



## Jeff Geiger Counters

### Good? Proposed Ban On In Person Lawyer Solicitation

By: Jeff Geiger. *This was posted Thursday, March 4th, 2010*

[Proposed amendments](#) to the Rules of Professional Conduct that govern lawyer advertising and communications by lawyers with prospective clients would prohibit in-person solicitation in all matters, not just those involving personal injury cases. The change is premised (presumably), in part, on the notion expressed in proposed Comment 1 to Rule 7.3 that “A person in need of legal services for a divorce, bankruptcy, or criminal defense may be just as overwhelmed and vulnerable to suggestion as a person in need of legal services in cases involving personal injury or wrongful death.”

This is significant and may speak to a society ensconced in the age of information in which a lawyer need not apply for a job in person. Indeed, a consumer of legal services is faced with a wide array of resources in which to assess his or her legal needs and selection of counsel.

I get it. But I am concerned still for three primary reasons.

First, I am ever mindful that as a self-regulated profession, lawyers must safeguard their integrity. Yet, it has been over thirty years since the Supreme Court confirmed that commercial speech (and lawyer speech) is protected by the First Amendment. While [Bates v. State of Arizona](#) did not address in-person solicitation, the Supreme Court made clear that advertising serves individual and societal interests in assuring informed and reliable decision making.

Second, I am ever concerned about a race to the bottom or a promotion of the lowest common denominator as the favored standard. Clearly, persons facing bankruptcy, divorce or criminal indictment may well be in a heightened emotional state. But the ban on in-person solicitation presumes that a potential client is so weak, so persuadable and so unintelligent as to be unable to make a rational decision. I don't buy it but am willing to plead ignorance on the subject if someone has anything more than anecdotal evidence to support such a position.

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Finally, I take issue with the underlying assumption that a lawyer (or counselor, if you will) will use a tragic or difficult situation to the disadvantage of a potential client. Will it happen, of course (and regardless of whether a rule is in place). But let's not legislate as if the bad apples are the norm!

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