

What To Do When You Get a “309” Letter From the ABC

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At some point several months ago, there was an incident at your licensed premises. Maybe a citation was issued. Maybe ABC investigators conducted an undercover investigation that you never knew about. Now you've received a letter from the ABC telling you to call or come in for an appointment. This is known by the Department as a “309 Hearing.”

ABC licensees get letters from the ABC called “309 Letters” inviting those licensees to attend “309 Hearings” without the licensees even knowing what they've received and where they're going. They may not even know why that “309 Letter” was sent to them. But that letter could result in a meeting where that licensee stipulates to a suspension or inadvertently seals his/her doom with an ill-timed confession. By the time the “309 Letter” is sent, the ABC has nearly always decided to file charges, that is, an accusation against that license. The Department is calling you, the licensee, into office to get you to plead guilty not to pat you on the back and tell you that you are doing a great job. Understanding what the “309” is all about, this firm does not have our clients attend “309 Hearings.” We respond as part of our legal services. A lawyer can speak to ABC personnel so that statements made are not admissions which can be used by the ABC during the eventual trial against the licensee.

The ABC treats the “309 Hearing” as part of the investigatory process and will use statements made by the licensee in the future administrative hearing. This is serious and potentially lethal to your license. In the alternative, a licensee may be led to

believe that the best thing to do at a “309 Hearing” when faced with an intended accusation is to give up and settle the case by signing the offered stipulation and waiver without ever knowing and understanding the long term ramifications. What seems like an easy small penalty at a “309 Hearing” today can evolve into a revocation down the road.

Beware. Never make a decision at a 309 meeting with the ABC. Return to your business and discuss the meeting with your partners, or business associates. You can also consider calling us on our hot line for a free consultation: [1 (800) 405 - 4222]. The decision you make may stay with you for as long as 3 years. Taking a little time to consider the situation is important. You need to know all the facts of the case and the ramifications of pleading guilty, that is, signing the Department’s stipulation and waiver papers which will then allow the Department to impose discipline against your license. You have a right to take at least a week to make a decision and get back to the ABC with your decision.

Licensees have responded to a “309 Letter” by appearing at their local ABC District Office not knowing why they were summoned. Eager to defend their license before the District Administrator, those sadly uninformed licensees launch into their defense and eloquently spill their guts about a very serious issue the ABC knew nothing about; nothing that is until that thrilling defense is presented. After those licensees have unwittingly initiated a new and different investigation, the District Administrator will explain, “No, that’s not what this hearing is for. First I’ve heard about it. But thanks for the lead. We’ll get right on it.” Those licensees can expect an accusation on the problem that generated the first “309 Letter” and can expect a new “309 Letter” on the problem brought to light by the licensees themselves.

Who hasn't tried to talk his way out of a traffic ticket? "But officer, I was going with the flow of traffic. Everyone was doing over 80." The CHP replies, "I agree. You were going over 80," writing down the admission on the back of his copy of the citation, "but I couldn't catch everyone."

Talking your way out of a violation at a "309 Hearing" is about as productive and potentially much more damaging. Here's our set of "309 Hearing" rules to follow:

1. Do not attend the "309" yourself.
2. Assume that you do not have enough information at the "309" to just "plead guilty."
3. Time is on your side. You don't have to resolve even the worst case at the "309."
4. Trying to talk the ABC out of filing an accusation is hopeless.
5. Anything a licensee says to the ABC at a "309" may come back to haunt him/her at trial.

Just what does this "309 Letter" look like? Here's a sample:

STATE OF CALIFORNIA -- BUSINESS, TRANSPORTATION AND HOUSING AGENCY

GRAY DAVIS, Governor

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Long Beach/Lakewood District Office
3950 Paramount Blvd., Suite 250
Lakewood, CA 90712
(562) 982-1337



December 10, 2001

Solomon, Saltsman & Jamieson
426 Culver Boulevard
Playa Del Rey, CA 90293

Licensee:
Address:
City:
File No:

Dear Licensee(s):

A matter concerning the operation of your licensed premises has come to the attention of the Department.

You are requested to call the undersigned at the below listed telephone number within five (5) days for an interview.

Sincerely,

A handwritten signature in black ink, appearing to read "Jane H. McCabe", written over a circular stamp.

Jane H. McCabe
District Administrator
(562) 982-1391

JHM:sl

Be advised this format is one of a few. Some District Offices invite licensees to call for an appointment. Others just set up a time and date for you to appear.

The format is up to the District Administrator. The underlying objective is the same: get a stipulation or get an incriminating statement.

After the “309 Hearing” the District Administrator or his/her designated investigator will write a “309” report indicating among many clerical entries, the standard penalty for that alleged offense, what the suggested penalty is based upon aggravating circumstances weighed against mitigating circumstances, if any. For example, in a sales to a minor case, a factor in aggravation could be that the minor was 14 years of age. A factor in mitigation could be that the licensee has been licensed at the location since 1972 with no prior violation. The report will also summarize the police investigation and also summarize the “309 Hearing” itself complete with incriminating statements made by the licensee.

Often heard but not true : “If you stipulate now, I can get you a 20 day suspension and stay 5 days. That’s a net 15 day suspension. It won’t get any better. It may get a lot worse.”

Of course you can go to the Hearing and sign the stipulation revoking your license or setting up a long term slow but sure revocation of your license. You can go to the hearing and try to talk your way out of the accusation and therein adversely impact your chances of prevailing at the full administrative hearing on the accusation before an Administrative Law Judge some six months later. There should be another alternative. There is.

By bringing in competent counsel to stand between you and the problem you can avoid being pressured into signing a stipulation and waiver you really shouldn’t sign and really didn’t want to sign. You can also avoid the problem of divulging a new

and different violation to the ABC that the ABC didn't know about before. You can also avoid the unintended confession that could ruin your chances for success at the eventual administrative hearing.

Skilled counsel can turn the "309 Hearing" into a proper exercise of discovery by finding out what the case is about while not providing any new information back to the Department. At the minimum, all that factual data is helpful in making a fully informed decision. At best there may be some legal issue that may cause the Department to rethink its intention to file an accusation and seek as suspension. Raising a factual defense at a 309 is very nearly never helpful. It almost always is hurtful. However there have been a few occasions when a District Administrator has changed his mind and decided to not file. On those few occasions, the mind change came after cogent legal argument. It takes a lot of homework and also a vast clearinghouse of knowledge to accomplish that feat. For a licensee to walk that tightrope of formulating a valid defense at a 309 while not giving up dangerous information, the results are more often than not disastrous.

While most licensees court catastrophe with the "309 Hearing", the process in the right hands can be a useful tool in ultimately winning before an Administrative Law Judge.

Solomon, Saltsman & Jamieson are attorneys practicing in the areas of ABC law, ABC Appeals Board cases, and all related Land Use Matters such as City and County Conditional Use Permits, Variances, Police and Fire permits, Entertainment law, and Gambling Law; as well as Business and Personal Injury litigation. Solomon, Saltsman & Jamieson can be reached at 800 405 4222."