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January 15, 2009

Governor Bob Riley
Office of Governor Bob Riley
State Capitol
600 Dexter Ave
Montgomery, AL 36130-2751

Dear Governor Riley:

The American Bar Association (“ABA”), representing over 407,000 lawyers, adopted a Resolution at its August 2008 annual meeting that encourages State legislatures and regulatory agencies to refrain from requiring private investigator licenses for persons engaged in computer or digital forensic services, including providing expert testimony before a court or providing network or system vulnerability testing. The Resolution is intended to counter a recent trend in state legislatures and regulatory agencies that requires such licensure. The Resolution and an explanatory Report are attached.

We are writing to bring this issue to your attention and to request your leadership on this issue. The Resolution encourages state legislatures, regulatory agencies, and other governmental entities to refrain from imposing such requirements because:

1. Investigation and expert testimony in computer forensics and network testing should be based upon the current state of science and technology, best practices in the industry, and knowledge, skills, and education of the expert.
2. The traditional role of private investigators is significantly different from that of a computer forensic or network testing professional and many licensed private investigators have little or no training in these areas. Private investigation licenses are not adequate determinants of competency in a field driven by technological innovation and science.
3. Numerous professional certifications are available to computer forensic and network testing professionals that are based on rigorous curricula and competency examinations. The experience, certifications, knowledge, and skills of a computer forensic expert are more suited to the skills required than a state private investigator license that enables one to work broadly in the investigation field.
4. The public and courts will be negatively impacted if e-discovery, forensic investigations, network testing, and other computer services can be performed only by licensed private investigators because not all licensed private investigators are qualified to perform computer forensic services and many qualified computer forensic professionals would be excluded because they are not licensed.

5. Private investigator licenses are not needed to ensure reliable evidence in litigation. Trial judges are vested with broad discretion in determining whether expert testimony is relevant and reliable; the Supreme Court has set forth a list of factors that may be used to guide them in making this determination (state licensing requirements are not a factor).
6. Data and systems are spread around the world as a result of a globally connected network and widespread use of the Internet. Thus, forensic examinations and network testing frequently involve multiple jurisdictions. A patchwork of differing state licensing requirements for computer forensic and network testing assistance will create jurisdictional complexities that will hamper business operations and court proceedings, disadvantage litigants, and may deprive courts of hearing the best available evidence.
7. There is very little supporting evidence that public safety or consumer protection would be served by such licensing requirements.

The ABA supports efforts to establish professional certification or competency requirements for such activities based upon the current state of technology and science. The Report notes that, "Digital forensics is a changing and complex field not readily amenable to regulation by state licensing requirements." More than 50 universities, colleges, and professional organizations offer training and education in the area of computer forensics. Law enforcement and judicial organizations also sponsor or offer specialized computer forensic courses. All of these courses have to keep pace with emerging attacks on computer systems, technological changes and new innovations, and legal developments, whereas state PI licenses do not. In fact, most state PI licensing examinations do not even address the area of computer forensics.

The American Bar Association, through its Governmental Affairs Office working with the Section of Technology & Science Law, stands ready to provide additional information to you and your staff on this important issue. Please let us know if we can be of further assistance. Thank you for your attention and consideration.

Sincerely,



Thomas M. Susman

Enclosures:

ABA Resolution 301, August 2008