



# CALIFORNIA JUDGES ASSOCIATION

*The Voice of the Judiciary*

CJA is aware that the enactment of AB 2761 (Low), effective January 1, 2017, has created an ambiguity between Family Code Sec. 400 and Penal Code Sec. 94.5 regarding the performance of marriages by judicial officers. AB 2761 expands the category of those allowed to perform marriages to allow retired members of the Legislature, Congress, and others to do so. The bill was amended in the last two weeks of the 2016 legislative session to prohibit a judicial officer from accepting compensation for solemnizing a marriage "while holding office. "

AB 2761 made no changes to Penal Code Sec. 94.5, which prohibits acceptance by a judicial officer of money or other thing of value for performing a marriage although it contains an express provision that it does not apply either to a retired judicial officer (but per Penal Code Sec 94.5 and *Rothman*, a retired judicial officer sitting on assignment in court is not deemed for the purposes of that section to be retired), nor a judicial officer performing a marriage on Saturday, Sunday or a legal holiday.

As of January 1, 2017, per AB 2761 and until further amendment, active judicial officers, including possibly those sitting by assignment in the Assigned Judges program, would be prohibited pursuant to Family Code Sec. 400 from accepting compensation from solemnizing a marriage. CJA believes that this prohibition should not apply to retired judicial officers that are no longer "holding office," such as those engaged in private alternative dispute resolution practice or those who have resumed the practice of law.

CJA is moving immediately to introduce legislation to amend Family Code Sec. 400 to clarify that active judicial officers may accept compensation for marriages performed on Saturday, Sunday, or a legal holiday, thereby conforming to Penal Code Sec. 94.5.

We will keep you advised of any updates on the effect of AB 2761 and subsequent legislation, and should you have any questions as to this issue or any other CJA matter please do not hesitate to contact your CJA District Board Representative or CJA Legislative Director, Lexi Howard at [lhoward@caljudges.org](mailto:lhoward@caljudges.org).

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