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### Summary of State of Nevada v. Tatalovich, 129 Nev. Adv. Op. 61

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*Nevada Law Journal*

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PROCEDURAL LAW: INVESTIGATIVE LICENSE

**Summary**

The Court determined whether investigative work undertaken for the purpose of developing and giving expert opinion testimony in a Nevada civil court case requires a Nevada private investigator's license.

**Disposition**

The Court answered that question in the negative. NRS 648.012's licensing requirement does not apply to experts employed to give an opinion on some aspect(s) of a case where the expert witness performs duties and tasks within his or her field to verify or obtain information necessary to form the basis for the opinion testimony.

**Factual and Procedural History**

Respondent Dwayne Tatalovich ("Tatalovich") is a private investigator that is licensed in Arizona. In two different Nevada civil court cases, the plaintiffs hired Tatalovich to investigate the crime scene where an injury occurred, take measurements and photographs, review all security measures, and reconstruct the crime. He also ran background checks on one of the accused in order to form an opinion concerning the soundness of a hiring decision. Tatalovich used his research to formulate his expert opinions for each case. Appellant State of Nevada, Private Investigator's Licensing Board ("Board") cited him for engaging in the business of a private investigator without a Nevada license in violation of NRS 648.060.<sup>2</sup>

The district court dismissed the citation. It held that Tatalovich's investigative activities were incidental to his formation of expert testimony and, as such, fell outside NRS 648's licensing scheme.

**Discussion**

The Board maintains that the statutes encompass a wide range of activities and that expert witnesses may not personally investigate facts in Nevada unless they hold a Nevada private investigator's license. Tatalovich counters that, as a matter of law, expert witnesses need not hold a Nevada private investigator's license to research their cases.

The licensing requirements of NRS 648 protect the public safety by restricting the activities of individuals who claim to possess but do not actually possess the skills required of a professional in that field. However, extending the licensing requirement to expert witnesses such

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<sup>1</sup> By Erica C. Smit

<sup>2</sup> NRS 648.060 provides that "no person may: (a) Engage in the business of private investigator, private patrol officer, process server, reposessor, dog handler, security consultant, or polygraphic examiner or intern or (b) Advertise his or her business as such,. . . unless the person is licensed pursuant to this chapter." NEV. REV. STAT. § 648.060 (2013).

as Tatalovich, the validity of whose qualifications and work is tested in court would not achieve that purpose.

This case closely resembles *Kennard v. Rosenberg*,<sup>3</sup> a California case. There an attorney hired a retired fireman and two chemists—none of whom held a private investigator’s license—to testify as expert witnesses in a lawsuit over the cause of a fire. The experts inspected and tested the site of the fire.<sup>4</sup> Because the experts were employed to consult with a party and share needed technical knowledge, the court concluded that the California private investigator’s licensing statute, which closely resembles Nevada’s, did not apply. The object of the expert’s activities was to gather information to form their opinions, not private investigation.<sup>5</sup>

The Board’s reading of NRS 648.012 and NRS 648.060 would capture conduct far afield from private investigation. Following the Board’s reading, a journalist who searches public records for a news story, a plumber who looks for a wedding ring lodged in a sink’s pipe, and even a prospective employer who calls an applicant’s past employers would all be required to obtain a private investigator’s license. The Legislature has not endorsed this expansive view. In fact, in 2013, after the Board cited Tatalovich and this litigation ensued, the Legislature amended NRS 648.012 to create a specific exception for expert witnesses who are “retained for litigation or trial . . . and who perform duties and tasks within his or her field of expertise that are necessary to form his or her opinion” related to a possible crime or tort.<sup>6</sup>

## **Conclusion**

Here, Tatalovich was hired as an expert witness, and in forming his testimony, he visited the crime scenes, took photographs and measurements, examined security measures, and reconstructed events. He also ran background checks on one of the accused in order to form an opinion concerning the soundness of a hiring decision. These tasks were necessary to form the basis of his opinion testimony, and Tatalovich’s Arizona license granted him access to the relevant databases for the background checks. His actions therefore fell outside the Nevada licensing requirement. The Court affirmed the ruling of the district court.

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<sup>3</sup> 273 P.2d 839 (Cal. Ct. App. 1954).

<sup>4</sup> *Id.* at 840–41.

<sup>5</sup> *Id.* at 842.

<sup>6</sup> The amendment was signed on June 1, 2013, and takes effect October 1, 2013. A.B. 306, 77th Leg. (Nev. 2013).