



Magnifying the PI: The Roles and Responsibilities of Private Investigators

By Robert Bell, Bruce Calvin, and Susan Woolley

Imagine this. In the course of conducting a workplace investigation, a licensed private investigator (PI) learns that a witness was, in the recent past, engaged in criminal activity—drug trafficking, money laundering, or another crime. The investigator wants to tell the police. Can he or she do so? On many detective television shows, the answer would be yes. Even more likely, the PI would, guns blazing, take matters into his or her own hands and bring the bad guy to justice. While this might make for good entertainment, in real life the answers are more complicated.

This article outlines some of the rules that govern the activities of PIs. Almost all U.S. states regulate PIs under their own rules and statutes, and therefore state rules provide guidance on the questions posed above.¹ This article focuses on standards found in the California Private Investigator

Act (CPIA).² It is important that investigators consult the rules of the jurisdictions in which they are licensed.

What does the CPIA have to say about the dilemma faced by the investigator in our scenario? The investigator is clearly authorized under the CPIA to conduct the workplace investigation.³ In addition, California imposes a duty of confidentiality on investigators. Investigators generally must keep confidential information learned during an investigation unless disclosure is authorized by the client or the investigator is required by law to disclose. The CPIA provides an exception to this duty where the investigator has information about criminal offenses. The relevant code section states:

Any licensee ... may divulge to any law enforcement officer or district attorney, or his or her representative, any information he or she may acquire as to any criminal offense, but he or she shall not divulge to any other person, except as otherwise required by law, any information acquired by him or her except at the direction of the employer or client for whom the information was obtained.⁴

Parsing this section begins to answer our first question. A PI “may” disclose information about crimes to law enforcement. This statutory language is discretionary; the statute allows—but does not require—investigators to disclose such information to law enforcement.⁵ In addition, the statute references “*any* information he or she may acquire as to *any* criminal offense ...” (emphasis added). Therefore, the ability to disclose is not limited to future crimes, but includes disclosures about past offenses as well. In addition, the CPIA does not require PIs to inform their clients before going to law enforcement.

PIs frequently work under the direction of an attorney, and the lawyer’s ethical duties generally bind the investigator working for him or her.⁶ A California attorney’s obligations to keep information confidential are much stricter than those imposed on PIs. Therefore, the answer to our questions will be different depending on whether the investigator is working under an attorney or not.

Investigators working under the direction of a California attorney are bound by these strict confidentiality rules.

A California lawyer’s duty of confidentiality is broad. Generations of law students have memorized the admonition “to maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.”⁷ There is a limited exception to this duty regarding prevention of future criminal activity. The Business and Professions Code allows, but does not require, an attorney to disclose confidential information to law enforcement when disclosure is “reasonably ... necessary to prevent a criminal act ... likely to result in death ... or substantial bodily harm.”⁸ The California Rules of Professional Responsibility incorporate this rule and add that before disclosing any confidential information, an attorney should (if it is reasonable to do so) attempt to persuade the client not to engage in the conduct or should try to prevent it.⁹

Investigators working under the direction of a California attorney are bound by these strict confidentiality rules. In the case posited here, the criminal behavior described occurred in the past. A PI working without an attorney could, according to the CPIA, divulge this information to law enforcement. However, there is no similar exception for attorneys; the rules provide a narrow exception for certain types of serious, imminent crimes. Information that could be divulged to law enforcement by an investigator working independently could not be divulged if that same investigator were working for a lawyer.

As for taking matters into one’s own hands, the law prohibits many *Magnum, P.I.*–type antics. For starters, PIs cannot represent themselves as government officials. That

means no badges, no uniforms, no police-type titles.¹⁰ Impersonating a law enforcement official is grounds for rescission of a PI’s license and is likely a crime.¹¹

Any type of dishonesty or fraud is prohibited by the CPIA and is grounds for rescission of a PI’s license.¹² Therefore, the TV trope of the investigator masquerading as a friend to trick a witness into giving away secrets is not allowed in California. Just such behavior led to the rescission of an investigator’s license in *Wayne v. Bureau of Private Investigators and Adjusters*.¹³ In *Wayne*, an investigator visited and telephoned the homes of several witnesses who the investigator knew were adverse to the entity for which he was conducting the investigation. The PI knew that these witnesses believed he represented their insurance carriers and therefore were “on their side,” and that witnesses would not have given him statements had they known he was employed by the adverse party. The investigator did not affirmatively misrepresent his position, but made statements that led witness to believe he was a friend, such as that he was “an independent investigator assigned to check on your accident.” The court of appeal found the failure to disclose that he worked for an adverse party constituted “dishonesty and fraud” within the meaning of the statutes and upheld suspension of the investigator’s license.¹⁴

Regarding creeping around backyards and crawling through windows, section 7539(g) specifically prohibits entering private buildings without the owner’s consent, except for those areas normally accessible by the public. “Entering” private premises via electronics, telephoto lenses, or video devices is also forbidden by antipaparazzi and antistalking laws.¹⁵ So much for Magnum’s cool camera with the long lens and the binoculars, unless they are pointed at a public space.

Clandestine GPS devices on subjects’ cars? Absolutely not, according to the California Penal Code. Lest one think such capers are limited to 1970s television, two PIs in Orange County, California, faced trial in 2016 on felony charges relating to planting a GPS device on a target’s car and filing false reports that the subject was driving drunk, which resulted in a false imprisonment claim.¹⁶

California is well known for its strict privacy laws, and nothing in the CPIA excludes licensed PIs from its purview.¹⁷ Infringing on privacy not only violates the CPIA, but can also create tort liability for investigators and those who hire them. For example, in *Noble v. Sears, Roebuck & Co.*, the California court of appeal held that “an unreasonably intrusive investigation may violate a plaintiff’s right to privacy.” In *Noble*, a private investigation firm was hired by Sears to investigate an accident that injured the plaintiff, Mrs. Noble.¹⁸ Sears wanted to take the deposition of a third party but was not able to contact him. The investigator sent an employee, Mr. Lemon, to Mrs. Noble’s hospital

room, where Mr. Lemon, through a series of deceptions, got the third party's contact information from her. The tort case was allowed to proceed against Lemon, the firm that employed him, Sears, and the attorney who hired the investigations firm, who were all subject to possible tort liability for Lemon's conduct.

Of course, there is plenty PIs can do. A licensed PI can investigate a broad range of information about individuals, including their occupation, conduct, honesty, and credibility. In addition, licensed PIs can secure evidence to be used in any court, board, or investigating committee. Licensed PIs can also provide protection to individuals and can carry firearms if they comply with all relevant statutes and other rules.¹⁹

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The role of a licensed PI is not exactly what popular culture would have us believe. Licensed PIs abide by professional and legal standards to gather information, often from individuals in highly emotional and vulnerable states. PIs play a critical role as workplace investigations continue to become more professionalized. And as far as we can tell, there are no rules against cool cars or Aloha shirts.



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- ¹ Seven states do not require that PIs be licensed: Alabama, Alaska, Colorado, Idaho, Mississippi, South Dakota, and Wyoming.
- ² Cal. Bus. & Prof. Code § 7520 *et seq.*
- ³ Cal. Bus. and Prof. Code § 7521.
- ⁴ Cal. Bus. and Prof. Code § 7539(a).
- ⁵ There might be situations where an individual has an independent duty to report actual or suspected criminal activity; that subject is beyond the scope of this article.
- ⁶ See, e.g., John S. Caragozian, *Private Investigators in California: Analysis of the PIA and Case Law*, PRIVACY RIGHTS CLEARINGHOUSE, (2015), <https://www.privacyrights.org/ar/PIs-Caragozian.htm>.
- ⁷ Cal. Bus. and Prof. Code § 6068 (1).
- ⁸ Cal. Bus. and Prof. Code § 6068 (e)(2).
- ⁹ California has not adopted the Model Rules of Professional Responsibility, which allow disclosure of confidential information in a broader range of circumstances. See Model Rule 1.6.
- ¹⁰ See Cal. Bus. and Prof. Code § 7539(d) and (e).
- ¹¹ Cal. Penal Code § 538d.
- ¹² See Cal. Bus. and Prof. Code § 7538(a)(1). See also Cal. Bus. & Prof. Code § 7561.4.
- ¹³ Wayne v. Bureau of Private Investigators and Adjusters, 201 Cal. App. 2d 427 (1962).
- ¹⁴ *Id.* at 436-48.
- ¹⁵ See, e.g., Cal. Civ. Code § 1708.7-1708.8.
- ¹⁶ See Cal. Penal Code § 637.7. See also, e.g., *PIs in Costa Mesa Spy Case Can Be Tried on Conspiracy and False-Imprisonment Charges*, Judge Affirms, LOS ANGELES TIMES, <http://www.latimes.com/socal/daily-pilot/news/tn-dpt-me-0430-lanzillo-impola-20160429-story.html> (last visited June 25, 2016).
- ¹⁷ See, e.g., Cal. Penal Code 632 (prohibiting eavesdropping on or recording confidential communications without consent of all parties to the communication).
- ¹⁸ Noble v. Sears, Roebuck & Co., 33 Cal. App. 3d 654 (1973).
- ¹⁹ See Cal. Bus. and Prof. Code § 7521(b) and (e).