

BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD
ADMINISTRATIVE LAW JUDGE SHAWN CLOUGHESY
STATE OF CALIFORNIA

and Employee,
PEACE OFFICERS OF CALIFORNIA
and Petitioner,
CALIFORNIA STATEWIDE LAW
ENFORCEMENT ASSOCIATION

Case No.: SA-SV-171-S

Exclusive Representative.)
Transcription of Tapes from hearing conducted on
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1 know of for certain.

2 ALJ CLOUGHESY: Okay. And --

3 THE WITNESS: (Inaudible.)

4 ALJ CLOUGHESY: Do you know some that just
5 come straight over from already being a peace officer
6 for another agency?

7 THE WITNESS: Yes. That's where most
8 everybody comes from.

9 ALJ CLOUGHESY: Okay. Any further questions
10 based on those?

11 MR. MESSING: No.

12 MR. ROSE: No.

13 ALJ CLOUGHESY: Thank you very much, sir.
14 This is mine and we are off the record.

15 (A brief pause transpired.)

16 ALJ CLOUGHESY: Okay. We're back on the
17 record. We have another witness called by the
18 petitioner. I'm going to ask this witness to raise your
19 right hand. Do you swear or affirm the testimony you'll
20 be giving will be the truth, the whole truth, and
21 nothing but the truth?

22 THE WITNESS: I do.

23 ALJ CLOUGHESY: Please state your name for the
24 record, spelling your last name.

25 THE WITNESS: Michael Guter, G-U-T-E-R.

1 ALJ CLOUGHESY: Sir, I'm going to show you a
2 document and I'm marking it as Petitioner's Exhibit H,
3 what appears to be a declaration of this witness. And
4 I'm going to have him review it just real quickly.

5 MR. MESSING: I need to take a moment, I'm
6 sorry, off the record.

7 ALJ CLOUGHESY: All right. Let's go off the
8 record.

9 (A brief pause transpired.)

10 ALJ CLOUGHESY: Back on the record. Sir, you
11 have reviewed Petitioner's Exhibit H; is that correct?

12 THE WITNESS: That's correct.

13 ALJ CLOUGHESY: And is it familiar to you?

14 THE WITNESS: Yes, it is.

15 ALJ CLOUGHESY: And what it is?

16 THE WITNESS: It's a declaration that I
17 executed January 15th, 2009.

18 ALJ CLOUGHESY: And turning to the last page
19 of that declaration I'm going to ask you if that is your
20 signature, sir?

21 THE WITNESS: Yes, it is.

22 ALJ CLOUGHESY: And you signed it on that
23 date?

24 THE WITNESS: Yes, I did.

25 ALJ CLOUGHESY: And in that -- Sacramento?

1 THE WITNESS: Yes.

2 ALJ CLOUGHESY: All right. And are all the
3 items contained in that declaration true and correct to
4 the best of your knowledge?

5 THE WITNESS: Yes.

6 ALJ CLOUGHESY: All right. Any further
7 qualifications before I pass the witness?

8 MR. ROSE: No.

9 ALJ CLOUGHESY: Mr. Messing, your witness.

10 MR. MESSING: Just one second.

11 EXAMINATION BY MR. MESSING:

12 Q. Okay. First of all, you first became an ABC
13 investigator in what year?

14 A. The investigator trainee or investigator I or
15 -- I was sworn in 1975.

16 Q. '75. Okay.

17 A. Yes.

18 Q. Thank you. Now, looking at page 6 of your
19 declaration, and I see in paragraph 33 that you explain
20 and interpret the laws, rules, and regulations of the
21 Alcohol Beverage Control Act and the Business and
22 Professions Code, correct?

23 A. That's correct.

24 Q. Okay. Now, not all of the rules, regulations,
25 and laws deal with criminal enforcement, correct?

1 A. Correct.

2 Q. Okay. So is it fair to say that actually the
3 mission of the Department of the ABC is to regulate the
4 alcohol industry?

5 A. That's half of it.

6 Q. What's the other half?

7 A. Enforce it.

8 Q. Okay. So you see that there's a difference
9 between regulating and enforcing?

10 A. Yes.

11 Q. Don't you regulate in an industry by telling
12 them what to do and if they don't do it, by enforcing
13 the conduct that is required?

14 A. That's correct.

15 Q. Okay. So isn't the whole system a system
16 that's created to regulate the conduct of the alcohol
17 industry?

18 MR. ROSE: Objection. Asked and answered.
19 Vague.

20 ALJ CLOUGHESY: I don't know if that's been
21 asked and answered, but would you agree with the way
22 that Mr. Messing put it?

23 THE WITNESS: I would still like to stay with,
24 as I said, the regulation and enforcement.

25 ALJ CLOUGHESY: Fair enough.

1 BY MR. MESSING:

2 Q. Well, when you say enforcement, not all of
3 the enforcement is criminal, correct?

4 A. Correct.

5 Q. So if a regulation is violated, there might be
6 a civil penalty associated with it, correct, a law or a
7 --

8 A. A law?

9 Q. Yes.

10 A. Yes, that's correct.

11 Q. And there may be a law, reg, or rule that if
12 it's violated, there may be administrative action taken
13 to enforce it, correct?

14 A. Correct.

15 Q. Okay. And you're involved in all of those
16 types of enforcement, correct, in your current job.
17 Okay. Do you enforce things dealing with criminals,
18 civil as well as administrative penalties?

19 A. Yes.

20 Q. Okay. Now, also part of that regulatory --
21 the regulation of the industry are the licensing
22 representatives, correct?

23 A. Correct.

24 Q. Okay. And are you familiar with what
25 licensing representatives do?

1 A. Yes.

2 Q. Okay. Do they also enforce -- interpret and
3 explain provisions of laws, rules, and regulations of
4 the Alcohol Beverage and Control Act and Business and
5 Professions Code?

6 A. Yes.

7 Q. Do they also enforce the laws, rules, and
8 regulations of the ABC Act and the Business and
9 Professions Code?

10 A. I would have to say, yes, with an explanation.

11 Q. All right. Well then you can provide the
12 explanation.

13 A. They strictly do the licensing portion of the
14 duties of the Department.

15 Q. Okay. And in that regard, if they refuse to
16 issue a license, are there administrative appeals
17 available to potential licensees?

18 A. Yes.

19 Q. And are the licensing representatives involved
20 in those appeals?

21 A. They -- may I explain?

22 Q. Yes.

23 ALJ CLOUGHESY: So can you not answer with a
24 yes or no?

25 THE WITNESS: No, I can't.

1 ALJ CLOUGHESY: Go ahead, sir.

2 THE WITNESS: They don't appeal. They may be
3 called to testify at hearings for protest or denial of
4 modifications of conditions.

5 BY MR. MESSING:

6 Q. Is that -- do you consider that to be involved
7 -- being involved in the appeal or not involved?

8 A. Well it's not really an appeal at that stage,
9 I don't think.

10 Q. I -- I didn't ask you if they appeal, I asked
11 you if they were involved in the appeal process. Okay.
12 And is your answer yes? Are they involved in the appeal
13 process?

14 A. No. I don't understand.

15 Q. When somebody files an appeal, the licensing
16 representatives are involved in testifying. Is that
17 your testimony?

18 A. No.

19 Q. Okay. Are you referring to these -- this
20 process in another term not an appeal, it's called
21 something else?

22 A. Yes.

23 Q. Is it called a protest?

24 A. Well, it could be either a protest hearing --
25 and that's not an appeal. That's where the applicant

1 decides, you know, if they want to go to a hearing or
2 not to, you know, to address the Department's decision.

3 Q. Okay. Protest a hearing happens after the
4 Department denies somebody a license, correct?

5 A. Or the protestants take the matter to a
6 hearing.

7 Q. Why would they take the matter to a hearing --

8 A. I'm sorry.

9 Q. -- if they were issued a license?

10 A. If the Department approved it, then the
11 protestants, they could take the matter to a hearing
12 also.

13 Q. Okay. Oh, so there are other people who could
14 protest like members of the community, for example?

15 A. Oh, yes.

16 Q. Okay. Very good. All right. So you know,
17 forgive me. I was using the term appeal in the generic
18 sense, meaning protesting, disputing or what have you,
19 but let's move on now. So the licensing representatives
20 are involved in that stage. Is there another stage
21 after the hearing?

22 A. Not that the licensing reps would be involved
23 in.

24 Q. So this is their predominant duty?

25 A. Yes.

1 Q. Okay. Is this an important part of the scheme
2 that regulates the industry of alcohol in the State of
3 California?

4 A. It's -- it's a part of protecting the welfare
5 of the public, yes.

6 Q. Okay. Now, these protest hearings, can they
7 deal with the conditions or restrictions on a license
8 such as the hours of operation of a -- of an
9 establishment that does alcohol?

10 A. Yes.

11 Q. And these hearings are held before an
12 Administrative Law Judge, correct?

13 A. Correct.

14 Q. Now, sworn ABC investigators tend to go to
15 hearings on issues of law violations regarding
16 licensees, correct?

17 A. Correct.

18 Q. So, for example, if a licensee sells alcohol
19 to a minor, you could make a criminal case out of that?

20 A. Yes.

21 Q. Okay. Could that also result in an
22 administrative hearing?

23 A. Yes.

24 Q. And you would be involved in that, as well as
25 a sworn investigator?

1 A. Yes.

2 Q. And by the way, does it happen that licensing
3 representatives sometimes become ABC investigators; they
4 go from one classification to the other?

5 A. I know that there's schooling involved, yes.
6 I mean, there's academic schooling that they have to
7 complete. But I have known them go from licensing
8 representative to an investigator, yes.

9 Q. That's the question. Thank you. And you --
10 your position would be considered a plain-clothed
11 position, correct?

12 A. Correct.

13 Q. You indicate that you -- your position -- you
14 receive supplemental differential pay for physical
15 agility, education and longevity?

16 A. Yes.

17 Q. Are there any other differentials that apply
18 to your position?

19 A. Those are the only ones that I can recall.

20 Q. Okay. When I say apply to your position, I
21 mean to ABC investigators; there are pays that you might
22 be eligible for that you might not be receiving
23 yourself. Are you familiar with any other types of
24 differentials?

25 A. ABC investigators?

1 Q. Yes.

2 A. No.

3 Q. Were you aware of an action taken a year or
4 two ago to include training pay for ABC investigators?

5 A. For trainers?

6 Q. Yes.

7 A. Yes.

8 Q. And that happened a couple of years ago?

9 A. I don't recall exactly when.

10 Q. Is that something that you might be eligible
11 to receive yourself if you decided to train?

12 A. I would have to be a qualified trainer, yes.

13 Q. ABC investigators receive recruitment and
14 retention differentials as well?

15 A. In certain geographical areas, I believe.

16 Q. Do you know how much that is?

17 A. No, I don't.

18 Q. Okay. Now, give me one second. I'm looking
19 for a document here. Is it -- do you recollect back in
20 the early 1990s Pete Wilson issuing IOUs to employees
21 instead of paychecks?

22 A. Yes.

23 Q. And at that time did you receive some IOUs
24 instead of real paychecks?

25 A. Yes.

1 Q. Do you recall what was then called CAUSE
2 spearheading a lawsuit to obtain benefits for people who
3 had received IOUs instead of paychecks?

4 A. Yes.

5 Q. In fact, you were a named plaintiff in that
6 case, were you not?

7 A. I believe I was.

8 Q. Okay. And did you not receive a recovery from
9 that lawsuit?

10 A. I believe I did.

11 Q. And that recovery was leave credits?

12 A. I -- I don't recall.

13 Q. All right.

14 MR. MESSING: Can I hold off for a moment
15 while Mr. Clark is out of the room? Let's go off the
16 record for a moment.

17 ALJ CLOUGHESY: Off the record.

18 (A brief pause transpired.)

19 ALJ CLOUGHESY: Back on the record.

20 CONTINUED EXAMINATION BY MR. MESSING:

21 Q. Just a few more things. Now, as a member of
22 the unit 7 bargaining unit, and as an ABC investigator,
23 do you keep track of the pay increases that occur from
24 year to year?

25 A. No.

1 Q. Are you aware that since January of 2007
2 through the present, ABC investigators could have
3 received a maximum of 17.9 percent pay raise?

4 MR. ROSE: Objection. Lacks foundation.
5 Assumes facts not in evidence.

6 MR. MESSING: I'm asking him if he knows.

7 ALJ CLOUGHESY: Sustained. Do you know -- do
8 you know -- when you asked him, you asked him as if it
9 was an established fact. We don't -- although we have
10 the MOU right here --

11 MR. MESSING: Normal cross-examination is --

12 ALJ CLOUGHESY: No. No, sir. Not the way
13 that you're doing it. I disagree completely.

14 BY MR. MESSING:

15 Q. Do you have any reason to dispute the fact
16 that ABC investigators received a 17.9 percent pay raise
17 from 2007 to the present?

18 MR. ROSE: Objection. Lacks foundation.
19 Relevance. Assumes facts not in evidence.

20 ALJ CLOUGHESY: Do you know, sir, one way or
21 another?

22 THE WITNESS: I don't know for sure, no.

23 ALJ CLOUGHESY: Next.

24 BY MR. MESSING:

25 Q. Just one other thing. Were you aware of the

1 receipt (ph) of peace officers in the bargaining unit of
2 the 3 percent at 50 plan, when that occurred?

3 A. I'm aware that it occurred. I don't recall
4 exactly when it did happen.

5 Q. Okay.

6 MR. MESSING: All right. No further
7 questions.

8 ALJ CLOUGHESY: Ms. Truong?

9 MS. TRUONG: No questions.

10 ALJ CLOUGHESY: Mr. Rose?

11 MR. ROSE: Yes.

12 EXAMINATION BY MR. ROSE:

13 Q. Mr. Guter, hello. Good afternoon. Thank you
14 for your patience. You have been with the Department
15 for quite a long time?

16 A. Yes, I have.

17 Q. Would you say that your job duties as an
18 investigator II, formerly known as special senior
19 investigator, remained constant or changed over the
20 period of your tenure in that position?

21 A. They have changed.

22 Q. How so?

23 A. With more emphasis towards enforcement.

24 Q. What was the -- what -- if there's more
25 emphasis on enforcement, what has there been less

1 emphasis on, if anything?

2 A. The licensing duties.

3 Q. So that we understand how you're using those
4 terms, can you give me a description in summary fashion
5 of enforcement duties as you use that label?

6 A. We will go ahead and investigate complaints.
7 We'll go in in an undercover capacity. These complaints
8 come from local law enforcement agencies and the public
9 and involve sales to minor, sales to drunks, illegal
10 gambling, narcotic activity.

11 Q. How do you go in undercover?

12 A. Plain clothes.

13 Q. What do you do when going in undercover?
14 Describe that sequence of events.

15 MR. MESSING: I'm going to object. This is
16 beyond the scope of cross-examination. This is -- the
17 direct examination was the declaration. We didn't -- I
18 don't remember raising anything about --

19 ALJ CLOUGHESY: (Inaudible) about enforcement
20 and regulatory scheme.

21 MR. MESSING: Not in the manner in which it's
22 carried out and conducted.

23 ALJ CLOUGHESY: No. I think we're getting
24 some clarification on redirect, so I'm going to overrule
25 the objection. Proceed. You were going to describe how

1 you went about doing it.

2 BY MR. ROSE:

3 Q. Undercover.

4 A. We'd identify the premises. We check the
5 file to -- for the layout of the premises because there
6 is a diagram in there. Depending on what the complaint
7 was, we usually go in in teams of two, and if it's a
8 narcotics issues, it's usually to give you some face
9 time. It's not usually something that we're going to go
10 ahead and get a buy right away on the first visit. It
11 takes a number of visits to establish some dialog with
12 the licensee or an employee.

13 Q. When you go in in teams of two, who do you
14 bring with you, assuming you're one of the parties or
15 member of the team?

16 A. My partner.

17 Q. Do licensing representatives ever go with you
18 undercover?

19 A. No.

20 Q. Do licensing representatives conduct their own
21 undercover operations without you?

22 A. Not that I'm aware of.

23 Q. Are there any other functions that you would
24 categorize under the label enforcement?

25 A. Well, there are -- there are a number of

1 things that are assigned to -- to the sworn that isn't
2 to the non-sworn. A couple of things that I have been
3 assigned to is to conduct background investigations on
4 potential employees, and most recently as the evidence
5 custodian of the office.

6 Q. Are you aware of whether licensing
7 representatives have been assigned to conduct background
8 individuals (inaudible.)

9 A. No.

10 Q. Are you aware of whether licensing
11 representatives have been assigned to be the evidence
12 custodian of the office?

13 A. They have not.

14 Q. Okay. Any other duties that would be fairly
15 characterized under your description of enforcement?

16 A. There are -- many times we'll go ahead and
17 work jointly with other law enforcement agencies.

18 Q. What agencies?

19 A. Being in Sacramento, specifically we work a
20 lot with the Sacramento Police Department and the
21 Sacramento County Sheriff's Department. We will work
22 with some of the other outlying police departments and
23 sheriff's departments. We cover six counties out of the
24 Sacramento District Office.

25 Q. What other county -- you said outlying police

1 and sheriff's departments. Could you name some others?

2 A. Elk Grove, South Lake Tahoe, West Sacramento
3 Auburn Police Department.

4 Q. And what do you mean working with those
5 departments or agencies? Can you explain what you mean
6 by that?

7 A. We may be working undercover with them on a
8 premises that they have concerns with. It could be
9 drunks, could be disorderly premises, or we could be
10 going in in high profile, identifying ourselves as
11 police officers and doing (inaudible) inspection of
12 premises with them.

13 Q. Are you aware of whether licensing
14 representatives go in high profile as you have described
15 it with other law enforcement agencies?

16 A. I'm not aware that they do.

17 Q. Any other duties that may be fairly
18 characterized under the enforcement label that you used?

19 A. Not that I can recall.

20 Q. What percentage of your time would you
21 estimate you have in the last year been conducting
22 enforcement issues as you have used that term?

23 A. I'd have to say at least -- at least 95
24 percent of the time.

25 Q. And how does that compare to the percentage of

1 time that you have done enforcement duties in years
2 past?

3 A. In the years past it was usually 50 percent
4 licensing and 50 percent enforcement.

5 Q. And we both used the term years past. Could
6 you point -- pinpoint us when you think it was
7 approximately 50 -- 50 percent licensing, 50 percent
8 enforcement, that (inaudible) last year that that was
9 so?

10 A. Three or four years ago, maybe.

11 Q. Okay. Now then, let's talk about the label of
12 licensing that were used. Can you describe some duties
13 that are falling under the label of licensing as you
14 have used that term?

15 A. As I performed it in the past or --

16 Q. Well, let's start with your understanding of
17 licensing duties in the current time period, meaning
18 now.

19 A. Okay. Currently we have, I believe, four or
20 five licensing representatives, and they are assigned
21 application. It can be anywhere from an off-sell
22 license to on-sell licensing to manufacturing licenses,
23 and they accept these packages, review the
24 documentation, and they will ensure that the licensees
25 are qualified to hold the license; that the financial

1 documentation points to them as the investors and
2 there's no undisclosed owner in there. The premises are
3 identified as being licensed as properly displayed on
4 the -- on the diagram and that they have right to
5 tenancy. If there's a protest, if it's from a local law
6 enforcement agency, they will go ahead and collect
7 supporting documentation from the law enforcement agency
8 that will confirm their allegation. If it's from a
9 public citizen, they will go ahead and investigate, you
10 know, those allegations by the public.

11 On new applications for new licenses, they
12 will go out into the field and they'll inspect the
13 premises itself, make sure that it agrees with the
14 diagram and check the area for consideration points
15 which could be churches, schools, public playgrounds,
16 residents within 100 feet. And then they will prepare a
17 report and submit that to their supervisor.

18 Q. And with respect to the preparation -- excuse
19 me. With respect to the supervisor of the license
20 representatives, is that the same supervisor or a
21 different supervisor than you?

22 A. It's a different supervisor than the one I
23 report to.

24 Q. And with respect to the inspections conducted
25 by licensed representatives, do they identify themselves

1 as ABC employees when conducting those inspections, if
2 you know?

3 MR. MESSING: (Inaudible) licensee.

4 ALJ CLOUGHESY: Sustained.

5 BY MR. ROSE:

6 Q. Okay. How many -- if you know, could you
7 estimate how many new license inspections licensing
8 representatives conduct on an annual basis on average?

9 A. I -- I don't know.

10 Q. How many have you conducted in the last year,
11 new license inspections?

12 A. In the last year?

13 Q. Yes.

14 A. None.

15 Q. Can you describe any other duties that you
16 would label or you would characterize under the label
17 licensing (inaudible.)

18 A. They would all -- if an applicant, or I should
19 say if a licensee, has -- has conditions on the license,
20 they can petition to have those conditions removed. And
21 when they make that request to have conditions to the
22 Department -- an assignment is made and the supervisor
23 issues that to a licensing representative to
24 investigate, and they prepare a report on their
25 findings.

1 Q. How many of those types of activities, the
2 reports concerning conditions on a license following a
3 petition to have the conditions removed, have you
4 performed in the last year?

5 A. None.

6 Q. Are there any other job duties that you would
7 characterize under the licensing label as you have used
8 that term?

9 A. There -- there is counter duty, called barrel
10 duty, and they're assigned -- one of the licensing reps
11 is assigned each day to field general information from
12 the public, whether they call or whether they arrive at
13 the office at the front counter.

14 Q. Why do you call it barrel duty? Why is it
15 called barrel duty?

16 A. You're stuck in the office.

17 Q. How many counter duty or barrel duty have you
18 performed in the last year?

19 A. None.

20 Q. Any other job duties that you would list under
21 the category licensing as you use that term?

22 A. Well as previously discussed, if the matter
23 goes to a hearing, if the licensing matter goes to a
24 hearing prepared by the licensing rep, they would be
25 called to testify at that hearing.

1 Q. Okay. Let me ask you about page 7 of your
2 declaration, Mr. Guter, if you don't mind. Go ahead and
3 turn to it. Looking first to paragraph 55, the top of
4 the page, line 3 reads as follows, my hours for work are
5 varied; I may be called to work at any time. Do you see
6 that statement?

7 A. Yes.

8 Q. What are your usual hours of work?

9 A. Right now that I'm assigned to the evidence
10 custodian and doing background investigation, it's 7 to
11 4.

12 Q. What type of work hours have you had in years
13 past?

14 MR. MESSING: I'm going to object. I don't
15 remember any questions about his work hours. This is
16 just more direct examination of a witness.

17 ALJ CLOUGHESY: That part I agree with,
18 Mr. Messing. Sustained.

19 MR. ROSE: So we're limited to
20 cross-examination, even though we don't have to submit a
21 declaration or --

22 ALJ CLOUGHESY: You know, if there was an
23 issue that was in the sense -- if you notice, I always
24 ask you in the beginning is there any qualifying
25 questions, and if there was a new question that you

1 wanted to ask him, and there was a couple of questions
2 that you wanted to ask that were not included in here
3 and put into in a sense the volume, I'm all for it, but
4 --

5 MR. ROSE: I also understood -- okay. I
6 understand now. When you said qualifying questions, I
7 thought you meant to qualify him as a witness. All
8 right. So I understand. All right. Let me move on.

9 BY MR. ROSE:

10 Q. On the same page, paragraph 67, you were asked
11 by Mr. Messing about whether you knew that the peace
12 officer, firefighter retirement benefits had been given
13 or had been granted to your classification. Do you
14 remember that question?

15 A. Yes.

16 Q. Are you aware of whether licensing
17 representatives received that benefit?

18 A. No, they didn't get the peace officer,
19 firefighter.

20 Q. By the way, before I forget, what percentage
21 of time in the last year, to your knowledge, have
22 licensing representatives spent doing licensing duties
23 on average as you have described that term today?

24 A. How much time do they spend on licensing
25 duties?

1 Q. Correct.

2 A. 100 percent.

3 MR. ROSE: Nothing further at this time.

4 ALJ CLOUGHESY: Mr. Messing?

5 EXAMINATION BY MR. MESSING:

6 Q. You said that there's now less emphasis on
7 licensing duties than you had in the past. Do you
8 remember saying that?

9 A. Yes.

10 Q. Okay. It used to be 50/50?

11 A. Yes.

12 Q. Okay. You said you now have 95 percent of
13 your time in enforcement. Is the other 5 percent
14 dealing with licensing duties?

15 A. Yes.

16 Q. Or is it more than 5 percent?

17 A. 5 percent is -- is pretty generous by itself.

18 Q. Do you think that your percentage breakdown is
19 representative of what other ABC investigators are
20 doing? Well, let me phrase it this way. Do you -- I'll
21 withdraw the question. Do you have greater, lesser, or
22 about the same amount of licensing duties as other ABC
23 investigators, if you know?

24 A. In our office? I could testify to that.

25 Q. Yes, in your office.

1 A. I probably have more.

2 Q. Okay. Now, what are the licensing duties that
3 you still have?

4 A. The ones that I have right now are assignment
5 for expansion of a licensed premises involving a bar
6 wanting to use the facilities of an adjacent premises.

7 Q. Okay. Why would that duty be assigned to you
8 as opposed to a licensing rep?

9 A. We have worked enforcement at that location,
10 and had disclosed a violation with regards to it. It's
11 a food operation. And the supervisor thought I would be
12 the right one to continue working on it since I was
13 familiar with the outlay.

14 Q. Are you working with a licensing rep on that
15 matter?

16 A. No.

17 Q. Are there matters with which you work with
18 licensing reps?

19 A. No.

20 Q. Okay. Are there matters that are referred to
21 you by licensing reps for you to work on in an
22 enforcement capacity?

23 A. No.

24 Q. No. Would that answer also be the same for
25 the other investigators that work with you in your

1 office?

2 A. Yes.

3 Q. So they generally don't work with licensing
4 reps?

5 A. No.

6 Q. Oh, as part of your duties do you do
7 background checks on licensees?

8 A. You mean right now?

9 Q. Yeah, now.

10 A. Is it in my duty statement?

11 Q. Do ABC investigators do background checks on
12 licensees?

13 A. I don't.

14 Q. Do ABC investigators do background checks on
15 licensees?

16 ALJ CLOUGHESY: That you're aware of.

17 THE WITNESS: In our office? That's all I
18 know.

19 ALJ CLOUGHESY: Whatever you know. That's all
20 we care about.

21 BY MR. MESSING:

22 Q. You can answer for your office if you don't
23 know anything else.

24 A. For our office?

25 Q. Yes.

1 A. There's one other investigator that is
2 handling an application for a license, and in the course
3 of their investigation they would go ahead and do a
4 background check on the licensees.

5 Q. Do licensing reps do background checks on
6 licensees?

7 A. Yes.

8 MR. MESSING: Nothing further.

9 ALJ CLOUGHESY: Ms. Truong? Go ahead.

10 EXAMINATION BY MR. ROSE:

11 Q. With respect to licensing -- excuse me. With
12 respect to the background checks of licensees, how many
13 of those have you conducted in the last year?

14 A. None.

15 Q. And the other person you mentioned in your
16 office, how many, if you know, has that investigator
17 conducted in the last year?

18 MR. MESSING: This was asked and answered.

19 ALJ CLOUGHESY: That one, yes. Sustained.
20 Anything further?

21 MR. ROSE: Yes.

22 BY MR. ROSE:

23 Q. Licensing reps in your office, do you have
24 any idea, an estimate or average, of how many background
25 checks on licensees, new licensees are conducted by

1 licensing reps in a given year or in the last year?

2 A. No, I don't.

3 MR. ROSE: Nothing further.

4 ALJ CLOUGHESY: All right. Anything on those
5 matters, Mr. Messing? Ms. Truong?

6 MR. MESSING: No.

7 MS. TRUONG: No.

8 ALJ CLOUGHESY: You have been a gentleman.

9 Thank you very much. Any objection to Petitioner's H,
10 other than the standard --

11 MR. MESSING: No.

12 ALJ CLOUGHESY: And on behalf of the employer.
13 With that, H is admitted. Thank you very much, sir.
14 Off the record.

15 (A brief pause transpired.)

16 ALJ CLOUGHESY: All right. We're back on the
17 record. I didn't take care of this cleanup matter. Is
18 there going to be any objection to the declaration of
19 Petitioner's G, (inaudible.)

20 MR. MESSING: No.

21 ALJ CLOUGHESY: G is admitted.

22 MS. TRUONG: You know, I don't know either if
23 D and E have been admitted.

24 ALJ CLOUGHESY: I have E is admitted.

25 Shoemaker is pending further exam.

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CERTIFICATE OF SHORTHAND REPORTER

I, TERRIE CULP-SMITH, a Shorthand Reporter, do hereby certify that I am a disinterested person herein; that I reported the preceding in shorthand writing from the tapes that were provided to me; that I thereafter caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said proceeding, or in any way interested in the outcome of said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of February 2009.

Terrie Culp-Smith
Shorthand Reporter