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**NOTICE**

TO: Bail Licensees

DATE: November 13, 2013

SUBJECT: Reminder of Bail Solicitation Laws

Background

The California Second District Court of Appeals recently ruled on a case, *People v. Todd Russell Dolezal*; which involved directly soliciting bail bond business at a county jail. The court ruled that prohibiting a bail bondsman's direct solicitation of bail from arrestees does not violate the first and fourteenth amendment's protection of commercial speech. Specifically, that Title 10, Chapter 5, Section 2079.1 of the California Code of Regulations (CCR), passes constitutional muster, under intermediate scrutiny, because it substantially serves the state's interests and is sufficiently tailored to advance these interests.

In the ruling, the court stated that the state had asserted three substantial interests: protection of arrestees from harassment, the facilitation of an efficient jail administration by preventing bail agents from congesting intake and visiting areas, and protecting the right to bail. The court further stated that soliciting bail is "commercial speech" that is subject to government regulation. For someone who has just been arrested, the court said, a jail is a stressful setting in which the inmate may lack the information needed to assess a sales pitch and may be vulnerable to pressure to make an immediate decision. The ban on unsolicited contact with an arrestee also helps preserve order and security by discouraging bail agents from showing up at the scene of an arrest or hanging out in jails to search for clients.

Reminder of Bail Solicitation Laws

The court's decision in this case serves as a reminder that bail agents may not solicit bail from arrestees unless they receive a request for bail services from the arrestee, an adult member of the arrestee's immediate family or a person designated by the arrestee in writing, to request such services. The regulations regarding solicitations that bail agents are required to comply with are Sections 2074, 2079 and 2079.1 of the CCR. The text of these regulations is as follows:

- Section 2079 of the CCR states that 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 arrested to ratify a previous oral designation made by him.

- Section 2079.1 of the CCR states that 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.
- Section 2074 of the CCR states that except as provided in Sections 2074 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.

Insurance Code section 1814 provides, "The violation of any...rule of the [insurance] commissioner made pursuant thereto, is a public offense, punishable by fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code [Felony], or in the county jail not exceeding one year [Misdemeanor], or by both that fine and imprisonment." (Ins. Code, § 1814.)

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