

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscqa>.
- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DRL website: An individual who believes that information on the website is inaccurate may contact the webmaster at web@drl.state.wi.gov

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST:

DAVID K. MAYER,

FINAL DECISION AND ORDER

RESPONDENT

LS0105311RSG

PARTIES

The parties in this matter under Wis. Stat. § 227.44 and Wis. Admin. Code § RL 2.037, and for purposes of review under Wis. Stat. § 227.53 are:

Complainant:

Division of Enforcement

Department of Regulation and Licensing

1400 East Washington Ave.

Madison, WI 53708-8935

Respondent:

David K. Mayer

P.O. Box 431

Plymouth, WI 53073

Disciplinary Authority:

Department of Regulation and Licensing

1400 East Washington Ave.

Madison, WI 53703

SUMMARY

This is a disciplinary action against David Mayer, who was alleged to have made a false statement in his application for a permit, to have violated local ordinances, and to have worked as a private security person without a permit. The second allegation is dismissed because the ordinance violations are found not to be substantially related to the profession, but the first and third violations were proven. The imposition of costs would impose a punitive hardship on Mr. Mayer, and costs are not ordered.

STATUTES AND RULES INVOLVED

440.26 Private detectives, investigators and security personnel; licenses and permits.

(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:

...

2. Act as a private detective, investigator, special investigator, or private security person.

...

(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. Been convicted of a misdemeanor or found to have violated any state or local law that is punishable by a forfeiture, subject to ss. 111.321, 111.322 and 111.335.

...

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

3. Made a false statement in connection with any application for a license or permit under this section.

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

...

RL 35.01 Unprofessional conduct.

The department may deny an application for renewal, 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:

...

(2) Violating, or aiding or abetting the violation of, any law the circumstances of which substantially relate to the practice of a private detective or private security person. A credential holder who has been convicted of a felony, misdemeanor or ordinance violation, as defined in Wis. Stat. § 440.26 (4m) shall send to the department within 48 hours after the judgment of conviction or the judgment finding that the person committed the violation, a copy of the complaint or other information which describes the nature of the crime or conviction and the judgment of conviction in order that the department may determine whether disciplinary action must or should be taken against credential holder.

...

(17) Providing false information in the application for a credential.

...

(19) Practicing without a current credential.

PROCEDURAL HISTORY

A. This case was initiated by the filing of a complaint (DOE case # 00 RSG 058) with the department on May 31, 2001. A Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and sent by certified mail on May 31, 2001 to the respondent, David K. Mayer. A disciplinary proceeding (hearing) was scheduled for June 27, 2001.

B. Mr. Mayer filed an answer on June 15, 2001.

C. A prehearing conference was held on June 22, 2001, at which time the hearing was rescheduled to July 27, 2001.

D. All time limits and notice and service requirements having been met, the disciplinary proceeding was held as scheduled on July 27, 2001. Mr. Mayer appeared by telephone and was not represented by an attorney. Attorney Steven Gloe of the Department's Division of Enforcement represented the Department of Regulation and Licensing. The hearing was recorded; no transcript was prepared. The testimony and exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

FINDINGS OF FACT

1. On February 27, 2001, the respondent, David K. Mayer, was issued a permit to act as a private security person, number 108-16972.

2. Mr. Mayer originally applied for a Conditional Private Security Permit on August 24, 2000.

3. Mr. Mayer answered "no" to the application question which states "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?"

4. On or about June 7, 2000, a misdemeanor charge of Disorderly Conduct was filed against Mr. Mayer in the Circuit Court for Sheboygan County, Wisconsin. The charge was dismissed by the court on September 26, 2000, but as of the date of his application, August 24, 2000, it was pending.

5. The following citations were issued to Mr. Mayer for violations of ordinances of the Village of Cascade in Sheboygan County, Wisconsin.

- March 2, 1997 - leaving garbage at his curbside for weeks without separating garbage from recyclables
- March 2, 1997 - Public Nuisances Health - allowing dog feces to accumulate on public right of way in front of his residence
- April 30, 1997 - Public Health Nuisance - allowing dog feces to accumulate on public right of way in front of his residence
- July 18, 2000 - Public Nuisance - Health - allowing dog feces to accumulate in and around his yard.

6. Mr. Mayer worked as a security person for National Liberty Security for approximately three years before receiving his Private Security Person permit.

ANALYSIS

This disciplinary proceeding is conducted under the authority of Wis. Stat. ch. 227 and Wis. Admin. Code ch. RL 2. The Division of Enforcement in the Department of Regulation and Licensing filed a complaint with the Department alleging that the respondent, David K. Mayer, violated rules regulating employment as a private security person, specifically that he made a false statement in his application for a permit, violated local ordinances, and worked as a private security person without a permit. The burden of proof is on the division of Enforcement to prove the allegations of the complaint by a preponderance of the evidence. Wis. Stat. § 440.20(3); 75 Atty. Gen. 76; Gandhi v. Medical Examining Board, 168 Wis.2d 299, standard, but the other two allegations were proven.

The Statement Regarding Pending Charges

Mr. Mayer does not dispute the fact that a misdemeanor charge of Disorderly Conduct was filed against him in June of 2000. Nor does he dispute the fact that it was pending against him in August of 2000 when he filed his application and answered "no" to the question of whether any criminal charges were pending. His defense is that he knew it was going to be dismissed, so he didn't have to report it. That explanation is not sufficient. The question on the application was simple and straightforward. The correct answer was also simple and straightforward. Mr. Mayer did not give the correct, and truthful, answer. The evidence shows that Mr. Mayer made a false statement in connection with his application for a permit. This was a violation of Wis. Admin. Code § RL 35.01 (17) as well as Wis. Stat. § 440.26 (6) (a) 3.

The Ordinance Violations

Citations were issued against Mr. Mayer in 1997 and 2000 for violations of village ordinances. Under Wis. Stat. § 440.26 (6) (a) 1. and Wis. Admin. Code § RL 35.01 (2), an ordinance violation may be a basis for a finding of unprofessional conduct. However, such a finding is subject to the "substantial relationship" test of the Fair Employment Act (Wis. Stat. §§ 111.311 through 111.395), and although the Division of Enforcement was justified in bringing this matter to a hearing, the ordinance violations in question do not satisfy the relevant legal test in that they are not substantially related to employment as a Private Security Person.

The Village of Cascade in Sheboygan County, Wisconsin issued citations to Mr. Mayer for violations of its ordinances as follow:

- March 2, 1997 - leaving garbage at the curbside for weeks without separating garbage from recyclables,
- March 2, 1997 - Public Nuisances Health - allowing dog feces to accumulate on the public right of way in front of his residence,
- April 30, 1997 - Public Health Nuisance - allowing dog feces to accumulate on the public right of way in front of his residence, and
- July 18, 2000 - Public Health Nuisance - allowing dog feces to accumulate in and around his yard.

Wis Stat. § 440.26 (6) (a), the disciplinary statute for private security persons, states,

"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. Been convicted of a misdemeanor or found to have violated any state or local law that is punishable by a forfeiture, subject to ss. 111.321, 111.322 and 111.335."

The ordinance violations in question are local laws punishable by forfeitures. (The record is unclear as to whether Mr. Mayer was actually convicted of the ordinance violations, resulting in the payment of forfeitures. Given the disposition here, the answer to that question is immaterial.)

Wis. Stat. § 111.321 generally prohibits employment discrimination (defined in Wis. Stat. § 111.322 to include actions against a credential issued to an individual) on the basis of conviction record. This law would prevent the enforcement of Wis. Stat. § 440.26 (6) (a) were it not for the exception in Wis. Stat. § 111.335 (1) (c), which says:

Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ or license, or to suspend from employment or licensing, any individual who: 1. has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the particular job or licensed activity

The burden of proof is on the Department to show that a substantial relationship exists. The record does not establish that such a relationship exists here between mismanaging one's garbage and pets and Mr. Mayer's employment as a private security person. The second count of the complaint is dismissed.

Working without a Permit

The Division of Enforcement presented the only evidence on the issue of Mr. Mayer's employment as a security person prior to receiving a permit, which was that he worked as a security person for National Liberty Security for approximately three years before receiving his permit. Mr. Mayer did complain that he lost his job when the department made this known to his employer, which only confirms the essential facts. Working as a security person without a permit is a violation of Wis. Admin. Code § RL 35 (19) and Wis. Stat. §§ 440.26 (6) (a) 4. and 440.26 (1) (a) 2.

Discipline.

It was established that Mr. Mayer violated rules and statutes regulating employment as a private security person. Such violations constitute unprofessional conduct under Wis. Stat. § 440.26 (6), and discipline may be imposed.

The purposes of professional discipline have been set forth by the Wisconsin Supreme Court in various cases involving attorneys, such as State v. Kelly, 39 Wis.2d 171, 158 N.W.2d 554 (1968), State v. MacIntyre, 41 Wis.2d 481, 164 n.w.2d 235 (1969), State v. Cory, 51 Wis.2d 124, 186 N.W.2d 325 (1970), and State v. Aldrich, 71 Wis.2d 206, 237 N.W.2d 689 (1976). Those purposes are: (1) to rehabilitate the offender; (2) to protect the public, by assuring the moral fitness and professional competency of those privileged to hold licenses; and, (3) to deter others in the profession from similar unprofessional conduct. Punishment is not a proper purpose of professional discipline. That framework has been adopted by regulatory agencies, including the Department of Regulation and Licensing, for disciplinary proceedings for other professions.

The primary goal of discipline is the protection of the public and the profession from this practitioner. Mr. Mayer's offenses have ended up hurting only himself, through the delay in processing his application and the termination of his employment. The primary lesson for Mr. Mayer to learn is the importance of following the profession's rules and the need for strict honesty in any dealings with the department. For this purpose, a finding of unprofessional conduct should be sufficient, coming on top of his loss of employment.

The attorney for the Division of Enforcement, Mr. Gloe, recommended that a condition be placed on Mr. Mayer's permit requiring any employer to submit quarterly reports to the department. This recommendation is not followed, for two reasons. The first is that this department has no direct jurisdiction over Mr. Mayer's employer-- whoever that may turn out to be--as a result of this disciplinary proceeding. The second is that Mr. Mayer's offenses here do not relate to his performance on the job, for which such reporting would be most appropriate. It should be sufficient to impose on Mr. Mayer a condition that he notify the department in writing within 5 days of obtaining, terminating, or changing employment.

Costs.

The assessment of costs against a disciplined professional is authorized by Wis. Stat. § 440.22(2) and Wis. Admin. Code § RL 2.18, Wis. Admin. Code, but neither the statute nor the rule clearly indicates the circumstances in which costs are to be imposed. The department has the discretion to impose all, some, or none of the costs of the proceeding. Mr. Gloe stated that the investigation and prosecution of this matter has required

substantial time and resources, resulting in costs by the Division of Enforcement of over \$1,500. However, there is information in the record that establishes that Mr. Mayer has very limited financial resources. No costs are imposed.

CONCLUSIONS OF LAW

I. The Department of Regulation and Licensing has personal jurisdiction over the respondent, David K. Mayer, based on his holding a credential issued by the department, and based on notice under Wis. Stat. § 801.04 (2).

II. The Department is the legal authority responsible for issuing and controlling credentials for Private Security Person, under subchapter II of chapter 440 of the Wisconsin Statutes, and it has jurisdiction over the subject-matter of a complaint alleging unprofessional conduct, under Wis. Stat. §§ 15.08(5)(c) and 440.26 (6) and Wis. Admin. Code ch. RL 35.

III. The violations in Findings of Fact 4 and 6 above constitute unprofessional conduct and discipline is appropriate, under Wis. Stat. § 440.26 (6).

ORDER

THEREFORE, IT IS ORDERED that David K. Mayer's permit shall be limited as follows: Mr. Mayer is required to notify the department in writing within five (5) days of obtaining, terminating, or changing employment as a private security person. Failure to do so shall be considered a violation of an order issued under Wis. Stat. § 440.26 (6) (a), and shall subject Mr. Mayer to further disciplinary proceedings. This limitation shall remain in effect until January 1, 2003.

IT IS FURTHER ORDERED that Count II (paragraph 12) of the Complaint is hereby dismissed.

EXPLANATION OF VARIANCE.

This final decision adopts the essential findings, conclusions and analysis proposed by the Administrative Law Judge, but varies the discipline proposed. In the final decision the term "private security person" is substituted for "private security guard," consistent with the terminology in Wis. Stat. § 440.26 and documents issued by the Department of Regulation and Licensing. On the basis of the facts and circumstances of this case, the issuance of the findings and conclusions of law and the limitation order are sufficient to protect public health, safety and welfare and fulfill the other purposes of discipline as described in the Analysis, above, as well as to avoid unnecessary punishment of the respondent.

Dated and signed: October 2, 2001

Oscar Herrera

Secretary

Wisconsin Department of Regulation and Licensing