CALIFORNIA RESERVE PEACE OFFICERS ASSOCIATION

CALIFORNIA RESERVE PEACE OFFICERS AND "LEGAL STATUS" UNDER THE LAW ENFORCEMENT OFFICERS SAFETY ACT OF 2004

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The California Reserve Peace Officers Association recently became aware of an issue concerning the "legal status" of California reserve peace officers under the Law Enforcement Officers Safety Act of 2004, as amended (18 U.S. Code Sections 926B and 926C) ["LEOSA"]. The question came up in the context of an interpretation of LEOSA to the effect that LEOSA requires that a person have law enforcement powers at all times (on-duty and off-duty) in order to be a "qualified law enforcement officer" as defined under LEOSA. That interpretation further asserts that because California reserve peace officers are only "temporary" law enforcement officers, they cannot be "qualified law enforcement officers" under LEOSA. We vehemently disagree with that interpretation and believe it is simply wrong on the facts and the law.

That interpretation of LEOSA is not found anywhere in the statutory provisions of LEOSA or as implemented by Federal, State and local law enforcement agencies nationwide. It would fundamentally re-write the federal statute, adding terms and concepts that do not exist, and is inconsistent with the legislative history of LEOSA as well as current case law, various Federal and State legal authorities on LEOSA and the practices adopted by most law enforcement agencies who have implemented LEOSA-related policies for their officers. If this argument were true, which it clearly is not, it would have literally hundreds of thousands of law enforcement officers in this country who do not have peace officer power off-duty but who carry a firearm in reliance on LEOSA (many as sanctioned by their agencies) violating the concealed carry laws of the 50 States (as well as Washington DC and Puerto Rico) on a daily basis.

We reiterate our belief that most California reserve peace officers are entitled to coverage under LEOSA. Our analysis of LEOSA was expressed in a legal memorandum we published in 2012 which can be found on our website at http://www.crpoa.org/pdfs/LEOSA_June_2012.pdf.

The following, read in tandem with our 2012 memorandum, explains why California reserve peace officers are entitled to coverage under LEOSA.

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1. Penal Code Provisions Regarding California Reserve Peace Officers

Part II, Title 3, Chapter 4.5, Section 830 of the California Penal Code provides as follows:

> 830. **Any person who comes within the provisions of this chapter and who otherwise meets all standards imposed by law on a peace officer is a peace officer**, and notwithstanding any other provision of law, no person other than those designated in this chapter is a peace officer. The restriction of peace officer functions of any public officer or employee shall not affect his or her status for purposes of retirement.
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> Penal Code Section 830.6, which forms a part of Chapter 4.5, provides in part:
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> 830.6 Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, a reserve deputy sheriff…and is assigned specific police functions by that authority, **the person is a peace officer**, if the person qualifies as set forth in Section 832.6.

California Commission on Peace Officer Standards and Training prescribes the administrative framework for the selection, training, and appointment of California reserve peace officers. In all cases, reserve peace officer candidates must meet the same selection criteria as all other California law enforcement officer candidates, they must attend a training academy based on the reserve level that person seeks to achieve as a reserve peace officer (Level I, II or III), and they must meet ongoing training and eligibility requirements attendant to any other law enforcement officer in the State of California with general law enforcement authority (Levels I and II) or more limited authority (Level III). The requirement that a reserve officer candidate attend a law enforcement academy and the associated number of hours corresponding to that person's reserve officer level in many cases exceed any academy and in-service training requirements of a vast majority of the other law enforcement officer categories described in Chapter 4.5.

Once appointed to a position as a reserve peace officer by a POST-certified agency, the person, by statutory definition, is a peace officer as prescribed in the Penal Code. A police chief or sheriff may not employ any person as a reserve peace officer who has not met these stringent requirements and such persons must abide by Continuing Professional Training and ongoing eligibility requirements in order to retain their status as peace officers. In sum, reserve peace officers are highly trained, professional law enforcement officers. The authority of a reserve peace officer should not be mistakenly equated with their "status" as peace officers.

2. Peace Officer "Status" vs. Peace Officer "Authority"

The statutory definition of a peace officer in the State of California set forth in Penal Code Section 830 is distinguishable from the peace officer authority of that person at a given moment in time. As California law enforcement officers (reserve or otherwise) go on-duty and off-duty, they do not lose their statutorily defined status as peace officers (sometimes referred to as their "designation" or their "appointment." Rather, their authority to take law enforcement action in an off-duty capacity may be limited or non-existent.

We note that many States authorize peace officers to take law enforcement action only when they are on-duty. In fact, as noted in the U.S. House of Representatives Report[2] when it passed LEOSA (then known as H.R. 218), prior to LEOSA many States prohibited law enforcement officers from carrying a firearm off-duty (see H.R. Rep. No. 560, 108th Cong., 2nd Sess. 2004, at page 4). If LEOSA were interpreted to require 24-hour peace officer authority, it would disqualify from LEOSA coverage the vast majority of California peace officers designated in the Penal Code and untold others throughout the U.S. because their authority off-duty is limited or non-existent. LEOSA does not conflate the definition of a statutorily identified class of persons (qualified law enforcement officers) with 24-hour peace officer authority. In other words, LEOSA does not state that the various requirements of LEOSA relative to who is a "qualified law enforcement officer" have to apply around the clock, 24 hours a day. Any interpretation to that effect in essence re-writes the statute. Furthermore, this theory has no support in any federal or state court opinions, pronouncements or practices, and in fact is contradicted by such authorities.

We believe the opposite to be true, namely that LEOSA is clear on its face and purposefully (as borne out by its legislative history, including 2 subsequent amendments to LEOSA as discussed below) does not include off-duty peace officer authority as a prerequisite of LEOSA coverage. If a person holds a peace officer "designation" or "appointment," and otherwise meets the predicates of LEOSA, he or she qualifies as a "qualified law enforcement officer" without any further inquiry required. We believe, furthermore, that this very issue has been addressed repeatedly in the numerous authorities cited below.

The view that LEOSA requires 24-hour peace officer authority violates a fundamental rule of statutory construction, namely the "plain meaning" rule. The California Supreme Court summarized it well when it noted:

> "In interpreting a statute, our primary goal is to determine and give effect to the underlying purpose of the law. (*People v. Valladoli (1996) 13 Cal.4th 590, 597 [54 Cal. Rptr. 2d 695, 918 P.2d 999].*) "Our first step is to

[2] http://www.gpo.gov/fdsys/pkg/CRPT-108hrpt560/pdf/CRPT-108hrpt560.pdf

> scrutinize the actual words of the statute, giving them a plain and commonsense meaning." (*Ibid.*) " 'If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history.' " (*California Teachers, supra, 28 Cal.3d at p. 698.*) In other words, we are not free to "give the words an effect different from the plain and direct import of the terms used." (*California Fed. Savings & Loan Assn. v. City of Los Angeles (1995) 11 Cal.4th 342, 349 [45 Cal. Rptr. 2d 279, 902 P.2d 297]*; see *§ 1858.*)" Goodman v. Lozano, 47 Cal. 4th 1327; 223 P.3d 77; 104 Cal. Rptr. 3d 219; 2010 Cal. LEXIS 868 (2010).

The legislative history of LEOSA is even more instructive. The U.S. House of Representatives Report on LEOSA contains the entire debate among House members on a proposed amendment which was rejected by the House and never became a part of LEOSA. That amendment would have allowed policies of an agency to supersede LEOSA, but it was squarely defeated on the House floor in the debate on that issue by a vote of 21-11 (see H.R. Rep. No. 560, 108th Cong., 2nd Sess. 2004 at page 62).

At page 60 of the Report, the House members discussed the many types of law enforcement officers whose authority was limited to on-duty time, and was non-existent off-duty. The proposed amendment would have required that law enforcement agencies have the discretion to require off-duty authorization to carry a firearm under LEOSA, in part due to the large population of peace officers who would be entitled to LEOSA protection in spite of the fact they are not 24-hour a day beat cops, a fact that raised concern among a number of House members and led the International Association of Chiefs of Police to adamantly oppose LEOSA:

> "Ms. LOFGREN. Reclaiming my time, in California, as the other Members from California will know, you become a law enforcement officer when you are accepted for peace officer standards and training, if you are POST certified. That includes weights and measure inspectors, it includes zoning administrators. It is very, very broad, and only some of those people actually get training. I mean, real cops obviously do, but there are a lot of people with POST training who are legally police officers, who are qualified under law, but who don't ever use a gun—museum guards."

In describing the broad categories of law enforcement officers who fall within the definition of "qualified law enforcement officers" under LEOSA, House members noted:

> "[LEOSA] includes not only police and sheriffs and other[s]...we would think of as law enforcement..., but also includes corrections, probation, and parole judicial officers and just about anyone who has statutory power of arrest and who are

engaged by their employment by a Government entity in the prevention, detection, investigation, supervision, prosecution or incarceration of law violators." H.R. Rep. No. 560, 108th Cong., 2nd Sess. 2004 at 23, 54, 55.

We stress that the proposed amendment giving agencies the right to adopt policies and procedures overriding LEOSA was rejected by the House, but the debate clearly demonstrates the Congressional intent that law enforcement officers who are defined by their on-duty status receive coverage under LEOSA despite any such policies. This is true even as to officers who, as Ms. Lofgren noted at page 54, "you would not think of as peace officers." With that intent in mind, the words of the statute never included off-duty law enforcement authorization as a requirement, obviously proving that once a person acquires on-duty law enforcement status, LEOSA's definitional requirement is satisfied.

The words of LEOSA are elegantly simple. A person either meets those requirements or he or she does not. The background and statutory intent of LEOSA, expressed in the House Report, namely to give our law enforcement officers the right to protect themselves and the public even when off-duty (irrespective of their authority off-duty to take law enforcement action), could not be clearer. The novel and unsupportable proposition that only 24-hour a day officers are entitled to LEOSA finds no support in LEOSA itself, nor the statutory history of LEOSA, published opinions, policies, or practices of courts, Attorneys General, or law enforcement agencies nationwide. Had Congress wanted to impose the requirement of off-duty law enforcement authority as a pre-requisite of LEOSA, which it specifically considered, it could have. Instead, it chose not to do so.

3. California Attorney General Opinions.

The following California Attorney General Opinions address the distinction between peace officer appointment and peace officer authority, and confirm that a person who meets the definition of a peace officer retains that definitional status even when off-duty, albeit the authority of that person to take law enforcement action may be constrained or non-existent:

A. 70 Ops. Cal. Atty. Gen. 20, 26 (1987). The issue presented was whether welfare fraud investigators who were not permitted by policy to carry firearms on-duty nevertheless fell within the class of peace officers who were exempt from then Penal Code Section 12025's prohibition on carrying firearms. The opinion concludes that they do and notes:

> **"Peace officers who are duly appointed under sections 830-832.8 do not lose their appointments when they are off-duty."**

B. 80 Ops. Cal. Atty. Gen. 293, 297 (1997). The California Attorney General considered whether a California peace officer who has not received training as mandated by POST but is nevertheless designated as a peace officer pursuant to Penal Code Section 830 is still a peace officer. The opinion concludes that he or she is, although he or she does not have the authority to exercise peace officer powers:

> "The requirements of sections 832.3 and 832.4 are not conditions of employment, but rather are limitations placed upon the exercise of peace officer powers. (*Gauthier v. City of Red Bluff (1995) 34 Cal.App.4th 1441, 1448, fn. 3.)* **Thus the officers who fail to meet the requirements may retain their "status" as peace officers, although their powers would change**. (See *Service Employees International Union Local 715 (AFL-CIO) v. City of Redwood City (1995) 32 Cal.App.4th 53, 59-60; 78 Ops.Cal.Atty.Gen. 209, 212-213 (1995); 72 Ops.Cal.Atty.Gen. 167, 172 (1989); 65 Ops.Cal.Atty.Gen. 618, 626 (1982); 63 Ops.Cal.Atty.Gen. 829, 833-834 (1980).)* Even though a police officer or deputy sheriff has not received training (§ 832.3) or obtained the basic certificate (§ 832.4), **he or she would nevertheless be considered "designated" as a peace officer in section 830.1, subdivision (a) ["Any . . . deputy sheriff, . . any police officer . . . is a peace officer"] for purposes of section 830 ["no person other than those designated in this chapter is a peace officer"]**.

C. 85 Ops. Cal. Atty. Gen. 203, 207 (2002). Affirming the opinion in paragraph B above, the California Attorney General confirmed the distinction between peace officer powers and peace officer status:

> "In 80 Ops.Cal.Atty.Gen. 293, *supra,* we addressed that question and concluded that if a police officer or deputy sheriff failed to complete the training prescribed by the Commission, such officer, although still "designated" as a peace officer, could not exercise peace officer **[*10]** powers, such as the powers of arrest, serving warrants, and carrying concealed weapons without a permit. (*Id.* at p. 297.) **We found that the relevant training requirements were limitations placed upon the exercise of peace officer powers even though the officers would retain their "status" as peace officers.** (*Ibid.*)"

An analysis of Penal Code Section 830.1 on that point is instructive. PC Section 830.1(c) describes a category of peace officers, custodial officers of various sheriffs' departments. Note the mechanics of this section. It duplicates the mechanics of PC Section 830.6 applicable to reserve officers, i.e., it defines who is a peace officer and then describes the authority of that officer:

"830.1(c). Any deputy sheriff of [list of counties] who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer **whose authority extends to any place in the state only while engaged in the performance of the duties of his or her respective employment** and for the purpose of carrying out the primary function of employment relating to his or her custodial assignments, or when performing other law enforcement duties directed by his or her employing agency during a local state of emergency."

The view that custodial deputies are not entitled to carry concealed and loaded firearms off-duty because such authority only exists "when performing their statutorily defined duties" has been discredited in legal circles. In particular, we note the distinction between limits on peace officer authority and categorical exemptions afforded by the California Penal Code (in this case relative to carrying a concealed firearm by correctional deputies and by analogy to the exemptions provided by LEOSA to "qualified law enforcement officers," including reserve peace officers). Those exemptions are extended to classes of identified peace officers specifically enumerated in the statutes, many of whom when off-duty are private citizens. However, that does not deprive them of the specifically defined exemptions if they meet the requirements of the definition whether on-duty or off-duty.

The foregoing demonstrates the self-evident proposition that a person who meets the definition of a peace officer under Penal Code Section 830 is, quite simply, a peace officer who has been "designated" or "appointed" by statute. The authority of that peace officer off-duty has nothing to do with LEOSA eligibility. When off-duty, active duty California reserve peace officers remain appointed peace officers nonetheless under the definitional provisions of the Penal Code and, as such, are "qualified law enforcement officers" under LEOSA.

4. California Department of Justice Directive on Peace Officer Status for Off-Duty Reserve Peace Officers

The obliteration of the distinction between the categorical status of a California peace officer and peace officer authority is the basic flaw of the incorrect interpretation of LEOSA discussed herein. That very issue was addressed by the California DOJ in the 2009 timeframe when CRPOA became aware that licensed firearms dealers were refusing to sell large capacity magazines to reserve peace officers on the same incorrect theory we are refuting, namely that reserve peace officers off-duty do not have peace officer "status." Licensed firearms dealers also would not sell either large capacity magazines and handguns which were not certified by the California DOJ for sale to the general public (i.e., "off-roster handguns") to off-duty reserve peace officers asserting the same logic of the flawed interpretation of LEOSA.

Upon our request to the DOJ to clarify this obviously incorrect conclusion, the DOJ undertook a more formal review and summarily rejected that erroneous advice. In its Notice, the California DOJ stated that off-duty reserve peace officers are "sworn peace officers" under California law and thus entitled to purchase high capacity magazines even when off-duty. If the Penal Code required 24-hour peace officer status to purchase a large capacity magazine, that would be a crime under Penal Code Section 32310 because, at the moment in time of the purchase, a reserve peace officer would not be a "sworn peace officer" entitled to the exemption of Penal Code Section 32405. The DOJ's view is directly on point with the analysis under LEOSA: **"A person who is properly identified as a reserve peace officer is a 'sworn peace officer.'"** Neither the definition of "peace officer" under the Penal Code or "qualified law enforcement officer" under LEOSA is qualified by an "on-duty/off-duty distinction."

With respect to the purchase of off-roster handguns by off-duty reserve peace officers, Penal Code Section 32000(b)(4) exempts "sworn members of these agencies" from the proscriptions of Penal Code Section 32000(a). Following confusion on that same issue (i.e., some firearms dealers would not sell off-roster handguns to off-duty reserve peace officers on the mistaken impression they were not peace officers), the DOJ clarified the matter in yet another notice published on its website (oag.ca.gov/firearms/exemptpo). The California DOJ now lists reserve peace officers as a categorical exemption from this prohibition in its Deal Record of Sale (DROS) Entry System and firearms dealers throughout the State of California now routinely sell off-roster handguns to off-duty reserve peace officers.

5. Federal, State and Local Law Enforcement LEOSA Policies and Practices Nationally

This memorandum does not attempt to survey the thousands of Federal, State and local law enforcement agencies nationally who have recognized that LEOSA applies to its law enforcement personnel notwithstanding that many of them have limited law enforcement powers on-duty, and in many instances no law enforcement authority off-duty. We also take note of the House debate, at page 4, in assessing the change LEOSA effectuated by granting concealed carry rights to out of State officers: "Many States do not currently permit their own law enforcement officers to carry concealed weapons." Clearly law enforcement officers in those States would not have peace officer authority off-duty, yet the House Report itself recognized they become eligible under LEOSA to carry a concealed firearm in all 50 U.S. States and territories. In the interest of providing a few illustrative examples, we take note of the following:

A. 2013 LEOSA Amendments. On January 2, 2013, President Obama signed the National Defense Authorization Act for Fiscal Year 2013 into law (the "2013 Act"). That legislation contained an amendment to LEOSA which now allows active and retired Department

of Defense military police and civilian law enforcement officers assigned to DoD to carry firearms under LEOSA. The reason this legislation was added was because our military police and civilian law enforcement officers did not have "statutory powers of arrest" (a requirement to be a "qualified law enforcement officer"), but rather had powers of "apprehension" under the Uniform Code of Military Justice ("UCMJ"). The mechanism by which military law enforcement officers now have LEOSA coverage is found at pages 339-40 of the 2013 Act. The amendment adds language which clarifies that any person who meets all of the other requirements of LEOSA and has powers of "apprehension" under the UCMJ (but not statutory powers of arrest) still satisfies that prong of the definition of "qualified law enforcement officer" under LEOSA. Power of "apprehension" of course applies to on-duty military personnel, almost always on military installations, as noted more specifically below.

The statement of Sen. Leahy when the 2013 Act was adopted is instructive and should be read in its entirety. In particular, Sen. Leahy notes the purpose of the amendment is to put "military police and civilian police officers within the Department of Defense on equal footing with their law enforcement counterparts across the country when it comes to coverage under LEOSA." Military police and civilian DoD police officers do not have law enforcement authority off-duty in the civilian world yet they are still "qualified law enforcement officers" under LEOSA. Under no circumstances could one contend that these persons' "status" as law enforcement officers extends to any time or place outside the authority provided in the UCMJ. That authority is explained in detail in the law review article, Opening the Gate?: An Analysis of Military Law Enforcement Authority Over Civilian Law Breakers On and Off the Military Installation, 161 Mil. L. Rev. 1 (September 1999):

> "The military lacks statutory formal arrest authority over civilians. "Formal arrest" means the authority to take a lawbreaker into physical custody for the purpose of exercising criminal jurisdiction over him. For federal officials, the authority to conduct a formal arrest requires an affirmative statutory grant of power by Congress. Arrests that are conducted without such authority are unlawful and invalid, unless they are upheld under common law doctrines or other authority. Several federal agencies, such as the Federal Bureau of Investigation, the U.S. Marshals and the Secret Service have broad statutory authority to arrest persons for violations of federal law. **Military law enforcement authorities, however, do not possess statutory arrest authority over civilians**." 161 Mil. L. Rev. at page 6-7.

Note the reference to the common law doctrines above. One of those is rooted in the concept of off-duty military personnel taking off-duty action as private citizens. See 161 Mil. L. Rev. at page 34 with respect to military law enforcement response to an "off-post emergency," in which it is clear under relevant law that military law enforcement personnel who take law

enforcement action which occurs outside the military installation do so as private citizens: "[T]he only legitimate legal justification for a response in this scenario is the common law doctrine of 'citizens arrest.'" In other words, even though military personnel have "qualified law enforcement officer" status on-duty, as provided in the 2013 Act, they clearly do not have any law enforcement power off-duty.

The comparison to a California reserve peace officer could not be more apparent, and now with the 2013 amendments this concept is codified in LEOSA. When military law enforcement officers go on leave, they have no law enforcement authority, yet it is now clear that they still retain LEOSA coverage, not only in accordance with the authorities cited above but now codified in LEOSA with the 2013 Act.

B. U.S. Department of Justice, Bureau of Prisons (BOP). Off-duty BOP correctional officers do not have many of the attributes of a "qualified law enforcement officer" which some have asserted must exist in an off-duty capacity for LEOSA to apply as they have no law enforcement authority off-duty. The BOP in fact admonishes its staff in its LEOSA-related policy by which the U.S. DOJ recognizes that LEOSA applies to BOP correctional officers that all actions BOP officers take off-duty have nothing to do with their status as BOP employees or any purported law enforcement authority they might assert were they on-duty:

> "The carrying of concealed personal firearms by off-duty staff pursuant to LEOSA is not an extension of official Bureau duties. **Any actions taken by off-duty staff involving personal firearms will not be considered actions within the scope of Bureau employment, but rather will be considered actions taken as private citizens.** Off-duty staff will be individually and personally responsible for any event that may relate to the carrying or use of a concealed personal firearm under LEOSA."
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> "It is important that off-duty staff not misrepresent that they are acting in furtherance of their official Bureau duties. **There should never be a time when off-duty staff claim to be carrying a concealed personal firearm as part of their Bureau employment or in furtherance of their official Bureau duties.**"

C. U.S. Coast Guard Reserve Officers. We revisit the Booth case cited in our 2012 memorandum (2008 NY Slip Op 28206; 20 Misc. 3d 549; 862 N.Y.S.2d 767; 2008 N.Y. Misc. LEXIS 3137; 239 N.Y.L.J. 111). That case involved an off-duty U.S. **reserve** Coast Guard officer who, by law, has no off-duty law enforcement authority whatsoever. The status of a U.S. Coast Guard officer as a law enforcement officer attaches only in connection with on-duty assignments "upon the high seas" as provided at 14 U.S. Code Section 89. The case is discussed in Section 6 below.

In its guidance on this topic relative to LEOSA, the U.S. Coast guard promulgated the LEOSA advisement to its personnel found at http://www.uscg.mil/announcements/alcoast/549-10_alcoast.txt, in which it noted that Coast Guard personnel who would be considered "qualified law enforcement officers" under LEOSA are boarding officers, including reservists, whose authority is limited not only as to time but as to a specific place, namely when taking enforcement action on vessels:

> "C. PROVIDED THEY MEET ALL THE CONDITIONS IN PARAGRAPH 5.A. AT THE TIME OF FIREARM CONCEALED CARRIAGE, THE USCG CONSIDERS THE BELOW DESCRIBED UNIFORMED USCG PERSONNEL TO FALL WITHIN THE LEOSA OF "QUALIFIED LAW ENFORCEMENT OFFICER". (1) COMMISSIONED, WARRANT, AND PETTY OFFICERS, **INCLUDING RESERVISTS** COVERED BY CHAPTER 3.C.1.B.3 OF REFERENCE (C), WHO HOLD A CURRENT, EFFECTIVE, AND PROPERLY ISSUED COMMAND DESIGNATION LETTER AS A BOARDING OFFICER OR BOARDING TEAM MEMBER IN ACCORDANCE WITH CHAPTER 3.C.1.B.1 OF REFERENCE (C).
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> **USCG LAW ENFORCEMENT POWERS ASHORE ARE LIMITED AND, IN SOME CIRCUMSTANCES, NON-EXISTENT. ACTIVITY INVOLVING USE OF CONCEALED FIREARMS WHILE NOT IN THE PERFORMANCE OF OFFICIAL DUTIES WILL LIKELY BE OUTSIDE THE MEMBERS SCOPE OF EMPLOYMENT (A DECISION MADE BY THE U.S. DEPARTMENT OF JUSTICE (DOJ), NOT THE USCG) THEREBY PLACING THE COSTS OF LEGAL DEFENSE SOLELY ON THE MEMBER. ADDITIONALLY, NEITHER THE USCG NOR DOJ WILL NORMALLY PROVIDE REPRESENTATION IN STATE COURT FOR CRIMINAL CHARGES."**

D. U.S. Department of Homeland Security. Pursuant to 40 U.S. Code Section 1315, the Secretary of the U.S. Department of Homeland Security is given authority to designate law enforcement officers to protect Federal government property. Such officers' authority is found in subsection (b)(2), which limits such officers' law enforcement powers to situations in which they are "engaged in the performance of official duties." While not engaged in such official duties, they have no such law enforcement authority. DHS nevertheless recognizes that such officers are covered under LEOSA. See Coast Guard "Alcoast" notice cited above. See also the DHS Instruction Guide on LEOSA.[3]

[3] http://www.dhs.gov/xlibrary/assets/foia/mgmt_instruction_257_01_001_law_enforcement_officers_safety_act.pdf

E. Virginia Regional Jailers. In 2005, the Virginia Attorney General opined that regional jailers in the State of Virginia, notwithstanding their extremely limited authority when they are on-duty (within one mile of their assigned workplace and only as to persons they are supervising in custody) and is non-existent off-duty, nevertheless are considered "qualified law enforcement officers."[4] Those officers have authority only "during the term of their appointment" (a "time-based restriction") and may only carry a firearm "in the course of their assigned duties."

F. California Agency Practice. Pending the results of a survey with our membership, we are aware that the following agencies have recognized LEOSA applies to its reserve peace officers: Los Angeles County Sheriff's Department, Sonoma County Sheriff's Department, San Francisco Police Department, Ontario Police Department, and Campbell Police Department. We understand other California law enforcement agencies are in the process of adopting or considering similar policies.

G. New Jersey Reserve Peace Officers. New Jersey courts routinely recognize that its volunteer reserve peace officers are "qualified law enforcement officers" under LEOSA as noted by The Sheepdog Academy, the seminal LEOSA training center for Federal, State and local law enforcement agencies (www.hr218leosa.com), which describes the results of New Jersey courts' determinations that LEOSA applies to volunteer officers. The list of agencies and the table of authorities for LEOSA coverage is surveyed in detail by The Sheepdog Academy, many of which cover law enforcement officers whose authority is restricted exclusively to their on-duty time. The fact is agencies at all levels of our government have recognized that off-duty law enforcement authority is not a predicate for the definition of "qualified law enforcement officer."

H. Iowa Attorney General Opinion. The Iowa Attorney General concluded that LEOSA applies to Iowa reserve officers, who are defined under Iowa law (Iowa Code subsection 80D.1A(3)) as follows:

> "Reserve peace officer" means a volunteer, nonregular, sworn member of a law enforcement agency who serves with or without compensation, has regular police powers while functioning as a law enforcement agency's representative, and participates on a regular basis in the law enforcement agency's activities including crime prevention and control, preservation of the peace, and enforcement of law."

The conclusions in this opinion are equally applicable to reserve peace officers in California.

[4] http://www.oag.state.va.us/Opinions%20and%20Legal%20Resources/OPINIONS/2005opns/05-026w.pdf

6. The Booth Case

The Booth case is one of the few cases concerning LEOSA and the definition of "qualified law enforcement officer" and is highly relevant to the issues at hand with regard to California reserve peace officers and all other law enforcement officers for that matter. Booth involved an off-duty Coast Guard reserve officer who was arrested in Newburgh, New York, and prosecuted for carrying a concealed firearm in violation of applicable law. Booth asserted a LEOSA defense claiming that he was a "qualified law enforcement officer" under LEOSA. All parties stipulated to the fact that the Coast Guard prohibited off-duty carry as a matter of policy and Booth himself was not acting within the scope of his employment nor imbued with law enforcement authority at the time of his arrest.

The key issue in Booth was whether the LEOSA requirement that a person be "authorized by the agency to carry a firearm" referred only to on-duty peace officer authorization or whether it also required off-duty peace officer authorization, an issue which places this case on all fours with the incorrect theory of perpetual law enforcement status being a requirement of LEOSA. If, as the prosecution asserted, LEOSA required authorization for both, Booth would not fall within the definition of "qualified law enforcement officer." The court specifically found that LEOSA does not include off-duty carry authorization as a prerequisite to a finding that he was "authorized by his agency to carry a firearm" under LEOSA. In other words, the fact that the Coast Guard reservist had no law enforcement authority off-duty at the time he carried a firearm did not deprive him of his status as a "qualified law enforcement officer" under LEOSA.

The basic premise that "authorized" means "authorized 24/7" was summarily dismissed by the Booth court and we are confident another court considering the case of a California reserve peace officer in the same situation would follow this principle.

7. LEOSA Amendments Broadening LEOSA Coverage

LEOSA has been amended 2 times since its passage in 2004, once in 2010 and again in 2013. In both instances, President Obama significantly broadened the population of active and separated law enforcement officers who are entitled to LEOSA coverage, a clear sign of the meaning and intent of LEOSA in the first instance. The 2010 amendments (referenced below), which included input from CRPOA to clarify that LEOSA applies to separated California reserve peace officers, eliminated the concept of "retirement" and corresponding retirement benefits and shortened the period of cumulative service from 15 to 10 years. The 2013 amendments clarified that off-duty military and civilian DoD law enforcement officers who merely have powers of "apprehension" (not "statutory powers of arrest") under the Uniform Code of Military Justice are LEOSA-qualified. The theory that LEOSA requires 24-hour peace officer authority is wholly inconsistent with the original intent and plain meaning of LEOSA, as well as the 2010 and 2013

amendments evidencing the broad group of law enforcement officers for whom LEOSA's protections are intended.

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In conclusion we note that the argument that off-duty peace officer authority is a required element of LEOSA is anathema to the entire rationale underlying the passage of LEOSA in the first instance. LEOSA was passed in order to harmonize the more than 50 sets of State's laws concerning concealed firearms carry by off-duty law enforcement officers and to give our law enforcement officers nationwide certainty, under one standard, concerning their ability to protect themselves and their families when they are *off-duty*. Fundamentally, LEOSA is intended to facilitate off-duty carry by a peace officer when he or she travels anywhere in the U.S., a time when that person has *absolutely no peace officer authority whatsoever*. Equating off-duty peace officer authority with LEOSA eligibility is, at its core, squarely at odds with the words and intent of LEOSA and its progeny.

The authority for on-duty carrying of firearms by law enforcement officers is unaffected by LEOSA. That authority is left squarely with the States and the policies of the agencies who employ their law enforcement officers. It is up to the agency to determine whether one of its law enforcement officers is to carry a firearm on-duty. Once the agency determines that the officer is authorized to carry a firearm on-duty, LEOSA applies, notwithstanding any State or local law to the contrary, and that officer may also carry a firearm off-duty anywhere in the United States.

LEGAL ADVISEMENT: THIS MEMORANDUM EXPRESSES THE VIEWS OF THE AUTHOR ONLY AND DOES NOT CONSTITUTE A LEGAL OPINION OR LEGAL ADVICE. ANY PERSON INTENDING TO CARRY A CONCEALED FIREARM PURSUANT TO THE LAW ENFORCEMENT OFFICERS SAFETY ACT OF 2004 IS NOT ENTITLED TO RELY ON THIS MEMORANDUM BUT SHALL OBTAIN SUCH PERSONAL LEGAL ADVICE AS HE OR SHE DEEMS NECESSARY.