

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST : FINAL DECISION
 : :
 : : AND ORDER
CARL E. RUCKER AND : :
RUCKER DETECTIVE AGENCY, : : LS0404303RSG
RESPONDENTS. : :

Division of Enforcement Case No. 00RSG040

The State of Wisconsin, Department of Regulation and Licensing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Department of Regulation and Licensing.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 18th day of July, 2005.

Secretary
Licensing

Celia M. Jackson,
Department of Regulation and

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST : PROPOSED FINAL
CARL E. RUCKER AND : DECISION AND ORDER
RUCKER DETECTIVE AGENCY, : Case No. LS 0404303RSG
RESPONDENTS. :

Division of Enforcement Case File No. 00 RSG 040

PARTIES

For purposes of review under Wis. Stat. § 227.53, the parties in this matter, under Wis. Stat. § 227.44 and Wis. Adm. Code § RL 2.037, are:

Complainant:

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
Madison, WI 53708-8935

Respondents:

Carl E. Rucker and
Rucker Detective Agency
Room 3002
161 West Wisconsin Avenue
Milwaukee WI 53203

Disciplinary Authority:

Wisconsin Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

This case was initiated by the filing of a complaint dated April 30, 2004 with the Department of Regulation and Licensing. An answer was filed, dated June 21, 2004.

The Department of Regulation and Licensing, Division of Enforcement, was represented in this matter by attorney Claudia Berry Miran. Respondents appeared *pro se*. Mr. Rucker participated by telephone and made no personal appearance in the matter. Attorney Colleen Baird was initially designated as the administrative law judge in the case. The undersigned was designated as the administrative law judge effective January 3, 2005, following voluntary recusal by attorney Baird.

Numerous prehearing conferences were held. The rulings and orders in the prehearing record include: Order Denying Motion For Substitution of Administrative Law Judge (October 8, 2004); Order Granting Complainant's Motion To Quash Respondent's Notice Of Deposition And Protective Order (October 8, 2004); Order Denying Respondent's Second Request For Substitution of Administrative Law Judge And Notice of Recusal (December 17, 2004); Memorandum On Prehearing Conference Including Decisions On Pending Motions (January 18, 2005); Memorandum On Prehearing Conference And Ruling On Respondent's Motion For Sanctions (March 1, 2005); and, Ruling On Respondent's Motion To Reopen The Hearing (April 26, 2005).

The evidentiary hearing in the matter was commenced on March 7, 2005, continued on several days thereafter, and was completed on April 8, 2005.

Respondent Carl Rucker submitted a motion to reopen the hearing on April 12, 2005, which was denied on April

26, 2005. Subsequently, on April 29, 2005, respondent Carl Rucker submitted a "Motion To Reopen And Reconsideration" which is decided below.

FINDINGS OF FACT

1. Carl E. Rucker, whose date of birth is February 27, 1936, holds a private detective license #63-5309 issued by the State of Wisconsin, Department of Regulation and Licensing (Department). Mr. Rucker's private detective license was first granted on June 10, 1980. Mr. Rucker's address of record is 161 West Wisconsin Avenue, Suite 3002, Milwaukee, WI, 53203.

2. Carl E. Rucker owns and operates the Rucker Detective Agency as a sole proprietorship and holds private detective agency license #62-5310 for the Rucker Detective Agency issued by the Department. The private detective agency for the Rucker Detective Agency was first granted on June 10, 1980. The address of the Rucker Detective Agency is 161 West Wisconsin Avenue, Suite 3002, Milwaukee, WI, 53203.

3. The Rucker Detective Agency provides private security personnel to E.R. Wagner Manufacturing Company located at 4611 N. 32nd St., Milwaukee, Wisconsin.

Count I: Unlicensed Security Person (Gamez)

4. On or about March 2, 2000, Rucker hired Roberta Gamez as an employee of the Rucker Detective Agency.

5. On or about March 2, 2000, Mr. Rucker assigned Roberta Gamez to work as a security guard and perform private security personnel duties as a security guard on the second shift at E.R. Wagner Manufacturing Company. Ms. Gamez's duties included working in the security booth, raising and lowering gates and watching security cameras. Ms. Gamez continued to work the second shift, six days per week at E.R. Wagner Manufacturing Company until July 21 or 22, 2000.

6. Early in the year 2000, Roberta Gamez and Carl Rucker completed an application for a private security permit for Ms. Gamez. The Division of Business Licensure and Regulation in the Department of Regulation and Licensing (Division of Business Licensure) received the application on April 3, 2000. The application included a box marked "**NO**" in response to the question:

*Have you **EVER** been convicted of a **MISDEMEANOR** or a **FELONY** or **DRIVING WHILE INTOXICATED (DWI)**, in this or any other state **OR** are criminal charges or DWI charges currently pending against you?*

7. In a notice dated July 18, 2000, the Division of Business Licensure notified Roberta Gamez of its intent to deny her application because she had been convicted of crimes related to the private security profession and made a false statement on her application. The Division of Business Licensure advised Carl Rucker of its intent to deny Ms. Gamez's application in a letter dated July 18, 2000, which he received on July 20, 2000.

8. Carl Rucker terminated Roberta Gamez's employment at the Rucker Detective Agency on July 21 or 22, 2000.

9. At no time during her period of employment by the Rucker Detective Agency as a private security person (security guard) did Roberta Gamez possess a private security permit.

Count II: Providing False Information Concerning Gamez

10. In March and April 2002, Henry Sanders was employed by the Department as an attorney in the Division of Enforcement and was handling the matter involving the employment of Roberta Gamez by the Rucker Detective Agency. Carl Rucker responded to an inquiry by Division of Enforcement staff concerning the employment of Roberta Gamez through a letter dated April 5, 2002, to Henry Sanders.^[1] As part of this response, Mr. Rucker provided false information to the Department. Specifically, Mr. Rucker made the following false statements in his letter:

"In March 2000, Roberta Gamez began working for RDA as a part-time office helper, for the sole purpose of earning enough cash to pay the required fee's (sic) for a private security guard permit." This statement is false in that Mr. Rucker well knew that in March 2000, Ms. Gamez began working for the Rucker Detective Agency as a security guard, not as a "part-time office helper."

"Gamez began to work as a guard on May 20, 2000." This statement is false in that Mr. Rucker well knew that Roberta Gamez began working for the Rucker Detective Agency as a private security guard on or about March 2, 2000.

Count III: Unlicensed Security Person (Ikner)

11. Willie J. Ikner has been employed by the Rucker Detective Agency to perform duties as a private security person (security guard) at various times since at least 1998.

12. Willie J. Ikner was first granted a permit as a private security person by the Department of Regulation and Licensing on December 11, 1997. His permit expired on August 31, 2000. Mr. Ikner applied to renew his expired permit on April 28, 2004. His permit was renewed on May 12, 2004. Mr. Ikner's permit was renewed again on September 1, 2004. Willie J. Ikner did not hold a valid private security permit from September 1, 2000 through May 11, 2004.

13. At various times in March and April 2004, while an employee of the Rucker Detective Agency, Mr. Ikner performed security personnel duties as a security guard at E. R. Wagner Manufacturing Company.

14. Mr. Rucker was responsible for assigning Willie J. Ikner to perform security personnel duties as a security guard at E. R. Wagner Manufacturing Company at various times in March and April 2004, when Willie J. Ikner did not hold a valid private security permit.

Count V: Rucker Detective Agency

15. Mr. Rucker is the sole proprietor of Rucker Detective Agency, holds the agency license for Rucker Detective Agency and personally directs the operations of Rucker Detective Agency.

CONCLUSIONS OF LAW

A. The Wisconsin Department of Regulation and Licensing has jurisdiction over this matter pursuant to Wis. Stat. §§ 440.03 and 440.26.

Count I: Unlicensed Security Person (Gamez)

B. In assigning Ms. Gamez to work as a security guard as described in the paragraphs under Count I of the Findings of Fact, above, Mr. Rucker engaged in conduct reflecting adversely on professional qualification as described in Wis. Adm. Code § RL 35.01(13), in that Mr. Rucker assigned a person to perform security personnel duties who had not been issued a permit prior to performing the services.

Count II: Providing False Information Concerning Gamez

C. In responding to an inquiry from Division of Enforcement with false statements as described in the paragraphs under Count II of the Findings of Fact, above, Mr. Rucker engaged in conduct reflecting adversely on professional qualification as described in Wis. Adm. Code § RL 35.01(18), in that Mr. Rucker provided false information to the Department.

Count III: Unlicensed Security Person (Ikner)

D. As the person responsible for assigning Mr. Ikner to work as a security guard as described in the paragraphs under Count III of the Findings of Fact, above, Mr. Rucker engaged in conduct reflecting adversely on professional qualification as described in Wis. Adm. Code § RL 35.01(13), in that Mr. Rucker is responsible for assigning a person to perform security personnel duties whose private security permit had expired and who had not been issued a current permit prior to performing the services.

Count IV: Providing False Information Concerning the Rucker Detective Agency's Accountant

E. Evidence in the record is insufficient to establish by a preponderance of the evidence that Mr. Rucker violated Wis. Adm. Code § RL 35.01(18) by providing Division of Enforcement staff with false information concerning the whereabouts and identity of a person who allegedly possessed documents relevant to the Division's investigation of file 00 RSG 040.

Count V: Rucker Detective Agency

F. By violating Wis. Adm. Code §§ RL 35.01 (13) and (18) as set forth in Counts I – III, above, Mr. Rucker has subjected the Rucker Detective Agency to discipline under Wis. Adm. Code § RL 35.02.

ORDER

NOW, THEREFORE, IT IS ORDERED that the licenses of Carl E. Rucker to practice as a private detective #63-5309 and the license of Rucker Detective Agency #62-5310 shall be, and hereby are, LIMITED according to the following

conditions and requirements:

For a period of four years after the date a final decision in this matter is signed on behalf of the Department of Regulation and Licensing, respondent Carl E. Rucker shall submit reports on a quarterly basis to the Department Monitor. The reports shall include a true and accurate accounting of the name and address of each employee of the Rucker Detective Agency who is employed as a private security person (security guard) and for each such employee: a) date of first hire; b) private security permit number; c) documentation acceptable to the Department Monitor showing permit status details, such as a copy of the employee's private security permit, or a print of the internet report showing license status available at <http://drl.wi.gov/drl/drllookup/LicenseLookupServlet>; and d) the dates that the employee performed security guard services. The reports shall include information for a 3-month period and be filed within 15 days after the end of the quarter covered in the report. The Department Monitor shall establish the quarterly reporting periods.

IT IS FURTHER ORDERED that the license of Carl E. Rucker to practice as a private detective #63-5309 shall be, and hereby is, SUSPENDED for a period of ninety days.

IT IS FURTHER ORDERED that Rucker Detective Agency shall be, and hereby is, REPRIMANDED.

IT IS FURTHER ORDERED that Mr. Rucker's April 29, 2005 "Motion To Reopen And Reconsideration" is DENIED.

IT IS FURTHER ORDERED that any violation of any term of this Order may be the basis for a summary suspension or separate disciplinary action under Wis. Stat. § 440.26.

COSTS OF THE PROCEEDING

IT IS FURTHER ORDERED that the costs of this proceeding shall be paid by Carl E. Rucker, as provided in Wis. Stats. §440.22, payable to the Department of Regulation and Licensing. Costs shall be paid in four equal payments, due on September 1, 2005, December 1, 2005, March 1, 2006 and June 1, 2006. In the event the amounts due are not received by the Department by the dates set in the payment schedule, the license of Carl E. Rucker to practice as a private detective #63-5309 and the license of Rucker Detective Agency #62-5310 shall be immediately suspended and remain suspended until the amounts due are paid.

Department Monitor

The Department Monitor is the individual designated by the Department as its agent to coordinate compliance with the terms of this Order, including receiving reports and coordinating all requests for modification of terms or other petitions. The Department Monitor may be reached, as follows:

DEPARTMENT MONITOR

Department of Regulation and Licensing, Division of Enforcement
1400 East Washington Ave., P.O. Box 8935
Madison, WI 53708-8935
Fax: (608) 266-2264; Telephone: (608) 267-3817
department.monitor@drl.state.wi.us

OPINION

The complaint alleges generally that respondents Carl Rucker and Rucker Detective Agency assigned two employees, neither holding a valid private security permit, to perform security personnel duties as security guards at a manufacturing company and that Carl Rucker provided false information to the Department of Regulation and Licensing regarding one of these employees and also regarding his accountant. The complaint charges unprofessional conduct, alleging violations of Wis. Adm. Code § RL 35.01(13) and (18) which provide, in part, as follows:

RL 35.01 Unprofessional conduct. The department may . . . , limit, suspend or revoke a credential, or reprimand a credential holder upon proof that the credential holder or any owner of an agency has engaged in conduct reflecting adversely on professional qualification. Conduct reflecting adversely on professional qualification includes, but is not limited to, any of the following:

(1) . . .

(13) *Assigning any person to perform private detective or security personnel duties who has not been issued a license or permit prior to performing the services*

(14) . . .

(18) *Providing false information to the department or its agent.*

(19)

Licensing requirements for security persons.

Suppliers of private security personnel and private security personnel are regulated under Wis. Stat. § 440.26.^[2] Under 440.26, a license as a private detective agency is required for any person who acts as a supplier of private security personnel or who solicits business or performs any other type of service or investigation as a private security person.^[3]

"Private security person" or "private security personnel," is defined as ". . . any private police, guard or any person who stands watch for security purposes."^[4] These personnel are often described as security guards. Requirements for obtaining a private security permit are generally that the applicant not have been convicted of a felony, unless pardoned, not have an arrest or conviction record related to private security work, and not be a dangerous user of drugs or alcohol or have a dangerous physical, emotional or mental condition.^[5] Applicants are required to submit an application that requires answers to questions about the applicant's background, and that includes the applicant's fingerprints, photograph, a permit fee and a statement from a private detective agency that the applicant will be employed by the agency when acting as a private security person.^[6] The Department of Regulation and Licensing is authorized to investigate whether an applicant meets the eligibility requirements for the permit. The Department cooperates with the Wisconsin Department of Justice and the Federal Bureau of Investigation to verify the identity of the applicants and obtain records of criminal arrests and convictions.^[7]

Security permits are issued for two years and must be renewed by September 1 of each even-numbered year.^[8] A private security permit issued by the Department authorizes the permit holder to engage in private security services for the holder's licensed employer anywhere in Wisconsin.

Exceptions for employees

Persons who work as private security persons must hold a permit as a private security person, hold a license as a private detective, or fall within one of the exceptions to the law. The exceptions include limited activities of off-duty law enforcement officers and of certain employees of the state, municipalities, insurers, attorneys and railroad companies. The statute also exempts an ". . . employee of a commercial establishment, while the person is acting within the scope of his or her employment whether or not he or she is on the employer's premises." Wis. Stat. § 440.26(5) (b). Commercial establishment employees working within this exemption are sometimes referred to as "proprietary guards."

Count I: Unlicensed Security Person (Gamez)

Evidence in the record supports a finding that Ms. Gamez worked for Rucker Detective Agency as a security guard at E.R. Wagner Manufacturing Company. Ms. Gamez testified to getting the E.R. Wagner assignment directly from Mr. Rucker. She obtained a uniform with a patch identifying her as "Security." She testified that her duties included working in the security booth, raising and lowering gates and watching security cameras. She submitted a calendar of her work hours to the Department of Workforce Development to support a wage claim. The calendar shows that her guard assignment at E.R. Wagner began on March 2, 2000. Copies of payroll checks signed by Mr. Rucker, also submitted by Ms. Gamez to support her wage claim, include a check dated March 31, 2000, as well as checks dated in April, June and July of 2000.^[9] In his letter of April 5, 2000, to Henry Sanders, Mr. Rucker admitted that Ms. Gamez worked as a guard, but he asserted: "Gamez began work as a guard on May 20, 2000."^[10] The evidence supports a finding that Ms. Gamez began working as guard in March 2000. Mr. Rucker offered no significant countervailing evidence.

In his defense, Carl Rucker emphasized the delay in processing the Gamez application, which took from April 3 until July 18, 2000. Mr. Rucker argued that the Department willfully withheld processing of the Gamez application for over four months to set a trap that would cause him to make a mistake.

On April 3, 2000, the Division of Business Licensure received the application for a permit as a private security person completed by Roberta Gamez and Carl Rucker. Ms. Gamez falsely indicated in the application that she had not been convicted of a misdemeanor or felony. A search of the records of the Wisconsin Department of Justice Crime Information Bureau on July 5, 2000, by the Division of Business Licensure reported that Ms. Gamez had a criminal record.

According to the application form, the fingerprints of Roberta Gamez were forwarded by the Division to the Federal Bureau of Investigation on July 5, 2000. The Division received a response back from the FBI on August 21, 2000.

On about July 18, 2000, approximately 74 business days after receiving the application, the Division mailed notices to Ms. Gamez and Mr. Rucker stating its intent to deny the application because Ms. Gamez had been convicted of crimes related to the security guard profession and made a false statement on her application. The Division issued a refund check for \$34 of the Gamez application fee to the Rucker Detective Agency on October 26, 2000.^[11] Ms. Gamez was never issued a permit as a private security person.

No explanation is provided in the record for the delay in processing the application. The needed FBI check was not the reason for the delay. Gamez's conviction was discovered in a report from the Wisconsin Department of Justice Crime Information Bureau dated July 5, 2000.^[12]

Mr. Rucker moved to dismiss the complaint early in the proceeding, contending that delay in determination of the permit application required dismissal of the complaint. The motion was denied on January 18, 2005. Although the Department is required to make a determination on an original application within 60 business days, a delay does not relieve any person from the obligation to secure a required permit.^[13] The delay might be considered as an equitable consideration to be given weight in the case, were it not that Mr. Rucker assigned Ms. Gamez to perform security services on April 2, 2000, even before the application was received by the Department.

Count III: Unlicensed Security Person (Ikner)^[14]

Mark Herman is an attorney who became employed in the Division of Enforcement in February 2004. He was assigned a case file involving a complaint by Roberta Gamez against Rucker Detective Agency and Carl Rucker. The case file had previously been assigned to another attorney, Henry Sanders, who had retired. Theodore Nehring is an investigator in the Division of Enforcement who was assigned to the Rucker matter in March 2004.

Willie J. Ikner worked for the Rucker Detective Agency at various times since at least 1998. Mr. Ikner did not hold a valid private security permit from September 1, 2000 through May 11, 2004.

Mark Herman and Theodore Nehring visited E.R. Wagner Manufacturing Company in Milwaukee on April 22, 2004. Mr. Herman wanted to find out whether Carl Rucker was employing persons at Rucker Detective Agency who worked as guards, but did not have permits. If so, then in Mr. Herman's view, some disciplinary action was appropriate, whereas if Mr. Rucker had reformed his practices, the Division of Enforcement might close the file for compliance gained with no further disciplinary action.

At two times during the day on April 22, 2004, Mr. Herman and Mr. Nehring visited the guard shack at E.R. Wagner Manufacturing Company. Jackie Wilson and William Booker, two security guards who worked for the Rucker Detective agency, confirmed in separate conversations that Willie Ikner worked as a guard on the second shift at E.R. Wagner Manufacturing Company. These statements supported a written schedule that Mr. Wilson had given to an E.R. Wagner employee labeled "March," showing "Willie Ikner 2nd Wed Thur Fri."^[15]

Count II and IV: Providing False Information

Counts II and IV allege that Carl E. Rucker engaged in unprofessional conduct by providing false information to the Department. Under Wis. Adm. Code § RL 35.01(18), a private detective or private detective agency may be disciplined for "[p]roviding false information to the department or its agent."

Count II concerns a letter dated April 5, 2000, that Carl Rucker wrote to attorney Henry Sanders at the Department confirming information he had discussed by telephone with Mr. Sanders. Mr. Rucker stated in the letter that, "In March 2000, Roberta Gamez began working for RDA as a part-time office helper . . ." and that "Gamez began to work as a guard on May 20, 2000." The letter is State's Exhibit 4 in the record. The two statements are false. Mr. Rucker knew the statements were false because he personally hired Roberta Gamez in March 2000 and he personally assigned her to work as a security guard in March 2000. The letter, together with the testimony of Roberta Gamez and her "work calendar,"^[16] establish that Mr. Rucker provided the information to the Department and knew the statements were false.

State's Exhibits 1 and 3 identify the nature of the investigation that the Department was conducting in January and February 2000. From these letters Mr. Rucker was well aware that the statements he made were material to the matter being investigated by the Department, and that the matter was within the jurisdiction of the Department. Mr. Rucker's false statements were not the result of a mistake. The context of the statements indicates they were intentionally made for the purpose of impeding the Department's investigation.

Count IV of the complaint alleges that Mr. Rucker provided false information to the Division of Enforcement investigatory staff. One of the topics of discussion at the April 22, 2004 meeting between Mr. Rucker, Mr. Herman and Mr. Nehring was that of unlicensed security guards. Mr. Herman testified that he asked for copies of Mr. Rucker's payroll records to see who Mr. Rucker was paying and, from that, determine whether the employees who were paid were currently licensed security guards. According to Mr. Herman and Mr. Nehring, Mr. Rucker said he did not have any of his payroll records. Instead, he said his accountant, Gerald Getzie, had those records.^[17] Mr. Rucker spelled out Getzie as "G E T Z I E."

The complaint alleges that:

17. *On or about April 22, 2004, DOE staff met personally with Rucker. During the course of the conversation Mr. Rucker made several statements that the Department has been unable to verify. Specifically, when Rucker was asked to provide copies of records showing wages paid to any person by RDA, Rucker replied that his "certified public accountant" would have such documentation. When asked to identify his accountant, Rucker replied that his accountant was a person named "Gerald Getzie" ("Getzie"). When asked to spell the last name of the accountant, Rucker replied "G-e-t-z-i-e." When asked where the accountant worked, Rucker replied that Getzie worked out of his home, and was employed full-time by a corporation.*

18. *In a follow-up conversation with DOE staff Rucker was asked for contact information for Getzie. Rucker replied that he had been by the location where Getzie worked, but that the persons there said he only worked seasonally, and was not presently there. When asked for a specific address for Getzie Rucker replied "9102 West Center" in "Milwaukee." When asked for a telephone number for Getzie Rucker replied that he had only a cell phone number, and that it was no longer in service.*

19. *9102 West Center in Milwaukee is not a valid address.*

20. *No person with the last name of "Getzie" has ever been licensed by the Department as a Certified Public Accountant, and no listing for a person named "Gerald Getzie" could be found in Milwaukee white pages or yellow pages.*

21. *By providing DOE staff with false information concerning the whereabouts and identity of a person who allegedly possessed documents relevant to the Department's investigation of 00 RSG 040, Rucker violated § 35.01(18).*

At the hearing the parties agreed that the address given by Mr. Rucker to Mr. Herman in a follow-up telephone conversation was 9201 West Center, Milwaukee, rather than 9102 West Center, Milwaukee as alleged in paragraph 18 of the complaint. Mr. Rucker contended that he was unclear about the spelling of the accountant's name and it should have been spelled as "G-U-R-S-K-E." Mr. Rucker offered evidence by way of a "montage" photograph that included typing on the montage and on typographic correction tape placed on the montage. Mr. Rucker contended that the montage showed a building located at the 9201 West Center Address, and included "Gurske Chiropractic" in the building.^[18] ("Gurske Chiropractic Clinic" is apparently displayed on an awning shown in the montage, but covered by the typographic correction tape.)

In rebuttal testimony, the Division of Enforcement offered evidence that a martial arts studio is located at 9201 West Center, that "Gurske Chiropractic" is at 9217 West Center, that there is no accounting office in the building, that Dr. Don Gurske at "Gurske Chiropractic" has a cousin "Gerald Gurske" who is a retired postal worker in Ashland, Wisconsin, that Dr. Don Gurske and the property manager have not heard of anyone conducting a bookkeeping business the building, and that business directories for the area did not identify a bookkeeping or accounting business in that area during October 2004.

The evidence offered to support Count IV is insufficient to meet the preponderance of evidence requirement under Wis. Stat. § 440.20(3):

1. The specific complaint allegation claimed to warrant discipline is that Rucker provided Division staff with ". . . false information concerning the whereabouts and identity of a person who allegedly possessed documents relevant to the Department's investigation of 00 RSG 040." Neither the complaint nor the information presented at the hearing identify specifically what information was false. Was it the address of Gurske/Getzie? The spelling of his name? Whether he was a C.P.A.? The complaint does not identify specifically when the false information was provided by Mr. Rucker. Was it at the meeting on April 22, 2004 or in the subsequent telephone conversation with Mr. Herman?

2. Much of the evidence presented by the Division in its case-in-chief was offered to show that 9102 in Milwaukee was not a valid address. When the street address number was corrected to 9201 West Center after the parties listened to the tape recording of the Rucker-Herman telephone conversation, the evidence presented earlier in the hearing concerning the existence of a 9102 West Center address became immaterial.
3. As described by both Mr. Nehring and Mr. Herman, the information that Mr. Rucker provided was somewhat speculative and not the kind of factual statement that can be used to support finding a violation of Wis. Adm. Code § RL 35.01. Mr. Rucker spelled out the accountant's name at the April 22, 2004 meeting, but claimed in his cross examination of Mr. Herman that he had said he was unsure of the spelling. Later in the hearing Mr. Rucker claimed the correct spelling was GURSKE. Mr. Nehring could not locate Getzie/Gurske at either the 9102 or 9210 address. However, the complaint paragraph 18. states that, "*When asked where the accountant worked, Rucker replied that Getzie worked out of his home, and was employed full-time by a corporation.*" and in paragraph 19., "*In a follow-up conversation with DOE staff Rucker was asked for contact information for Getzie. Rucker replied that he had been by the location where Getzie worked, but that the persons there said he only worked seasonally, and was not presently there.* Theodore Nehring was uncertain whether Rucker stated that Getzie was a certified public accountant. Mark Herman testified that at their meeting on April 22, 2004, Rucker said that Getzie was a certified public accountant. However, Mr. Herman testified that subsequently in their telephone conversation:

Mr. Rucker stated to me that he believed Mr. Getzie had represented to Mr. Rucker that Mr. Getzie was a certified public accountant but that he might not be. I asked if there was any contact information, and Mr. Rucker stated that he had a cell phone number but it wasn't working, and he also stated that he believed that I could find Mr. Getzie at an address 9102 West Center Street in Milwaukee. [\[19\]](#)

The statements attributed to Mr. Rucker by Mr. Herman, that "he believed" a fact relating to Getzie suggest that Mr. Rucker was unsure of his statement, being cautious or playing a game. Unlike his false statements described in Count II, the Getzie related information provided by Mr. Rucker is uncertain, speculative or qualified. Mr. Rucker cannot be held accountable under Wis. Adm. Code § RL 35.01(18) for his verbal comments regarding Getzie/Gurske at the April 22, 2004 meeting or in the subsequent telephone conversation.

The Division of Enforcement also argued that information provided by Mr. Rucker to one of its investigators, Camille Majors, was false and also warranted discipline under Wis. Adm. Code § RL 35.01(18). Counts II and IV of the complaint relate to providing false information. Count II refers specifically to information in Mr. Rucker's letter of April 5, 2002, Count IV to information provided by Mr. Rucker to Mr. Herman and Mr. Nehring regarding Mr. Rucker's accountant, Getzie/Gurske. Neither count can be interpreted to include an allegation that Mr. Rucker provided false information to investigator Majors. Since the allegation is not within the scope of the complaint and notice of hearing, a finding on the allegation would be inconsistent with Mr. Rucker's due process rights.

Count V: Rucker Detective Agency

The complaint cites Wis. Adm. Code § RL 35.02 as a basis for ordering discipline against the license of the Rucker Detective Agency:

RL 35.02 Discipline against agency for private detective violations. The department may take disciplinary action against a licensed private detective agency for violations of chs. RL 30 to 35 committed by licensed private detectives or security persons employed by the agency.

The rule uses the permissive "may," permitting the Department to take disciplinary action against the agency for violations committed by licensed private detectives or security persons employed by the agency. Discipline of both Carl Rucker and Rucker Detective Agency is warranted in this case. Ms. Gamez and Mr. Ikner both violated Wis. Adm. Code § 35.01(19) by working without a valid permit, thereby subjecting the Rucker Detective Agency to disciplinary action under the rule. Carl Rucker engaged in unprofessional conduct while acting as the licensed private detective for the Rucker Detective Agency. He assigned Ms. Gamez and Mr. Ikner to work as security guards without valid permits. Mr. Rucker provided false information to the Department. Because Rucker Detective Agency is a sole proprietorship owned by Carl Rucker, both Mr. Rucker and Rucker Detective Agency are culpable for the violations committed by Carl Rucker. Mr. Rucker is the sole proprietor of the Rucker Detective Agency and the person directly responsible to the Department for seeing that practices at the Rucker Detective Agency meet professional standards and that the public is protected.

Respondent's Contentions

In addition to his arguments relating to the delay in processing the Gamez application, discussed above, Mr. Rucker argued that the complaint was unnecessary, racially motivated, and brought on for the sole purpose of causing Rucker Detective Agency to lose business and contracts; and so that the Department could steer the E.R. Wagner Manufacturing Company contract to someone who may be receiving kickbacks from another private detective agency. Rucker further argued that Herman and Nehring lied to the Department so that charges would be brought. He claimed the requests for records are a violation of Wisconsin privacy rights. Mr. Rucker claimed that the questions asked by the Department about Roberta Gamez were a pretext for additional fabrications concerning Willie Ikner. He made various claims regarding Roberta Gamez including that she was confused by the application process, that the Department led Gamez to believe that Rucker had taken money that she sent to the Department and that her application had been tampered with. Mr. Rucker introduced no credible evidence to support any of these charges.

Mr. Rucker contended that Ms. Gamez's signature on her complaint to the Department was forged. Ms. Gamez testified that a coworker, Ashley Toy, completed the form for her and signed the complaint because Ms. Toy's handwriting was better than hers.^[20]

Mr. Rucker contended that the Department should have issued a temporary permit to Ms. Gamez. At the time that Roberta Gamez applied for a permit, the Department of Regulation and Licensing had a procedure for issuing a "conditional" permit effective for the period of time necessary to conduct a background check of applicants. That permit process was subsequently discontinued. Mr. Rucker argued in his opening that the Department was negligent in not sending Gamez a conditional permit.^[21] The record shows that Gamez and Rucker did not apply for the conditional permit. The portion of the application for a conditional permit was filled out, but the section was crossed out, apparently by Mr. Rucker, who wrote "VOID" across that portion of the application.^[22]

Order

Regulation of a profession by the state is founded in the police power of the state to protect the public welfare and to safeguard the life, health and property of its citizens. The statute regulating security personnel, like other occupational licensing statutes, is not enacted for the benefit of persons licensed, but for the benefit and protection of the public."^[23] A principal responsibility of a private detective agency that supplies security guards is to manage operations so that only persons holding valid permits are placed in the sensitive position of a security person. By legislative mandate, no person with an unpardoned felony conviction record or who has been convicted of a crime or ordinance violation substantially related to the security profession may hold a private security person permit. The legislature has also mandated that the Department is to screen applicants. Employers do not have access to the criminal background information available to the Department of Regulation and Licensing from the Federal Bureau of Investigation and the Wisconsin Crime Information Bureau. State regulation of private security guards, especially the function of screening guards for criminal history, has been an important consideration in recent discussions how to improve of national security.^[24]

What discipline is appropriate? The objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209, 237 N.W.2d 689 (1976). Punishment of the licensee is not an appropriate consideration. *State v. MacIntyre*, 41 Wis. 2d 481, 485, 164 N.W.2d 235 (1969).

The Division of Enforcement requested an order suspending respondents' licenses for six months, requiring reporting for 4 years and imposing costs. Past Department decisions in cases involving security services performed without a valid permit are noted below. In these decisions the Department has routinely ordered a reprimand and payment of all or part of the costs.^[25] These past decisions involved a greater number of employees working as security guards for a longer period of time than was proven in the instant matter. However, these cases did not involve violation of the rule against providing false information to the Department. In two cases involving statutory or rule violations in addition to providing security services without a valid permit, the Department ordered a license suspension and a revocation.^[26]

The record includes mitigating circumstances that oppose revocation or a long suspension of the Rucker licenses, Only two individuals were involved in unlicensed practice and only for relatively short periods of time. Mr. Rucker terminated Ms. Gamez's employment shortly after he discovered her application had been denied. Mr. Ikner had previously held a permit and presumably his background had been screened. The Department has processed 67 security person applications through the Rucker Detective Agency between 1997 and the present.^[27]

Past decisions by the Department involving security services provided by persons without valid permits indicate that

the appropriate level of discipline for the agency license of Rucker Detective Agency is a reprimand and a limitation. The proposal for a suspension of Carl E. Rucker's private detective license is intended to emphasize the seriousness of Mr. Rucker's unprofessional conduct in providing false information to the Department and in assigning persons without permits to perform security services.

Is suspension of the agency license of Rucker Detective Agency appropriate? Under Wis. Adm. Code § RL 35.03(1), the effect of suspending the license of the Rucker Detective Agency would be to terminate the employment of any security personnel employed by the agency. This result is unwarranted, given that the violations found were the doing of Mr. Rucker, and not the employees of Rucker Detective Agency. Under the order, the Rucker Detective Agency may continue to operate. Carl Rucker, however, may not engage in any professional services as a private detective, including acting as a security guard.

This disciplinary order is intended to deter Mr. Rucker and others from similar unprofessional conduct. The public relies on the employing private detective agency to verify that its security employees are qualified and fit for their assignment and that agency employees are not themselves likely to create danger to the public. Private detective agencies who assign employees to perform security work without a permit are engaged in a dangerous game. These employees may have undisclosed conviction records that would disqualify them from performing private police functions, put the public in danger, and even impair enforceability of insurance and business contracts of the private detective agency because of contract illegality. The agency and its employees risk loss of credential and employment. Employment of security personnel who do not hold valid permits is a crime.^[28]

Costs of the Proceeding

Wis. Stat. § 440.22(2), provides in part:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department.

The recommendation that the costs of the proceeding be assessed is based on fairness to other members of the profession. The Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions, and are proportionate to those costs. The costs of prosecuting cases for a particular licensed profession are borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in unprofessional conduct. This approach to the imposition of costs is supported by the practice of the Wisconsin Supreme Court, which is granted similar discretionary authority by SCR 22.24 to impose costs in attorney disciplinary hearings. The Court has acknowledged the logic of imposing the cost of discipline on the offender rather than on the profession as a whole, and routinely imposes costs on disciplined respondents unless exceptional circumstances exist.^[29]

Costs are also imposed in this matter as a sanction under the discovery statutes. The Division of Enforcement served respondents with a request for production of documents on about August 19, 2004 and with an "Amended Request for the Production of Documents" dated October 22, 2004, under Wis. Stat. §§ 227.45 (7), 804.09 and Wis. Adm. Code § RL 2.13. Respondents filed a reply dated November 24, 2004 objecting to the request. Respondents did not provide any of the requested documents and did not apply for a protective order under Wis. Stat. § 804.01 (3). Following a hearing on January 14, 2005, the Division of Enforcement's motion for sanctions under Wis. Stat. §§ 804.09 (2) and 804.12 (4) was granted, but the specific sanction requested was denied, the order stating that, "The sanctions will be withheld pending the evidentiary hearing."

Under Wis. Stat. § 804.12 (4), the administrative law judge may select from a range of sanctions:

"If a party . . . fails (a) . . . (c) to serve a written response to a request for inspection submitted under s. 804.09, after proper service of the request, . . . the court in which the action is pending on motion may make

such orders in regard to the failure as are just, and among others, it may take any action authorized under sub. (2) (a) 1., 2. and 3. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising the party or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. . . .”

Had Mr. Rucker responded to the request for production of documents as required by statute, this matter may have been concluded without a lengthy hearing. Under the circumstances, it is reasonable and just for Mr. Rucker to bear the full cost of the hearing as authorized under Wis. Stat. § 440.22.

Respondents’ April 29, 2005 Motion To Reopen And Reconsideration

On April 12, 2005, Carl Rucker submitted a motion to reopen the hearing. This motion was denied on April 26, 2005. Mr. Rucker filed a second motion to reopen the hearing on April 29, 2005, the date agreed to by the parties as the due date for submission of final written arguments. The April 29, 2005 motion does not state grounds sufficient to warrant reopening the hearing and is denied for the reasons stated in the ruling on the earlier motion to reopen. However, the arguments made in the motion as to the merits of the case were considered as if they had been submitted as respondents’ final arguments.

Respectfully submitted,

William Dusso
Administrative Law Judge
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 52708
Telephone: (608) 261-2385

Dated: June 23, 2005

[1] State’s Exhibit 4.

[2] *Wis. Stat. § 440.26 regulates private detective agencies, suppliers of private security personnel, private detectives and private security persons. 440.26(1) provides, in part:*

(1) License or permit required.

(a) No person may do any of the following unless he or she has a license or permit issued under this section:

1. . . .

2. Act as a . . . private security person.

3. . . .

4. Solicit business or perform any other type of service or investigation as a . . . private security person.

(5) Exemptions.

(a) . . .

(b) The license requirements of this section do not apply to . . . any employee of a commercial establishment, while the person is acting within the scope of his or her employment and whether or not he or she is on the employer's premises.

(c)

(6) Discipline.

(a) Subject to the rules adopted under s. 440.03 (1), the department may reprimand the holder of a license or permit issued under this section or revoke, suspend or limit the license or permit of any person who has done any of the following:

1. . . .

2. Engaged in conduct reflecting adversely on his or her professional qualification.

3. . . .

4. Violated this section or any rule promulgated or order issued under this section.

[3] Wis. Stat. § 440.26(1) (a).

[4] Wis. Stat. § 440.26(1m) (h).

[5] Wis. Stat. § 440.26(5m) (a), Wis. Adm. Code § RL 31.02(3).

[6] Wis. Adm. Code § RL 31.036; See also Exhibit 6A.

[7] Wis. Stat. § 440.03(13); See also Exhibit 6A.

[8] Wis. Stat. § 440.08(2) (a) 63g.

[9] Exhibit 5.

[10] State’s Exhibit 4.

[11] State’s Exhibits 2 and 6A.

[12] Exhibit 6A.

[13] Wis. Adm. Code § RL 4,03, Wis. Stat. § 227.116(6) (a).

[14] At the hearing the parties noted that the complaint includes two paragraphs numbered "13." The complaint was amended to change the second paragraph numbered "13." to "13A." (Transcript of March 10, 2005, p. 24).

[15] State's Exhibit 7, p. 7.

[16] State's Exhibit 5.

[17] Transcript for March 9, 2005, pp. 38, 39.

[18] Exhibit F.

[19] Transcript for March 9, 2005, pp. 40, 41.

[20] Transcript for March 31, 2004, p. 36

[21] Transcript for March 31, 2004, p. 190 - 193

[22] Exhibit 6A

[23] *Gilbert v. State, Medical Examining Bd.*, 119 Wis. 2d 168 (1984); *Strigenz v. Department of Regulation*, 103 Wis. 2d 281, 286 (1981); *State ex rel. Wis. Registration Bd. of Architects & Professional Engineers v. T. V. Engineers*, 30 Wis.2d 434, 438-39, 141 N.W.2d 235, 237 (1966).

[24] Parfomak, *Guarding America: Security Guards and U.S. Critical Infrastructure Protection*

[<http://www.fas.org/sgp/crs/RL32670.pdf>]. Congressional Research Service, November 12, 2004.

[25] The following cases were resolved by stipulation: *In the Matter of Disciplinary Proceedings Against American Security*, No. LS0501251RSG (January 25, 2005) <http://drl.wi.gov/dept/decisions/docs/0105055.htm>. Reprimand and \$1,500 costs for allowing two employees to practice as private security persons for about over nine months with expired temporary licenses. *In The Matter Of The Disciplinary Proceedings Against DBP Detective & Security Agency And Dino Baschiera*, Case No. LS0411231RSG, (November 23, 2004) <http://drl.wi.gov/dept/decisions/docs/1104116.htm>. Reprimand and \$1,000 costs: out of twenty five employees, fifteen employees either worked as private security guards prior to obtaining a permit, never obtained a permit or were working during a period when the permit was expired. On a subsequent list, out of eighteen employees, two who were actively practicing as a private security guard had never obtained a permit. *In The Matter Of The Disciplinary Proceedings Against Wackenhut Corporation, Respondent*, Case No. LS0404171RAL (April 17, 2004) <http://drl.wi.gov/dept/decisions/docs/0404067.htm>. Reprimand and \$1,300 costs: employing unlicensed persons to perform private detective services and employing unlicensed persons who carried firearms without a firearms permit. *In The Matter Of The Disciplinary Proceedings Against International Total Services, Inc dba ITS Security, Respondent*, Case No. LS0103061RSG (March 6, 2001) <http://drl.wi.gov/dept/decisions/docs/0301120.html>. Reprimand, \$1,400 costs and a two-year reporting requirement: in 1998 and continuing at least through calendar year 1999, ITS Security employed a significant number of personnel to perform as security guards who were without permits. *In The Matter Of The Disciplinary Proceedings Against Response Security, Inc., Respondent*, Case No. LS0101101RSG (January 10, 2001) <http://drl.wi.gov/dept/decisions/docs/0101155.html>. Reprimand, \$300 costs and quarterly reports for two years: for about three months Response Security, Inc employed at least three unlicensed individuals as private security guards. The decision also finds that Response Security, Inc. cooperated fully in the investigation and has taken corrective action. *In The Matter Of The Disciplinary Proceedings Against National Liberty Security, Inc., Respondent*. Case No. LS000524RSG (May 23, 2000) <http://drl.wi.gov/dept/decisions/docs/0500121.html>. Reprimand and \$300 costs: the respondent employed 5 unlicensed persons to perform private security persons for periods six weeks to 18 months.

[26] *In The Matter Of The Disciplinary Proceedings Against Christopher L. Davis And Davis Protective Agency, Respondents*, Case No. LS0312011RSG (May 6, 2004) <http://drl.wi.gov/dept/decisions/docs/0504090.htm> involved an unlicensed private detective agency as well as unlicensed private security guard services. The Department suspended both the agency license and the security guard permit for forty-five days. *In The Matter Of The Disciplinary Proceedings Against Freddie Fernandez, Respondent*, Case Do. LS0410137RSG (October 13, 2004) <http://drl.wi.gov/dept/decisions/docs/1004090.htm> concerned a private security person who provided false information to the Wisconsin Department of Transportation. The respondent appeared at the consumer counter of the Department of Transportation supposedly for the purpose of obtaining identification using the birth certificate of another person and misrepresented that he was conducting a survey to see how easy it was to obtain false identification from the State of Wisconsin. Among other conclusions, the Department found that the respondent had obstructed a police officer in violation of Wis. Stats. § 946.41(1) and the violation warranted revocation.

[27] Transcript of March 31, 2005, p. 200.

[28] Under Wis. Stat. § 440.26(8), Any person, acting as a . . . private security person, or who employs any person who solicits, advertises or performs services in this state as a . . . private security person, . . . , without having procured the license or permit required by this section, may be fined not less than \$100 nor more than \$500 or imprisoned not less than 3 months nor more than 6 months or both.

[29] *In the Matter of Disciplinary Proceedings against M. Joanne Wolf*, 165 Wis. 2d 1, 12 (1991); *In the Matter of Disciplinary Proceedings against Willis B. Swartwout, III*, 116 Wis. 2d 380, 385 (1984).