

PRIVATE INVESTIGATORS AS BODYGUARDS

Robert A. Gardner, CPP, CSP

"A bodyguard is a security guard. Therefore, only a PPO may contract to specifically provide a bodyguard service. However, a PI who has a contract with a client, may provide a bodyguard service to the client if that service is peripheral to an on-going PI contract."

– Bureau of Security and Investigative Services (BSIS) Website

For legal and regulatory purposes bodyguards are security guards and only a Private Patrol Operator (PPO) can contract to provide security guard services.¹ However an exception permits Private Investigators to act as security guards to "protect a person, but not property, which is incidental to an investigation for which the private investigator has been previously hired to perform."²

That sounds straightforward enough but like many other regulations this one can lend itself to creative interpretation. What some investigators view as a limited – and limiting – exception others see as a legal loophole big enough to drive an armored SUV through.

Whichever your view, before you strap on the Glock 9 mm and slip into those sexy Secret Service sunglasses it is prudent to consider the personal and professional hazards associated with providing bodyguard services.

Reality – Part I

Practically speaking, if nothing bad happens it doesn't really matter which side of the "incidental to an investigation" line you operate on. Unless someone complains it is unlikely your activities will be questioned. However, by definition, bodyguard work involves the potential for bad things to happen. When they do you can expect plenty of questions.

Even if you do everything right, a bodyguard assignment can easily become a bodyguard incident. Do you have the maturity, experience, specialized training, equipment, and backup resources necessary to effectively protect your client and innocent third parties? Could you take the life of another human being? Have you seriously considered that possibility and its ramifications? Will your conduct survive scrutiny by BSIS, Law Enforcement, Plaintiff Attorneys and their experts, and perhaps the evening news?

Legality

"Protective Surveillance" is a catchy term that some PIs believe can magically turn a questionable bodyguard assignment into a legal investigation. So how do you know if the magic worked? Where does surveillance (investigator) end and protection (security guard) begin? That is a subjective question that BSIS will ultimately answer for you...after the fact.

When things go bad you can expect a visit from the BSIS Enforcement Division. They will be interested in just how "incidental to an investigation" your activities really were. Invoices and your contract with the client may be examined. What percentage of your billing reflects actual investigation? What percentage was billed to bodyguard activities? Do you advertise – even obliquely – that you provide bodyguard services? BSIS may ask the client what services he or she hired you to provide. Clients don't usually understand the finer points of creative interpretation. If they hired you as a bodyguard they will likely say so. Even if they are inclined to cover for you, once BSIS explains to them that anyone who "conspires with another person to violate any provision of this chapter...or who knowingly engages a nonexempt unlicensed person is guilty of a misdemeanor"³ they will probably reconsider.

Providing bodyguard services "incidental to an investigation" places you under the jurisdiction of the Private Security Services Act as well as the Private Investigator Act. BSIS will want to ensure that you comply with both.

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There may also be a police investigation, especially if significant force or a weapon was involved. Even if everything goes in your favor, the investigative process and exposure to potential prosecution can be inconvenient and unnerving.

Insurance

The Private Security Services Act requirement for a policy that provides for "minimum limits of insurance of five hundred thousand dollars (\$500,000) for any one loss due to bodily injury or death and five hundred thousand dollars (\$500,000) for any one loss due to injury or destruction of property"⁴ applies to PIs working armed bodyguard details.

Even if your policy provides for those limits don't assume that you are automatically covered. Many PI insurance policies specifically exclude coverage for bodyguard or other armed or security related activities. For PIs relying on their homeowner's policy...don't. Homeowner's policies rarely cover claims arising from business activities. Read your policy and check with your insurance agent. Make sure you are covered.

Remember too that insurance policies generally exclude unlawful acts. If you find yourself on the wrong side of the "incidental to an investigation" exception chances are you won't be covered.

Liability

If anyone is – or even imagines they were – harmed by something you did or failed to do as a bodyguard, litigation is almost a certainty. There are thousands of personal injury attorneys in California who make a living playing the security litigation lottery. You don't want to be their next Quick Pick.

When you are sued, you and your actions will be analyzed in microscopic detail. Were your services legally "incidental to an investigation" or an unlicensed practice? Are your licenses and permits current? Do you have the experience and training necessary to competently provide bodyguard services? Were your actions reasonable under the circumstances? Did you file the required reports with BSIS? Are you prepared to have your finances, your business practices and perhaps your personal life dissected publicly? Will your insurance company defend you and cover damages if you lose? Even if you prevail, can your business survive the time, energy, financial drain and negative publicity of a legal battle?

Remember too that insurance policies generally exclude unlawful acts. If you find yourself on the wrong side of the "incidental to an investigation" exception chances are you won't be covered.

Reality- Part II

There is nothing "incidental" about accepting responsibility for another person's life. Like so many other things Private Investigators do, bodyguard work is a specialty. It requires professional training, substantial experience and specialized resources that most PIs – and many PPOs for that matter – including those with a law enforcement background, just don't have.

The "incidental to an investigation" exception is a tool to help PIs serve a special need of a unique type of investigation client. It is not a dispensation to run a bodyguard service under the theory that looking left and right while escorting a client through a hotel lobby constitutes an investigation. As with any professional tool the "incidental to an investigation" exception must be used skillfully, carefully and lawfully. ●

Business and Professions Code References

1. Section 7582.1(a)
2. Section 7125.5(a)
3. Section 7582.3(b), 7523 (b)
4. Sections 7521.5(c), 7583.39, 7583.40, 7583.41

Robert A. Gardner is a "Board Certified" security management professional with multi-state Private Investigator and Private Patrol licenses. He is a graduate of dignitary protection training presented by both the California State Police and the California Department of Justice and has provided protection services to several prominent individuals including a State Governor and a First Lady of the United States.

Mr. Gardner's firm offers security related consulting, investigation and expert witness services from offices in Ventura, CA and Las Vegas, NV. He does not do bodyguard work. Web site: www.crimewise.com