

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN  
DEPARTMENT OF REGULATION AND LICENSING

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IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION
CARL E. RUCKER, dba	:	AND ORDER
RUCKER DETECTIVE AGENCY,	:	LS8912151RAL
RESPONDENTS.	:	

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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 Board for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 26 day of June, 1991.

  
Pat McCormack, Deputy Secretary

STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION & LICENSING

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IN THE MATTER OF  
DISCIPLINARY PROCEEDINGS AGAINST

CARL E. RUCKER, dba  
RUCKER DETECTIVE AGENCY,

LS891215RAL

Respondents

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PROPOSED DECISION

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The parties to this proceeding for the purposes of Wis. Stats. sec. 227.53 are:

Carl E. Rucker  
4712 West Capitol Drive  
Milwaukee, WI 53216

Rucker Detective Agency  
4712 West Capitol Drive  
Milwaukee, WI 53216

Department of regulation & Licensing  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708

Department of Regulation & Licensing  
Division of Enforcement  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708

A hearing was scheduled to be held in this matter on December 15, 1990, at 1400 East Washington Avenue, Madison, Wisconsin. Respondent on that date and at the time set for hearing notified the administrative law judge (ALJ) by telephone that he had experienced car trouble en route from Milwaukee to Madison, and that the car was at that time undergoing repairs. Mr. Rucker agreed to notify the ALJ as soon as it was

determined at what time he would be able to appear. When no further word was received from respondent within two and one half hours thereafter, the ALJ convened the hearing, granted complainant's motion for default pursuant to Wis. Adm. Code sec. RL 2.14, and received the testimony of complainant's witnesses, who had been standing by.

The ALJ thereafter determined that notwithstanding grant of the motion for default, respondent's testimony would be received by sworn affidavit, along with any relevant documentary evidence. The established procedure is more completely set forth in the ALJ's Scheduling Order dated January 3, 1991, which is a part of the record herein. Respondent's written defense to complainant's evidence, along with three exhibits denoted by him as Respondent's Exhibits 1 through 3, was received on February 19, 1991. *Complainant's Response to Respondents' submissions* was received on February 28, 1991, and *Respondents' Reply to Complainant's Response* was received on March 18, 1991.

Based upon the entire record in this case, the ALJ recommends that the Department of Regulation and Licensing adopt as its final decision in the matter the following Findings of Fact, Conclusions of Law and Order.

#### FINDINGS OF FACT

1. Carl E. Rucker (Rucker) 4712 West Capitol Drive, Milwaukee, Wisconsin 53216, is licensed in the State of Wisconsin as a private detective by license #5309, granted on June 10, 1980.
2. Rucker Detective Agency (Rucker Agency) 4712 West Capitol Drive, Milwaukee, Wisconsin, is duly licensed as a private detective agency in Wisconsin by license #5310, granted June 10, 1980. The Rucker Agency is owned by Mr. Rucker.
3. By letter dated June 11, 1987, the Department of Health and Social Services (DH&SS), Bureau of Community Health and Prevention, sent to the Rucker Agency an invitation to submit a proposal for the provision of investigative services involving making compliance buys at grocery stores in Wisconsin in connection with the DH&SS Special Supplemental Food Program for Women, Infants and Children (WIC Program). The letter was signed by Linda Sunstad, director of the WIC Program (Sunstad), and enclosed a 17 page Request for Proposal.
4. Under cover of an unsigned letter dated July 8, 1987, Mr. Rucker submitted a proposal for provision of investigative services by the Rucker Agency. Page one of the Proposal states in part as follows:

The Rucker Detective Agency is a sole proprietorship created in May, 1980. It is minority owned and has been so certified by the Wisconsin Department of Development, Milwaukee County, City of Milwaukee, and the Metropolitan Milwaukee Sewerage Commission. Its principal office is in Milwaukee where it has 9 investigators. Branch offices exist in Madison, Racine and Kenosha. It has a total of 18 investigators, 51 security personnel and a reservoir of 171 registered investigators available for part time, full time, or temporary work. All investigators and security personnel currently employed are full time. Support services are provided by a clerk, a dispatcher, and an accountant. The agency is bonded and licensed by the Wisconsin Department of Regulation and Licensing, carries \$300,000 in liability insurance. It is located at 152 W. Wisconsin Ave., #720, Milwaukee, Wisconsin 53202.

\* \* \* \*

The Rucker Agency and all of its employees are bonded and licensed by the Wisconsin Department of Regulation and Licensing. The company has been in business for 8 years. During this period of time, it has conducted all sorts of investigations including criminal, civil, individual, insurance, car thefts, fraud and others.

5. By letter dated July 20, 1987, Ms. Sunstad requested additional information relating to the Rucker Agency's Proposal. Subparagraph 2. of that letter requests as follows:

Provide us with photocopies of detective licenses issued by the Department of Regulation and Licensing to five - six of the nine investigators you identified in your proposal as being headquartered in your principal office in Milwaukee.

6. By letter dated July 27, 1991, Mr. Rucker responded to Ms. Sunstad's letter. Addressing the request for copies of the licenses of five or six of the investigators headquartered in Milwaukee, Mr. Rucker enclosed copies of six watchman and guard licenses issued by the City of Milwaukee. The concluding paragraph but one of Mr. Rucker's letter states as follows:

Attached are the watchman/guard licenses of several of our employees. As you are probably aware, the Rucker Agency has both a State Private Investigator license and a Private Investigator Agency license. This allows us to hire watchman/guards who are licensed by the City and registered with the Milwaukee Police Department to do investigative work under the license and the insurance of the Agency. Without the agency license, each would have to have his own Investigator license, his own insurance

and meet the state administrative requirements. All of our employees, including our reserve employees, are therefore fully qualified to do investigative work.

7. On or about July 29, 1987, Mr. Rucker sent an apparently unsolicited letter to WIC Vending Relations Manager Patricia M. Paska. The purpose of the letter as stated therein was to make corrections to the proposal for investigative services submitted on July 8, 1987, as follows: First, section 2.4 of the proposal states that the Rucker Agency had "its principal office . . . in Milwaukee where it has 9 investigators." The July 29 letter states that this language should be corrected to read "[The Rucker Agency] has made contact with 9 investigators in the target area." Second, the language in the proposal that the Rucker Agency "has a total of 18 investigators, 51 security personnel and a reservoir of 171 registered investigators available for part time, full time or temporary work," and that "All investigators and security personnel currently employed are full time" was to be corrected to read "[The Rucker Agency] has a total of 18 security persons eligible to apply for private investigator licenses now, and 51 security officers currently working and a reservoir of about 171 registered security officers. All investigators currently employed are subcontractors from other agencies." Third, section 2.5 of the proposal states, "The Rucker Detective Agency and all of its employees are bonded and licensed by the Wisconsin Department of Regulation and Licensing." The July 29 letter corrects this to read, "The Rucker Detective Agency is licensed by the Wisconsin Department of Regulation and Licensing and carry [sic] liability insurance by a private insurance agency." Finally, the July 29, 1987, letter corrects the last paragraph of the July 27, 1987, letter to read in part, "Permits are issued by the city and registered with the Milwaukee Police Department to do security service work which makes them eligible to apply for investigators licenses." The relevant language in the July 27 letter was, ". . . the Rucker agency has both a State Private Detective license and a Private Investigator Agency license. This allows us to hire watchmen/guards who are licensed by the City and registered with the Milwaukee Police Department to do investigative work under the license and insurance of the agency."

7. At the time of the July 8, 1987 proposal, Mr. Rucker was the only licensed private detective employed by the Rucker Agency.

#### CONCLUSIONS OF LAW

1. The Department of Regulation & Licensing has jurisdiction in this matter pursuant to Wis. Stats. sec. 440.26(6).

2. In representing in the proposal for the provision of investigative services submitted to the WIC program that the Rucker Agency employed 18 investigators, with

nine investigators employed at the Milwaukee office, when in fact Mr. Rucker was the only licensed private detective employed by the Rucker Agency, respondents have intentionally submitted a proposal to the State of Wisconsin WIC Program which is false or misleading, and respondents have thereby engaged in conduct reflecting adversely on their professional qualification, within the meaning and in violation of Wis. Stats. sec. 440.26(6) and Wis. Adm. Code sec. RL 3.32 (1974).

3. In representing in the proposal for the provision of investigative services submitted to the WIC program that the Rucker Agency and all of its employees were bonded and licensed by the Department of Regulation & Licensing, respondents have not engaged in conduct reflecting adversely on their professional qualification, within the meaning of Wis. Stats. sec. 440.26(6) and Wis. Adm. Code sec. RL 3.32 (1974).

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Carl E. Rucker to practice as a private detective be, and hereby is, suspended for a period of thirty days.

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

IT IS FURTHER ORDERED that pursuant to Wis. Stats. sec. 440.22, one half the costs of this proceeding shall be assessed against Carl E. Rucker, and shall be payable by him to the Department of Regulation & Licensing.

OPINION

At the outset, Mr. Rucker denies that the proposal for provision of investigative services received as Exhibit #2 at the hearing herein is the proposal which was submitted by him to the WIC program. While he does not deny that a proposal was in fact submitted, he has repeatedly indicated his belief that the proposal and the cover letter dated July 8, 1987, which were received into evidence, are not the true documents because the letter does not bear his signature and because the proposal itself is neither signed nor notarized.<sup>1</sup>

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<sup>1</sup> Mr. Rucker's statement of his belief that the true cover letter and proposal were both signed and that the proposal was notarized was contained in his oral Answer received by telephone on December 4, 1990, as well as in earlier statements by him. The contention was not renewed in either his evidentiary submission of February 14, 1991, or in his *Reply to Complainant's Response*. Nonetheless, the contention has been given the same evidentiary weight as if established by sworn testimony.

I am satisfied, however, that the proposal in evidence is in fact the document submitted to the WIC Program by respondents. First, Ms. Sunstad testified that the proposal and cover letter offered into evidence were copies of the documents received from respondents.<sup>2</sup> Second, Ms. Sunstad's letter of July 20, 1987, requesting further information, makes accurate reference to the terms of the proposal received as exhibit #2. Next, respondents' letter of clarification dated July 29, 1987 (Respondent's Exhibit #3), not only makes reference to the proposal submitted to the WIC Program "on about July 8," but also makes accurate reference to specific provisions of the proposal in evidence. Finally, while Mr. Rucker questions the genuineness of the unsigned proposal, he has failed to either provide a copy of a signed document or to dispute the accuracy of the individual provisions of the document in evidence. On balance, I find there to be satisfactory evidence that Exhibit #2 is in fact the proposal submitted to DH&SS by Mr. Rucker. Having so found, the question becomes whether the proposal submitted by Mr. Rucker evidences conduct by him which reflects adversely on his professional qualification.

Mr. Rucker's proposal clearly and unequivocally states that as of July 8, 1987, the Rucker Agency employed a total of 18 investigators full time, nine of whom were in the Milwaukee office. In two subsequent letters following the letter of inquiry by Ms. Sunstad, Mr. Rucker gradually retreated from the representations contained in the proposal. In the July 27, 1987, letter, Mr. Rucker abandons the representation that the 18 employees were licensed, and instead states that watchman/guards employed by the Rucker Agency were "fully qualified to do investigative work . . . under the agency license and insurance." Finally, in the July 29, 1987 letter, Mr. Rucker states merely that the Rucker Agency "has a total of 18 security persons eligible to apply for private investigator licenses." Based on Mr. Rucker's own subsequent correspondence, there can be no question but that the original Rucker proposal purposefully and intentionally misrepresented the firm's employee qualifications, and I conclude that such misrepresentation, in the words of the statute and rule, is "conduct reflecting adversely on respondents' professional qualification."

Conversely, I do not recommend that the department find that Mr. Rucker's representation that the Rucker Agency was both licensed and bonded by the Department of Regulation & Licensing to also constitute an intentional misrepresentation. This is because unlike the question of qualified employees,

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<sup>2</sup> In his evidentiary submission of February 14, 1991, respondent objects to the testimony of Ms. Sunstad as "hearsay." A review of that testimony reveals no hearsay, and Mr. Rucker's objection is therefore deemed overruled.



there was little or no motive for Mr. Rucker to represent that the department had issued the bond or liability policy required by Wis. Stats. sec. 440.26(4), rather than that the department had merely approved such policy. So long as the required policy was in effect, and there is no allegation that it was not, it seems probable that this harmless misstatement was unintentional rather than that it was somehow intentionally designed to mislead the WIC program to respondents' advantage.

Having found a violation, the only remaining question is what discipline, if any, is appropriate. It is well established that the purposes of discipline of occupational licensees include protection of the public, rehabilitation of the licensee, and deterrence of other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 207. Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481. While the misrepresentation found in this matter does not constitute a trivial violation, there is some mitigation. Mr. Rucker did in fact make corrections to the proposal prior to the awarding of the contract in question. And while it might be concluded that those corrections were prompted at least in part by the possibility that Mr. Rucker may have felt the state's hot breath blowing down the back of his neck, the fact remains that no harm was done. These considerations in my view militate for lesser rather than greater discipline.

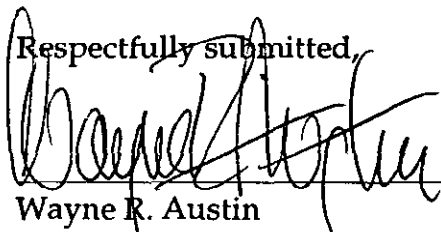
Another relevant factor in selecting appropriate discipline is suggested by Wis. Admin. Code sec. RL 35.03(1), which provides that suspension, revocation or nonrenewal of an agency license terminates the private detective or private security personnel activity by employees of the agency. Accordingly, the effect of suspending the license of the Rucker Agency would be to terminate the employment of any watchmen/guards employed by the agency. This seems an inappropriately harsh result given the nature of the misconduct found. Suspension for some period of time of Mr. Rucker's private detective license, on the other hand, will not affect either the agency license or Mr. Rucker's ability to act as its proprietor during the period of suspension of his personal license; and I conclude that suspension of that license for thirty days is both consonant with the seriousness of the misconduct and sufficient to address the rehabilitation and deterrence disciplinary objectives.

Finally, I have recommended that one-half the costs of these proceedings be assessed against respondents. Throughout the course of these proceedings, Mr. Rucker has made frequent reference to his impecuniousness. While no evidence in that regard was ever submitted by him, consideration is given to the possibility that assessment of the entire costs may have the unintended result of extending the period of suspension

of the license beyond thirty days, because of the requirement at Wis. Stats. sec. 440.22(3) that a suspended license may not be restored until the assessment is paid.

Dated at Madison, Wisconsin this 8th day of April, 1991.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Wayne R. Austin", is written over a horizontal line.

Wayne R. Austin  
Administrative Law Judge

WRA:BDLS2:206

STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION & LICENSING

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IN THE MATTER OF DISCIPLINARY :  
PROCEEDINGS AGAINST : AFFIDAVIT OF COSTS OF THE  
 : OFFICE OF BOARD LEGAL SERVICES  
CARL E. RUCKER, dba :  
RUCKER DETECTIVE AGENCY, : (Wis. Stats. sec. 440.22)  
 :  
RESPONDENTS :

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STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF DANE )

Wayne R. Austin, being first duly sworn on oath, deposes and states as follows:

1. Your affiant is an attorney licensed to practice law in the State of Wisconsin, and is employed by the Wisconsin Department of Regulation & Licensing, Office of Board Legal Services.

2. In the course of his employment, your affiant was assigned as administrative law judge in the above-captioned matter.

3. Set out below are the actual costs of the proceeding for the Office of Board Legal Services in this matter. Unless otherwise noted, all times commence at the start of the first five minute period following actual start of the activity, and terminate at the start of the first five minute period prior to the actual end of the activity.

ADMINISTRATIVE LAW JUDGE EXPENSE

Wayne R. Austin

<u>DATE &amp; TIME SPENT</u>	<u>ACTIVITY</u>
2/2/90 15 minutes	Prehearing Conference
2/6/90 20 minutes	Draft Prehearing Memorandum
9/18/90 10 minutes	Draft Notice of Adjourned Hearing
10/12/90 15 minutes	Draft Notice of Adjourned Hearing

Affidavit of Costs  
Page 2

11/27/90 2 hours, 30 minutes	Draft Order on Motions
12/3/90 25 minutes	Prehearing Conferences
12/5/90 25 minutes	Conduct Hearing
12/6/90 25 minutes	Prepare Letter to Parties
3/27/91 20 minutes	Prepare Proposed Decision
3/29/91 1 hour, 50 minutes	Prepare Proposed Decision
4/2/91 3 hours, 5 minutes	Prepare Proposed Decision
4/3/91 2 hours, 25 minutes	Prepare Proposed Decision
4/4/91 5 hours, 35 minutes	Prepare Proposed Decision
<u>Total Time Spent.....</u>	<u>18 hours</u>

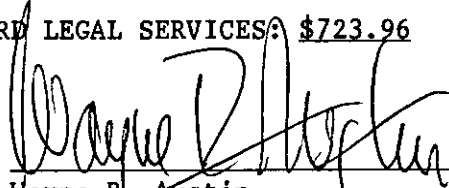
Total administrative law judge expense for Wayne R. Austin:  
18 hours @ \$31.37, salary and benefits:.....\$564.66

REPORTER EXPENSE  
Magne-Script

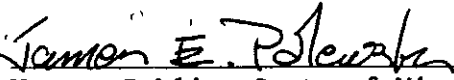
<u>DATE &amp; BILLING</u>	<u>ACTIVITY</u>
12/5/90 \$90.00	Attend hearing
12/21/90 \$69.30	Prepare Transcript

Total billing from Magne-Script reporting  
service (Invoice #4561, dated 12/21/90):.....\$159.30

TOTAL ASSESSABLE COSTS FOR OFFICE OF BOARD LEGAL SERVICES: \$723.96

  
\_\_\_\_\_  
Wayne R. Austin  
Administrative Law Judge

Sworn to and subscribed before me this 9<sup>th</sup> day of April, 1991.

  
\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission is permanent

WRA:BDLS:1020

STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION & LICENSING

IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST :  
 :  
CARL E. RUCKER, dba, : AFFIDAVIT IN SUPPORT  
RESPONDENT. : OF MOTION FOR COSTS

STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF DANE )

Steven M. Gloe, being duly sworn, deposes and states as follows:

1. That he is an attorney licensed in the state of Wisconsin and is employed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement:

2. That in the course of those duties he was assigned as a prosecutor in the above captioned matter; and

3. That set out below are the costs of the proceeding accrued to the Division of Enforcement in this matter, based upon Division of Enforcement records compiled in the regular course of agency business in the above-captioned matter.

PROSECUTING ATTORNEY EXPENSE

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
9/25/89	Review file; prepare complaint	2 hour
1/3/90	Review answer; prepare interrogatories	1 hr 45 min
2/2/90	Prehearing conference	15 min
2/22/90	Prepare response to request for production	45 min
4/11/90	Review materials rec'd; review file	15 min
5/4/90	Prepare discovery documents	1 hr 45 min
6/6/90	Review materials received; adjournment	5 min
6/14/90	Review materials received; correspondence	15 min
6/20/90	Review materials received; adjournment	5 min
9/17/90	Hearing preparation	2 hours

9/25/90	Preparation of stipulation offer	1 hr 30 min
10/11/90	Hearing preparation	1 hr
10/24/90	Hearing preparation	45 min
10/25/90	Discovery materials	2 hours
11/6/90	Review materials received; motion	15 minutes
11/7/90	Prepare response to motion	1 hour
11/8/90	Review materials received; conf. investigator	30 minutes
11/21/90	Prepare objections: venue	1 hr 15 min
11/26/90	Review materials received; ALJ order	15 min
11/28/90	Preparation of records for production	1 hour
11/29/90	Preparation of discovery; motions	1 hr 45 min
11/30/90	Hearing preparation	1 hr 30 min
12/3/90	Hearing preparation	1 hour
12/10/90	Hearing preparation; attend hearing	2 hours
1/3/91	Review materials received; ALJ order	15 min
2/28/91	Review materials received; prepare response	30 min
3/15/91	Review materials received from respondent	15 min
TOTAL HOURS		<hr/> 22 hrs 55 min

Total attorney expense for  
22 hours and 55 minutes at \$34.23 per hour  
(based upon current salary and estimated benefits) equals: \$ 886.56


#### INVESTIGATOR EXPENSE

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
9/7/88	Review file	30 minutes
9/14/88	Prepare notes and questions	40 minutes
9/29/88	Case conference	30 minutes

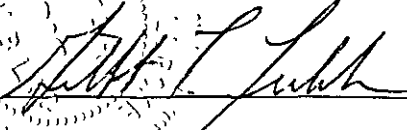
9/30/88	Prepare and dictate correspondence	45 minutes
10/4/88	Proof and revise correspondence	40 minutes
11/1/88	Review materials received; city of Milwaukee	30 minutes
11/2/88	Telephone conversation	5 minutes
11/3/88	Telephone conversation	10 minutes
3/16/89	Telephone conversations	15 minutes
3/16/89	Review file; prepare case summary	4 hr 14 min
3/22/89	Proof and revise case summary	1 hr 15 min
3/23/89	File maintenance	50 minutes
11/7/89	Review documents; telephone conversation	40 minutes
<b>TOTAL HOURS</b>		<hr/> 11 hrs 5 min.

Total investigator expense for  
 11 hours and 5 minutes at \$ 18.21 per hour  
 (based upon current salary and estimated benefits) equals: \$ 201.77

**TOTAL DIVISION OF ENFORCEMENT ASSESSABLE COSTS \$ 1,088.33**

  
 \_\_\_\_\_  
 Steven M. Glog, Attorney

Subscribed and sworn to before me this 11<sup>th</sup> day of April, 1991.

  
 \_\_\_\_\_  
 Notary Public

My commission is permanent.



## NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,  
the times allowed for each, and the identification  
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

### 1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Department of Regulation and Licensing.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

### 2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Department of Regulation and Licensing

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Department of Regulation and Licensing.

The date of mailing of this decision is June 27, 1991.

**227.49 Petitions for rehearing in contested cases.** (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (c). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

**227.52 Judicial review; decisions reviewable.** Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employe trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

**227.53 Parties and proceedings for review.** (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) 1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board or the consumer credit review board, the credit union review board or the savings and loan review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b) 1 to 4.

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

3. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions

for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party's attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision under s. 227.47 or the person's attorney of record.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.