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CALIFORNIA INSURANCE COMMISSIONER

NOTICE

TO: Bail Licensees
FROM: Producer Licensing Bureau
DATE: September 21, 2023
SUBJECT: Reminder of Bail Solicitation Laws

Recent Reversal Maintains Current Bail Law

On August 24, 2023, the California Supreme Court issued an opinion upholding California Code of Regulations, title 10, section 2076, which prohibits bail bond agents from entering into arrangements whereby they are notified by jail inmates when individuals have been arrested and may need bail services. The Supreme Court's opinion in [The People v. Monica Marie Martinez \(S267138\)](#) reversed a decision by the Court of Appeals, which had found the regulation facially invalid under the First Amendment.

In reversing the lower court, the Supreme Court stated:

“the Court of Appeal failed to consider the full range of interests at stake when a commercial bail bond agent engages the services of a jail inmate to gain private access to information about prospective clients. The state's interests in stemming this practice are not solely—or even primarily—about the manner in which bail bond agents solicit clients. The state's interests instead mainly concern the effects of these arrangements on sound jail administration and fair competition in the bail bond industry.”ⁱ

The Supreme Court further determined:

“The regulation does not prohibit a bail licensee from seeking or receiving such information [about arrestees], ‘provided the information is not being conveyed pursuant to a prohibited arrangement or understanding’ with an incarcerated person or other prohibited informant.”ⁱⁱ

Reminder of Illegal Bail Solicitation Arrangements

The Supreme Court's decision in this case serves as an important reminder that the California Code of Regulations

“places limits on arrangements for the sharing of information about a class of consumers (inmate-consumers of bail services) with commercial actors seeking to profit from that information... Such communications are directly and solely related to the economic interests of the agents: Early access to information identifying potential clients enables the licensee to achieve a competitive advantage over other bail bond agents in soliciting business.”ⁱⁱⁱ

**Reminder of Illegal
Bail Solicitation
Arrangements
(continued)**

Bail bond agents may not enter into any sort of formal or informal agreements with incarcerated or nonincarcerated persons to be notified upon the arrival of newly booked inmates or other arrestees or to otherwise illegally obtain information concerning arrestees.

**Laws Regarding Bail
Solicitation**

Bail bond agents are required to comply with California Code of Regulations, title 10, sections 2074, 2076, 2079, and 2079.1 regarding the solicitation of bail services. The text of these regulations are as follows:

- [Section 2074. Unlawful Solicitations; Place.](#)

Except as provided in Sections 2079 and 2079.1, 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 the bail licensee's services.

- [Section 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, any 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.

- [Section 2079. Soliciting of Bail; Persons.](#)

No bail licensee shall solicit bail except in accordance with Section 2079.1 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 the arrestee.

Laws Regarding Bail Solicitation (continued)

- [Section 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

Violations

[California Insurance Code section 1814](#) makes violations of a rule promulgated by the Insurance Commissioner an offense chargeable either as a misdemeanor or a felony. The text of that law is as follows:

The violation of any foregoing provision of this chapter, or of any rule of the 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, or in the county jail not exceeding one year, or by both that fine and imprisonment.

Contact Information

For questions regarding this notice, please contact the Producer Licensing Bureau—Bail Unit by email at sac.bail@insurance.ca.gov or by phone at (916) 492-3035 (note: this is a voicemail only line). Please allow up to three business days for a response.

ⁱ *People v. Martinez*. (August 24, 2023) p. 1 <<https://www.courts.ca.gov/opinions/documents/S267138.PDF>> [as of August 31, 2023].

ⁱⁱ *People v. Martinez*. (August 24, 2023) p. 11 <<https://www.courts.ca.gov/opinions/documents/S267138.PDF>> [as of August 31, 2023].

ⁱⁱⁱ *People v. Martinez*. (August 24, 2023) p. 22 <<https://www.courts.ca.gov/opinions/documents/S267138.PDF>> [as of August 31, 2023].