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STATE OF WISCONSIN
BEFORE THE SOCIAL WORKER SECTION
EXAMINING BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY
THERAPISTS AND PROFESSIONAL COUNSELORS

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

KATHLEEN M. MARTINSON,
C.A.P.S.W.,
RESPONDENT

FINAL DECISION CLARIFIED
FOLLOWING REMAND
LS9901081SOC

PARTIES

The parties in this matter under § 227.44, Stats., and for purposes of review under § 227.53, Stats., are:

Kathleen M. Martinson, C.A.P.S.W.
1460 West Main Street
Sun Prairie, WI 53590

Social Worker Section
Examining Board of Social Workers, Marriage
and Family Therapists and Professional Counselors
P.O. Box 8935
Madison, WI 53708-8935

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

This matter was commenced by the filing of a Notice of Hearing on January 18, 1999. A hearing was held in the above-captioned matter on April 13-15, 1999. Atty. John R. Zwiag appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. The respondent, Kathleen M. Martinson, appeared in person and by her attorney, Bruce F. Ehlke, Shneidman Myers Dowling Blumenfield. Closing arguments were filed by August 26, 1999.

The Administrative Law Judge filed a Proposed Decision on May 3, 2000. The Social Worker Section adopted the ALJ's Proposed Decision as its Final Decision on June 15, 2000. The respondent appealed the matter to Circuit Court and on April 2, 2001, the matter was remanded to the Social Worker Section with two orders:

- 1. ... that said Examining Board explain to the Circuit Court whether its Final Decision and Order, in its Case No. LS9901081SOC, is based on a conclusion that Kathleen M. Martinson was guilty of having violated Sec. 457.26 (2) (f) or Sec. 457.26 (2) (g), Wis. Stat., or a conclusion that she was guilty of having violated both of said paragraphs, and that the Examining Board state the factual basis for its conclusion that she violated said paragraph or**

the respective factual bases for its conclusion that she violated both of said paragraphs;

2. ... that the aforesaid Examining Board explain why it adopted as its own the Proposed Decision issued by the Administrative Law Judge on May 3, 2000, that the full cost of the proceeding be assessed against Martinson, given that she successfully had defended herself against three of the four charges against her that had been alleged in the Complaint that had been filed by the Department of Regulation and Licensing ...

This Final Decision Clarified Following Remand specifically addresses explains those two issues; additions to the previous Final Decision appear in bold typeface.

FINDINGS OF FACT

1. Kathleen M. Martinson, date of birth, May 6, 1958, is certified by the Social Worker Section of the Wisconsin Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors as an advanced practice social worker in the state of Wisconsin, pursuant to certificate number 179, which was first granted October 14, 1993.

2. Respondent's last address reported to the Department of Regulation and Licensing is 1460 West Main Street, Sun Prairie, WI 53590.

3. Ms. Martinson began employment as a social worker with the Dane County Department of Human Services ("DHS") in August 1986. She worked with juveniles throughout her employment at that agency, including the time period between July 1, 1994 and August 31, 1994.

4. Beginning on April 25, 1994, Ms. Martinson was employed in the Family Based Services Unit within the Children, Youth and Families Division of the DHS.

5. On July 5, 1994, CP, a juvenile male from Chicago, Illinois, who was then 15 years of age, was taken into custody in Dane County, Wisconsin. On July 6, 1994, the Dane County District Attorney's Office filed a delinquency petition with the court charging CP with possession of cocaine with intent to deliver and with obstructing an officer. At that time, CP was placed in secure custody in the Dane County Juvenile Detention Center.

6. On July 13, 1994, Ms. Martinson was assigned the delinquency intake case involving CP. CP's family and network support lived in Chicago.

7. On July 15, 1994, CP appeared before the court and entered a plea of denial of the charges contained in the delinquency petition. Ms. Martinson was present at the plea hearing but she did not speak with CP. A custody hearing was set for July 19, 1994.

8. On July 18, 1994, Ms. Martinson called the Chicago Central Index and was given Kevin Shirley's name as probation officer in Chicago. [The Chicago Central Index provides a list of individuals who have been assigned a caseworker in Cook County.] Thereafter, she telephoned Mr. Shirley regarding CP. During the telephone contact, Mr. Shirley told Ms. Martinson that CP was under supervision in Illinois for possession of a controlled substance and that there was an active juvenile warrant outstanding for CP because of his failure to appear at a hearing there.

9. On July 18, 1994, CP appeared before the court for a custody review hearing. Ms. Martinson was present at the hearing. Before the start of the hearing, Ms. Martinson asked CP if he had a caseworker in Illinois and if he had been in trouble in Illinois. CP answered "no" to both questions.

10. During CP's custody review hearing on July 18, 1994, Ms. Martinson obtained a telephone number where CP's mother could be reached. She noted the telephone number in her case file on or about July 18, 1994.

11. Ms. Martinson's supervisor was on vacation from July 29 through August 15, 1994. During that time, a supervisor from another unit was assigned to supervise Ms. Martinson.

12. At no time prior to August 29, 1994, did Ms. Martinson notify any supervisor or manager that she was unable to provide necessary services for the CP case.

13. On August 1, 1994, an appearance for a jury draw was scheduled in CP's proceeding. Ms. Martinson was not required to be present for that appearance and did not attend.

14. When CP appeared at the August 1, 1994, court proceeding, he withdrew his plea of denial and entered a plea of no contest to one count of possession of cocaine with intent to deliver. Based on that plea, the trial court made an adjudication of delinquency at that time. CP waived the requirement under s. 48.30 (6), Stats., (1994) that a dispositional hearing be held no more than 10 days following the entry of his plea. The dispositional hearing was set for August 12, 1994. Because of scheduling conflicts, the dispositional hearing was rescheduled for August 11, 1994.

15. During the August 1, 1994, court proceeding involving CP, the court ordered Ms. Martinson to make an immediate referral to the DHS Substitute Care Unit and for the Unit to make an immediate referral for CP to both group homes and residential treatment facilities. A copy of the court order was faxed to Ms. Martinson and the DHS Substitute Care Unit that afternoon. Ms. Martinson received the fax the morning of August 2, 1994.

16. On Saturday and Sunday, August 6 and 7, 1994, Ms. Martinson worked at her office on matters relating to CP's proceeding, including the referral to the DHS Substitute Care Unit. She filled out a referral for substitute care form and drafted a memo addressed to Izzy Popic. She attached a copy of the family data sheet, the court order, the delinquency petition and the substitute care referral form to the memo. Then, she hand-delivered the documents to Ms. Popic's office and placed them on Ms. Popic's chair. In her memo to Ms. Popic, Ms. Martinson apologized for the fact that the report was "lacking in information"; stated that she did not have a telephone number for CP's mother and that the Cook County case worker was unwilling to release information without a release. Ms. Martinson also worked on the dispositional court report required under s. 48.33 (1), Stats., (1994). Although she completed the report on August 6 or August 7, it was dated August 10, 1994 because it was reprinted on that date.

17. On August 10, 1994, without ever having interviewed CP or any member of his family, Ms. Martinson filed the dispositional court report with the court in the CP matter. In the report, Ms. Martinson:

a) Made the dispositional recommendation that the custody of CP be transferred to the Division of Corrections for the purpose of placement at the Ethan Allen School for Boys at Wales, Wisconsin or at the Lincoln Hills School in Irma, Wisconsin, both of which are secured correctional facilities.

b) Included a social history, without indicating the source of the information and without noting that she had not interviewed CP or any member of his family.

c) Stated: "Substitute Care referrals have been sent to various group homes and institutions; however no information has been received back at this time regarding placement possibilities." Ms. Martinson did not indicate in the report that those referrals were made the previous day.

18. The statutes, s. 48.33 (3) (a), Stats., (1994) required that a dispositional report recommending transfer of custody to the DHS for placement in a secure correctional facility include: "a description of any less restrictive alternatives that are available and that have been considered, and why they have been determined to be inappropriate". The dispositional report filed by Ms. Martinson did not contain the required information.

19. The dispositional hearing was scheduled for August 11, 1994. CP's attorney did not appear at the hearing. CP waived the 10-day requirement for the dispositional hearing. The judge found good cause to continue the dispositional hearing until August 19, 1994.

20. The dispositional hearing was held on August 19, 1994. During the hearing, CP's attorney complained to the judge that the dispositional court report filed by Ms. Martinson with the court on August 10, 1994, was misleading and also that it was inadequate in that it did not describe less restrictive alternatives available and why they were inappropriate.

21. During the August 19, 1994 dispositional hearing, the judge inquired as to the information that Ms. Martinson had gathered regarding CP. Ms. Martinson informed the judge that her prior contact with CP was "next to none"; that she had been unsuccessful in reaching CP's parents and that she had an extremely hard time getting information from Cook County.

22. During the August 19, 1994 dispositional hearing, the judge determined that Ms. Martinson had not really had contact with CP and had not interviewed CP's parents. The judge instructed Ms. Martinson to interview CP and his family. The judge said that the record showed that the assigned social worker had not really had contact with CP and to enter a disposition under those circumstances would probably be reversible error. The judge further stated that the court lacked an adequate record to go forward with the disposition and that she had no choice but to set the matter over for hearing on August 29, 1994. The judge ordered the DHS to make an immediate referral to the Sprite and Apogee programs.

23. On August 23, 1994, CP's attorney filed a motion to dismiss the delinquency petition contending that the State had not shown good cause for a continuance of the dispositional hearing beyond the August 19, 1994 date to which CP had agreed.

24. On August 24 or August 25, 1994, Ms. Martinson visited CP at the detention center and conducted an interview of him that lasted for about an hour and a half.

25. On August 29, 1994, Ms. Martinson interviewed CP's mother by telephone.

26. On August 29, 1994, the judge heard the motion to dismiss filed by CP's attorney. Ms. Martinson testified regarding her preparation of the case between July 13, 1994 and August 19, 1994.

27. During the motion hearing on August 29, 1994, the judge concluded that she could not find that Ms. Martinson had acted in good faith in not interviewing the child or his family before August 19. The judge also concluded that the information obtained from Cook County that was included in the jurisdictional court report was not current, and that, although Ms. Martinson had attempted to obtain information about the child through Cook County, she could not find that her actions were sufficient. The judge recognized that the caseloads of social workers sometimes make it impossible for them to do all that is required. Describing Ms. Martinson as "dilatory", the judge said she probably took prompt action since August 19 to remedy the situation but the question was what had happened before that date. Although Ms. Martinson was not neglecting her job duties overall, she had not done what was required in this case, and for that reason the judge concluded she had no option but to dismiss the case against CP.

28. At the conclusion of the hearing on August 29, 1994, the Court granted CP's motion to dismiss and ordered that all charges against CP be dismissed with prejudice; that CP be held in secure custody for 48 hours under s. 48.208 (2); that if an active warrant was received from Cook County, the court would act on it and that if a warrant was not received by 4:30 p.m., on August 31, 1994, CP would be released from custody.

CONCLUSIONS OF LAW

1. The Social Worker Section of the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors has jurisdiction in this matter pursuant to

s. 457.26 (2), Stats., and s. SFC 20.02, Wis. Adm. Code.

2. Ms. Martinson's conduct, in failing to interview CP prior to filing the dispositional report with the court on August 10, 1994 and prior to appearing at the dispositional hearings scheduled for August 11, 1994 and August 19, 1994, as described in Findings of Fact 7, 9, 17, 22 and 24 herein, constitutes a violation of **s. SFC 20.02 (22), Code, and hence a violation of both** s. 457.26 (2) (f) and (g), Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED that the respondent, Kathleen Martinson, be, and hereby is, reprimanded.

IT IS FURTHER ORDERED that pursuant to s. 440.22, Stats., the cost of this proceeding be assessed against respondent.

This order is effective on the date on which it is signed by a designee of the Social Worker Section of the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors.

OPINION

The Division of Enforcement alleges in its Complaint that Ms. Martinson's conduct, as described therein, constitutes a violation of s. 457.26 (2) (f) and (g), Stats., and s. SFC 20.02 (22), Code.

The evidence presented in this case establishes that Ms. Martinson violated laws governing the practice of advanced practice social work.

I. Applicable Laws

457.26 Disciplinary proceedings and actions. (2) Subject to the rules promulgated under s. 440.03 (1), the appropriate section of the examining board may reprimand a certificate holder or deny, limit, suspend or revoke a certificate under this chapter if it finds that the applicant or certificate holder has done any of the following:

...

(f) Engaged in unprofessional or unethical conduct in violation of the code

of ethics established in the rules promulgated under s. 457.03 (2).

(g) Performed social work services in violation of the rules promulgated under

s. 457.03 (2) or otherwise engaged in conduct while practicing social work,

marriage and family therapy or professional counseling which evidences a lack

of knowledge or ability to apply professional principles or skills.

SFC 20.01 Definition. "Gross negligence" in the practice of social work, or marriage and family therapy, or professional counseling means the performance of professional services that does not comply with an accepted standard of practice that has a significant relationship to the protection of the health, safety or welfare of a patient, client, or the public, and that is performed in a manner indicating that the person performing the services

knew or should have known, but acted with indifference to or disregard of, the accepted standard of practice.

SFC 20.02 Unprofessional conduct. Unprofessional conduct related to the practice under the credential issued under ch. 457, Stats., includes, but is not limited to, engaging in, attempting to engage in, or aiding or abetting the following conduct:

...

(22) Gross negligence in practice in a single instance, or negligence in practice
in more than one instance.

...

48.33 (3) (1994) Correctional Placement Reports. A report recommending transfer of the child's custody to the department for placement in a secured correctional facility shall be in writing and, in addition to the information specified under sub. (1) (a) to (d), shall include all of the following:

(a) A description of any less restrictive alternatives that are available and that have been considered, and why they have been determined to be inappropriate.

...

II. Background

(A) Kathleen Martinson

Ms. Martinson is certified in Wisconsin as an advanced practice social worker. She was granted a certification on October 14, 1993. She received a Bachelor of Science degree from the University of Wisconsin, Stevens Point, with emphasis in psychology, sociology and public administration in 1982. She received a Master's degree in Social Work from the University of Wisconsin, Madison, in 1992.

Ms. Martinson is currently employed as an ongoing social worker with the Dane County Department of Human Services in its Sun Prairie office. She began employment as a social worker with the Department in August 1986. She worked with juveniles throughout her employment at that agency, which included the time period relevant to the Complaint filed in this matter. Beginning April 25, 1994, Ms. Martinson was employed in the Family Based Services Unit within the Children, Youth and Families Division of the Department.

(B) Client CP

On July 5, 1994, CP, a juvenile male from Chicago, Illinois, who was then 15 years of age, was taken into custody in Dane County, Wisconsin. On July 6, 1994, the Dane County District Attorney's Office filed a delinquency petition with the Court charging CP with possession of cocaine with intent to deliver and with resisting or obstructing an officer. At that time, CP was placed in secure custody in the Dane County Juvenile Detention Center, where he remained until August 29, or August 31, 1994. While in detention, CP's behavior was good. Prior to being taken into custody in Dane County, CP lived with his mother in Chicago. *Ex. 5, p. 5; 7, p. 2.*

(C) Expert Witnesses

(1) C.W. King

Mr. King testified at the request of the Division of Enforcement. He has been the Director of the Department of Human Services in Chippewa County since 1995. He started as a Social Worker in the Social Services Department in the fall of 1972. He became the Director of the Community Programs Department in December of 1975 and was employed in that position until 1995 when he became the Director of the Human Services Department. [The Human Services Department was created in 1995 when the Social Services Department and the Community Programs Department merged.] As Director of the Human Services Department, Mr. King plans, directs and implements programs for the department which provide services relating to mental health, the developmentally and physically disabled; AODA; child and adult protection; transportation, long-and short-term support services; foster care, juvenile court and restitution and public welfare programs for clients eligible for economic assistance, medical assistance, housing, general relief and fuel assistance. *Tr., Day 2, p. 101-102; Ex. 23.*

(2) Margaret McCarthy

Ms. McCarthy testified at the request of Ms. Martinson. She was employed as a Social Worker, then Administrator, for the Milwaukee County Department of Human Services between 1971 and January 5, 1998. Between 1991 and 1993, Ms. McCarthy was one of three Section Managers of the Child Welfare Bureau. Her duties included, but were not limited to, supervising and directing 6 supervisors responsible for 54 staff providing child protection and child welfare intake services and directing casework/case management services to court

ordered and voluntary client families in their home. Between January 1996 and January 1998, Ms. McCarthy was the Section Manager of Juvenile Court Services. Her duties included, but were not limited to, having administrative responsibility for 5 units of post dispositional staff at the Children's Court Center; providing support and leadership to 5 supervisors responsible for 62 staff providing services to the Juvenile Court staff, and consulting with staff and supervisors on problem cases. In January 1998, Ms. McCarthy retired from her position with Milwaukee County and went to work for New Ventures, which is a limited liability corporation under contract with the Bureau of Milwaukee Child Welfare to provide services under the child welfare program. She was employed at New Ventures for six months, then resigned in order to take independent contract work on a national level. *Tr.*, p. 201-206; *Ex. #25*.

III. Evidence Presented

(A) Summary of Events

The following is a summary of the significant events that occurred relating to the delinquency proceeding involving CP:

I. July 1994

July 5, 1994 CP, a juvenile male from Chicago was taken into custody in Dane County.

Tr., Day 1, p. 107; *Ex.12*, p. 32, #3.

July 6, 1994 The Dane County District Attorney's Office filed a delinquency petition with the Court charging CP with possession of cocaine with intent to deliver and obstructing an officer. Following a custody hearing, CP was placed in secure custody in the Dane County Juvenile Detention Center. *Complaint*, par. 5; *Answer*, par. 2; *Tr.*, Day 1, p. 106; *Ex. 7*, p. 1; *Ex. 12*, par. 4 and 5.

July 13, 1994 [Wednesday]: Ms. Martinson was assigned the delinquency intake case involving CP. CP's family and network support live in Chicago. *Complaint*, par. 6, *Answer* par. 3; *Ex. 2*.

July 15, 1994 [Friday]: 1:30 p.m. - 1:45 p.m. - CP appeared in court for a jurisdictional (plea) hearing. His attorney entered a plea of denial on his behalf. A custody hearing was set for July 18, 1994 at 1:30 p.m. Ms. Martinson was also present in Court. She testified, at the hearing held in this matter, that she did not remember speaking with CP at the jurisdictional hearing and that there is no entry in her case note log indicating that she spoke with him that day. *Complaint* par. 6; *Answer*, par. 3; *Tr.*, Day 1, p. 17-20; *Ex. 3*, p. 35 [and reverse side].

July 18, 1994 [Monday]

10:50 a.m. - Ms. Martinson called the chief parole officer in Chicago to obtain information regarding CP. The telephone line was busy. She made multiple attempts and tried at least 3 different telephone numbers. *Ex. 3*, p. 37.

12:50 - 12:55 p.m. - Ms. Martinson called the Chicago Central Index and was given Kevin Shirley's name as CP's worker in Chicago. She spoke with Mr. Shirley briefly but had to interrupt the conversation because she had to attend the court hearing set for 1:30 p.m., involving CP. During the conversation with Mr. Shirley, he advised Ms. Martinson of previous charges against CP in Chicago and that there was an active juvenile warrant for CP for failure to appear at a hearing there. He also informed her that if the court released CP from custody they would never see him again. *Complaint*, par. 8; *Answer*, par. 5; *Tr. Day 1*, p. 21-22; *Ex. 3*, p. 37 and reverse side; *Ex. 28E*, p. 12-14.

12:50 - 1:30 p.m. - At some point in time, between the time Ms. Martinson spoke with Mr. Shirley and the time she appeared at CP's custody hearing, she spoke with CP. She leaned across counsel's table and asked CP if he had a caseworker in Illinois and if he had been in trouble in Illinois. CP said no. She did not record CP's statements in her daily log. [She did inform the Court on August 29, 1994, that CP denied having a social worker in Cook County.] *Tr.*, Day 1, p. 23-23; p. 100, lines 4-10; *Ex. 3*, p. 36-38; *Ex. 28E*, p. 25, lines 1-7.

1:30 p.m. - 1:45 p.m. - Ms. Martinson appeared at the custody review hearing. Some of the information noted in her case log includes the following:

- a) The telephone number of CP's grandmother and the fact that CP's mother participated at the hearing by telephone after being reached at that number.
- b) The fact that during the hearing she reviewed her conversation with Kevin Shirley.
- c) The fact that CP's attorney requested that she obtain CP's records from Chicago. She told CP's Attorney that she would attempt to obtain CP's records.
- d) The fact that CP said he did not remember anything about supervision in Illinois.

e) CP was ordered to remain in custody.

2:30 p.m. - Ms. Martinson called Mr. Shirley again. He indicated that he wanted CP "Doc" in Wisconsin; that he had only seen "the kid" once and that he had never met with CP's mother.

Ex. 3, p. 36.

July 21, 1994 [Thursday] The Assistant District Attorney told Ms. Martinson that her office would be researching CP's status in Chicago. *Ex. 3, p. 36.*

II. August 1994

August 1, 1994 [Monday]

- A jury draw was scheduled for CP. *Answer par. 9.*

- Ms. Martinson was not required and did not appear at the proceeding. *Tr., Day 1, p. 109; Ex. 28D, p. 10.*

- CP withdrew his plea of denial and entered a plea of no contest to one count of possession of cocaine with intent to deliver. Based on CP's plea, the Court made an adjudication of delinquency at that time. *Answer, par. 9; Ex. 12, par. 7; Ex. 16.*

- At CP's proceeding on August 1, 1994, the court ordered Ms. Martinson to make an immediate referral to the DHS Substitute Care Unit and for the Unit to make an immediate referral to both group homes and residential treatment facilities, without waiting for a Community Assessment and Review Team ("CART") staffing. A copy of the order was faxed to Ms. Martinson and sent to the Substitute Care Unit that afternoon. *Answer par. 10 and 12; Ex. # 4; Ex. 28B, p. 9.*

- Based upon CP's consent, the dispositional hearing was set for August 12, 1994, one day beyond the ten-day time limit for a child in secure detention. [Because CP was in secure custody, s. 48.30 (6), Stats., (1994) required that the dispositional hearing be held within 10 days, unless the time was extended for good cause.] *Answer par. 11; Ex. 17, p. 2, end footnotes.*

August 2, 1994 [Tuesday]

- Ms. Martinson received the order for the referral to group home and residential treatment facilities that was faxed to her by the court on August 1, 1994.

- Ms. Martinson contacted the court and advised the clerk that she was scheduled to be in another hearing in another branch at the time set for CP's dispositional hearing. The court reset the dispositional hearing to August 11 and sent notice to all parties on August 9, 1994. *Tr., Day 1, p. 49-50; Ex. 12, par.13; Ex. 17, end footnotes; Ex. 28C, p. 2, line 20.*

August 6 and 7, 1994 [Saturday and Sunday]

- On Saturday and Sunday, August 6 and 7, 1994, Ms. Martinson worked at her office on matters relating to CP's proceeding, including the referral to the DHS Substitute Care Unit. She filled out a referral for substitute care form and drafted a memo addressed to Izzy Popic. She attached a copy of the family data sheet, the court order, the delinquency petition and the substitute care referral form to the memo addressed to Ms. Popic. On Sunday, August 7, 1994, Ms. Martinson delivered the documents to Ms. Popic's office and placed them on Ms. Popic's chair. In her memo to Ms. Popic, Ms. Martinson apologized for the fact that the report was "lacking in information"; stated that she did not have a telephone number for CP's mother and that the Cook County case worker was unwilling to release information without a release. *Tr., Day 1, p. 33; Ex. 5; Ex. 28D, p.10.*

- Ms. Martinson also worked on the court report required under s. 48.33, Stats (1994). Although she completed the report on August 6 or August 7, 1994, it was dated August 10, 1994 because it was reprinted on that date. *Exhibits 5; 27; 28E, p. 11-12.*

August 8, 1994 [Monday]

- Ms. Martinson was in Milwaukee part of the day working on another case. *Tr., Day 2, p. 21.*

3:55 p.m. - Ms. Martinson spoke with Mr. Shirley by telephone. He informed her that he needed a letter from her in order for him to provide CP's records to her. He indicated what information she needed to include in the letter and provided her with his fax number. *Exhibit 3, p. 39; Ex. 6; Ex. 28E, p. 29.*

August 9, 1994 [Tuesday]

- Ms. Martinson met with the Assistant District Attorney regarding CP's case.

12:17 p.m. - Ms. Martinson faxed a request to Mr. Shirley for CP's records. In the fax to Mr. Shirley, Ms. Martinson informed him of the nature of the charges filed against CP and the date of the dispositional hearing. She also requested a copy of CP's file, including all police contacts, any charges that resulted, and the current disposition of those charges as well as any social histories or evaluations that had been compiled. *Ex. 6; Ex. 28E, p. 25 and 29.*

- Ms. Popic received the Referral for Substitute Care form which Ms. Martinson placed on her chair on August 7, 1994, for processing. The referrals were then sent out to group homes and CCIs ("child care institutions") for processing. *Tr., Day 1, p. 55; Ex. 3, p. 40; Ex. 12, par. 10.*

12:59 p.m. - Ms. Martinson received a telephone call from Izzy Popic regarding the referral for substitute care. *Ex. #3, p. 43.*

August 10, 1994 [Wednesday]

9:23 a.m. - Mr. Shirley faxed a 40-page document from CP's Chicago files to Ms. Martinson. The fax did not include, pages 3, 5, 7 and 10 of the February 26, 1993 Social Investigation Report relating to CP. *Ex. 20, p. 29-35.*

10:10 a.m. - Ms. Martinson returned the call she received from Izzy Popic on August 9, 1994 relating to the substitute care referrals. She told Ms. Popic that when she received the missing pages from Mr. Shirley she would hand deliver them to her. *Tr., Day 1, p. 59-60; Ex. #3, p. 43.*

- Ms. Martinson filed the dispositional court report with the court in the CP matter. *Complaint, par. 18; Answer, par. 14; Ex. 7; 28D, 28E, p. 21, 25.*

August 11, 1994 [Thursday]

8:30 a.m. - Ms. Martinson appeared in court for CP's dispositional hearing. The court was informed that CP's attorney did not receive the notice indicating that the hearing date had been changed from August 12 to August 11. CP waived the 10-day requirement for the dispositional hearing. The judge found good cause to continue the dispositional hearing until August 19.

Tr., Day 1, p. 50; Ex. #12, par. 13-14; Ex. 28C.

9:43 a.m. - Ms. Martinson received a telephone message from CP's attorney regarding the status of the referrals to group homes and residential treatment facilities.

10:25 a.m. - Ms. Martinson returned the call that she received from CP's attorney regarding the status of the referrals to group homes and residential treatment facilities. *Tr., Day 1, p. 57.*

August 15, 1994 [Monday]

9:57 a.m. - Ms. Martinson spoke with Michael Chmielewski from Carmelite Home. [Carmelite is a residential treatment facility for adolescent boys.] Mr. Chmielewski told Ms. Martinson that he could not make a decision to accept CP due to a lack of information. He said that his inclination was not to accept CP due to the nature of the offense and attitude status. *Ex. 3, p. 44; Ex. 15.*

3:05 p.m. - Izzy Popic informed Ms. Martinson that she still needed the missing pages from the Social Investigation Report faxed by Mr. Shirley to Ms. Martinson. *Tr., Day 1, p. 59-60.*

August 16, 1994 [Tuesday]

9:15 a.m. - A call was placed to Kevin Shirley in Chicago requesting the missing pages from CP's records. *Ex. 3, p. 44.*

9:15 a.m. - A call was placed to Izzy Popic informing her that a call had been placed to Kevin Shirley regarding the missing pages from CP's records. *Ex. 3, p. 44.*

9:55 a.m. - Ms. Martinson spoke with Carolyn from Sojourn regarding the referral Sojourn received from the Substitute Care Unit in reference to CP. The focus of the discussion was that there was not enough information to screen and also that the referral to Sojourn was not appropriate. *Ex. 3, p. 45.*

August 17, 1994 [Wednesday]

- Ms. Martinson was in La Crosse, Wisconsin working on another case. *Ex. 28C, p. 3, line 16.*

August 18, 1994 [Thursday]

- Ms. Martinson was in La Crosse, Wisconsin working on another case. *Tr., Day 2, p. 31; Ex. 28C, p. 3, line 16.*

10:00 a.m. - Mary Lloyd, Ms. Martinson's supervisor, spoke on the telephone with Assistant District Attorney Barbara Franks regarding CP's case. The focus of the discussion was that CP's attorney felt that the referrals made to the Substitute Care Unit relating to CP were not made in a timely manner; that referrals were not made that should have been made, and that Ms. Martinson had not been truthful. Ms. Lloyd left a note to Ms. Martinson to see her regarding her discussion with ADA Franks. *Ex. 3, p. 46*

2:32 p.m. - Izzy Popic left a telephone message for Ms. Martinson regarding a message she [Ms. Popic] received from CP's attorney. *Ex. 3, p. 53.*

August 19, 1994 [Friday]

- Ms. Martinson was in La Crosse, Wisconsin part of the morning working on another case. She returned to her office sometime before the jurisdictional hearing scheduled for 1:30 p.m.

Tr., Day 2, p. 31-32; p. 86-89; Ex. 28C, p. 3, line 16.

10:00 a.m. - Ms. Martinson received a fax from Mr. Shirley containing the missing pages from the February 26, 1993 Social Investigation report. *Ex. 28D, p. 4; Ex. 28E, p. 21, line 25.*

10:00 a.m. - 1:30 p.m. - Sometime between 10:00 a.m. and 1:30 p.m., Ms. Martinson reviewed the fax containing the missing pages which she received from Mr. Shirley at 10:00 a.m. *Tr., Day 2, p. 31-32; p. 86-89; Ex. 28D, p. 3, lines 19-25 and p. 4, lines 1-10.*

12:30 p.m. - Ms. Martinson wrote a note to her supervisor, Mary Lloyd, acknowledging that she received Ms. Lloyd's message regarding CP's hearing that was set for 1:30 p.m. *Ex. 3, p. 47.*

1:30 - 2:35 p.m. - Ms. Martinson appeared in court for CP's jurisdictional hearing.

- At the hearing, CP's attorney complained to the court that the dispositional court report filed by Ms. Martinson was inadequate because it did not describe less restrictive alternatives available and why they were inappropriate. CP's attorney also said that the court report filed by Ms. Martinson was extremely misleading because the report stated that "Substitute Care referrals have been sent to the various group homes and institutions; however no information has been received back at this time regarding placement possibilities". CP's attorney said, in essence, that since the referrals were sent to Izzy Popic on August 9, 1994 and the court report was dated August 10, 1994, "in no way could any of the referrals have been received back to the Department nor possibly could Ms. Popic even have gotten them in the mail yet." *Complaint, par. 21; Answer par. 17; Ex. 7, p. 2; Ex. 28D, p. 5.*

- The court inquired as to the information Ms. Martinson had gathered. *Ex. 28D, p. 2.*

- Ms. Martinson provided an update to the court regarding her contact with CP and her unsuccessful attempts to contact his parents; the referrals that were made to residential treatment programs; the additional information that she received from Mr. Shirley; the status of CP's probation in Illinois; the source of the social history contained in the report and the status of any drug or alcohol assessment. *Complaint par. 18; Answer, par. 14; Ex. 7; 28D, p. 2-5, 9-12, 14; 28E, p. 21- 22.*

- Ms. Martinson informed the court that her prior contact with CP was "next to none"; that she had been unsuccessful in reaching CP's parents and that she had an extremely hard time getting information from Cook County. *Ex. 12, par. 17; Ex. 28D, p. 10-11.*

- The judge determined that Ms. Martinson had not really had contact with CP and had not interviewed CP's parents. The judge instructed Ms. Martinson to interview CP and his family. *Tr., Day 1, p. 65-66; Complaint, par. 22; Answer, par. 18; Ex. 3, p. 49 [reverse side]; Ex. 28D, p. 11, 17 and 22.*

- The judge stated that the record showed that the assigned social worker had not really had contact with CP and to enter a disposition under those circumstances would probably have been reversible error. The judge said that she lacked an adequate record to go forward with the disposition and that she had no choice but to set the matter over for hearing on August 29, 1994. *Ex. 3, p. 49; 28D, p. 17.*

- The judge ordered that the Department make an immediate referral to the Sprite and Apogee by August 29, 1994. *Ex. 12, par. 19; 28D, p. 22.*

- The matter was set for hearing on August 29 at 3:00 p.m. *Ex. 1, 8, and 9; Ex. 17, p. 3.*

August 22, 1994 [Monday]

7:45 a.m. - Ms. Martinson hand delivered a note to Izzy Popic, along with pages 3, 5, 7 and 10 of the February 26, 1993 Social Investigation report which were missing from the fax that she received from Mr. Shirley on August 10, 1994. In her note, Ms. Martinson informed Ms. Popic that the court had ordered the Department to make referrals to the Sprite and Apogee programs. *Tr., Day 1, p. 71-75; Ex. 3, p. 48; Exhibits 8, and 9.*

10: 37 a.m. - Ms. Martinson received a phone message from Izzy Popic regarding the referrals to Sprite and Apogee. *Ex. 3, p. 53.*

12: 50 p.m. - The Sprite Program County referral form was sent out as ordered by the court. *Tr. p. 75; Ex. 3, p. 53; Ex. 10.*

August 23, 1994 [Tuesday]

- CP's attorney filed a motion with the court for an order dismissing the charges filed against CP on the grounds that there was no showing of good cause for a continuance of the dispositional hearing beyond the August 19, 1994 date to which CP had agreed. *Complaint, par. 23; Answer, par. 19; Ex 12, 17, p. 3.*

August 24, 1994 [Wednesday]

3: 00 p.m. - Ms. Martinson visited CP at the detention center and conducted an interview of him that lasted for about an hour and a half. *Tr., Day 1, p. 77; Tr., Day 2, p. 47-48; Ex. 3. p. 56; Ex. 13 and 14.*

- At some point in time, Ms. Martinson received a letter from Dawn Brubakken, the Clinical Director of Odyssey Group Home, Inc., denying the request for referral of CP. In her letter, Ms. Brubakken indicated that [*Tr., Day 1, p. 75- 76; Ex. 11*]:

1) She had received the updated referral material on CP including Ms. Martinson's most recent court report.

2) It was clear in Ms. Martinson's court report that group home was not one of her recommendations.

3) She was denying CP an interview with either of their programs based not only on Ms. Martinson's recommendation, but also because the referral appears inappropriate.

4) In order to be successful in community based treatment, the client needs to have ties to the community, or roots to family in order to become a working part of the community. Without having either of these present in this case, CP would have little to motivate him to avoid the alleged drug-related activities that brought him to Madison in the first place.

August 25, 1994 [Thursday]

9:15 a.m. - Ms. Martinson communicated with the court regarding releasing CP for purposes of participating in an interview at Norris. The court declined to release CP for the interview. *Ex. 3, 56, [reverse side].*

9:23 a.m. - Ms. Martinson informed Jan Casseo at Norris that the judge would not release CP for an interview. Casseo informed Ms. Martinson that CP could not be interviewed in detention before the hearing on Monday, August 29, 1994. *Ex. 3, 55, 56 [reverse side].*

10: 51 a.m. - The District Attorney's Office faxed a copy of the Motion to Dismiss filed by CP's attorney to Ms. Martinson. *Tr., Day 1, p. 76-77; Ex. 3, p. 55, [reverse side]; Ex. 12.*

4:05 p.m. - Ms. Martinson returned a call to Jim Saranofski at Apogee. He was not available so she left a message. *Ex. 3, p. 57.*

4:08 p.m. - Ms. Martinson called DuSable High School in Chicago where CP last attended. There was no answer. *Ex. 3, p. 57.*

August 26, 1994 [Friday]

2:20 p.m. - Ms. Martinson communicated with Assistant District Attorney Barbara Franks regarding Kevin Shirley's participation in the jurisdictional hearing scheduled for Monday, August 29, 1994. *Ex. 3, p. 58.*

2:50 p.m. - Ms. Martinson communicated with Michael Chmielewski at Carmelite Home regarding screening CP. Mr. Chmielewski indicated that he was unwilling to screen CP because he felt CP would run and that CP would not invest in treatment. *Ex. 3, p. 59; Ex. 15.*

August 29, 1994 [Monday]

11:00 a.m. - Ms. Martinson received information from an individual regarding DuSable High School where CP last attended. She made an entry in her case notes that the "school does not start until next Tuesday - unable to access attendance information until that date - information available 9/6/94". *Ex. 3, p. 57.*

11: 40 a.m. - Ms. Martinson interviewed CP's mother by telephone. *Tr., Day 1, p. 82; Ex. 3, p. 60-61.*

3:00 p.m.

- Ms. Martinson appeared at CP's jurisdictional hearing. She testified regarding her preparation of the case between July 13 and August 19. During her testimony, Ms. Martinson informed the court that she had 26 to 30 pending cases in July and August 1994. *Complaint, par. 26, Answer, par. 23; Ex. 3, p. 63-66; Ex. 17, p. 3, note 3; Ex. 28E, p. 19.*

- During the motion hearing, the court concluded that it could not find that Ms. Martinson had acted in good faith in not interviewing the child or his family before August 19. The court also concluded that the information obtained from Cook County that was included in the jurisdictional court report was not current, and that, although Ms. Martinson had attempted to obtain information about the child through Cook County, it could not find that her actions were sufficient. The court recognized that the caseloads of social workers sometimes make it impossible for them to do all that is required. Describing Ms. Martinson as "dilatory", the court said she probably took prompt action since August 19 to remedy the situation but the question was what had happened before that date. Although Ms. Martinson was not neglecting her job duties overall, she had not done what was required in this case, and for that reason the court concluded that it had no option but to dismiss the case against CP.

- At the conclusion of the hearing, the court granted CP's motion to dismiss and ordered that all charges against CP be dismissed with prejudice; that CP be held in secure custody for 48 hours under s. 48.208 (2), Stats.; that if an active warrant was received from Cook County, the court would act on it and that if a warrant was not received by 4:30 p.m., on August 31, 1994, CP would be released from custody. *Ex. 16; Ex. 17, p. 3; Ex. 28E, p. 54-55.*

August 31, 1994 [Wednesday] The court issued a written order requiring that CP be held in secure custody for 48 hours under s. 48.208 (2), Stats., and that if an active warrant was received from Cook County, the court would act on it. The order further indicated that if no warrant was received by 4:30 p.m., on August 31, 1994, the Juvenile Detention Center was authorized to release CP from custody. *Ex. 16.*

(B) Dispositional Court Reports

(1) Statutory Requirements

Section 48.33 (1), Stats., (1994), provided, in part, that before the disposition of a child adjudged to be delinquent, the court is required to designate an agency to submit a report containing certain information including, but not limited to, the following [*Ex. 27*]:

(a) The social history of the child.

(b) A recommended plan of rehabilitation or treatment and care for the child which is based on the investigation conducted by the agency and any report resulting from an examination or assessment under s. 48.295, which employs the least restrictive means available to accomplish the objectives of the plan.

(c) A description of the specific services or continuum of services which the agency is recommending that the court order for the child or family.

(d) A statement of the objectives of the plan, including any desired behavior changes and the academic, social and vocational skills needed by the child.

(e) A plan for the provision of educational services to the child, prepared after consultation with the staff of the school in which the child is enrolled or the last school in which the child was enrolled.

Section 48.33 (3), Stats., (1994) stated, in part, that a report recommending transfer of a child's custody to the department for placement in a secured correctional facility shall be in writing and, in addition to the information specified under sub. (1) (a) to (d), shall include all of the following:

(a) A description of any less restrictive alternatives that are available and that have been considered, and why they have been determined to be inappropriate.

(2) Court Order

On August 1, 1994, a jury draw was scheduled for CP. Ms. Martinson was not required and did not appear at the proceeding. CP entered a plea of no contest to one count of possession of cocaine with intent to deliver. Based on CP's plea, the Court made an adjudication of delinquency and set a dispositional hearing for August 12, 1994. The court ordered Ms. Martinson to make an immediate referral to the DHS Substitute Care Unit and for the Unit to make an immediate referral for CP to both group homes and residential treatment facilities, without waiting for a Community Assessment and Review Team ("CART") staffing. A copy of the order for the referral was faxed to Ms. Martinson and to the DCDHS Substitute Care Unit that afternoon. Ms. Martinson received the court order the next day. She advised the court that she was scheduled to appear at another hearing at the same time set for CP's hearing. The court rescheduled the hearing for August 11, 1994.

(3) Ms. Martinson's Dispositional Report

Ms. Martinson filed the dispositional court report with the court in the CP matter on August 10, 1994. *Complaint, par. 18; Answer, par. 14; Ex. 7; 28D, 28E, p. 21, 25.*

The relevant portions of the report prepared by Ms. Martinson relating to CP's case are as follows [Ex. 7, p. 3-4]:

Current Situation

C-- is currently placed in the Dane County Detention Home, where he has been since July 5th of this year. His behavior has been good during his stay there. *Substitute care referrals have been sent to various group homes and institutions; however no information has been received back at this time regarding placement possibilities.* [Emphasis added]

Case Plan

At this time, there are three basic options available to the court:

A) Residential Treatment: At this time, C--'s behavior in detention (which has basically been good) and reports from Illinois do not identify any specific "treatment" needs to be addressed. The court would need to order that a psychological evaluation be completed in an attempt to determine what, if any, specific treatment needs C-- has that need to be addressed in that type of facility.

B) Corrections: C-- has a pattern of engaging in dangerous behavior that would warrant the protection of the public; and has entered a plea to a charge that, in the adult system, would be punishable by a sentence of 6 months or more.

C) Return to Illinois: This worker is unaware of specific laws regarding the transfer of jurisdiction between states of juveniles; however, the probation officer in Cook County was notified that C-- was in the detention facility in Dane County shortly after DCDHS worker assignment. The officer's response was that there is an active juvenile arrest warrant out for C--, and that he is currently under supervision in the State of Illinois. C--'s mother and family reside in Chicago, and he apparently was in Madison for the purpose of selling cocaine.

Recommendations

I respectfully recommend that the custody of C--- be transferred to the Division of Corrections for the purpose of Placement at the Ethan Allen School for Boys at Wales, Wisconsin or at the Lincoln Hills School in Irma, Wisconsin.

(C) Analysis

Based upon the pleading [the Complaint and the Answer] and the evidence presented, there are four issues that require analysis. The issues are:

1. Failure to Interview CP. Whether Ms. Martinson failed to interview CP prior to filing the dispositional report on August 10, 1994 and prior to appearing at the dispositional hearings scheduled for August 11, 1994 and August 19, 1994 and, if so, whether such conduct constitutes a violation of s. 457.26 (2) (f) or (g), Stats.

2. Failure to Interview CP's family. Whether Ms. Martinson failed to interview CP's family prior to filing the dispositional report on August 10, 1994, and prior to appearing at the dispositional hearings scheduled for August 11, 1994 and August 19, 1994, and, if so, whether such conduct constitutes a violation of s. 457.26 (2) (f) or (g), Stats.

3. Failure to Describe Less Restrictive Alternatives. Whether Ms. Martinson failed to describe less restrictive alternatives in the dispositional report that she filed with the court on August 10, 1994, as required under s. 48.33 (3) (a), Stats., (1994), and, if so, whether such conduct constitutes a violation of s. 457. 26 (2) (f) or (g), Stats.

4. Filing a Misleading Court Report. Whether the jurisdictional court report that Ms. Martinson filed with the court on August 10, 1994 contained misleading information in violation of s. 457. 26 (2) (f) or (g), Stats.

(1) Failure to Interview CP

(a) Summary

The evidence presented establishes that Ms. Martinson failed to interview CP prior to filing the dispositional report with the court on August 10, 1994 and prior to appearing at the dispositional hearings scheduled for August 11, 1994 and August 19, 1994 and that such conduct constitutes a violation of **s. SFC 20.02 (22), Code, and hence a violation of both** s. 457.26 (2) (f) and (g), Stats.

(b) Discussion of Evidence

Ms. Martinson did not interview CP until August 24 or 25, 1994, after the judge instructed her on August 19, 1994, to interview him.

Between July 13, 1994, the day Ms. Martinson was assigned the delinquency intake case involving CP, and August 19, 1994, the day the court ordered her to interview CP, Ms. Martinson had two brief communications with CP. **1**

First, Ms. Martinson spoke with CP prior to the custody review hearing on July 18, 1994. She leaned across counsel's table and asked CP if he had a caseworker in Illinois and if he had been in trouble in Illinois. She said that CP's response was "no". She said that she did not record the specific question that she asked CP or his specific response in her case log. *Tr., Day 1, p. 19-24, 100, 117-118; Tr. Day 2, p. 244, line 18; Ex. 3, p. 38 [reverse side]-; Ex. 28D, p. 10-11.*

1. Ms. Martinson was present in court on July 15, 1994, when CP appeared for a hearing. However, she did not remember speaking with CP and there is no entry in her case log indicating that she spoke with him that day. *Tr., Day 1, p. 17- 20, 105, Ex. 2; Ex. 3, p. 35; Answer, par. 3.*

Ms. Martinson testified that she did not interview CP after the custody review hearing held on July 18, 1994, because CP denied that he had a caseworker in Illinois and that he had been in trouble there. She said that CP was not honest with her so she wanted to obtain his records from Chicago so that she could ask him questions about that to see what his response would be so that she could determine if he was being truthful with her. She also said that the initial material that she received from Chicago on August 10, 1994 was incomplete so she elected not to interview CP using that information. She testified that Shirley faxed the missing pages to her office on August 19, 1994, the morning of the jurisdictional hearing. When asked why she did not interview CP at that time, she said that she did not see the fax because she was out of the office that morning. However, based upon the transcript of the proceedings of the August 19, 1994 hearing, Ms. Martinson informed the judge that she had reviewed the information that she received by fax from Chicago that morning. *Tr., Day 1, p. 66, 99; Ex. 28D, p. 4, lines 1-13.*

Second, sometime between August 1, and August 10, 1994, Ms. Martinson had a telephone contact with CP. She testified that during the telephone contact, which CP initiated, CP asked her what she thought would happen to him. She said that she told him what the options were. She stated that she did not solicit any information from CP during the conversation and she did not record the contact in her case log. When asked, at the hearing held in this matter, why she did not ask CP about his history during the telephone conversation that she had with him, Ms. Martinson testified that she was trying to meet the demands, not just of his case but the other cases that she was involved with. She said that she was "getting information on things" as she could. *Tr., Day 1, p. 37-38; 47-48; Ex. 3.* **2**

Ms. Martinson admitted that she did not conduct an extensive interview of CP before she prepared the court report during the weekend of August 6 and 7, 1994, despite the fact that the detention center was in the building adjacent to where she appeared in court relating to CP's case. When the judge asked Ms. Martinson at the jurisdictional hearing on August 19, 1994, about her contact with CP, she told the judge that her personal contact with CP was "next to none". At that hearing, the judge determined that Ms. Martinson had not really had contact with CP and had not interviewed CP's parents. The judge instructed Ms. Martinson to interview CP and his family. *Tr., Day 1, p. 31-32; 37; 47; 60; Complaint, par. 24; Answer par. 20; Ex. 14; 28D, p. 11, 17-19.*

Ms. Martinson further testified that prior to completing the court report relating to CP, she completed approximately 48 other reports over the eight years she had been employed with the DHS. She said that in some of the court reports that she completed prior to CP's, she recommended corrections, but she had never recommended corrections in any court report before CP's, where she had not interviewed the subject of the report. She said that it was extremely rare for her not to have interviewed the client in such a case and that generally when she is doing a report of that nature she has access to far more information. She said that "It's much easier to go to someone's house, sit down with them, look them in the face, and conduct an interview. You get so much more information, not just verbal information, but non-verbal information. You can call the school, you can call treatment providers. There were none in this case. They had not been involved in counseling or -- or -- and school was closed. We couldn't talk to school personnel. It was a terrible lack of information available in this case". *Tr., Day 1, p. 85-87.*

2. Ms. Martinson said that prior to CP's plea hearing on August 1, 1994, she scheduled an interview to talk to CP, but his attorney instructed him not to talk to her prior to entering a plea because anything he told her could be used against him in the judicial proceeding. *Tr., Day 1, p. 114; Tr., Day 2, p. 64.*

Finally, Ms. Martinson admitted that it is not appropriate for a social worker to prepare a court report recommending correction time for a juvenile, without interviewing the juvenile, when the juvenile is available to be interviewed. She said that she felt she did not have any alternative but to prepare the report as she did, because besides servicing CP's case she was servicing several other cases with a lot of demands on them. She said she recalls trying to do the best she could under the circumstances. She was putting in a lot of extra time. She said that she "seem to recall feeling like there was just so much going on, just trying to get as much done as

I could on all my cases". *Tr., Day 1, p. 98.*

(c) Expert Witnesses

Mr. King testified at the request of the Division of Enforcement. He testified that in his opinion it is unacceptable practice for a social worker to fail to interview a juvenile prior to a dispositional hearing if the juvenile is available to be interviewed and assuming the juvenile is mentally competent. *Tr., Day 2, p. 110- 111; Ex. 23.*

Mr. King further stated that any minimally competent social worker would know that he or she should interview a juvenile, who is available to the social worker, prior to making a dispositional recommendation in a delinquency petition. He said that a social worker needs information about the individual before making a dispositional recommendation because the social worker is making a recommendation that is "supposed to be what is going to be helpful or what is going to prevent the kind of behavior that this child is here for". He said that without that information, a social worker cannot do a minimally competent job. *Tr., Day 2, p. 111-113; 125127; 133-135.*

Mr. King also testified that a social worker should interview a juvenile prior to making a dispositional recommendation "because a social worker's job in making a dispositional recommendation is to do the best job they can of gathering all of the information about the individual, doing an assessment about all of that information and then coming up with what appears to be the best recommendation". *Tr., Day 2, p. 112-113.*

In addition, Mr. King testified that, assuming that for whatever reason Ms. Martinson had not interviewed CP prior to August 11 [the date the dispositional hearing was initially scheduled], a minimally competent social worker would have interviewed CP when the social worker became aware that the disposition would not be determined until August 19. *Tr. Day 2, p. 145.*

When asked whether a social worker should interview a person who the social worker knows has lied to her about his history and expect to have any kind of an effective interview without having in hand the documents that actually establish the truth of his history, Mr. King replied as follows [*Tr. Day 2, p. 123*]:

Think of where social workers would be if they were required to only interview people who didn't lie to them, or to have verification about what lies they were being told before they could interview. Ms. Martinson has skills as a social worker that should allow her to assess what's being said to her. It's important that she do that. The fact that she may in the course of this interview be told some lies certainly should not preclude her wanting to interview this client.

When asked if Ms. Martinson had talked to CP and CP had said, "I have no history of -- I have no arrest record. I have no history of trouble with the law in Cook County", Mr. King testified that Ms. Martinson should have asked a lot more questions and she should have done a much more in-depth assessment. He said that if she picked up in the interview that he was lying then maybe she needed to make a recommendation that before she could proceed she needed some psychological evaluation done. He said, "how can I do that if I don't talk to this person?" *Tr. Day 2, p. 125, 138.*

In reference to the importance of the information from Cook County, Mr. King testified as follows [*Tr., Day 2, p. 125-127*]:

Q. All right. So, your testimony is the information from Cook County that Ms. Martinson thought was important, it is your opinion that it was not important?

A. I didn't say that.

Q. Okay.

A. I said that is not the sole deciding factor. The other -- the other thing is I have no reason to believe that the people who took the testimony in Cook County, Illinois are any smarter or anymore skilled at interviewing than Ms. Martinson.

Q. Well, we're -- I'm talking for the moment here -- we're talking about the -- the police record. I mean, that's not a matter of interviewing. That's a matter of -- that should be a matter of record. And my question to you is: is having that police record documented unimportant?

A. No, it's important. But it's not overwhelmingly important to the degree that you couldn't talk to this child until you had it in your hand. Of course it's important. But you can get it after the fact. You can look at the -- your assessment of the child. You can put the two together and say, "Ah-hah. He's lied to me."

Q. Okay.

A. Surprise.

Q. All right. And then what do you do at that point?

A. Well, then you go back and talk to the kid.

Q. Talk to him again, huh?

A. And you say, "I have here indications that when I talked to you the first time that you left out a few things. Let's talk about what you left out."

Q. Okay. So, what you're really saying is in this case she should have conducted more than one interview -

A. I don't know.

Q. -- of the boy?

A. She should have started with one.

Q. All right. Now, you said that this interview should take place before the dispositional hearing. Is that correct?

A. The dispositional hearing was when? This is after she gets assigned, yes. Was that -- it should have taken place in my opinion before she submitted that report.

Ms. McCarthy testified at the request of Ms. Martinson. She testified that she was not aware of anything in writing that requires a social worker to interview a delinquent who is in custody in detention prior to the social worker making a recommendation regarding the custodial disposition of a person. She admitted during cross-examination that the fact that a standard is not in writing does not mean that it does not exist. *Tr. Day 2, p. 211, 250.*

Ms. McCarthy further testified that she believes the practice of social work from a standards perspective is comprised of a constellation of behavioral and performance expectations. There is not one specific standard of practice that defines professional or unprofessional practice by and large. So, that from her perspective she uses the word "constellation" to mean a grouping of standards and practices that constitutes good social work practice. In reference to the practice standards that would have applied to Ms. Martinson in July, August and September of 1994, Ms. McCarthy testified that the constellation of standards that would have applied "include interviewing the young man, contacting family, contacting other social service agencies that had knowledge of the young man and his family, consultation with supervision at the direction of the court, consultation with providers in the community who might offer some services on this young man's behalf and preparation of reports to the court" regarding the outcome of those investigative efforts. *Tr., Day 2, p. 211; 237-238.*

She said that in her opinion Ms. Martinson's failure to interview CP prior to filing the written report with the court is one in a constellation of minimal standards in preparing a court report that must be met. However, it is not one of the specific behaviors that from her perspective would constitute unprofessional behavior standing by itself. She also said that she could not say that Ms. Martinson acted in an unprofessional manner in not interviewing CP prior to receiving the information from Chicago. *Tr., Day 2, p. 216, 228.*

Ms. McCarthy admitted during cross-examination that Ms. Martinson should have interviewed CP prior to writing the court report. She said that she could understand why Ms. Martinson would choose not to interview CP without the information from Chicago. She said that even if a client has lied in the past to a social worker, the social worker should still interview the client in order to meet the standard that needs to be accomplished. When asked if a social worker in consultation with his or her supervisor determines not to interview a youth who is readily available to them before recommending that the child be incarcerated should mention the fact that she had not interviewed the child in the report, she answered "yes". She said that fact should be mentioned in the report because then the court becomes aware that the social worker's recommendation is based on different circumstances than an interview and also because the normal practice is to interview the child. *Tr., Day 2, p. 240-241; 245-246; 262-263; 268-269.*

Finally, Ms. McCarthy testified that prior to interviewing a client a social worker does not know what information he or she will obtain from an interview. She said that the information could be good, bad or indifferent. Basically, that is why you do an interview. *Tr., Day 2, p. 257.*

(2) Failure to Interview CP's Family

(a) Summary

The Complainant alleges, in essence, that Ms. Martinson failed to interview CP's family prior to filing the dispositional report on August 10, 1994, and prior to appearing at the dispositional hearings scheduled for August 11, 1994 and August 19, 1994, in violation of s. 457.26 (2) (f) and (g), Stats. The evidence does not establish that the violation occurred.

The evidence establishes that Ms. Martinson did not interview CP's father and that she did not interview CP's mother until August 29, 1994, almost three weeks after she filed the dispositional report. However, the evidence does not establish that CP's parents were available or willing to participate in an interview or that Ms. Martinson did not attempt to contact them to offer them an opportunity to participate in an interview.

Ms. Martinson testified that, although not documented, she made numerous unsuccessful attempts to contact CP's mother by telephone. *Tr., Day 1, p. 74-75.*

Mr. King testified that it is unacceptable practice for a social worker to fail to interview family members prior to a dispositional hearing "if the family members are reachable". Ms. McCarthy testified that the standard of practice relates to the "attempt made to contact the family" to offer them an opportunity to participate in an interview.

The State has the burden of proof to establish that Ms. Martinson did not make any attempts to contact CP's parents or that such attempts were insufficient to meet the standards of practice of the profession in effect at that time.

(b) Discussion of Evidence

Ms. Martinson testified that the only way she could get a hold of CP's mother was through his grandmother or through a neighbor. She said that she received a telephone number for CP's grandmother during the custody review hearing held on July 18, 1994; that CP's mother testified at the custody hearing by telephone and that the connection was made with CP's mother at his grandmother's home. *Tr., Day 1, p. 34-37; Ex. 3, p. 38.*

Ms. Martinson further stated that prior to working on the court report on August 6 and 7, 1994, she attempted to contact CP's mother but she did not recall if it was through the grandmother or the neighbor. She said she did not recall how many times she tried to contact CP's mother and that she did not record that fact in her case log because the contacts were unsuccessful. *Tr., Day 1, p. 36-37; 73-74; 110-113; Ex. #5.*

Ms. Martinson admitted that she did not interview CP's family prior to the jurisdictional hearing held on August 19, 1994. At the August 19, 1994, hearing, the judge concluded that there was insufficient information in the record for her to act on. As a result, the dispositional hearing was rescheduled for August 29, 1994. The judge instructed Ms. Martinson to interview CP and his family before the August 29th hearing. Ms. Martinson testified that, between the hearing on August 19, 1994, and the hearing on August 29, 1994 she attempted to contact CP's father without success. On the morning of August 29, 1994, before the jurisdictional hearing, Ms. Martinson called the number that she had for CP's grandmother and spoke with CP's mother regarding CP. *Tr., Day 1, p. 65-67, 82, 87; Ex. 3, p. 49 [reverse side], 60-62.*

(c) Expert Witnesses

Mr. King testified that in his opinion it is unacceptable practice for a social worker to fail to interview a member of the juvenile's family in a case like this prior to a dispositional hearing "if the family members are reachable". He stated that any minimally competent social worker would know that they should interview a juvenile's family members who are available to them prior to making a dispositional recommendation in a delinquency petition "because generally family members have a different perspective than the individual". *Tr., Day 2, p. 110-113.*

Mr. King said that quite often when you talk to family members you get different views or another look at the person you're talking about. "These are probably -- the individual is the center of the whole thing. Family members probably have the most information about the individual that you're about to do this report on". *Tr., Day 2, p. 110-113.*

When asked during cross-examination how does an individual interview a person in Cook County, Illinois, in a housing authority who fails to return telephone calls, Mr. King said that, "you don't". He said, "good practice would be that there would be document evidence in the record of the attempts to make the phone call, the number called, the time called and that there was no response". He said that you cannot interview someone that does not return your calls. Good practice "would indicate that you would document your attempts and it would be clear in the records so that any other reasonably competent professional reviewing your record could see the attempts that you made". *Tr. Day 2, p. 116-117.*

Mr. King admitted during cross-examination that he has not always documented every telephone call that he ever made relating to a case and when asked if he has ever failed to document a telephone call where he did not establish any contact or communication with the person he was trying to contact, he answered, yes. He said that he did not consider his conduct to be unprofessional conduct but he did not think it was good practice. *Tr., Day 2, p. 120.*

Ms. McCarthy testified that if CP's family was available to be interviewed they should have been contacted and requested to participate in an interview. She said that it is one of the constellation of standards that she would expect a social worker to do. She said that the standard of practice relates to the "attempt" made to contact the family to offer them an opportunity to participate in an interview and that in delinquency matters social workers have no authority to impose themselves on the family of a juvenile alleged to have committed a delinquent act. There are no sanctions imposed against a family for failure to cooperate or participate in proceedings relating to juvenile delinquency matters. She further stated that [*Tr., Day 2, p. 264*]:

It's not at all uncommon where I come from that parents are never seen, they don't come to detention

hearings, they don't do any phone conferencing at all, where there is no contact at all by a parent. So, our staff are expected -- have been expected to attempt to contact, to locate, to send letters, to try phone calls. Our detention sends telegrams to notify families that youth are in custody. We've sent workers out to try and locate, give notices of detention. Attempts are made to engage the family in the process. But that is all that can be expected because the family has the burden to participate and cooperate.

(3) Failure to Describe Less Restrictive Alternatives in the Court Report.

(a) Summary

The Complainant alleges that the dispositional report filed by Ms. Martinson did not comply with s. 48.33 (3) (a), Stats., (1994), in that it did not include "a description of any less restrictive alternative that are available and that have been considered, and why they have been determined to be inappropriate", in violation of s. 457.26 (2) (f) and (g), Stats. Ms. Martinson denies the allegation. The evidence presented does not establish that the violation occurred.

The evidence presented establishes that Ms. Martinson did not include a description in her report of all of the "less restrictive alternatives" that were available for CP, in that she did not include a discussion of group homes as an alternative, and she did not indicate why group homes were not appropriate for CP. She also did not identify specific residential treatment facilities in her report. However, the evidence does not establish that Ms. Martinson's conduct, as described above, constitutes a violation of s. 457.26 (2) (f) or (g), Stats. The allegation that Ms. Martinson violated the statutes is based primarily upon Mr. King's testimony. In my opinion, Mr. King's lack of experience and knowledge of the practice of social work services in 1994 in cases involving juvenile delinquents raises questions regarding his credibility on this issue. The State has the burden of proof to establish that the violation occurred.

(b) Discussion of Evidence

There are two areas of disagreement regarding what information must be included in a dispositional report in reference to a discussion of "less restrictive alternatives". First, there is a difference of opinion regarding whether the report must contain a discussion relating to "all" applicable less restrictive alternatives. Second, there is a difference of opinion regarding whether the report must include a discussion relating to specific facilities and institutions.

Ms. Martinson testified that of the three options that she identified in her report, residential treatment, corrections and CP's return to the State of Illinois, she recommended that CP go to corrections. She also said that whenever she recommends corrections she is required to "identify the least restrictive alternatives in that she is required to identify what other alternatives are out there and indicate why you do not believe they are appropriate". *Tr., Day 1, p. 39, 48-49; Day 2, p. 55; Ex. 7; Complaint, par. 18; Answer, par. 14.*

When asked why she did not address group homes in her case plan as an option, Ms. Martinson said that her understanding has been that she did not always have to include all the lesser restrictive environments, which would also include foster care. *Tr., Day 2, p. 92-93; Day 3, p. 18.*

Ms. Martinson further testified that, although group homes are less restrictive options to corrections, they would not have been appropriate for CP. Ms. Martinson stated that [*Tr., Day 3, p. 13*]:

When group homes look at a young man for placement, group homes in particular have a very -- very strong family counseling component. They do weekly family sessions. And of course the advantage of a group home is they're retained within the community. They have ready access to the family. They try and work out vis -- like weekend visitations pretty quickly to make sure that that family tie is not disrupted, or at least not any more disrupted than it would have to be.

In reference to residential treatment, Ms. Martinson testified that "you need to have a specific diagnosis to send a child to residential treatment. That is part of where the CART team got its origins was to restrict referrals based on that as well as other criteria they established". She said that when she prepared her report, she did not have any information that led her to believe that CP had a drug or alcohol problem. She said that she did suggest in her report that a psychological evaluation could determine if CP had a problem. *Tr., Day 2, p. 92-95; Ex. 7, p. 3.*

Finally, Ms. Martinson testified that the information she obtained after she filed her report, such as the missing records from Cook County; her interview of CP; the AODA assessment, and the telephone conversations with CP's mother and grandmother, made her recommendation for corrections stronger. She said that CP reported things during the interview that led her to be more concerned about him than she had been before. She said that CP's personal use of alcohol and drugs that he reported was much higher than she was aware of. She said that CP should receive alcohol and drug treatment, which he could access through corrections. The advantage to a correctional placement for that treatment is he would have to stay there through the withdrawal and through the really difficult parts of alcohol and drug treatment. Whereas, with residential treatment, if it got difficult he could

leave. *Tr., Day 2, p. 55.*

(c) Expert Witnesses

Mr. King testified that for Ms. Martinson to make a recommendation for corrections when she had not seriously looked at alternatives and she had not talked to the kid, is not competent practice. He said that Ms. Martinson made a recommendation in the report for a placement to corrections without enumerating the alternative placements and the reasons why they were not considered. The case plan portion of the report "does not appear to be a description of any specific alternatives and certainly it does not appear to have any information about why alternatives would not be appropriate". During cross-examination, Mr. King testified that his real criticism of Ms. Martinson was that she did not explain why she was rejecting residential care and she did not specify any facility that she considered and eliminated. He said that it is normal practice for social workers to indicate in their report that they have already considered those facilities and eliminated them. Ms. Martinson did not "consider them and eliminate them in her report. So, the public defender is then available to say, "Well, why don't we look at this or why don't we look at this? That's the public defender's job". The social worker's job is to have done that ahead of time and say, "This is why I'm not recommending these things." *Tr. Day 2, p. 138-140; Ex. 7, p. 3.*

Ms. McCarthy testified that it is a professional judgment based on a variety of factors that go into the preparation of a court report. She said that you can get a report from ten different social workers on the same child and get ten different recommendations from dismiss, handle informally, consent decree to division of corrections to waiver to adult court. *Tr., Day 2, p. 223.*

Ms. McCarthy further stated that, from her review of the dispositional report prepared by Ms. Martinson, the statutory requirement for options that are less restrictive are spelled out. She said that Ms. Martinson discusses residential treatment as an option, indicating that without a psychological evaluation to determine beyond that would not be possible. She said that such comment is certainly not unrealistic or unusual in her experience reviewing multitudinous court reports, having chaired the "out of home care committee" for Milwaukee County for five years. She said that the discussion around corrections is one that she is very familiar with from a social work perspective in terms of couching a recommendation and the necessity for discussing dangerous behaviors and alluding to the fact that the offense if committed by an adult would result in incarceration. In reference to the option to return CP to Illinois, she said that from her perspective it was clearly a less restrictive alternative and that she believes it meets the statutory burden at the time in terms of outlining alternatives to a most restrictive placement. *Tr. Day 2, p. 219-221.*

In reference to practice in Milwaukee County, Ms. McCarthy said that the courts would order that a dispositional report be made available for a young person in detention within the statutory time limit. She said that if a staff person, based on offense only, had made a decision that corrections appeared to be the most appropriate, she would expect as a supervisor and manager that the report would support a division of corrections commitment. She would expect them to explore the least restrictive alternatives as required by statute, but she would expect the report to focus on the staff person's decision or belief or assessment that this young person needed to be in corrections based on offense alone. *Tr., Day 2, p. 222.*

According to Ms. McCarthy, there was a great deal of debate and discussion in Milwaukee County regarding whether every least restrictive alternative prior to recommendation for Division of Corrections had to be explored and ruled out specifically in any kind of report to the court. She said that the decision regarding whether you needed to include specific language about less restrictive attempts to placement was, in essence, made for social workers because Milwaukee County, like Dane County, had a procedure whereby substitute care referrals were made and, in conjunction with that process, some agreement was reached regarding which one of those would be included in the report, *Tr., Day 2, p. 219-220.*

Finally, Ms. McCarthy testified that she disagreed that "it was incumbent upon Ms. Martinson to do anything more than what she put in her report in terms of spelling out that the case meets the statutory burden for division of corrections placement". She said that it is not uncommon for a staff person to take a position that leaves the responsibility to the judge to make a decision among options. *Tr., Day 2, p. 224.*

Since the opinions offered by Mr. King and Ms. McCarthy in reference to this issue differ, it is necessary to assess the basis for their opinions. In my opinion, both of the witnesses have very limited knowledge of the standards of practice of social workers that were in effect in 1994, especially relating to the provision of services involving juvenile delinquents. Both witnesses practiced as social workers during the early part of their careers (in the 1970s), then later as administrators. Mr. King has personally performed very little, if any, social work services in cases involving juvenile delinquents. He has the least amount of knowledge of the standards of practice of the profession that were in effect in 1994. *Tr., Day 2, p. 104; Ex. 23.*

Mr. King has been the Director of the Department of Human Services in Chippewa County since 1995. He began employment as a Social Worker in Shawnee County, Kansas in June 1971. From November, 1971 to August 1972, Mr. King was employed as a Social Work Supervisor in Shawnee County, Kansas. From September 1972 to December 1975, Mr. King was employed in Chippewa County, Wisconsin as a Social Work Supervisor II. In January, 1976, Mr. King became the Director of the Community Programs Department in Chippewa County and remained in that position until May, 1995, at which time he became the Director of the Human Services

Department. [The Human Services Department was created in 1995 when the Social Services Department and the Community Programs Department merged.] As Director of the Human Services Department, Mr. King plans, directs and implements programs relating to mental health; the developmentally and physically disabled; AODA; child and adult protection; transportation; long-and short-term support services; foster care; juvenile court and restitution, and public welfare programs for clients eligible for general relief, housing and economic, medical and fuel assistance. *Tr., Day 2, p. 101-102; Ex. 23.*

Although one of the functions of the Chippewa County Department of Human Services is to provide services of social workers in cases involving juvenile delinquency cases, Mr. King testified that he does not perform duties as a social worker and that he does not directly supervise those individuals who perform such duties. *Tr., Day 2, p. 105.*

Mr. King's limited knowledge of the standards of practice of social workers was acquired, in part, as a result of his role as a course reviewer for the Council on Social Work Education and as a seminar presenter for the National Association of Social Workers ("NASW").

Mr. King is a course reviewer for the Council on Social Work Education, which certifies schools of Social Work. He participates in the accreditation process as a practitioner. His role is to look at Social Work programs and try and see how they relate to the actual practice of social work. In the past, Mr. King participated in accreditation surveys involving San Jose State and Southern Illinois University. *Tr., Day 2, p. 103-104; Ex. 23.*

In reference to his role as a seminar presenter, Mr. King testified that he was a member of the NASW Insurance Trust Board between 1993 and 1996; that he is a risk management training leader and coordinator and that he is a frequent presenter for NASW seminars. He said that NASW offers risk management workshops that are designed to give practitioners information on how to keep themselves from being sued, how to improve their practice, and other aspects of practice. Mr. King said that he has given presentations at more than 50 risk management workshops. *Tr., Day 2, p. 104; Ex. 23.*

In reference to Ms. McCarthy's knowledge of the standards of practice of social workers that were in effect in 1994, she indicated in her curriculum vitae that the only "direct service experience" she has obtained is her experience as a Children's Probation Officer/Social Worker with the Milwaukee County Department of Human Services, Juvenile Court Services, between 1971 and 1978. In that position, Ms. McCarthy's duties included providing court ordered supervision and related treatment for adolescents and their families, including the preparation of social histories and development treatment plans for adjudicated and alleged delinquent youth and their families. *Tr., Day 2, p. 203-204; Ex. 25, p. 3, item 8A.*

In reference to administrative experience, between 1978 and 1996, Ms. McCarthy worked in a supervisory and administrative capacity in the Child Welfare Bureau. The Bureau provides services for all "out of home placement", regardless of whether the juvenile is adjudged delinquent or "CHIPS".

In 1996, Ms. McCarthy returned to Juvenile Court Services as the administrator of the "Ongoing Probation Section". As administrator of the "Ongoing Probation Section", between 1996 and 1998, Ms. McCarthy was responsible for 5 supervisors and 62 line staff who did post dispositional services for juvenile court in Milwaukee County. *Tr., Day 2, p. 205; Ex. 25. ³*

Finally, Ms. McCarthy testified that, as a manager at Milwaukee County, she participated in the development of employment standards and practice standards for caseworkers, with and without Masters degrees, while in juvenile court as well as in child welfare services. She said that by utilizing her experience and expertise, she actually developed performance standards in Milwaukee County. Subsequently, she worked as a consultant in reviewing practice standards in the State of Florida. *Tr. Day 2, p. 206; Ex. 25.*

3. It is not clear from the evidence when Ms. McCarthy participated in the development of practice standards for caseworkers in Milwaukee or when she worked as a consultant in Florida.

(4) Filing a Misleading Court Report

(a) Summary

The Complainant alleges in its Complaint that Ms. Martinson filed a dispositional court report with the court in the CP matter in which she stated: "Substitute Care referrals have been sent to various group homes and institutions; however no information has been received back at this time regarding placement possibilities." The Complainant further alleges that Ms. Martinson did not indicate in the dispositional report that those referrals were only made the previous day. Ms. Martinson responded in her Answer that the substitute care referrals relating to CP actually were sent out by the Substitute Care Unit and that she advised the Circuit Court on August 11, 1994 regarding the source of the information included in her report and regarding when the referrals in question had been sent out. *Complaint, par. 18 (c); Answer, par. 14. ⁴*

The evidence presented does not establish that the violation occurred. The opinions of the expert witnesses differed as to whether the relevant statement contained in Ms. Martinson's report is misleading; there is no

evidence indicating that the judge assigned to CP's case concluded that the report was misleading in any manner, and there is no evidence that Ms. Martinson intentionally misled the judge in the report. The State has the burden of proof to establish that the violation occurred.

(b) Discussion of Evidence

On August 1, 1994, Judge O'Brien faxed a copy of an order to Ms. Martinson and the DHS Substitute Care Unit regarding CP's case. The judge ordered that there be an immediate referral to the DCDHS Substitute Care Unit and that the Substitute Care unit make an immediate referral to group homes and residential treatment facilities, without waiting for a CART staffing. Ms. Martinson received the fax on August 2, 1994 because she was out of the office on August 1. *Tr., Day 1, p. 26; Ex. 4.*

Ms. Martinson testified that the Substitute Care Unit of the DCDHS is responsible for all placements. Social workers do not place children in homes. They ask for a list of names for placement for a child. After a referral is made to the Substitute Care Unit, the Unit staff assesses what might be an appropriate home or what might be an appropriate residential treatment facility and then they send out the referral and discuss it with the social worker. The social worker would then be directed to contact the group home or residential treatment facility to discuss the matter.

Ms. Martinson said that, at least in August of 1994, all requests made by social workers and/or their supervisors to send a child to residential treatment and/or corrections had to be reviewed by a DCDHS committee called the Community Assessment and Review Team ("CART"). Prior to that time, social workers could make direct referrals. According to Ms. Martinson, the court ordered DCDHS to by-pass the referral to have a CART staffing because the referral would have taken approximately two weeks to a month. *Tr., Day 1, p. 27.*

4. The court proceeding set for August 11, 1994, was rescheduled because CP's attorney did not appear. The transcript does not contain any statements made by Ms. Martinson to the court relating to the source of the information in her report or regarding when the referrals in questions had been sent out. *Ex. 28C.*

In reference to the referral involving CP, Ms. Martinson testified that on Saturday and Sunday, August 6 and 7, 1994 she worked at her office on matters relating to CP's case, including the referral to the DHS Substitute Care Unit. She filled out the referral for substitute care form, which, in general, identifies the social worker, the child and the child's family; what resource is being requested; what other resources have already been used; the goal and length of placement; health and physical information; behavioral characteristics and law violations. She also prepared a memo addressed to Izzy Popic whose job was to screen and send out all the referrals for corrections and residential treatment facilities. She attached a copy of the family data sheet, the court order, the delinquency petition and the substitute care referral form to the memo addressed to Ms. Popic. On Sunday, August 7, 1994, Ms. Martinson hand-delivered the documents to Ms. Popic's office and placed them on Ms. Popic's chair. In her memo to Ms. Popic, Ms. Martinson apologized for the fact that the report was "lacking in information"; stated that she did not have a telephone number for CP's mother and that the Cook County case worker was unwilling to release information without a release. According to Ms. Martinson, Ms. Popic sent the substitute care referral form to two group homes in Madison, Odyssey and Sojourn. *Tr., Day 1, p. 32-34, 40-44, 96; Ex. 5; 11.* **5**

Finally, in response to why she left blank spaces on the substitute care referral form, Ms. Martinson testified that she did so on purpose because she had not received the information that she had requested from Chicago at that time. *Tr., Day 1, p. 40, 113, 116; Ex. 5.*

While testifying at the hearing held in this matter, Ms. Martinson admitted that her report does not indicate when the referrals were made and that she did not expect to receive information back on the referrals by the time she prepared her report. *Tr., Day 1, p. 97.*

CP's attorney initially raised the issue regarding whether Ms. Martinson's dispositional report is misleading. On August 18, 1994, Mary Lloyd, Ms. Martinson's supervisor, spoke with Assistant District Attorney Barbara Franks regarding CP's case. The focus of the discussion was that CP's attorney felt that the referrals made to the Substitute Care Unit relating to CP were not made in a timely manner; that referrals were not made that should have been made, and that Ms. Martinson had not been truthful. Ms. Lloyd left a note to Ms. Martinson to see her regarding her discussion with Ms. Franks. *Tr., Day 1, p. 65; Ex. 3, p. 46.*

5. Ms. Popic received the referral for substitute care form on August 9, 1994. *Ex. 12, p. 2, par. 10; Ex. 28D, p. 5-6.*

At the jurisdictional hearing held on August 19, 1994, CP's attorney complained to the judge that Ms. Martinson's report was extremely misleading. CP's attorney stated the following [*Ex. 3, p. 50; Ex. 12, p. 3, par. 15, 16; Ex. 28D, p. 5-6*]:

THE COURT: Ms. Stahl

MS. STAHL: Thank you, judge. Judge, I have a real problem here today. First of all, this court report is extremely misleading. I will start with the fact that you ordered the Department to make referrals on August 1 st. Those

referrals got to Izzie Popic on August 9th. Members of our office called and received the date from Ms. Popic. This court report was written on August 10th when in no way could any of the referrals have been received back to the Department nor possibly could Ms. Popic even have got them in the mail yet. There were some referrals that she did decide to make. At this time, one of them was Odyssey, they had not yet even gotten a referral on C

THE COURT: And you know that from talking to them?

MS. STAHL: Actually Ms. Dalen did and that's why I brought her here if you wanted to follow up on that.

THE COURT: That was as of today?

MS. STAHL: That was of today. Sojourn did not find that C... was inappropriate. In fact, what happened was the paperwork they got was not complete and they sent it back for more information. Norris has not made a decision yet because the paperwork got to them so late and we did not yet hear from Carmelite.

Secondly, on the second page of the court report, Page 2, under there there's one part called -- title, Current Situation, Ms. Martinson wrote all of these referrals had been made.

Finally, in an affidavit attached to the Motion to Dismiss filed with the court on August 23, 1994 CP's attorney stated the following [Ex. 12, p. 2, par. 11]:

11. On August 10, 1994, Ms. Martinson wrote a court report pursuant to Section 48.33, Wis. Stats. in preparation for disposition. In that report, she stated "referrals have been sent to various group homes and institutions; however no information has been received back at this time." Ms. Martinson failed to mention that she did not request the referral process to begin until one day before she wrote the court report.

(c) Expert Witnesses

Mr. King said that "in the paragraph where she talks about that these referrals have been sent out to other agencies, that that was misleading" because they were sent out two days before. Clearly there was no expectation that they could have been back based on the time she sent them out. He said that it would be inappropriate practice for a social worker to intentionally mislead a judge in a report.

Ms. McCarthy testified that she did not view the dispositional report as being intentionally misleading. Throughout the report it became apparent to her that the information was taken from information provided by someone else. Specifically, the information received from Cook County was reviewed, summarized and included in a report. The report also includes information regarding what has currently happened with his adjustment while in the detention facility in Dane County. So, it's a compilation of information and distilling some that she did not find to be misleading. *Tr. p. 218-221.*

When asked if she believed that a judge reading the sentence in Ms. Martinson's report, stating that referrals had been sent out but no information had been received back, would believe that those referrals had been sent out in time that a response might have been expected, Ms. McCarthy testified that in her experience judges were aware of the procedures and the time frames and the length of time that this type of practice took. She said that the judges would be completely aware of the time line problem because they knew every time cases were stacked and how long it took for referrals to get made and disregarded it completely. *Tr. p. 247-249.*

IV. Discipline

The evidence presented establishes that Ms. Martinson failed to interview CP prior to filing the dispositional report with the court on August 10, 1994 and prior to appearing at the dispositional hearings scheduled for August 11, 1994 and August 19, 1994, and that such conduct constitutes a violation of of **s. SFC 20.02 (22), Code, and hence a violation of both** s. 457.26 (2) (f) and (g), Stats.

Ms. Martinson was first assigned the delinquency intake case involving CP on July 13, 1994. She did not interview CP until August 24 or 25, 1994 after the judge instructed her to do so. As noted previously, the detention center where CP was held was in the building adjacent to where Ms. Martinson appeared in court for CP's hearings. Not only did Ms. Martinson appear in court in reference to matters relating to CP's assignment, she also appeared in court in reference to matters relating to other cases assigned to her. The one telephone contact that she had with CP was initiated by CP. CP asked her what she thought would happen to him. She said that she told him what the options were. When asked why she did not ask CP about his history during the telephone conversation that she had with him, Ms. Martinson said that she was trying to meet the demand, not just of his case but the other cases that she was involved with. She said that she was "getting information on things" as she could.

Other than a lack of time, there were several other reasons that Ms. Martinson gave for not interviewing CP. Namely, 1) CP lied to her about his troubles in Illinois so she wanted to obtain his complete files from Chicago before interviewing him and 2) CP's attorney instructed CP not to talk to her prior to entering a plea. However, even Ms. Martinson admitted that it is not appropriate for a social worker to prepare a court report recommending correction time for a juvenile, without interviewing the juvenile, when the juvenile is available to be interviewed. She said that she felt she did not have any alternative but to prepare the report as she did, because besides servicing CP's case she was servicing several other cases with a lot of demands on them. She

said she recalls trying to do the best she could under the circumstances. She was putting in a lot of extra time. She said that she "seem to recall feeling like there was just so much going on, just trying to get as much done as I could on all my cases". *Tr., Day 1, p. 98.*

Finally, Ms. Martinson testified that prior to completing the court report relating to CP, she completed approximately 48 other reports over the eight years she had been employed with the DHS. She said that in some of the court reports that she completed prior to CP's, she recommended corrections, but she had never recommended corrections in any court report before CP's, where she had not interviewed the subject of the report. She said that it was extremely rare for her not to have interviewed the client in such a case and that generally when she is doing a report of that nature she has access to far more information. She said "It's much easier to go to someone's house, sit down with them, look them in the face, and conduct an interview. You get so much more information, not just verbal information, but non-verbal information. You can call the school, you can call treatment providers. There were none in this case. They had not been involved in counseling or -- or -- and school was closed. We couldn't talk to school personnel. It was a terrible lack of information available in this case". *Tr., Day 1, p. 85-87.*

Mr. King testified that in his opinion it is unacceptable practice for a social worker to fail to interview a juvenile prior to a dispositional hearing if the juvenile is available to be interviewed and assuming the juvenile is mentally competent. He further stated that any minimally competent social worker would know that he or she should interview a juvenile, who is available to the social worker, prior to making a dispositional recommendation in a delinquency petition. *Tr., Day 2, p. 110-111; Ex. 23.*

Ms. McCarthy admitted during cross-examination that Ms. Martinson should have interviewed CP prior to writing the court report. She said that she could understand why Ms. Martinson would choose not to interview CP without the information from Chicago. She said that even if a client has lied in the past to a social worker, the social worker should still interview the client in order to meet the standard that needs to be accomplished. When asked if a social worker in consultation with his or her supervisor determines not to interview a youth who is readily available to them before recommending that the child be incarcerated should mention the fact that she had not interviewed the child in the report, she answered "yes". She said that fact should be mentioned in the report because then the court becomes aware that the social worker's recommendation is based on different circumstances than an interview and also because the normal practice is to interview the child. *Tr., Day 2, p. 240-241; 245-246; 262-263; 268-269.*

Finally, Ms. McCarthy testified that prior to interviewing a client a social worker does not know what information he or she will obtain from an interview. She said that the information could be good, bad or indifferent. Basically, that is why you do an interview. *Tr., Day 2, p. 257.*

The Social Worker Section considers Ms. Martinson's failure to interview the juvenile to constitute gross negligence in practice in a single instance, in that it constitutes the practice of professional social work services that do not comply with an accepted standard of practice that have a significant relationship to the protection of the health, safety or welfare of a patient, client or the public. and that are performed in a manner indicating that Ms. Martinson knew or should have known, but acted with indifference to or disregard of, the accepted standard of practice. Sec. SFC 20.01, Code.

Gross negligence in the practice of social work in a single instance is a violation of sec. SFC 20.02 (22), Code. A violation of any of the subsections of SFC 20.02, Code, constitutes unprofessional conduct, which is by definition a violation of sec. 457.26 (2) (f), Stats. It is also by definition a violation of the first part of sec. 457.26 (2) (g), Stats., but more importantly, it is a violation of the second part of sec. 457.26 (2) (g), Stats., in that it constitutes conduct while practicing social work which evidences a lack of knowledge or ability to apply professional principles or skills.

Having found that Ms. Martinson violated laws governing the practice of certified advanced practice social workers, a determination must be made regarding whether discipline should be imposed, and if so, what discipline is appropriate.

The Social Worker Section of the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors is authorized under s. 457.26 (2), Stats., to reprimand a certificate holder or deny, limit, suspend or revoke a certificate if it finds that the applicant or certificate holder has engaged in conduct prohibited under the statutes.

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. McIntyre*, 41 Wis. 2d 481 (1969).

The Complainant recommends that Ms. Martinson be reprimanded. Ms. Martinson recommends that the matter be dismissed. The Administrative Law Judge recommends that Ms. Martinson be reprimanded. This measure is designed primarily to assure protection of the public and to deter other licensees from engaging in similar misconduct.

In reference to protection of the public, it is clear that Ms. Martinson's conduct in failing to interview CP contributed to the court's decision to dismiss the delinquency proceeding that was pending against CP. As a result, CP was released from custody without having received any type of treatment or rehabilitation and the public was potentially put at risk of suffering additional harm.

In reference to deterrence, it is recommended that Ms. Martinson be reprimanded to put other licensees on notice that adherence to the laws governing the practice of certified advanced practice social workers is mandatory, not optional, and that their response to time restraints and other workplace demands must assure compliance with these laws.

Based upon the record herein, the Administrative Law Judge recommends that the Social Worker Section of the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

V. Costs

440.22 Assessment of costs.

(1) In this section, "costs of the proceeding" means the compensation and reasonable expenses of hearing examiners and of prosecuting attorneys for the department, examining board or affiliated credentialing board, a reasonable disbursement for the service of process or other papers, amounts actually paid out for certified copies of records in any public office, postage, telephoning, adverse examinations and depositions and copies, expert witness fees, witness fees and expenses, compensation and reasonable expenses of experts and investigators, and compensation and expenses of a reporter for recording and transcribing testimony.

(2) 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. ...

...

RL 2.18 Assessment of costs.

...

(3) The disciplinary authority's final decision and order imposing discipline in a disciplinary proceeding shall include a determination whether all or part of the costs of the proceeding shall be assessed against the respondent.

The imposition of costs following a disciplinary action is a discretionary decision by the credentialing authority. The Social Worker Section, as a matter of public policy, and unless exceptional circumstances exist, consistently imposes the cost of investigating and prosecuting unprofessional conduct on the offending individual rather than on the non-offending members of the profession in the form of increased certification fees. 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, which acknowledges the logic of imposing the cost of discipline on the offender rather than on the profession as a whole, and which routinely imposes costs on disciplined respondents unless exceptional circumstances exist. See, e.g. In the Matter of Disciplinary Proceedings against M. Joanne Wolf, 165 Wis.2d 1, 12, 476 N.W.2d 878 (1991) and In the Matter of Disciplinary Proceedings against Willis B. Swartwout, III, 116 Wis.2d 380, 385, 342 N.W.2d 406 (1984) The only regular exception to this general policy arises when a respondent and the Division of Enforcement present a stipulated resolution to the Section prior to the initiation of a formal disciplinary proceeding, which includes a negotiated agreement not to impose costs.

In this specific case, although three of the four counts filed against Ms. Martinson were dismissed, 100% of the costs are still imposed on Ms. Martinson because the four counts of the complaint all stemmed from Ms. Martinson's actions in a series of hearings on one individual in juvenile court, meaning that the costs related to the four counts would not be distinguishable and the prosecution of any one count by itself would almost certainly have involved just as much investigation and preparation as all four did. This approach to the imposition of costs is supported by the Wisconsin Supreme Court's ruling In the Matter of Disciplinary Proceedings Against Kenneth N. Johnson, 165 Wis. 2d 14, 477 N.W.2d 54 (1991). In that case, the Board of Attorneys Professional Responsibility filed three charges against a district attorney, all related to his activities related to filing a complaint alleging the issuance of a worthless check. The Court found that two of the charges were not proven but it denied the district attorney's motion that the costs be apportioned on the basis of the number of counts proven.

Dated at Madison, Wisconsin this 13th day of June 2001.

**Cornelia Gordon-Hempe, Chair, Social Worker Section,
Examining Board of Social Workers, Marriage and Family
Therapists and Professional Counselors**