

**II.C. Discussion and Possible Action on Amendments to the  
Rules of Professional Conduct on Lawyer Advertising and Solicitation**

---

**September 14, 2021 Crispin Passmore:**

I do not claim a detailed understanding of California's current restrictions, so I comment based upon my experience in England & Wales and observations arising from the excellent analysis in the papers.

The experience of States that have deleted and amended rules should be instructive. A good regulator removes rules that are not proportionate and targeted at real risk of harm to consumer welfare or the fair operation of the market – that includes ensuring that the market serves currently underserved populations as we express through the 'justice gap'. In legal services we might add the importance of protecting the rule of law and public confidence in the justice system, which is undermined if too many ordinary people and small business do not have adequate access to affordable services. If the evidence from those States that have reformed this area is not negative then we should propose, as a minimum, replicating their reforms. We may also, given that California is a leading and forward-thinking State, want to explore where we can go further so as to ensure that advertising can be better used to match supply and demand.

One observation, as an outsider, is that while California's advertising rules appear to be restrictive, the public still seems to be bombarded with billboards, advertising and claims that many members of the public and commentators might find at best unseemly and at worst undermining the reputation of lawyers. That would suggest the current rules are ineffective as well as restrictive.

Furthermore, I would suggest that advertising is a key method for new and innovative legal services to reach their target market. It aids comparison and thus consumer choice, increasing pressure on attorneys that are either expensive or unable to demonstrate technical or customer service quality. Advertising is a key element of competitive markets and is in the public interest. That applies particularly to reaching hard to reach or disadvantaged groups who do not know that they might benefit from legal advice.

I do not doubt the ethical issues around advertising and solicitation. In my view they can be managed through other overarching ethical obligations and reliance upon general law. England & Wales used to have similarly restrictive rules on advertising, solicitation and referral. In the 1960s the profession was openly justifying these restrictions on the grounds that they did not want to encourage competition between lawyers as that was not in the professions interest. Ethical considerations were reverse engineered to justify the rules only once it became important that the public interest should be ahead of lawyer interests. Most restrictions were lifted in 2004 with very little evidence of negative impact.