

Title 10

CCR 2071

This regulation does not apply to attorneys.

1 PREDICATE FOR THE COUNT.

2 THE COURT: MR. GURWITZ?

3 MR. GURWITZ: YOUR HONOR, AS TO THE FIRST ARGUMENT,

4 MR. KOPENY INSINUATES THAT THERE HAS TO BE A SPECIFIC
5 REFERENCE IN THE REGULATION ITSELF TO A STATUTE TO SAY, FOR
6 EXAMPLE, IN 2071 THIS REGULATION HEREBY ADVANCES THE
7 PRINCIPLE OF, YOU KNOW, INSURANCE CODE SECTION 1812 OR
8 SOMETHING LIKE THAT. THERE DOESN'T. THERE'S JUST NO BASIS
9 FOR HIS CLAIM THAT THAT IS CORRECT. IT DOES NOT HAVE TO BE
10 A SPECIFIC REFERENCE TO A STATUTE.

11 IN TERMS OF HIS OTHER CLAIM, THE MAIN CLAIM HE
12 MAKES, THAT THERE'S NO -- THAT 2071 DOES NOT SOMEHOW ADVANCE
13 IN THE ENFORCEMENT OR, YOU KNOW, FOLLOWING BY BAIL AGENTS OF
14 CHAPTER 7 OF THE INSURANCE CODE, THAT'S JUST -- I MEAN, THE
15 PEOPLE FRANKLY FIND THAT TO BE ABSURD. BECAUSE CHAPTER 7 --
16 AND I DIDN'T MAKE THESE WORDS UP THAT HE QUOTED. IT SAYS IN
17 CHAPTER 7, "LEGISLATIVE STATUTES," THAT BAIL AGENTS HAVE TO
18 ACT WITH HONESTY AND INTEGRITY AND AVOID IMPROPER BUSINESS
19 PRACTICES, HAVE AN UNDERSTANDING OF THE OBLIGATIONS AND
20 DUTIES OF BAIL, MAINTAIN STANDARDS OF FAIRNESS, AND A FEW
21 OTHER THINGS THAT I MENTIONED THROUGHOUT THE BRIEF. NOW
22 GRANTED, THOSE ARE SOMEWHAT VAGUE. SO WHAT HAPPENS IS THE
23 [REDACTED] IS PERMITTED BY LAW TO ADOPT
24 REGULATIONS TO ALLOW FOR THE ENFORCEMENT OF THOSE SPECIFIC
25 STANDARDS.

Insurance Commissioner

26 SO WHAT WE HAVE HERE IS THE [REDACTED]

Insurance Commissioner

ADMINISTRATIVE PROCEDURES ACT

GOVERNMENT CODE §11349

The following definitions govern the interpretation of this chapter:

(a) "Necessity" means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.

(b) "Authority" means the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation.

(c) "Clarity" means written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.

(d) "Consistency" means being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.

(e) "Reference" means the statute, court decision, or other provision of law which the agency implements, interprets, or makes specific by adopting, amending, or repealing a regulation.

(f) "Nonduplication" means that a regulation does not serve the same purpose as a state or federal statute or another regulation. This standard requires that an agency proposing to amend or adopt a regulation must identify any state or federal statute or regulation which is overlapped or duplicated by the proposed regulation and justify any overlap or duplication. This standard is not intended to prohibit state agencies from printing relevant portions of enabling legislation in regulations when the duplication is necessary to satisfy the clarity standard in paragraph (3) of subdivision (a) of Section

* Smith vs. Downey was a proceeding in mandamus to review an order of the Insurance Commissioner suspending licenses to act as bail agent and as bail permittee for 90 days for soliciting business from the jails. Smith tried to say he had to be convicted in a criminal court before action could be taken against his license. He was not arrested or charged criminally, just had his license suspended.

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1 MAKING AN EXTREMELY CLEAR REGULATION THAT'S BEEN AROUND FOR
2 DECADES TO AVOID THE, FOR LACK OF A BETTER WORD, DIRTY
3 BUSINESS PRACTICE THAT OCCURRED HERE THAT WOULD LEAD TO A
4 VIOLATION OF ALL THOSE ETHICAL PRINCIPLES THAT ARE SET FORTH
5 IN CHAPTER 7 OF THE INSURANCE CODE.

The OFFICE OF ADMINISTRATIVE LAW WAS NOT CREATED UNTIL 1979. THE LAST

6 SO THERE HAS NEVER -- IN THE DECADES THAT 2071 HAS
7 AMENDMENT TO THE REGULATIONS WAS IN 1977. THE REGULATIONS HAVE NEVER
8 BEEN AROUND, THERE HAS NEVER BEEN ANY KIND OF CLAIM THAT I'M
9 BEEN REVIEWED BY THE OFFICE OF ADMINISTRATIVE LAW.

10 AWARE OF IN ANY PUBLISHED CASE OR HOLDING SAYING THAT 2071
11 IS INVALID AND SHOULD BE DECLARED AN INVALID REGULATION BY A
12 COURT LIKE MR. KOPENY ASKED THIS COURT TO DO.*

13 AND THEN THE SMITH VERSUS DOWNEY CASE THAT I TALKED
14 ABOUT IN MY BRIEF DID HAVE A VERY SIMILAR STATUTE DESIGNED
15 TO AVOID DIRTY BUSINESS PRACTICES BY HAVING SOLICITATIONS IN
16 THE JAIL. AND IT WAS THE IDENTICAL CLAIM THAT'S RAISED HERE
17 DESPITE WHAT MR. KOPENY SAID. THEY SAID IT WAS IMPROPER FOR
18 THE INSURANCE COMMISSIONER TO PROMULGATE A REGULATION SAYING
19 THEY CAN'T SOLICIT BUSINESS IN A PUBLIC PLACE. AND THEY
20 SAID, NO, IT WAS TOTALLY APPROPRIATE FOR THE INSURANCE
21 COMMISSIONER TO PROMULGATE A RULE SAYING YOU CAN'T SOLICIT
22 BAIL IN JAIL BECAUSE IT LEADS TO ALL THE DIRTY BUSINESS
23 PRACTICES THAT EVERYBODY KNOWS ABOUT. AND THEY AFFIRMED IT.
24 SO I DON'T SEE ANY DISTINCTION BETWEEN 2071, WHICH THEY
25 CHALLENGED, AND THE REGULATIONS THAT WERE UPHELD IN SMITH
26 VERSUS DOWNEY.

THE COURT: ANYTHING ELSE, MR. KOPENY?

MR. KOPENY: YES, YOUR HONOR.

DEPARTMENT OF INSURANCE

1407 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94103



December 20, 1974

The State Bar of California
601 McAllister Street
San Francisco, CA 94102

Gentlemen:

The undersigned, John N. Andrews, has been requested by the California Insurance Commissioner to draft proposed amendments to his Rules and Regulations relating to bail bond licensees under Sections 1800 through 1822 of the California Insurance Code. ~~Such Rules and Regulations are contained in Sections 2053 through 2104 of Title 10 of the California Administrative Code.~~

It seems that members of the State Bar, especially those with a significant criminal practice, are interested in these regulations. Of particular interest, I believe, is Section 2071 relating to the recommendation of attorneys to arrestees by bail licensees. Also, the State Bar may have more than ordinary interest in Section 2090 relating to the surrender of the arrestee by the bail licensee before the time of his scheduled appearance.

For your convenience I enclose a copy (printed) of the current Rules, which have been in effect since January 1, 1954. Also enclosed is a copy of a first draft of proposed amendments. I earnestly solicit your comments on any provision of these rules, but especially on said Sections 2071 and/or 2090.

A brief comment on my analysis of the above two Sections may be helpful.

With respect to Section 2071, recommendation of attorneys, it will be noted that the Section flatly forbids any such recommendation by bail licensees, except that local Bar Association regulations may be followed; and no change is proposed. Of course, the Canons of Legal Ethics do not forbid, generally, recommendation of attorneys--doubtless because favorable recommendation by satisfied clients is probably the way attorneys usually build up a clientele--but recommendations or referrals from jails are more restricted. I believe the Insurance Commissioner's flat prohibition of Section 2071 is proper.

The State Bar of California
December 20, 1974
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With respect to Section 2090, surrender of a bailed arrestee, the Section controls only the return of premiums. There can be no doubt but that the bail licensee, in whose "custody" the arrestee has been released, can lawfully surrender him at any time (Penal Code Section 1300). While this right is not in accord with usual insurance principles, bail and bail bonds have a different historical and legal basis of development than does insurance. While it seems only fair that premium be returned 100% if the arrestee is not at fault, and pro rata if he is, obviously such requirement will tend to discourage surrender, which may be argued to impede the enforcement of criminal laws in that the appearance of arrestees will become less certain. I strongly believe, however, that at least when the arrestee is again in custody on another charge, any "surrender" by the bail licensee can have no reason other than to relieve the bail licensee of responsibility on the bail; and there should be a return of at least pro rata premium.

Your comments at your earliest convenience will be greatly appreciated.

Very truly yours,

JOHN N. ANDREWS

JNA:hcr
Enc.

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June 5, 1975

John N. Andrews
Department of Insurance
1407 Market Street
San Francisco, California 94103

Dear Mr. Andrews:

As we previously advised you, the proposed amendments to the California Administrative Code relating to Rules and Regulations for Bail Bond Licensees was referred to the State Bar Committee on Criminal Law and Procedure for study and report. That Committee on April 10, 1975, submitted its recommendations concerning the proposed amendments recommending in substance a different amendment to Section 2071 and disapproval of the proposed amendment to Section 2090. The report was submitted to the Board of Governors and was considered at its meeting in May, 1975, and at that time the Board approved the recommendations of the Committee as set forth in its report and directed that the portions of the report dealing with the proposed amendments be forwarded to the Insurance Commissioner.

We are therefore enclosing herewith an extract of that portion of the report of the Committee on Criminal Law and Procedure dealing with the two proposals submitted to them.

In approving the report the Board in effect adopted its recommendations as the position of the State Bar and it is requested that every consideration be given to the recommendations contained in the report.

Yours very truly,

A handwritten signature in cursive script, appearing to read "William B. Eades".
William B. Eades
Committee Coordinator

cc: Messrs. Abel, Casey,
Lally, Malone, Cramer,
Pargament, Miss Wailes

EXTRACT FROM REPORT OF COMMITTEE
ON CRIMINAL LAW AND PROCEDURE TO
THE BOARD OF GOVERNORS

5. Insurance Department's Proposed Amendments to the Administrative Code Regulations governing bail bond licensees.

Sub-committee reported that the submitted documents were very lengthy but that the cover letter only requested our response to two proposed sections, namely, Sections 2071 and 2090.

Section 2071. Suggesting or recommending attorney; prohibited. No bail licensee shall in any manner, directly or indirectly, suggest the name or recommend any attorney to any person in any manner which if concurred in by the attorney would constitute a violation by him of the Canons of Legal Ethics. Nothing contained in this section, however, shall prevent a bail licensee from following any lawful procedure proscribed by a local bar association or the State Bar of California. (Proposed amendment is outlined.)

ACTION: The Committee recommends that the Board of Governors respond to the inquiry by proposing that Section 2071 be changed to read as follows: "No bail licensee, as a bail licensee, shall in any manner, directly or indirectly, suggest the name of or recommend any attorney to any person. Nothing contained in this section, however, shall prevent a bail licensee from following any lawful procedure proscribed by a local bar association or the State Bar of California." The vote in favor of this alternative was 16 to 2.

DISCUSSION: Several members did not understand the wording of the proposed statute and felt that it does not say what the insurance commissioner intended it to say. That is, it does not flatly forbid any such recommendations. The members felt

that provisions of this type are necessary because of the unusual access bondsmen have to people in jail. Several members were concerned with first amendment problems that might occur if a prisoner asked a bondsman to recommend an attorney. Further problems were seen in the enforcement of the rule as proposed. The alternate wording agreed to by the members would permit a bondsman to make a recommendation of an attorney under circumstances that would be permissible for any other private citizen, but not when acting in his capacity as a bondsman.

Section 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 therefor, ~~unless~~ except when as the result of judicial action, information concealed or misrepresented by the arrestee or other reasonable cause for rescission exists, any one of which was material to the hazard assumed, the hazard was substantially increased and the additional premium or charges, if any, for such increased hazard was not paid within a reasonable time after demand for payment was made to the arrestee. In case of any such surrender for which all premium paid is not required to be returned, pro rata return of premium shall be made, computed on that portion of the time elapsed from the time of his surrender, as compared to the time for such release to the time his appearance was contemplated at the time of his release. If at the time of the surrender the arrestee is again in custody of any duly constituted authority, such fact shall not affect the application of this rule; except that the fact alone that the arrestee is again so in custody shall not be an increase in hazard within the purview of this rule.

ACTION: The Committee recommends disapproval of the proposed amendment by a vote of 14 to 5.

DISCUSSION: Members found considerable problems with the proposal. The court would be required to calculate that part of the bond premium to be returned in each case which is complex. Furthermore, the period of computation is arbitrary since the next appearance of the defendant can be set from one day to several months. It was suggested that a better computation period might be the one year life of the bond.

It was pointed out that Penal Code Section 1300(4)(b) also covers certain aspects of this problem and that any attempt to provide administrative regulations should be keyed to that section. In addition, it was agreed that the section should require a showing of cause, of why he is surrendering a defendant and what he deserves as a return of premium.