

The Licensing of Colorado Private Investigators: A Two-Edged Sword

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In 1977, the *Colorado Supreme Court* ruled that the state's private investigator licensing statute was unconstitutional. Sometime thereafter the *Professional Private Investigator's Association of Colorado* (PPIAC) was formed. The PPIAC was founded with the intent of bringing licensing of private investigators back to Colorado. Since that time, three attempts have been made and each has failed. A fourth effort to establish licensing is expected next year.

The debate on licensing, at least within the profession, has been vigorous, but consensus has been difficult to reach. It is clear from the debate that many Colorado private investigators do not favor government regulation. The State of Colorado has also shown reluctance to take on the responsibility of licensing and regulating private investigators.

As president of PPIAC from 2004 through 2006, I supported licensing efforts. During that time, PPIAC submitted its sunrise application to the Colorado Department of Regulatory Agencies (DORA), only to receive a response on October 12, 2006 that recommended against licensing of private investigators.

Here are some of DORA's findings:

- *"Regarding state law, the attorney general of Colorado identifies more than thirty criminal provisions that could apply to private investigators and another five related to identity theft alone. In addition to these provisions, numerous other laws pertain to many of the activities of a private investigator, particularly laws against stalking."*
- *"This review finds insufficient evidence of harm to the public from the unregulated practice of the occupation of private investigators to warrant state licensing of the*

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occupation. Licensing of an occupation by the state includes numerous requirements such as educational standards and examination components. State licensing can significantly restrict competition by reducing the number of competitors and increasing business compliance costs, thus increasing costs to consumers. In addition, state licensing increases the cost of government.”

- *“In conclusion, the analysis of the actual harm in Colorado as a result of the unregulated practice of private investigators in the state does not meet the threshold necessary to warrant state regulation.”*
- *“Recommendation – do not regulate private investigators.”*

During **January 2007**, the **PPIAC** represented approximately 25% of all Colorado private investigators. Members and non-members testified both for and against the legislation proposed that year. The bill died in its first committee hearing. Since then, several events have transpired that provoked efforts to revive the licensing debate.

The following incidents involving Colorado private investigators, each in their own way, have undermined credibility of the profession within the state and tarnished the public image of all private investigators. The events raise questions about adequate training for practitioners in this field, and about remedies when over-zealous investigative agents violate privacy or other individual rights.

- During **2008**, a Larimer County process server was beaten to death while serving a restraining order.
- In **2009**, a Colorado private investigator conducting surveillance was shot by a claimant who was subsequently charged with attempted murder.
- In **August 2010**, a GPS device was found on the car of a woman who was the subject of an inquiry. A private investigator purportedly placed the device there as part of surveillance efforts. He was later charged with felony stalking, as was his client.

As with any profession, maintaining credibility and a positive public image are crucial to Colorado’s private investigators. It is important that these issues be taken seriously by industry advocates, and I suggest that it is in **PPIAC’S** interest to take any and all opportunities to

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respond to negative press when it occurs. The organization should speak with reporters about issues as they are unfolding, or present the industry's perspective through letters to the editor and public service announcements on radio and television. **PPIAC** should also recognize the value of establishing volunteer programs that provide pro bono assistance to consumers through organizations like the **Metropolitan Volunteer Lawyer's Association (MVLA)** and the **Rocky Mountain Children's Law Center**. These efforts can pay a hefty dividend in public awareness of the important roles professional investigators play in today's society.

It appears the **PPIAC** will turn again to the Colorado General Assembly and to state regulators during the coming month for government assistance in a new licensing initiative. In light of that, it should be noted and is good to remember that there is little if any substantive evidence that licensing would have prevented these most recent incidents in which poorly prepared or poorly informed investigators make unfortunate judgments. Yet these incidents have become the drivers of an effort that itself poses risk to the industry.

As the **PPIAC** moves forward with the licensing proposal, it should take into account conflicting objectives of its membership with those of non-members. Each Colorado private investigator, **PPIAC** member or not, will face a decision on supporting this effort based on how licensing will affect his or her business. The problem is that most will be forced into a decision with little accurate, objective, or dependable information. The cost-versus-benefit issues involved cry out for some fact-based guidance from industry leadership on whether a bill to regulate practitioners will help or harm this statewide service industry. Without that, moving forward now with legislation would be premature.

It seems prudent to address the issues surrounding licensing of Colorado private investigators with both the protection of the public and the best interest of the industry at heart. I think it is safe to assume that both the public and Colorado's private investigators should demand the highest possible licensing standards. The most important of those standards is likely to be the most controversial – the minimum number of relevant investigative hours required for a license application.

If licensing is to become a reality, I would propose the experience requirement for relevant investigative hours be as follows:

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- A **COLORADO LICENSED PRIVATE INVESTIGATOR** should demonstrate at least 15,000 hours of relevant investigative experience.
- A **COLORADO LICENSED ASSOCIATE PRIVATE INVESTIGATOR** should demonstrate at least 3,000 hours of relevant investigative experience and be required to work under a licensed Colorado private investigator to fulfill the remaining hours required for full licensure.

Testing of all license applicants, mandatory continuing education, and a minimum of \$1 million in E&O (Errors & Omissions) insurance should also be required in any licensing program. Any new licensing law should apply equally to all existing private investigators practicing in the state, as well as any new applicants, requiring existing operators to pass competency exams and meet all other qualifications; in other words, no “grandfathering” of existing practitioners into the system.

These regulations, some might argue, exceed requirements in other states, which may not require insurance coverage or minimum experience levels. But in establishing standards for Colorado Licensed Private Investigators, or Colorado Licensed Associate Private Investigators, practitioners should remember that high but reasonable standards is useful if it achieves the goals of raising credibility and public trust in the state’s private investigator network. Anything short of that will serve neither the public nor the profession. It has been surmised that licensing could encourage state agencies to release to licensed investigators records that are currently inaccessible to them. Raising the bar of required experience and professionalism under a licensing statute could certainly encourage that effort.

Conclusion:

Licensing of private investigators in Colorado is a two-edged sword. Licensing carries with it the implied benefit of higher levels of credibility, consumer protection, and professional standards. But licensing also carries the risk that the burden of government regulation could have negative consequences for a field that is already self-regulated through competition and market-place pressures. Government regulation risks discouraging entry into the profession by entrepreneurial and competent investigators with valuable services to offer. Government regulation brings with it additional costs and administrative hurdles that run counter to the benefits of free-market competition. Government bureaucracies, already facing budget

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shortfalls and staff shortages, are also at risk of becoming nothing more than a rubber-stamp that creates only the illusion of a regulated industry. And while registration and licensing of investigators may give some comfort to consumers with complaints, it will not – at least without high standards, thorough enforcement, and effective penalties--prevent either incompetence or unethical behavior by those who would recklessly or intentionally skirt the law.

I would urge that those involved in licensing discussions examine the issues thoroughly, with due diligence, at a pace that does not rush to judgment, and allow careful reflection on the wisdom of turning over to government authority the responsibility for enforcing standards of conduct among private investigators.