature of the state's public official at the state level, then must be transmitted to the Authentication Office of the Department of State in Washington, D.C. for the Authentication of the State Official's signature.

The Secretary of State is the designee in each State for issuing an Apostille. The California Secretary of State provides authentication of public official signatures on documents to be used outside the United States of America. The country of destination determines whether the authentication is an Apostille or Certification. The California Secretary of State can only authenticate documents issued in the State of California by the following public officials and their deputies:

- County Clerks
- County Recorders
- Judges of the Superior Court
- Court Administrators
- Executive Officers
- Executive Clerks
- State Officials
- Notaries Public

Any document that has been executed by County Health Officers and County Local Registrars can only be authenticated if the document is first certified by the County Clerk's office.

For more information on Apostille – please call the Secretary of State Special Filings Division at 916-657-5448 or visit the Secretary of State website at:
http://www.ss.ca.gov/business/notary/notary_authentication.htm

For a current listing of countries participating in the Hague Convention, please visit the Department of State in Washington DC website at:
<http://www.state.gov/m/a/auth/>

DEPARTMENT OF INSURANCE

Insurance Code

- 12070 List of Insurers
- 12071 Certification of newly admitted insurers
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Business & Professions Code

- 17900 Fictitious business name defined; name suggesting additional owners
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CA Code of Regulations Title 14, Section 753.5 & Fish & Game Code

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California Code of Regulations Title 14, Section 753.5

Fish and Game Code

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***Please note: In some counties these documents are filed with The Clerk of Superior Court rather than the County Clerk.**

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NATURALIZATION *

Code of Federal Regulations Title 8, Volume I

338.11 Execution and issuance of certificate of naturalization by clerk of court

For more information on Naturalization, please visit the Bureau of Citizenship & Immigration Services in the Department of Homeland Security (formerly INS) website at: <http://www.immigration.gov/graphics/index.htm>

***Please note: In some counties these documents are filed with The Clerk of Superior Court rather than the County Clerk.**

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NOTARY OATHS Con't

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- 8228 Enforcement of chapter; examination of notarial books, records, etc.
- 8230 Identification of affiant; verification

OATH OF OFFICE:

Constitution Article 20 Section 3*

Government Code

1225	Officers authorized to administer oaths
1360	Necessity of taking constitution oath
1362	Administration by authorized officer
1363	Place of filing; expiration date of term of office
1364	Additional test or qualification; prohibition against removal from office or position for noncompliance
1365	Removal of appointing officer for failure to require additional test or qualification
1366	Remedies for removal or threat of removal additional test or qualification provisions
1367	Payment of expenses
1368	Perjury; punishment
1369	Advocating overthrow of government; offense; punishment
3100	Declaration; public employees as disaster service workers
3101	Definitions
3102	Requirement of taking oath of affirmation; temporary or successive employments
3103	Form of oath or affirmation
3104	Administration of oath; fee
3105	Filing
3106	Oaths by state employees
3107	Conditioning of compensation on taking of oath; ascertainment and certification as to taking; correction of error or deficiency
3108	False statement as perjury
3109	Advocating or affiliating with organization which advocates overthrow of government
24057	Administering oaths

- **Note:** The second paragraph of the oath prohibiting affiliation with organizations advocating the overthrow of the government was struck by the California Supreme Court as an unconstitutional infringement on first amendment rights of the US Constitution in **Vogel vs County of Los Angeles (1967) 68 Cal.2d 18, issued December 21, 1967, and final January 20, 1968** – Therefore only the first paragraph is administered for either the Oath of Office to officers/deputies and Loyalty Oath to employees.

PASSPORTS*

Code of Federal Regulations, Section 51.21 of Title 22

By statute (22 U. S. Code 219), the U.S. Secretary of State has the authority to grant and issue U.S. passports. Within the U.S. Department of State's Bureau of Consular Affairs, Passport Services is the office that designates public sector entities to accept passport applications and perform the acts required to make those applications legal documents.

For more information on passports, travel warnings or foreign entry requirements, please visit the Department of State website at: travel.state.gov

***Please note: In some counties these documents are executed by The Clerk of Superior Court rather than the County Clerk.**

POWER OF ATTORNEY BY SURETY

Code of Civil Procedure

995.630 Conditions of acceptance or approval

995.640 County Clerk; certificate

PROCESS SERVER REGISTRATIONS

Business & Professions Code

22350 Certificate of registration; filing; exceptions

22351 Contents of certificate

22351.5 Fingerprint cards; felony convictions

22352 Fees

22353 Bond

22354 Duration and renewal of certificate

22355 Register; maintenance by County Clerk; identification cards; renewal of certificate

22356 Responsibility of registrant

22356.5 Proof of service by independent contractor; additional information; conditions

22357 Action on bond; recovery; filing new bond or additional deposit

22358 Revocation or suspension of certificate; grounds

22359 Violations; misdemeanor

22360 Proof of service; county; number

PROFESSIONAL PHOTOCOPIER REGISTRATIONS

Business & Professions Code

- 22450 Definition; registration
- 22451 Application of chapter
- 22452 Application for registration
- 22453 Application fees; identification card fees
- 22453.1 Fees for process servers
- 22454 Notary public commission
- 22455 Bond or deposit
- 22456 Duration and renewal of certificate
- 22457 Register of professional photocopiers; identification cards
- 22458 Confidentiality; standards of photocopier
- 22459 Violation of confidentiality; recovery on bond
- 22460 Revocation of registration; reapplication
- 22460.5 Investigation for suspension or revocation of certificate
- 22461 Judicial review of suspension or revocation of certificate
- 22462 Certification by photocopier of records distributed or transmitted
- 22463 Violation; punishment

PROOF OF PUBLICATION

Code of Civil Procedure

- 2011 Evidence of publication; filing; original or certified copy as prima facie evidence

PUBLIC OFFICIAL BONDS

Government Code

- 1457 Bonds of county and judicial district officers
- 1458 Bonds of supervisors and certain others
- 1459 Bond of County Clerk
- 1460 Preservation of bonds; certified copies; fees
- 1460.1 Return of recorded bond; duration of filing; destruction or other disposition
- 1461 Bond of person appointed to fill vacancy
- 1462 Filing fee; prohibition
- 1480 Individual bonds
- 1481 Master bonds
- 1482 Provision to cancel bond
- 24150 Prescribing official bonds
- 24151 Amount of supervisor's bond
- 24152 Additional bond of tax collector
- 24153 Separate bonds of sheriffs
- 24154 Master bond
- 24155 Duties of officers consolidated; official bond
- 24156 Self-insurance in lieu of bonds; resolution; county, district and court officers and employees; determination

ROSTER OF PUBLIC AGENCIES (aka STATEMENT OF FACTS)

Government Code

53050 Public Agency

53051 Information concerning public agency & members of governing board

STATEMENT OF ECONOMIC INTERESTS (aka Conflict of Interest)*

Government Code

87200 Applicability

87500 Place of Filing Statement

Title 2, Division 6, California Code of Regulations

18115 Duties of Filing Officers and Filing Officials - Statements of Economic Interests

***Please note: In some counties these filings are maintained by the Registrar of Voters, or Board of Supervisors. There are several other statutes governing the filing of Statement of Economic Interests and Conflict of Interest Codes. The sections included above deal specifically with the function as it relates to County Clerk.**

STATUTORY FEES

Government Code

26820 Collection of fees

26831 Copies; records, proceedings or paper on file

26833 Certifying copy

26836 Other certificates

26837 Comparison of papers

26840 Marriage license; disposition of fees

26840.1 Marriage certificate

26840.2 Marriage license; issuance outside of normal business hours; additional fee

26840.3 Increase of fees for support of family conciliation court and mediation services; conditions

26840.7 Marriage license; additional fee upon issuance; use of fee

26840.8 Marriage authorization; additional fee upon filing; use of fee

26849.1 Filing, canceling, revoking, or withdrawing bond of notary; recording fee

26850 Filing and indexing of other papers

26851 Recording other licenses or certificates

26852 Certificate to official capacity of public official

26853 Affidavits; exception

26855 Acknowledgments

26855.1 Power of attorney, or notice of cancellation, revocation or withdrawal of power of attorney; admitted surety insurer

26855.2 Financial statement of admitted surety insurer

STATUTORY FEES Con't

Government Code

- 26855.3 Certificate stating whether admitted surety insurer's certificate of authority has been surrendered, revoked, etc.
- 26861 Performance of marriage
- 54985 Authority to increase or decrease fees or charges; basis; disputes; application of chapter
- 54986 Public meetings; notice; public data; action of board by ordinance; costs
- 54987 Construction of chapter

Penal Code

- 70.5 Fee for performance of marriage by commissioner or deputy commissioner of civil marriages

UNLAWFUL DETAINER ASSISTANT REGISTRATIONS

Business & Professions Code

- 6400 Definitions
- 6401 Chapter application exceptions
- 6401.5 Practice of law by nonlawyers
- 6401.6 Legal document assistant; limitation on service; services of attorney
- 6402 Registration requirement; registration of disbarred & suspended lawyers prohibited
- 6402.1 Registration eligibility
- 6403 Contents of registration applications
- 6404 Fees
- 6405 Bonds
- 6406 Certificates of registration; duration; renewal; denial; appeal
- 6407 Register; identification cards
- 6408 Disclosure of registration required
- 6408.5 Advertisements and solicitation; required disclaimers
- 6409 Retention of original documents prohibited
- 6410 Written contracts required; contents; rescinding & voiding
- 6410.5 First-in-person or telephonic solicitation; disclaimers and statements prior to conversation
- 6411 Unlawful acts
- 6412 Recovery of damages from bonds; filing of new bonds required
- 6412.1 Remedies for violation; attorney's fees
- 6412.5 Waivers from client
- 6413 Revocation of registration
- 6414 Appeal of revocation of registration
- 6415 Penalties

COUNTY CLERKS NOW AND IN FUTURE

In addition to the above responsibilities of the County Clerk, either as County Clerk or in their ex-officio roles, there have been many locally controlled consolidations of the elected County Clerk's office with other elected offices. For general law counties, the allowable consolidations are outlined in Government Code 24300 et seq, largely dealing with the elected officers enumerated in Government Code 24000. Provisions for changing elected to appointive status are also contained in Government Code 24009. The most common consolidation is with Recorders (over 40 County Clerks are also Recorders), about a dozen are consolidated with Recorders and Assessors, but all are distinct, legally separate responsibilities that are carried out by the same person. Elections for these offices include all elected titles together (ie., County Clerk-Recorder-Assessor). The local Board of Supervisors can de-consolidate or reconfigure these offices as they wish, as long as they remain within the guidelines of Government Code 24300 on what is statutorily allowable.

In addition to the above consolidations and the ex-officio roles specifically listed in the Govt. Code for general law counties the statutes provide for special exceptions on a county by county basis resulting from a request from the local county to allow an arrangement uniquely for their county. Examples are: Special legislation Govt. Code 26802.5 that allows the Registrar of Voters to be appointed by the Board of Supervisors in the counties of El Dorado, Kings, Lake, Marin, Merced, Monterey, Riverside, San Joaquin, Solano, and Tulare.