

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

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IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
BRUCE A. HENCHEN,	:	LS9201151RAL
RESPONDENT.	:	

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

Dated this 24 day of March, 1992.

Pat McCormack  
Pat McCormack, Deputy Secretary  
Department of Regulation and Licensing

STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF  
REGULATION AND LICENSING

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IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	PROPOSED DECISION
	:	LS9201151RAL
BRUCE A. HENCHEN,	:	
RESPONDENT.	:	

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

Bruce A. Henchen  
Box 61, Route 3  
Viroqua, Wisconsin 54665

Department of Regulation & Licensing  
P.O. Box 8935  
Madison, Wisconsin 53708

This proceeding was commenced by the filing of a Notice of Hearing and Complaint on January 15, 1992. A hearing was held on January 31, 1992. Richard Castelnuovo, Attorney at Law, appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. The Respondent, Bruce A. Henchen did not appear at the hearing.

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

**FINDINGS OF FACT**

1. Respondent, Bruce A. Henchen, Box 61, Route 3, Viroqua, Wisconsin 54665, was granted a limited license to practice as a private detective in the State of Wisconsin pursuant to license #8544 which was granted on February 7, 1991.

2. A Criminal Complaint and Summons was issued by the Clark County District Attorney's Office on November 20, 1990, which alleged that on November 17, 1990, Bruce A. Henchen did intentionally take and carry away the movable property of another without the person's consent and with intent to deprive the owner permanently of possession of said property, contrary to sec. 943.20 (1)(a) Wis. Stats. The Complaint also alleged that Henchen possessed a white tailed deer which was not tagged according to law, contrary to s. 29.40 (2) Wis. Stats., and removed a Department of Natural Resources tag which was attached to a white tailed deer, contrary to s. 29.644 Wis. Stats.

3. On November 21, 1990, the Jackson County District Attorney's Office filed a Criminal Complaint, which alleged that on November 17, 1990, Bruce A. Henchen did intentionally take and carry away the movable property of another without the person's consent and with intent to deprive the owner permanently of possession of said property, contrary to s. 943.20 (1)(a) Wis. Stats.

4. Respondent filed an application with the Department of Regulation and Licensing ("department") on January 2, 1991, for a license to practice as a private detective.

5. The department granted a limited license to respondent based upon respondent's disclosure concerning his November 17, 1990 arrest record and his history of alcohol use, the circumstances of which substantially relate to the practice of a private detective.

6. The Final Decision and Order Granting Limited Private Detective License, issued by the department on February 7, 1991, provides, in part, that respondent's license to practice as a private detective shall be limited as follows:

1. Applicant Henchen will participate in the department's IPP Program (Impaired Professionals Procedure) immediately following licensure.
3. Applicant Henchen shall file with the department a report within 5 days before or after the following dates:

July 1, 1991  
January 1, 1992  
July 1, 1992  
January 1, 1993

And every January 1 and July 1 thereafter until further order of the Department.

4. Each report shall be verified as true by applicant's employer, James R. Brieske of Brieske Investigations.
5. Each report shall include:
  - a. The name, address and telephone number of applicant's employer at the time of the report.
  - b. A statement that applicant Henchen did not carry or use firearms or other dangerous weapons during the course of his private detective and/or security guard duties.
  - c. A statement concerning applicant Henchen's performance of private detective duties for Brieske Investigations.

7. Following licensure, respondent failed to participate in the department's Impaired Professional Procedure ("IPP") program. On August 9, 1991, the department informed respondent that he was no longer eligible to participate in the "IPP" program based upon substantial violations of the "Agreement for Participation", dated February 25, 1991.

8. Respondent failed to file reports with the department within 5 days before or after July 1, 1991 and within 5 days before or after January 1, 1992, as required by the department's Final Decision and Order Granting Limited Private Detective License, dated February 7, 1991.

9. As a result of the criminal complaint filed against respondent in November, 1990, by the District Attorney for Clark County, respondent was convicted on February 13, 1991, of one count of misdemeanor theft, in violation of s. 943.20 (1)(a) Wis. Stats., and one count of removal of a deer tag, in violation of s. 29.644 Wis. Stats.

10. Based upon respondent's conviction in Clark County on February 13, 1991, of misdemeanor theft, respondent was placed on probation for 18 months. As a condition of probation, respondent was ordered "to continue in any alcohol and related-area counseling, or participate in marital counseling" as appropriate, and to submit to periodic, unannounced urine testing.

11. A copy of the Notice of Hearing and Complaint filed by the Department of Regulation and Licensing, Division of Enforcement, in the above-captioned matter was served on respondent by certified mail on January 15, 1992. A return receipt for the certified mail bears the signature "Bruce Henchen", and shows "1/18/92" as the delivery date.

12. Respondent did not appear at the hearing held in the above-captioned matter on January 31, 1992.

#### **CONCLUSIONS OF LAW**

1. The Department of Regulation and Licensing has jurisdiction in this matter pursuant to s. 440.26 (6) Wis. Stats., and s. RL 35.01 (2) Wis. Adm. Code.

2. Respondent by failing to participate in the Impaired Professional Procedure program, and by failing to file reports with the Department of Regulation and Licensing within 5 days before or after July 1, 1991, and January 1, 1992, as required in the Final Decision and Order Granting Limited Private Detective License, dated February 7, 1991, engaged in conduct reflecting adversely on his professional qualification, in violation of s. 440.26 (6) Wis. Stats.

3. Respondent, by having been convicted of misdemeanor theft on February 13, 1991, violated a law the circumstances of which substantially relate to the practice of a private detective, in violation of s. 440.26 (6) Wis. Stats., and s. 35.01 (2) Wis. Adm. Code.

4. Respondent, by failing to appear at the hearing held in the above-captioned matter on January 31, 1992 is in default, pursuant to s. RL 2.14 Wis. Adm. Code.

ORDER

**NOW, THEREFORE, IT IS ORDERED** that the license granted to Bruce A. Henchen, on February 7, 1991, #8544, to practice as a private detective, be and hereby is, **SUSPENDED** for an indefinite period of time.

**IT IS FURTHER ORDERED** that:

1. Respondent may petition for termination of the suspension of his license at any time during the period of suspension, and such petition shall be granted upon respondent's compliance with the following requirements:

- (a) Respondent shall provide evidence satisfactory to the department that he is not impaired by reason of alcohol or other drugs, and that he has successfully completed a program comparable to the department's IPP program for the treatment of chemical dependency, conducted by a facility which meets standards equivalent to those set forth in s. RL 7.06 (1) Wis. Adm. Code, or conducted by an individual therapist who meets requirements equivalent to those set forth in s. RL 7.06 (2) Wis. Adm. Code.
- (b) Respondent shall provide evidence satisfactory to the department that, subsequent to his February 13, 1991 conviction, he has not been convicted of a crime the circumstances of which substantially relate to the practice of a private detective.
- (c) Respondent shall, after restoration of his license, comply with all conditions and limitations placed on his practice which the department deems appropriate.

2. Pursuant to s. RL 2.14 Wis. Adm. Code, the complainant's motion for default be and hereby is, **GRANTED**.

3. Pursuant to s. 440.22 Wis. Stats., the costs of this proceeding shall be assessed against respondent, and shall be payable by respondent to the Department of Regulation and Licensing.

This order is effective on the date on which it is signed by the Department of Regulation and Licensing or its designee.

OPINION

A hearing was held in the above-captioned matter on January 31, 1992. Attorney Richard Castelnuovo appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. The Respondent, Bruce A. Henchen did not appear at the hearing. Complainant moved for an order granting default pursuant to s. RL 2.14 Wis. Adm. Code.

The evidence presented at the hearing establishes that the respondent violated s. 440.26 (6) Wis. Stats., and s. 35.01 (2) Wis. Adm. Code, by failing to comply with the limitations set forth in the department's Final Decision and Order Granting Limited Private Detective License, dated February 7, 1991, and by having been convicted of a crime the circumstances of which substantially relate to the practice of a private detective.

The evidence presented at the hearing does not establish that the respondent "performed private detective services while his ability to competently perform duties was impaired by alcohol, in violation of s. RL 35.01 (1) Wis. Adm. Code", as alleged in paragraph (7)(b) of the Complaint. No evidence was presented at the hearing regarding whether the respondent "performed private detective services", at any time after the issuance of his license, or whether he performed such services while his ability to competently perform duties was "impaired by alcohol".

Having found that the respondent violated s. 440.26 (6) Wis. Stats., and s. 35.01 (2) Wis. Adm. Code, a determination must be made regarding whether discipline should be imposed, and if so, what discipline is appropriate.

The Department of Regulation and Licensing is authorized under s. 440.26 (6) Wis. Stats., to reprimand the holder of a license or to revoke, suspend or limit the license of any person who has been convicted of a crime, subject to ss. 111.321, 111.322 and 111.335, or has engaged in conduct reflecting adversely on his or her professional qualification, or has made a false statement in connection with any application for a license.

The purposes of discipline by occupational licensing boards are to protect the public, deter other licensees from engaging in similar misconduct, and to promote the rehabilitation of the licensee. State v. Aldrich, 71 Wis. 2d 206 (1976). Punishment of the licensee is not a proper consideration. State v. MacIntyre, 41 Wis. 2d 481 (1969).

The Administrative Law Judge recommends, after having considered the applicable provisions in Ch. 111 Wis. Stats., that the respondent's license to practice as a private detective be suspended until such time as the department receives satisfactory evidence that respondent is not impaired by reason of alcohol or other drugs, and that he has not been convicted of a crime since his conviction for theft on February 13, 1991. This measure is designed to insure protection of the public, and rehabilitation of the respondent.

In reference to rehabilitation of the respondent, it is clear from the evidence that in all likelihood the respondent would have received benefits from participation in the department's IPP program or some other comparable treatment program. The Impaired Professionals Procedure adopted by the department is set forth in Ch. RL 7, Wis. Adm. Code. Section RL 7.01 (2) Wis. Adm. Code reads, in part, as follows:

The intent of the department in adopting rules in this chapter is to protect the public from licensees who are impaired by reason of their abuse of alcohol or other drugs. This goal will be advanced by providing an option to the formal disciplinary process for qualified licensees committed to their own recovery. This procedure is intended to apply when allegations are made that a licensee has practiced a profession while impaired by alcohol or other drugs or when a licensee contacts the department and requests to participate in the procedure.

The department's initial decision to require Henchen to participate in the IPP program was based upon information contained in his application for licensure (Exhibit #3). Henchen indicated in his application that he was intoxicated at the time of the incidents which resulted in his conviction; that from November 20, 1990 to December 15, 1990, he participated in an inpatient alcohol treatment program at Lutheran Hospital, La Crosse, Wisconsin; that he was a recovering alcoholic, and that he was receiving outpatient counseling at the Douglas Clinic, Viroqua, Wisconsin. (Ex. #3).

Additional evidence of Henchen's need for treatment for alcohol abuse is found in the Judgment of Conviction, dated February 15, 1991. One of the conditions of probation contained in the Judgment of Conviction is that respondent "continue in any alcohol and related-area counseling, or participate in marital counseling", as appropriate, and "submit to periodic, unannounced urine testing" (Ex. #3).

Although the evidence does not establish that Henchen practiced in the past while impaired, the only viable measure available to the department to insure that he does not do so in the future is to suspend or revoke his license. Revocation of Henchen's license is not recommended because, aside from the fact that he failed to seek treatment and failed to file the required reports, there is no evidence in the record which would indicate that he is not otherwise competent to practice as a private detective. Henchen's conviction in February, 1991 does not provide additional cause for concern in light of the fact that at the time of initial application the department considered all of the circumstances of the crimes for which he was convicted.

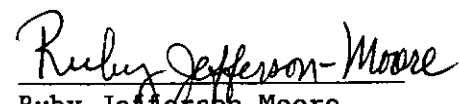
In my opinion, permitting respondent to continue to practice under a limited license is not a viable option. The department's initial decision to grant a limited license provided Henchen with an opportunity to practice as a private detective, as well as an opportunity to participate in the department's IPP program. Henchen elected not to participate in the IPP program. There is no evidence in the record indicating why Henchen elected not to participate in the IPP program, or whether he obtained treatment for his dependency by participating in some other comparable treatment program.

In reference to Henchen's conviction for misdemeanor theft, it is clear that practice as a private detective would provide him with ample opportunity to engage in repetitive criminal behavior, including but not limited to, the opportunity to misappropriate client funds. Although the surety bond required of private detectives provides some measure of protection to the public, additional measures must be put in place in order to insure that the public is protected. Until such time as the department receives evidence that the respondent has been rehabilitated and is not likely to engage in repetitive criminal behavior, the respondent should not be permitted to practice.

Based upon the evidence presented and the discussions herein, the Administrative Law Judge recommends that the Department of Regulation and Licensing adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin this 6th day of March, 1992.

Respectfully submitted,

  
Ruby Jefferson-Moore  
Administrative Law Judge



## 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 March 24, 1992.

STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

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IN THE MATTER OF DISCIPLINARY :  
PROCEEDINGS AGAINST :  
 : AFFIDAVIT OF COSTS  
 : LS9201151RAL  
BRUCE A. HENCHEN, :  
RESPONDENT. :

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STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF DANE )

Ruby Jefferson-Moore, being first duly sworn on oath deposes and states:

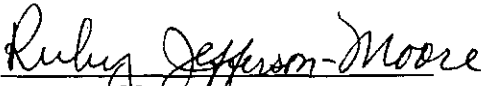
1. That affiant is an attorney licensed to practice law in the State of Wisconsin, and employed by the Wisconsin Department of Regulation and Licensing, Office of Board Legal Services to provide legal services.
2. That in the course of her employment, she was appointed administrative law judge in the above-captioned matter. That to the best of affiant's knowledge and belief the costs for services provided by affiant are as follows:

<u>DATE</u>	<u>ACTIVITY</u>	<u>TIME</u>
1/30/92	Review of file	30 min.
1/31/92	Conducted hearing	1 hr.
2/14/92	Review of record	1 hr.
2/17/92	Draft of proposed decision	3 hrs.
2/18/92	Revisions/proposed decision	30 min.
2/24/92	Revisions/proposed decision	30 min.
3/3/92	Revisions/proposed decision	1 hr.
3/6/92	Proof/revisions/proposed decision	30 min.


Total costs for Administrative Law Judge: \$205.36.

3. That upon information and belief the costs for court reporting services provided by Magne-Script are as follows: \$99.50

Total costs for Office of Board Legal Services: \$304.86.

  
\_\_\_\_\_  
Ruby Jefferson-Moore

Sworn to and subscribed to before me  
this 15th day of June, 1992.

  
\_\_\_\_\_  
Notary Public  
My Commission: is permanent

STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

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IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	AFFIDAVIT OF COSTS
	:	91 RAL 043
BRUCE A. HENCHEN,	:	
RESPONDENT.	:	

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STATE OF WISCONSIN )  
                          ) ss.  
COUNTY OF DANE     )

Michael J. Berndt, 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 supervises the Division of Enforcement legal staff; 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>
9/25/91	Review of file	30 mins.
1/13/92	Draft complaint and notice of hearing	1 hr. 30 mins.
1/14/92	Review legal documents/telephone call	45 mins.
1/21/92	Conversation with department staff	15 mins.
1/29/92	Trial preparation	1 hr.
1/31/92	Prepare for and appear at hearing	45 mins.
TOTAL HOURS		<u>4 hours 45 mins.</u>

Total attorney expense for  
4 hours hours and 45 minutes at \$30.00 per hour  
(based upon average salary and benefits  
for Division of Enforcement attorneys) equals:                     \$ 142.50

**INVESTIGATOR EXPENSE**

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
9/4/91	Review file	1 hr.
9/4/91	Discuss with staff	1 hr.
9/5/91	Submit for Attorney review	15 mins.
TOTAL HOURS		<u>2 hours 15 mins.</u>

Total investigator expense for  
2 hours and 15 minutes at \$18.00 per hour  
(based upon average salary and benefits  
for Division of Enforcement investigators) equals: \$ 40.50

**TOTAL ASSESSABLE COSTS \$ 183.00**

  
Michael J. Berndt, Attorney Supervisor

Subscribed and sworn to before me this 18th day of September, 1992.



Notary Public  
My Commission is permanent.

mjb  
WPPMJB-281