

**SUMMONS  
(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

AGE  
8/23/2016  
(Received in Mail)

LIP-2016-00016

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

DAVE JONES in his capacity as Commissioner of the California Department of Insurance

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CHAD CONLEY

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): Stanley Mosk  
111 North Hill Street  
Los Angeles, California 90012

CASE NUMBER:  
(Número del Caso):

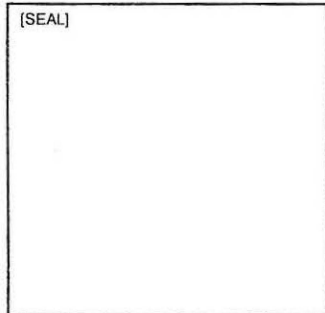
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
John Rorabaugh, Esq. 801 Parkcenter Drive, Suite 205, Santa Ana, California 92705

DATE: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy  
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify): California Department of Insurance  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
4.  by personal delivery on (date):



1 JOHN M. RORABAUGH, #178366  
E. ALAN NUNEZ, #062288  
2 ROBERT TOMLIN WHITE, #222504  
ADAM SOSTRIN, #233908  
3 Attorneys at Law  
801 Parkcenter Drive, Suite 205  
4 Santa Ana, California 92705  
Telephone: (714) 617-9600  
5 Facsimile: (714) 644-9986

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

AUG 17 2016

Sherri R. Carter, Executive Officer/Clerk  
By M. Soto, Deputy  
Moses Soto

6 Attorney for Moving Party/Real Party In Interest  
CHAD CONLEY

7 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 IN AND FOR THE COUNTY OF LOS ANGELES

9  
10 CHAD CONLEY

11 Plaintiff,

12 vs.

13 DAVE JONES in his capacity as Commissioner

14 Of the California Department of Insurance

15 Defendant,  
16  
17

) Case No.: BC 6 3 0 3 8 3

) VERIFIED COMPLAINT FOR  
) DECLARATORY RELIEF

18 This Complaint is filed on behalf of Chad Conley against Defendant Dave Jones in his  
19 capacity as Insurance Commissioner. Plaintiff allege as follows:

20 INTRODUCTION

21 1. Plaintiff bring this action for a declaratory judgment that the Commissioner  
22 exceeded his statutory authority and acted inconsistently with the California and United States  
23 Constitutions in adopting California Code of Regulations, Title 10, Chapter 5, Subchapter 1,  
24 Article 2, Section 2071 ("10 CCR § 2071"). 10 CCR § 2071 sets out a prohibition on bail

COPY



1 licensees from directly or indirectly referring or recommending attorneys to arrestees or persons  
2 purporting to act on behalf of arrestees. 10 CCR § 2054.5 defines arrestees as persons who are  
3 detained or in custody where posting bail can effectuate their release. Accordingly, the  
4 prohibition on referrals appears to apply only to persons in actual custody, and not those who  
5 have been released or who were never in custody.

6 2. Suggesting or recommending attorneys is an effective way to ensure that those  
7 facing criminal charges are represented by competent attorneys who can help clients navigate  
8 the myriad obstacles associated with the criminal justice system.

9 3. The Insurance Commissioner claims authority to adopt 10 CCR § 2071 in  
10 accordance with the provisions of the Administrative Procedure Act (Government Code, Title 2,  
11 Division 3, Part 1, Chapter 4.5), pursuant to authority found in Section 1812 of the California  
12 Insurance Code (Cal. Ins. Code § 1812 ).

13 4. Cal. Ins. Code § 1812 provides that the “commissioner may make reasonable rules  
14 necessary, advisable, or convenient for the administration and enforcement of the provisions of  
15 this chapter.” Furthermore, in adopting 10 CCR § 2071, the Department of Insurance (“DOI”)  
16 asserted that Cal. Ins. Code § 1812 confers it with authority to “implement, interpret, or make  
17 specific Sections 1800 through 1822” of the California Insurance Code.

18 5. However, nothing in Cal. Ins. Code §’s 1800 through 1822 relate to referrals or  
19 relations *vis a vis* attorney and bail agents, and 10 CCR § 2071 is therefore an *ultra vires*  
20 regulation.

21 6. Furthermore, since 10 CCR § 2071 prevents a bail licensee from directly or even  
22 *indirectly* suggesting attorneys it denies the licensee his or her right to speech as guaranteed by  
23 the California and United States Constitutions.  
24

1           7.     Accordingly, Plaintiff asks this court to declare 10 CCR § 2071 invalid because:  
2     (1) Cal. Ins. Code § 1812 confers the Commissioner only with authority to “implement, interpret,  
3     or make specific Sections 1800 through 1822” of the California Insurance Code, and Cal. Ins.  
4     Code §’s 1800 through 1822 have nothing at all to do with attorney referrals and/or relations *vis*  
5     *a vis* bail licensees and attorneys. Also, (2) 10 CCR § 2071 is an impermissible abridgment of  
6     Plaintiff’ right to speech as guaranteed by the California and United States Constitutions.

7           8.     Plaintiff now seek declaratory relief from the court to remedy this regulatory  
8     overreach and unjustified infringement on constitutionally protected rights.

9   **JURISDICTION AND VENUE**

10          9.     This case raises questions under the Administrative Procedure Act (Title 2,  
11     Division 3, Part 1, Chapters 3.5, 4, 4.5 and 5 of the Government Code of California). This case  
12     also raises questions under Article 1, Section 2 of the California Constitution, and the First and  
13     Fourteenth Amendments of the U.S. Constitution.

14          10.    This court is authorized to grant declaratory relief under section 1060 of the  
15     California Code of Civil Procedure and section 11350 of the California Government Code.

16          11.    This court is authorized to grant injunctive relief under sections 525 and 526 of  
17     the California Code of Civil Procedure.

18          12.    Venue is proper to this Court under section 401(1) of the California Code of Civil  
19     Procedure.

20   **PARTIES**

21          13.    Plaintiff, Chad Conley (“Conley”), is a licensed bail agent (CA Bail License #  
22     1845390) under the California Insurance Code.

23          14.    The California Department of Insurance (“DOI”) is an executive agency of the  
24

1 State of California responsible for enforcing California law and regulations regarding bail  
2 licensees. As part of its regulatory responsibilities, the DOI is charged with ensuring that bail  
3 licensees comply with the California Code of Regulations and the California Insurance Code,  
4 and for prosecuting violations.

5 15. Defendant is Dave Jones, the Commissioner of the California Department of  
6 Insurance. When 10 CCR § 2071 was adopted, Wesley J. Kinder was the Insurance Commissioner.  
7 The current Insurance Commissioner is responsible for implementing the specific statutory  
8 provisions of the Insurance Code, including 10 CCR § 2071, and is therefore the defendant in this  
9 action and sued in his official capacity only.

#### 10 THE REGULATION

12 16. 10 CCR § 2071 was adopted on August 17, 1977, under Ruling No. 219, and File  
13 No. RH 182. At that time, the Insurance Commissioner made the following finding: "Per  
14 proceedings in accordance with the provisions of the Administrative Procedure Act (Government  
15 Code, Title 2, Division 3, Part 1, Chapter 4.5), and pursuant to authority vested by Section 1812  
16 of the California Insurance Code, and to implement, interpret or make specific Sections 1800  
17 through 1822 of the California Insurance Code, the Insurance Commissioner adopts and repeals  
18 Sections in Title 10 of the California Insurance Code: Adopts new Article 2, Subchapter 1,  
19 Chapter 5, Sections 2053 through 2104, inclusive."

20 17. 10 CCR § 2071 provides as follows: "No bail licensee shall in any matter, directly  
21 or indirectly, suggest the name or recommend any attorney to any arrestee or person purporting  
22 to act for or represent an arrestee." In addition, 10 CCR § 2054.5 defines an arrestee as "...any  
23 person actually detained or subject to detention in custody whose release may lawfully be effected  
24

1 by bail.” Accordingly, the proscriptions of 10 CCR § 2071 would appear to be limited to referrals  
2 made to persons in actual custody or detention, but the strong language in 10 CCR § 2071 could  
3 be a source of confusion.

4 18. While the Insurance Commissioner finds authority to adopt 10 CCR § 2071 under  
5 Cal. Ins. Code § 1812, which “implement[s], interpret[s] or make[s] specific” Cal. Ins. Code §  
6 §’s 1800-1822, these sections are not related to the subject of referrals and regulating relations  
7 between licensees and attorneys.

### 8 BACKGROUND

9 19. The fundamental concept of the bail bond system is that a bail bond constitutes a  
10 contract between the surety, the criminal defendant, and the government, whereby the  
11 government releases the defendant from custody to the constructive custody of the surety in  
12 exchange for the surety’s promise to produce the defendant when required or pay the government  
13 as set forth in the bond.

14 20. The surety’s liability under the terms of the bail contract is based upon the premise  
15 that when the defendant is released after the posting of the bond, the surety takes the place of the  
16 government by accepting the responsibility of the defendant’s custody and the surety held a  
17 certain amount of control over the defendant. (*Private Police, supra*, 32 INLR 1414-16; see also  
18 *Reese v. United States* (1869) 76 U.S. 13, 21.) The surety’s consideration for the bail contract is  
19 the constructive custody of the defendant. Accordingly, once the government regains custody  
20 of the defendant, the surety loses its consideration for the bond and the bail contract is  
21 terminated.

22 21. The purpose of the bail bond system is to secure the appearance of a criminal  
23 defendant in court who has obtained pre-judgment release from State custody. “The object of  
24

1 bail and its forfeiture is to insure the attendance of the accused and his obedience to the orders  
2 and judgment of the court.” (*People v. Far West Insurance Company* (2001) 93 Cal. App. 4th  
3 791, 794.) The bail bond system accomplishes this goal by providing a bail surety with incentive  
4 to locate, apprehend and return defendants to the State that fail to appear in court as  
5 required. The chief motivation for a surety to fulfill its obligations undertaken with a bail bond  
6 is the threat of substantial forfeiture if the bail fugitive is not timely returned to the State *coupled*  
7 with the ability of the surety to prevent such forfeiture by surrendering the defendant within a  
8 statutory deadline. Upon a bail fugitive’s timely return to State custody, the defendant’s presence  
9 is assured and the purpose of bail satisfied.

10 22. “The social value of bail bondsmen, however, extends far beyond the financial  
11 interests of the individual bondsman. Profit drives the bondsman to protect his investment,  
12 [citation omitted] but the result is far beyond personal gain. The court system is able to operate  
13 effectively, the right to bail is protected, and fleeing criminals, of possible danger to society, are  
14 apprehended. [Citation omitted.]” (*Private Police, supra*, (1999) 32 INLR 1413, 1431.)

15 23. Accordingly, the California Penal Code (“PC”) has specific provisions allowing for  
16 the taking of bail and the release of defendants on it. Under PC § 1268, “Admission to bail is the  
17 order of a competent Court or magistrate that the defendant be discharged from actual custody  
18 upon bail. Likewise, under PC § 1269, “[t]he taking of bail consists in the acceptance, by a  
19 competent court or magistrate, of the undertaking of sufficient bail for the appearance of the  
20 defendant, according to the terms of the undertaking, or that the bail will pay to the people of  
21 this state a specified sum.”

22 24. Further, California Code of Regulations, Title 10, Chapter 5, Subchapter 1, Article  
23 2, and the California Insurance Code, govern California Bail licensing requirements and  
24

1 limitations.

2 25. Under Cal. Ins. Code § 1801, there are three types of bail licenses: the bail agent's  
3 license under Cal. Ins. Code § 1802, a bail permittee's license under Cal. Ins. Code § 1802.5, and  
4 the bail solicitor's license under Cal. Ins. Code § 1803. The bail agent's license permits the  
5 holder to solicit, negotiate, and effect undertakings of bail on behalf of any admitted surety. A  
6 license may also be held by a corporation under Cal. Ins. Code § 1810(b).

7 26. A bail agent's license under Cal. Ins. Code § 1802.5 shall not be issued "unless and  
8 until there is filed with the commissioner a bond having an admitted surety insurer as surety  
9 thereon in the penal sum of five thousand dollars (\$5,000), conditioned upon the proper  
10 application and disposal of all moneys collected or received by the bail permittee, his or her  
11 solicitors licensed pursuant to his or her appointment; and his or her employees, in favor of the  
12 people of the State of California."

13 27. License status may be effected under Cal. Ins. Code § 1806, where the  
14 Commissioner is given authority to "suspend, revoke or refuse to issue a license" if it appears  
15 that "the holder of such permit is not a fit and proper person to be permitted to continue to hold  
16 or receive such license." Further, under Cal. Ins. Code § 1807 the commissioner may "suspend  
17 or revoke any bail license for any cause for which he could deny such license."

18 28. While the California Insurance Code grants the commissioner powers to regulate  
19 bail agents, generally, California Code of Regulations, Title 10, Chapter 5, Subchapter 1, Article  
20 2, limits certain specific conduct of bail licensees.

21 29. For instance, 10 CCR § 2054.4 prevents unlawful payment of commissions; 10  
22 CCR § 2072 prevents payment[s] or receiving of payment[s] on behalf of arrestees from or to  
23 attorneys; while 10 CCR §'s 2079 and 2079.5 prohibit improper bail licensee solicitations, etc.  
24



1           30. Nothing in either California Code of Regulations, Title 10, Chapter 5, Subchapter  
2 1, Article 2, or the California Insurance Code, pose limitations on referrals except for 10 CCR §  
3 2071, which broadly prevents bail licensees from, “in *any matter, directly or indirectly,*  
4 *suggest[ing]* the name or recommend[ing] any attorney to any arrestee or person purporting to  
5 act for or represent an arrestee.” 10 CCR § 2054.5 defines an arrestee as “...any person actually  
6 detained or subject to detention in custody whose release may lawfully be effected by bail.”

7           31. On its face, 10 CCR § 2071 casts too wide of a net. The regulation prevents a bail  
8 agent from ever *suggesting* the name of an attorney – either orally or in writing, or in any other  
9 conceivable manner – to *any possible* clientele, if it concerns a person who can be released on  
10 bond. These restrictions therefore prevent any uncompensated attorney referrals concerning  
11 arrestees, even if they pertain to a bail licensee’s family or friends. Bail licensees may also be  
12 liable under the regulation for unintentional referrals.

13           32. Bail licensees are confronted - on a daily basis - with telephone calls from arrestees,  
14 and/or office visits from friends and family, who wish to have the arrestee released from custody.  
15 Coupled with the powerful motivation to have a loved one at home and not in a jail cell, is the  
16 desire to have effective legal counsel to confront whatever range of criminal charges the arrestee  
17 is exposed to.

18           33. To avoid a prosecution from the Department of Insurance for perceived violations  
19 of 10 CCR § 2071, however, bail licensees, statewide, cannot utter the name of an attorney,  
20 verbally or orally, or in any other conceivable manner, regardless of the fact that they may be  
21 aware of competent counsel who can render assistance.

1           34. According 10 CCR § 2071 is *ultra vires*, vague and overbroad, an impermissible  
2 prior restraint on speech, and it unduly infringes upon a bail licensee's ability to communicate  
3 truthfully and freely to and regarding arrestees.

4  
5                           **THE COMMISSIONER'S AUTHORITY IS LIMITED BY STATUTE**

6           35. The Commissioner is charged with performing all duties imposed by the provisions  
7 of this code and other laws regulating the business of insurance in this state. Cal. Ins. Code §  
8 12921.

9           36. Each regulation adopted, to be effective, shall be within the scope of authority  
10 conferred. Cal Gov Code § 11342.1.

11  
12                           **CAUSE OF ACTION FOR DECLARATORY RELIEF**

13           37. Plaintiff incorporates by reference each and every allegation continued in  
14 paragraphs 1 through 37.

15           38. An actual controversy has arise and now exists between Plaintiff and the  
16 Commissioner concerning whether the Commissioner had authority to adopt 10 CCR § 2071.

17           39. Plaintiff contends that 10 CCR § 2071 is invalid and may not be implemented or  
18 enforced because the Commissioner lacked the authroity to adopt it.

19           40. Specifically, Plaintiff contends as follows:

20                           (a)      The Commissioner had no authority to regulate attorney referrals  
21 as he has done in 10 CCR § 2071.

22                           (b)      When adopting 10 CCR § 2071, the Department of Insurance  
23 ("DOP") asserted that Cal. Ins. Code § 1812 provides it with authority to  
24

1 “implement, interpret, or make specific Sections 1800 through 1822” of the  
2 California Insurance Code. However, nothing in Cal. Ins. Code §’s 1800 through  
3 1822 relate to referrals or relations *vis a vis* attorney and bail agents, and 10 CCR  
4 § 2071 is therefore an *ultra vires* regulation.

5 (c) Furthermore, 10 CCR § 2071 is inconsistent with the California and  
6 United States Constitutions in that the regulation prevents a bail licensee  
7 communicating truthfully and freely to arrestees and persons purporting to act for  
8 or represent arrestees.

9 41. Plaintiff has no plain, speedy and adequate remedy at law than this proceeding for  
10 a declaration that 10 CCR § 2071 is unlawful, void, and unenforceable. Unless such a  
11 declaration is granted, Plaintiff will be prohibited from *suggesting* the name of competent  
12 counsel – either orally or in writing, or in any other conceivable manner – to any possible clientle,  
13 if it concerns a person who can be released on bond. Furthermore, Plaintiff may unintentionally  
14 suggest the names of attorneys to possible persons purporting to act for or represent arrestees,  
15 and may be subject to liability, criminal or otherwise. Thus, unless such a declaration is granted  
16 and the court deems 10 CCR § 2071 unlawful, void and unenforceable, Plaintiff’s ability to speak  
17 truthfully while mentioning legal counsel – in any forum - is curtailed.

18 **PRAYER**

19 1. For a judicial declaration that § 10 CCR § 2071 is invalid and may not be  
20 implemented, enforced, and specifically for a declaration that:

21 2. The Commissioner has no authority to regulate attorney referrals as he has done in  
22 § 10 CCR § 2071.  
23  
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1           3. The Commissioner has no authority to adopt 10 CCR § 2071 in accordance with  
2 provisions of the Administrative Procedure Act (Title 2, Division 3, Part 1, Chapter 3.5, 4, 4.5  
3 and 5 of the Government Code of California), pursuant to authority found in Cal. Ins. Code §  
4 1812.

5           4. That while Cal. Ins. Code § 1812 confers the Commissioner with authority to  
6 “implement, interpret, or make specific Sections 1800 through 1822” of the California Insurance  
7 Code, nothing in Cal. Ins. Code §’s 1800 through 1822 relate to referrals or relations *vis a vis*  
8 attorney and bail agents.

9           5. That § 10 CCR § 2071 is an *ultra vires* regulation which violates the California  
10 Administrative Procedures Act, which may not be implemented, utilized, or enforced by  
11 Defendants.

12           6. That § 10 CCR § 2071 is inconsistent with the California and United States  
13 Constitutions in that the regulation is vague and overbroad, a prior restraint on speech, and it  
14 denies bail licensees their right to communicate truthfully to arrestees or those acting on behalf  
15 of them.

16           7. That if § 10 CCR § 2071 is valid it is limited to communications with defendants  
17 who are in actual custody as 10 CCR § 2054.5 defines an *arrestee* as “...any person actually  
18 detained or subject to detention in custody whose release may lawfully be effected by bail.”

19           8. Awarding Plaintiff court costs and reasonable attorneys’ fees under 42 U.S.C. §  
20 1988, California Code of Civil Procedure § 1021.5, and any other applicable statute.

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9. Awarding such other and further relief as the Court finds just and proper.

**WHEREFORE**, it is respectfully requested that the court grant this Verified  
Complaint for Declaratory Relief.

Dated: July 12, 2016

  
\_\_\_\_\_  
John M. Rorabaugh, Attorney for Plaintiff  
Chad Conley



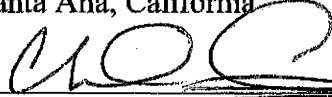
VERIFICATION

I, Chad Conley, declare:

I am a licensed bail agent and the owner of Chad Conley Bail Bonds. I have read the foregoing Complaint and know the contents thereof. I believe that the same are true and correct to the best of my knowledge.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 7<sup>th</sup> of day of July 2016, at Santa Ana, California

  
\_\_\_\_\_  
Chad Conley  
Chad Conley Bail Bonds

**EXHIBIT "A"**

PRINTING OF REGULATIONS

The enclosed regulations and/or Certificates of Compliance filed by your agency on 9-12-77 for publication in the California Administrative Code will be included in Register 77, No. 3 & available in about five weeks.

If your agency plans to distribute copies of these regulations printed on your order, you should place an order with the State Printer at once to save costs (Form 67).\*

Refer to the proper title of the California Administrative Code and to the above Register; no copy is needed. You may prefer a blanket order.

Codification Office  
OFFICE OF ADMINISTRATIVE HEARINGS  
915 Capitol Mall, Room 106  
Sacramento, CA. 95814  
(445-5909)

\*You will receive no further notice concerning this matter.

LEA

FACE SHEET  
FILING ADMINISTRATIVE REGULATIONS  
WITH THE SECRETARY OF STATE  
(Pursuant to Government Code Section 11380.1)

RECEIVED FOR FILING  
SEP - 8 1977  
Office of Administrative Hearings

ENDORSED  
APPROVED FOR FILING  
(Gov. Code 11380.2)  
SEP 12 1977

Office of Administrative Hearings

Copy below is hereby certified to be a true and correct copy of regulations adopted, or amended, or an order of repeal by:

Department of Insurance

(Agency)

Date of adoption, amendment, or repeal:

September 6, 1977

By: *Angele Khachadour*  
ANGELE KHACHADOUR  
Deputy

(Title)

ENDORSED FILED  
IN THE OFFICE OF

SEP 12 3 44 PM 1977

MARCH FONG EU  
SECRETARY OF STATE  
OF CALIFORNIA

DO NOT WRITE IN THIS SPACE

DO NOT WRITE IN THIS SPACE

After proceedings had in accordance with the provisions of the Administrative Procedure Act (Government Code, Title 2, Division 3, Part 1, Chapter 4.5) and pursuant to the authority vested by Section 1812 of the California Insurance Code, and to implement, interpret, or make specific Sections 1800 through 1822 of the California Insurance Code, the Insurance Commissioner hereby adopts and repeals the following regulations in Title 10 of the California Administrative Code, as follows:

- 1) Repeals Article 2, Subchapter 1, Chapter 5, Sections 2053 through 2104, inclusive
- 2) Adopts new Article 2, Subchapter 1, Chapter 5, Sections 2053 through 2104, inclusive

This order shall take effect on the thirtieth day after its filing with the Secretary of State as provided in Section 11422 of the Government Code.

The Insurance Commissioner has determined that there will be no increase or new cost to local government resulting from the adoption of the proposed regulation. This determination has been made pursuant to the provisions of Section 2231 of the California Revenue and Taxation Code.

Title 10, Chapter 5, Subchapter 1,  
California Administrative Code  
Article 2. Bail Transactions

PRELIMINARY

2053. Application; Construction. This article as amended is applicable to all applications for licenses filed after the effective date of such amendments, to all transactions or severable portions thereof occurring thereafter and to the keeping of all records pertaining to such transactions or severable portions thereof.

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All such applications filed prior thereto and all transactions or severable portions thereof occurring prior thereto and the keeping of records pertaining thereto shall be governed by the provisions of this article which were in effect prior to such date. Insofar as the provisions of this article are substantially the same as the provisions of this article as it read prior to said effective date, they shall be construed as restatements and continuations thereof and not as new provisions.

2053.1. Past Violations; Power of Commissioner. Insofar as the provisions of this article are new provisions, their promulgation shall not preclude the commissioner from taking such action as is permitted by law for acts or omissions which occurred prior to the effective date of these amendments.

2054. Definitions; Application of Insurance Code. Insofar as they are applicable, the definitions contained in the General Provisions and in Chapter 7, Part 2, Division 1 of the Insurance Code are applicable to this article.

2054.1. "Bail License"; "Bail Licensee"; Terms Defined. As used in this article "bail license" includes all licenses specified in Section 1801 of the Insurance Code and "bail licensee" the holders thereof whether on a permanent or temporary basis and whether as individuals or as members of a partnership.

2054.2. "Bail Agent" or "Permittee" Includes Copartners. Whenever the term "bail agent or permittee" is used in this article, such term includes the members of a partnership of bail agents or permittees if applicable.

2054.3. "Bail"; "Transaction of Bail"; Terms Defined. As used in this article "bail" or "transaction of bail" includes undertakings of bail and "bail bond" as that term is defined in Insurance Code Section 1800.4, including the activities in respect to execution or delivery of undertakings of bail of any person, whether designated "general agent" or otherwise, who conducts, or supervises the conduct of bail business pursuant to contract with a surety insurer.

2054.4. Payment of Commissions; Unlawful Rebates; Prohibited. No person may receive commission on bail or the transaction of bail as defined in Section 2054.3 unless he holds a bail license as defined in Section 2054.1. No bail licensee shall pay or allow in any manner, directly or indirectly, to any person who is not also a bail licensee any commission or other valuable consideration on or in connection with a bail transaction. This section shall not prohibit payments by a bail licensee to an unlicensed person of charges by such person for services of the kind specified in Section 2081(c) and (d).

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2054.5. "Arrestee" Defined. As used in this article "arrestee" means any person actually detained or subject to detention in custody whose release may lawfully be effected by bail.

2054.6. Notices; Time for Filing. Whenever any provision of this article requires that notice be given to or that filing be made with the commissioner a specified period of time before a matter may lawfully be used or an event lawfully occur, such period of time may be reduced by the commissioner at the request of the licensee if good cause is shown therefor.

2054.7. Notice of Noncompliance; Request and Hearing. Whenever pursuant to any provision of this article the commissioner gives notice to any person that such person may not establish a particular relationship or perform a particular act, such person shall upon written request therefor filed within 10 days of said notice be granted a hearing within 60 days following the date of such notice on the issues of noncompliance specified in such notice. Whenever pursuant to the provisions of this article the commissioner gives notice to any person to discontinue within a specified time a particular established relationship or the performance of a particular act, such person shall upon written request therefor filed within 10 days of said notice be granted a hearing on the issues of noncompliance specified in such notice which shall be held at least 10 days prior to the date specified in the notice as the date such person shall discontinue the relationship or the act.

#### LICENSE REGULATIONS

2055. Applications; Forms. All applications for original or renewal bail licenses shall be on forms furnished by the commissioner. All applicants for such licenses and all bail licensees shall furnish such supplementary information and supporting statements as the commissioner may require.

2056. License Qualifications. An original bail license shall not be issued to any person unless he:

(a) Is a California resident and has been such for a period of two years immediately preceding issuance of the license.

(b) Satisfies the commissioner that he is a person of good business reputation and of good general reputation in:

(1) The community in which he intends to principally engage in the transaction of bail, or

(2) The community or communities in which he formally resided, if he has not been a resident of the community in which he intends to principally engage in the transaction of bail for a sufficient period of time to establish such reputation.

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(c) Is 18 or more years of age.

2057. Prohibited Associations. An original or renewal bail license shall not be issued to any person nor shall it be kept in force if he is:

(a) Regularly or frequently employed by or associated with:

(1) A court of law in respect to its exercise of its criminal jurisdiction, if any,

(2) A public law enforcement agency possessing the power of arrest and detention of persons suspected of violating the law in the specific terms of the statutes establishing and governing the agency.

(b) A private patrol operator.

(c) An active member of the State Bar of California.

(d) An associate of persons of bad general or bad business reputation, or criminals, except to the extent that such association is required in the transaction of bail with such persons.

(e) In case the associations defined in (d) above are only with persons related to the licensee or applicant by blood or marriage, on good cause shown the commissioner may issue the license applied for or a restricted license, or may revoke an existing license and issue in lieu thereof a restricted license.

2058. License; Prior Prohibited Associations. An unrestricted original bail license shall not be issued to any person if within the two-year period immediately prior to his application a license would not have been issued to him for any of the reasons specified in Section 2057(a); but a restricted bail license may be issued to such person if he presents evidence satisfactory to the commissioner that his bail business will be conducted in a county other than any county wherein he was employed by or associated with a court of law or law enforcement agency; or that such business will be conducted only in a part of the same county so remote from the place of his prior employment that such employment will have no affect on his conduct of his bail business.

2059. Solicitor; Other Licenses Prohibited. A person licensed as a bail solicitor may not at the same time be licensed as:

(a) A bail agent.

(b) A bail permittee.

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(c) A bail solicitor for more than one employer unless all such employers are partners, in which event he shall be licensed as a solicitor for all partners.

**TRANSACTION OF BAIL THROUGH PARTNERSHIPS  
 AND EMPLOYEES**

2060. Only natural persons may be issued a bail license.

2061. Transaction as Partners; Notices. Two or more bail agents or permittees desiring to transact bail as partners shall file with the commissioner the written statement required by Section 2061.2 at least 10 days prior to so transacting, except as provided by Section 2061.3.

2061.1. Partners; Individual Licensing; Rebating. Each partner shall be licensed individually as a bail agent or permittee, or both, and every partner shall be licensed in the same capacity or capacities as the other members of the partnership so that all partners will be licensed in the same capacity or capacities; except the commissioner may permit the inclusion of an unlicensed partner if evidence is presented satisfactory to him that such unlicensed partner will have no functions, duties or responsibilities involving the actual conduct, supervision or transaction of the bail business.

2061.2. Copartners; Filing Individual Statements. A written statement subscribed by each partner shall be filed with the commissioner setting forth:

(a) The nature of all businesses conducted or intended to be conducted by the partnership.

(b) The location of the principal place of conduct of the bail business of the partnership and of all other places for the conduct of such business.

(c) The proportion of ownership of each member of the partnership.

(d) An agreement to immediately notify the commissioner of any change in the membership of the partnership or of the matters set forth in (a) to (c) hereof.

2061.3. Change in Partnership; Notices. Upon any change in the membership of the partnership whether through death, dissolution, addition, deletion, or otherwise, or upon the revocation of the license of any partner, the survivors or successors to the bail business, if they are to act as a partnership, shall file a new statement pursuant to Section 2061.2 and shall be subject to the requirements of Section 2061.1. If the change in membership arises

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through the death or revocation of the license of a partner in a partnership of three or more persons whose partnership agreement provides for continuation of the partnership by the survivors; such survivors may continue to transact bail as a partnership until the expiration of such reasonable period of time as may be specified in any notice which may be sent by the commissioner pursuant to Section 2054.7.

2061.4. Copartnership Suspension; Prohibitions. If the license of any partner is suspended such partner may not engage in the transaction of bail nor may he receive any commission on, or profit derived from, such transactions entered into by other persons during the period of suspension.

2061.5. Copartnership; Disciplinary Action for Act of One Partner. The licenses of each member of a partnership are subject to suspension or revocation for the failure of the partnership or of any member of the partnership to comply with all laws and rules governing or regulating the conduct of the bail business or acts incidental thereto if such failure occurred with his express or implied knowledge, consent, ratification or collusion.

2062. Licensed Employees; Notice of Employment. A bail agent or permittee of a partnership of bail agents or permittees desiring to employ another person licensed as a bail agent or permittee for the purpose of assisting him in his bail business shall file with the commissioner a written statement as required by Section 2062.2 at least 10 days prior to such employment. If prior to the expiration of such 10-day period the commissioner gives notice to the prospective employer specifying wherein such employment would be contrary to any provision of this article or any law relating to bail, such person shall not be employed. If after such 10-day period and after the establishment of the employer-employee relationship the commissioner gives notice to such employer and to such employee specifying wherein the continued employer-employee relationship would be contrary to any provision of this article or any law relating to bail, they shall discontinue such relationship within such reasonable time as the commissioner may prescribe.

2062.1. Employee; Licensed in Same Capacity as Employer. Each such employee (employed pursuant to Section 2062) shall be licensed in the same capacity or capacities as the employing bail licensee or bail licensees.

2062.2. Employment; Written Notices. A written statement subscribed by the employer and each such employee (employed pursuant to Section 2062) shall be filed with the commissioner setting forth:

- (a) The fact of employment.
- (b) The location of the place of business from which the employee will normally transact bail.

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(c) The basis of compensation of the employee and if such compensation is to be more than \$1,000 per month the amount thereof.

(d) An agreement to immediately notify the commissioner in writing of any change in the matters set forth in (a) to (c) hereof.

2063. Licensed and Unlicensed Employees; Effect. Sections 2063.1 to 2063.2, inclusive, apply to each employee of a bail agent or permittee whether or not such employee is licensed as a bail agent, permittee or solicitor if such employee performs any duties connected with the transaction of bail by his employer.

2063.1. Employer Supervision; Disciplinary Action. An employing bail agent or permittee shall exercise a reasonable degree of supervision over his employees and make a reasonable effort to keep informed of their acts as his employees. Failure of the employer to exercise such supervision resulting in the violation of law or these regulations by the employee may result in disciplinary action against the employer.

2063.2. Branch Offices. A bail licensee (i.e., the owner, a partner or a licensed employee) shall be in charge, as his usual and customary place of business, of each branch office.

2063.3. Solicitor; Transactions and Conduct. A bail solicitor shall not conduct a bail business or transact bail under any name or at any address other than that of his employer; nor shall he use any forms or documents in connection with a bail transaction other than those of his employer.

#### CONDUCT OF BAIL LICENSEES

2064. Bail Licensees; Capacity and Conduct. Every bail licensee shall conduct his business in such a manner that the public and those dealing with him shall be aware of the capacity in which he is acting, and if he transacts bail both as an employee and as an individual or in any other dual capacity; each such transaction shall be so conducted that the public and those dealing with him shall not be confused as to the capacity in which he acts.

2065. Business in Specified Capacities Only and Notices. Every bail agent or permittee shall conduct his bail business:

(a) As an individual;

(b) As a member of a partnership as provided in Section 2061;

(c) As an employee of another bail agent or permittee as provided in Section 2062;

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(Pursuant to Government Code Section 11380.1)

(d) As the temporary associate of another bail agent or permittee in the joint transaction of bail if such temporary association is limited to a single transaction or to a series of related transactions;

(e) As the temporary conductor of the bail business of another bail agent or permittee during a period of his temporary absence; or

(f) In any other lawful manner provided written notice is filed with the commissioner by the bail licensee at least 10 days prior to his so conducting his bail business setting forth full details of the manner in which the business will be conducted and the names of all persons, if any, to be associated with him. If prior to the expiration of such 10-day period the commissioner gives notice to such bail licensee specifying wherein the intended conduct of the business would be contrary to any provision of this article or any law relating to bail, such bail licensee shall not so conduct his business. If after such 10-day period the commissioner gives notice to such bail licensee specifying wherein the continued conduct of his bail business would be contrary to any provision of this article or any law relating to bail, he shall discontinue to so conduct his business within such reasonable time as the commissioner may prescribe.

2066. Business in Own Name. Except as provided in Section 1724.5 of the Insurance Code and the commissioner's regulations promulgated thereunder (Sections 2050 and following of Title 10 of the California Administrative Code) and Sections 2066.2, 2066.3, 2066.4 hereof, every bail licensee shall do business in his own name.

2066.1. Using Employer's Name. Every bail agent and permittee employed by another bail agent or permittee pursuant to Section 2062 and acting as such and every bail solicitor shall do business only in the natural name or fictitious name, if any, of his employer.

2066.2. Using Predecessor's Name. The permission under Section 1724.5 of the Insurance Code to use a predecessor's name in case a bail agent or permittee purchases or succeeds to the bail business of another bail agent or permittee is applicable only where the business so purchased or succeeded to was a bona fide business which the predecessor or predecessors had actively conducted as a bail business for at least 5 consecutive years.

2066.3. Fictitious Names; Filing; Similar Names. Prior to its use, a fictitious name or style must be:

(a) Filed with and approved by the commissioner in writing.

(b) Filed with the county clerk of all counties in which the user thereof maintains an office for the transaction of bail or in which he contemplates the active solicitation of bail under such fictitious name or style.

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(c) Worded in compliance with the requirements of Section 1724.5 of the Insurance Code and the regulations of the commissioner promulgated under authority thereof (Sections 2050 and following of Title 10 of the California Administrative Code).

2066.4. Disapproval of Fictitious Name. If the commissioner gives notice to a bail agent or permittee specifying wherein the continued use of a fictitious name would be in violation of any of the provisions of the Insurance Code or this Article, such bail agent or permittee shall discontinue the use of such fictitious name subject to such extension of time as the commissioner may prescribe pursuant to the provisions of Section 1724.5 of the Insurance Code.

2066.5. Advertising of Fictitious Names. All advertising or telephone listings in the yellow pages of telephone directories shall contain the true name of the licensee(s) who owns it with equal prominence with that of the fictitious name, so that there will be no indication that another separate business exists when in fact, the ownership is the same.

2067. Misrepresenting Capacity; Authority. No bail licensee shall directly or indirectly represent that he is a fidelity or surety insurer or that he has the authority or powers of a bail permittee, bail agent, or bail solicitor unless he is licensed as such; nor shall he misrepresent his authority or power to act on behalf of a surety insurer; nor shall he advertise his bail business in the yellow pages of the telephone directory under "Surety" or "Fidelity."

2068. Transactions by Unlicensed Persons; Prohibitions. No bail licensee shall directly or indirectly permit any person on his behalf to solicit or negotiate undertakings of bail or bail bonds or to effect undertakings of bail or to issue or deliver bail bonds unless such person is properly licensed by the commissioner to perform such acts, even though such person acts in a purely mechanical or ministerial manner or renders his services gratuitously. This section shall not prevent a bail agent or permittee from using the mail, or any messenger or delivery service used by the public generally, to file executed undertakings of bail or deliver bail bonds, nor shall it prevent such filing or such delivery by the attorney or other agent of the arrestee. No person in the employment of the licensee shall act as an agent of the arrestee in the performance of any of the acts specified herein.

2069. Confidential Communications; Information. No bail licensee shall disclose or reveal any information coming into his possession or to his knowledge concerning an impending arrest or detention of a person by a law enforcing agency, except in accordance with the lawful inquiry of a law enforcement or judicial officer, unless such information is a matter of public record or knowledge.

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2070. Agreements for Bail Before Arrest; Prohibited. No bail licensee shall enter into an agreement or arrangement with any person, which agreement or arrangement has for its purpose the guaranteeing or assuring such person or any other person in advance of the commission of any offense that bail will be furnished to such person or any other person when and if such person or any other person is arrested, nor shall any bail licensee perform any act which will encourage any person to violate the law.

2071. Suggesting or Recommending Attorney; Prohibited. No bail licensee shall in any manner, directly or indirectly, suggest the name of or recommend any attorney to any arrestee or person purporting to act for or represent an arrestee.

2072. Acting for Attorney; Prohibited. No bail licensee shall receive, accept or collect for, or transmit to, any attorney any money or other item of value for attorney's fee, costs or any other purpose on behalf of an arrestee or any other person with whom bail is negotiated. Any bail licensee who is lawfully holding any money or other item of value as collateral may, however, upon the release of such collateral, honor an assignment thereof to an attorney if the licensee took no part in the negotiation of such assignment. No bail licensee shall furnish forms for or otherwise aid in such assignment.

2073. Preparation of Writ of Habeas Corpus; Prohibited. No bail licensee or his employees shall prepare, make, or assist in any manner in the preparing, making or filing of a petition for a writ of habeas corpus for or on behalf of an arrestee. Such licensee or his employees may, however, without charge and in accordance with the specific directions of the attorney of the arrestee, perform such mechanical and ministerial acts as will assist such attorney in preparing or making such petition.

2074. Unlawful Solicitations; Place. Except as provided in Sections 2079 and 2079.5, no bail licensee shall solicit any person for bail in any prison, jail, or other place of detention of persons, court or public institution connected with the administration of justice; or in the halls or corridors adjacent thereto; provided that a bail licensee may, in such halls, corridors or in other rooms or areas where not prohibited by local rule or ordinance transact bail with persons specified in Section 2079 who have prior to transaction, requested his services.

2075. Regulations of Public Authority; Compliance. Every bail licensee shall fully comply with every rule, regulation or ordinance issued by a proper public authority governing the conduct of persons in or about any prison, jail or other place of detention of persons, court or public institution connected with the administration of justice. This section shall not be construed to authorize any act constituting a violation of any other section of this article which is done pursuant to any rule, regulation or ordinance that is merely permissive in its nature.

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(Pursuant to Government Code Section 11380.1)

2076. Informing or Notifying of Arrests; Prohibitions. No bail licensee shall, for any purpose, directly or indirectly, enter into an arrangement of any kind or have any understanding with a law enforcement officer, newspaper employee, messenger service or any of its employees, a trusty in a jail, or other person incarcerated in a jail, or with any other persons, to inform or notify any licensee (except in direct answer to a question relating to the public records concerning a specific person named by the licensees in the request for information), directly or indirectly, of:

- (a) The existence of a criminal complaint;
- (b) The fact of an arrest; or
- (c) The fact that an arrest of any person is impending or contemplated.
- (d) Any information pertaining to the matters set forth in (a) to (c) hereof or the persons involved therein.

2077. Fictitious Communications. No bail licensee shall, directly or indirectly, transmit or cause to be transmitted to himself or to any other person a communication authorizing said licensee or any other person to solicit or negotiate bail which is a fictitious communication or which is from a person other than a person from whom he may lawfully solicit bail pursuant to Section 2079 or with whom he may lawfully negotiate bail pursuant to Section 2080. No such communication shall, at any time or in any manner, be used directly or indirectly as an aid in securing information concerning a person confined in a jail, prison or other place of detention or for the purpose of visiting an arrestee therein, or for any other purpose.

2077.1. Identification Card. Every bail licensee shall keep in his possession an identification card issued to him by the commissioner and shall, upon request, show it to any person with whom he transacts bail. He shall not permit any person other than himself to use his identification card for any purpose. The identification card shall be returned to the commissioner immediately upon the termination of all of the holder's bail licenses.

2078. Gifts Prohibited. No bail licensee shall give, directly or indirectly, any gift of any kind to any public official or employee of any governmental agency who has duties, functions or responsibilities in respect to the administration of justice or a place wherein detention of persons charged with crime may occur, or to a prisoner in any jail or place of detention. Items of nominal value which are distributed generally for the purpose of advertising shall not be considered gifts for the purpose of this article, except if given to prisoners or persons directly in charge of prisoners in their place of detention; nor shall this article prevent the customary giving of gifts to relatives by blood or marriage. But nothing in this Section shall be construed to justify any rebate or bribe.

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2079. Soliciting of Bail; Persons. No bail licensee shall solicit bail except in accordance with Section 2079.5 and from:

- (a) An arrestee;
- (b) The arrestee's attorney;
- (c) An adult member of the arrestee's immediate family; or
- (d) Such other person as the arrestee shall specifically designate in writing. Such designation shall be signed by the arrestee before the solicitation, unless prohibited by the rules, regulations or ordinances governing the place of imprisonment. If so prohibited, it may be signed after release of the arrestee to ratify a previous oral designation made by him.

2079.1. Solicitation of Arrestee; Hours. Any solicitation of an arrestee himself pursuant to Section 2079(a) shall be only after a bona fide request for bail services has been received from the arrestee or from a person specified in Section 2079(b) or (c). Any solicitation of a person specified in Section 2079(c) or (d) shall be only between the hours of 7 o'clock a.m., and 11 o'clock p.m., unless the bail licensee is directly and specifically authorized in writing by the arrestee or the arrestee's attorney to make such solicitation at some other specific time.

2080. Negotiation of Bail; Persons. No bail licensee shall negotiate concerning bail, except with:

- (a) A person specified in Section 2079;
- (b) Any other person who without previous solicitation on the part of the bail licensee has requested his services.

2081. Collection and Charges Permitted. No bail licensee shall, in any bail transaction or in connection therewith, directly or indirectly, charge or collect money or other valuable consideration from any person except for the following purposes:

- (a) To pay the premium at the rates established by the insurer and set forth on the undertaking of bail or to pay the charges for the bail bond filed in connection with such transaction at the rates filed in accordance with Section 2094.
- (b) To provide collateral.
- (c) To reimburse himself for actual, necessary and reasonable expenses incurred in connection with the individual bail transaction, including but not limited to:

- (1) Guard fees after the first 12 hours following release of an arrestee on bail;

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(2) Notary fees, recording fees, necessary long distance telephone expenses (i.e., telephone calls billed by the telephone company as "long distance", but not those for which "message unit" charges only are made); telegram charges, travel expenses and verification of collateral outside of the county where the bail was arranged; a reasonable posting fee charged by a licensee operating in a county other than that where the bail was arranged; providing that no charge shall be made for travel from the licensee's office to post bail in an area where the licensee advertises in the yellow pages of the telephone directory unless the advertisement specifically so states. Such travel charges, when permitted, shall not exceed the amount allowed to be taken as a travel expense for income tax purposes under the federal Internal Revenue Code and Regulations thereunder, or the amount allowed by the State of California to be claimed for mileage by its employees, whichever the licensee chooses.

(d) To reimburse himself for actual reasonable and necessary expenses incurred and caused by a breach by the arrestee of any of the terms of the written agreement under which and pursuant to which the undertaking of bail or the bail bond was written. Such reimbursement may not exceed the penal amount of such undertaking or bond and may include a reasonable charge for the services of the licensee, his employees, partners, or other persons associated with him in the particular transaction of bail.

(e) If a forfeiture of bail occurs and is not set aside, the expenses under (c) and (d) of this Section which are incurred within 180 days of such forfeiture may be charged in addition to the amount of such forfeiture.

2082. Prohibited Service Charges. Except to the extent permitted by Section 2081(c), (d), and (e), no bail licensee shall make any charge for his services in a bail transaction in addition to the premium on an undertaking of bail or the charge for a bail bond at the rates filed in accordance with Section 2094.

2083. Written Statements of Bail Transactions; Contents; Delivery. Every bail licensee shall, at the time of obtaining the release of an arrestee on bail or immediately thereafter, deliver to such arrestee or, if the negotiations concerning the bail were not with the arrestee, to the principal person with whom such negotiations were had, a numbered document containing the following information:

- (a) If an undertaking of bail, the name of the surety insurer.
- (b) The name and address of the bail licensee.
- (c) The name of the arrestee.

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- (d) The date of release of the arrestee.
- (e) The date, time and place of the arrestee's required appearance.
- (f) The amount of bail.
- (g) The offenses with which the arrestee is charged.
- (h) The premium if an undertaking of bail, or the charge if a bail bond.
- (i) An itemization of all actual expenses described in Section 2081(c) and (d), supported by vouchers and receipts, or true copies thereof.
- (j) The total amount of all charges.
- (k) The amount received on account.
- (l) The unpaid balance, if any.
- (m) A description of and receipt for any collateral received and a statement of any conditions relating thereto including a copy of any written agreement executed in connection therewith.

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2083.1. Same; Additional Statements. If, after the release of an arrestee, additional expenses are incurred or charges made, the bail licensee shall immediately deliver to the person specified in Section 2083 an additional numbered document containing the information required by Section 2083(h), (i), (j), (k) and (l).

2084. Guarantor Agreements; Delivery; Notices. All guarantor agreements shall be in writing, or reduced to writing as soon as possible after consumation. If any person acts as a guarantor, a copy of the guarantor's agreement shall be delivered to him promptly upon his execution thereof. No bail licensee shall enforce any such agreement without disclosing to the guarantor all collateral held by such licensee indemnifying the bond to which the agreement relates, and the identity of all other guarantors thereof, if any.

2086. Undertakings of Bail; Delivery; Compliance. No bail licensee shall deliver an undertaking of bail which does not comply with all of the provisions of Section 381 of the Insurance Code.

2087. Waiver of Rights of Guarantor; Prohibited. No bail licensee shall require the waiver by a depositor of collateral or by a guarantor of any right he might have or thereafter acquire in connection with any bail transaction. No bail licensee shall require or accept in connection with any bail transaction any waiver of defense, confession of judgment, or other agreement impairing the right of the person with whom the bail is negotiated or any depositor of collateral or guarantor to a determination of his rights in a civil court.



2088. Collateral; Fiduciary Relation. Any bail licensee who receives collateral in connection with a bail transaction shall receive such collateral in a fiduciary capacity, and prior to any forfeiture of bail shall keep it separate and apart from any other funds or assets of such licensee.

2088.1. Collateral; Custody Thereof. If pursuant to his agreement or contract of agency employment or partnership any bail licensee is or may be required, or in fact does, transfer collateral to another bail licensee, general agent, or surety insurer, such recipient of said collateral shall hold it in the same fiduciary capacity as the bail licensee, return it, and otherwise handle it in conformity with Sections 2088 through 2089, both inclusive, hereof. Such collateral shall only be transferred to another bail licensee or to a surety insurer holding a certificate of authority in California and said collateral shall not be removed from this state.

2088.2. Return of Collateral. Any collateral received shall be returned to the person who deposited it with the bail licensee or to any assignee of such person, other than the bail licensee or his representative, as soon as he is advised that the obligation, the satisfaction of which was secured by the collateral, is discharged. It is the duty of the bail licensee or surety insurer to determine promptly whether such obligation has been discharged upon request for return of the collateral by the person depositing it or by his assignee. If the collateral was deposited to secure the obligation of a bond, it shall be returned immediately upon the entry of any order by an authorized official by virtue of which liability under the bond is terminated. If any licensee or surety insurer which has custody of the collateral fails to take promptly any action necessary to secure the termination of such liability, he shall return such collateral immediately upon the accrual of any right to secure an order of termination of liability. If such collateral was deposited as security for unpaid premium or charges and if such premium or charges remained unpaid at the time of exoneration and after demand therefor has thereafter been made by the licensee or surety insurer which has custody of the collateral, the collateral other than cash may be levied upon in the manner provided by law and the proceeds of such collateral may be applied to the amount of such unpaid premium or charges.

2088.3. Real Property as Collateral. If a bail licensee receives as collateral in a bail transaction, whether in his own or on another's behalf, any document which conveys title to real property, such document shall state on its face that it is executed as part of a security transaction. If such document is recorded, a reconveyance of such property executed in such a manner that it may be recorded shall be delivered by the responsible bail licensee or surety insurer to the person executing the original conveyance or to his heirs, legal representative or successor in interest immediately upon such responsible party learning of the satisfaction of the obligation secured; and it is the duty of such responsible party to determine promptly whether such obligation has been discharged upon request for return of the collateral by the person entitled thereto.

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(Pursuant to Government Code Section 11380.1)

2089. Return of Excess Collateral on Forfeiture. If collateral received is in excess of the bail forfeited, such excess shall be returned to the depositor immediately upon the application of the collateral to the forfeiture; subject, however, to any claim for unpaid premium or charges as provided in Section 2081.

2090. Surrender of Arrestee to Custody; Return of Premiums. No bail licensee shall surrender an arrestee to custody prior to the time specified in the undertaking of bail or the bail bond for the appearance of the arrestee, or prior to any other occasion when the presence of the arrestee in court is lawfully required, without returning all premium paid for such undertaking or bond; except that when as the result of judicial action, information concealed or misrepresented by the arrestee or other reasonable cause, any one of which was material to the hazard assumed, and the licensee can show that the hazard was substantially increased, then the bail licensee may retain incurred out of pocket expenses permitted to be charged by Section 2081(c) and (d). The surrender of an arrestee who is again in custody for an offense for which a penalty greater than that for the original offense may not be imposed, or his surrender at the request of the guarantor shall never, in and of themselves, be considered to be reasonable cause for surrender, and in case of any surrender under such circumstances, and no actual and substantial increase in hazard can be shown by the licensee, all premiums received and incurred expenses shall be returned. Compliance with an Order of the Court made pursuant to Section 1300(b) of the Penal Code shall be in compliance with this Section; and a licensee at the time of any surrender of an arrestee prior to the time specified in the undertaking of bail shall inform such arrestee of his rights under said Section 1300(b) to petition the Court for a ruling as to return of premium.

2091. Forfeitures; Misrepresentations. No bail licensee shall make any misleading or untrue representation to a court or to a public official for the purpose of avoiding or preventing a forfeiture of bail or of having set aside a forfeiture which has occurred, or for the release of an arrestee on his own recognizance after bail has once been placed by the licensee. A copy of all written representations made by or on behalf of a bail licensee for such purpose shall be kept as provided in Section 2098, unless such representations are filed by an official as a public record.

2092. Interrogations; Licensee Must Answer. Every bail licensee must truthfully answer any question asked him by the commissioner or his representative about his bail transactions or matters relating to the conduct of his bail business, subject only to his lawful constitutional rights against self-incrimination.

#### FILINGS AND RECORDS

2094. Filing Schedule of Charges. Every bail permittee shall file with the commissioner a schedule of charges to be made for bail. He shall also file with the commissioner any change in such charges at least five days prior to the effective date thereof. Such charges and changes so filed are public records.

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2094.1. Rates Chargeable. No bail permittee shall issue or deliver a bail bond except at the rates most recently filed with the commissioner in accordance with Section 2094.

2094.2. Filing of Charges; Differences in Rates. If a person is licensed as both a bail agent and a bail permittee or licensed in either capacity but conducting his bail business under an agreement with a person licensed in the other capacity, any filing made pursuant to Section 2094 shall state all differences between the premiums charged for undertakings of bail and the charges made for bail bonds and the reasons therefor. If there is any such difference and if for his own convenience a bail licensee shall substitute or cause to be substituted one type of obligation for the other, he shall do so without additional premium or charge. Such substitution without additional premium or charge may not be used as a device or means of avoiding compliance with Section 2094 or with Chapter 9, Part 2, Division 1 of the Insurance Code.

2095.  filings; Necessary Notices. Every bail licensee shall promptly file with the commissioner the following:

(a) If conducting business as a partnership pursuant to Section 2061, the written statement required by Section 2061.2 and any modification thereof.

(b) If the relationship of a bail agent or permittee employed by another bail agent or permittee or a partnership of bail agents or permittees exists as set forth in Section 2062:

(1) The written statement to the commissioner required by Section 2062.2;

(2) The written notice of any change as required by Section 2062.2(d).

(c) The written notice required by Section 2065(f) if applicable to such licensee.

(d) The written notice required by Section 2066.4(a) of any fictitious name or style used pursuant to Section 2066.4.

(e) A written notice of any changes made in any of the licensee's business addresses.

(f) A complete list of all persons employed by the licensee who aid him in any way in the conduct of his bail business setting forth for each employee the full name, duties and basis of compensation, and if such compensation is to be over \$1,000 per month the amount thereof.

(g) A notice containing the same information as that required by (f) above for each new employee.

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CONTINUATION SHEET  
**FILING ADMINISTRATIVE REGULATIONS  
 WITH THE SECRETARY OF STATE**

(Pursuant to Government Code Section 11380.1)

(h) A notice of termination of the employment of any employee and, if the reason therefor was any act or conduct by the employee which would in the opinion of the employer indicate an unfitness to transact bail, a full statement of such reason.

(i) A notice within 10 days after service upon him of the filing of:

- (1) Any criminal suit;
- (2) Any action at law against him or of any judgment against him which arises out of his transaction of the bail business or the transaction of bail.

(j) A written notice within five days after making any arrangement of any kind to obtain money, securities or other assets to use directly or indirectly in the bail business, giving the name of the person with whom such arrangements have been made, the amount of money or value of other assets involved, the date of the transaction and the details of the arrangement.

(k) A copy, or a reference to copies already filed and which he will use, of all forms or documents which the licensee intends to use regularly or frequently in connection with his bail transactions, including:

- (1) The document to be delivered to the arrestee or other person containing the information required by Section 2083;
- (2) The form of any receipt for or agreement relating to collateral used pursuant to Section 2083(m);
- (3) The document to be delivered to the arrestee or other person containing the information required by Section 2083.5;
- (4) The form of guarantor's agreement referred to in Section 2084;
- (5) The form of original communication referred to in Section 2097(a);
- (6) The form or original application referred to in Section 2097(b); and
- (7) Any other form or document.

2096. Improper Forms; Notice. If the commissioner finds that any form or document, the filing of which is required by Section 2095(k), is misleading or contrary to any provision of this article or any law relating to bail, he shall notify the bail licensee specifying

(Pursuant to Government Code Section 11380.1)

wherein such form or document is misleading or contrary to any provision of this article or any law relating to bail. Thereafter such bail licensee may not use such form or document. If such notification is not given to such licensee within 30 days after the filing of such form or document, the commissioner shall prescribe a reasonable time after which such form or document may not be used.

**2097. Documents; Retention of Originals or Duplicates by Licensee.** Every bail licensee shall retain in his records the original or duplicate original of the following:

(a) Any written request received by him from an arrestee or person acting on his behalf which resulted in the posting of bail by such licensee.

(b) The application for bail signed by the arrestee or person negotiating bail on his behalf.

**2098. Documents; Retention of Copies by Licensee.** If a bail licensee has arranged for the posting of bail, he shall in each case retain in his records a copy of the following documents:

(a) The document or documents furnishing the arrestee or person negotiating bail on his behalf with the information required by Section 2083.

(b) The collateral receipt or any form of agreement relating thereto described in Section 2083(m).

(c) The document listing additional charges required by Section 2083.5.

(d) Any written representation made to a court or a public official with respect to the matters dealt with in Section 2091.

(e) Any guarantor's agreement.

(f) All documents signed by the arrestee or any person with whom bail is negotiated, the originals of which are not retained by the licensee.

(g) All documents delivered to the arrestee or any person with whom bail is negotiated.

**2099. Documents; Tender to Arrestee or Representative.** Every bail licensee shall tender a copy of any document which is executed by any person with whom bail is negotiated to such person at the time of the execution thereof.

**2100. Necessary Record; Open to Inspection.** Every bail agent or permittee shall keep complete records of all business done under authority of his license or under the authority of the license of

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any bail solicitor, bail agent or bail permittee employed by him. All records kept by such agent or permittee, including all documents and copies thereof shall be open to inspection or examination by the commissioner or his representatives at all reasonable times, at the principal place of business of the licensee as designated in his license. Such records shall include at least the following information as to each bail transaction shown either in one of the forms required by the provisions of these rules or in a separate book, ledger, or card record:

(a) The full name and address of the arrestee.

(b) The date of arrest, the offense with which the arrestee was charged, the penal amount of the bail, the premium for the undertaking of bail or the amount charged for the bail bond, the date the bail was filed or delivered, and the court or public official before whom the arrestee must appear.

(c) The full name and address of the person furnishing information leading to the solicitation or negotiation of the bail, the date and time such information was received, the manner in which it was received, the connection or relationship to the arrestee of the person other than the arrestee furnishing such information, and the name of the person receiving such information.

(d) If the bail was negotiated with any person other than the arrestee, the full name, address and connection or relationship to the arrestee of such person, and the name of the person who carried out the negotiations on behalf of the licensee.

(e) If the bail was negotiated directly with the arrestee, a full statement of the manner in which the arrestee communicated with the licensee and the name of the person receiving such communication.

(f) The full name and address of each and every person directly or indirectly paying, promising to pay, or guaranteeing the payment of, the whole or any part of the premium, guard fees, charges for extraordinary services, or collateral made or deposited in connection with a bail transaction.

(g) The name of any bail licensee from whom the business was accepted or to whom commission was promised or paid in connection therewith, and the amount of commission promised or paid.

(h) The name of any person who received or was promised any portion of a premium, guard fee, charge or commission or was compensated in any manner directly or indirectly on account of any bail transaction.

(i) If any valuable consideration other than money was received in connection with a bail transaction, a full statement in explanation of such consideration and the circumstances attendant thereto.

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(j) Where a writ bond was issued, the name of the attorney appearing thereon.

(k) A separate book record which shall show the date of receipt of any collateral as a guarantee in a bail transaction, the name of the person from whom it was received, the name of the person receiving it, a complete description of the collateral, the amount of bail guaranteed, the amount of premium guaranteed and the disposition of the collateral. If the collateral was returned, the date of its return and the name of the person to whom it was returned.

2101. Copartnership Records; Filings. During the period when two or more bail licensees are conducting their business as a partnership pursuant to Section 2061, such licensees may combine their books and records and make a joint filing with the commissioner of all forms used by them as a partnership, provided, however, that such books and records shall identify the member of the partnership who actually transacted each individual bail transaction or portion thereof.

2101.1. Records; Licensed Employees. Every employing bail agent or permittee shall keep at his office all books and records concerning the bail transactions of himself and his employees while acting as such, and such employees may use all forms filed, directly or by reference, with the commissioner by such employer; provided, however, that such books and records shall identify the particular person who actually transacted each individual bail transaction or portion thereof. But the employed bail agent or permittee is responsible for the maintenance of such records, and the proper use of such forms for the transactions in which he participates.

2101.2. Records; Temporary Associations. If two or more bail agents or permittees are temporarily associated for the purposes of a single or series of bail transactions, each shall be responsible for keeping sufficient records to identify the transactions and to meet the requirements of this article with respect to the portion of the transaction conducted by him.

2101.3. Records; Temporarily Conducting Business. During the time a bail agent or permittee is temporarily conducting the business of another bail agent or permittee as provided in Section 2065(e), such bail agent or permittee shall be responsible for the proper entries in and the retention of the books and records of such other bail agent or permittee but he may use the forms and documents usually used by the permanent owner of the bail business. Following such temporary conduct of his business the permanent owner of such business is responsible for the retention of such books and records.

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2102. Use of Filed Documents and Forms. Except as provided in Sections 2101.1 to 2101.3, inclusive, every bail agent and permittee shall use the forms and documents filed, directly or by reference, by him with the commissioner as an individual and shall be individually responsible for the proper entries in and the retention of all books and records.

2103. Information; Not Required; Severability. Any bail licensee may secure from any person with whom he engaged in a bail transaction information in addition to that required by these rules or his signature to documents other than those required by these rules. If such information is secured as a part of the same document which contains any of the information required by these rules, it shall be clearly severable and the licensee, in using such document, may, at his discretion, omit the use of the portion of it which is not required by these rules.

2104. Destruction of Records. Five years after the final completion of all parts of a bail transaction, a bail licensee may destroy his records pertaining to such transactions.

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