

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

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IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
ROBERT KIEFERT,	:	LS0307171RAL
D/B/A INTELTEC,	:	
RESPONDENTS.	:	

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

ORDER

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

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs with the Department General Counsel within 15 days of this decision. The Department General Counsel shall mail a copy thereof to respondent or his or her representative.

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

Dated this 30<sup>th</sup> day of June, 2004.

Patricia Hoeft, Director  
Bureau of Real Estate & Direct Licensing

STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

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IN THE MATTER OF THE DISCIPLINARY	
PROCEEDINGS AGAINST	PROPOSED DECISION
	LS0307171RAL
ROBERT D. KIEFERT	
D/B/A INTELTEC	
RESPONDENTS.	

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PARTIES

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

Robert Kiefert  
d/b/a Inteltec  
158½ West Lincoln Street  
Oregon, WI 53575

Department of Regulation and Licensing  
P.O. Box 8935  
Madison, WI 53708-8935

Department of Regulation and Licensing  
Division of Enforcement  
P.O. Box 8935  
Madison, WI 53708-8935

This proceeding was commenced by the filing of a Notice of Hearing and Complaint on July 17, 2003. The Respondent filed an Answer to the Complaint on August 1, 2003. The hearing was held on September 24, 2003. Attorney Claudia Berry Miran appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. Respondent did not appear at the hearing held in this matter. The hearing transcript was filed on October 7, 2003.

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

### **FINDINGS OF FACT**

1. Robert A. Kiefert, d.o.b. 03/14/69, was first granted a private detective license by the Department of Regulation and Licensing on February 21, 2001 (#10452).

2. Mr. Kiefert's last-known address on file with the Department of Regulation and Licensing is 158½ West Lincoln Street, Oregon, WI 53575.

3. Inteltec, 158½ West Lincoln Street, Oregon, WI 53575, is licensed as a private detective agency (license #16112) in the state of Wisconsin. The license was first granted on February 21, 2001. Robert Kiefert is identified in the records of the Department of Regulation and Licensing as the sole proprietor of Inteltec.

4. On June 13, 2003, Inteltec's agency license was placed on "Hold" status by the Department of Regulation and Licensing for failure to maintain a current bond or liability policy.

5. On September 10, 2002, Mr. Kiefert submitted an application to renew his private detective license.

6. The renewal application for a private detective license requires that the applicant answer the following question:

Have you been convicted within the past two years of a felony, misdemeanor or a violation of any State or local law (other than traffic) that is punishable by a forfeiture, OR, are charges pending?  
(If YES, provide information.)

7. Mr. Kiefert's response to the question stated in paragraph 8 above was to check the box marked "Yes" and circle the words "Charges Pending".

8. On September 25, 2002, Mr. Kiefert pled no contest and was found guilty of issuing worthless checks on July 4, 2002 to Pick-N-Save, a grocery store, in violation of City of Stoughton Ordinance No. 9.943.24. The violation which Mr. Kiefert was found guilty of substantially relate to the practice of a private detective.

9. Mr. Kiefert did not notify the Department of Regulation and Licensing in writing of the date, place and nature of the

Court's finding of his guilt for issuance of worthless checks, as required under s. 440.26 (4m) (b), Stats.

10. On February 20, 2003, Mr. Kiefert was convicted in Dane County Circuit Court of the following misdemeanors: entry into/onto building/construction site/room; disorderly conduct and carrying a concealed weapon. The crimes for which Mr. Kiefert was convicted substantially relate to the practice of a private detective.

11. On or about March 19, 2003, Mr. Kiefert's Probation Officer informed the Department that Mr. Kiefert had been convicted of entry into/onto building/construction site/room; disorderly conduct and carrying a concealed weapon. The Probation Officer also informed the Department that Mr. Kiefert is on probation supervision as a result of his convictions. His term of supervision will expire on February 20, 2005.

12. Mr. Kiefert did not notify the Department of Regulation and Licensing in writing of the date, place and nature of his convictions for entry into/onto building/construction site/room, disorderly conduct and carrying a concealed weapon.

13. On March 27, 2003, The Department of Regulation and Licensing denied Mr. Kiefert's application for a license to practice as a private detective on the following grounds:

Documentation on file that establishes that you have been convicted of misdemeanor crimes, the circumstances of which substantially relate to the practice of a private detective. You also failed to notify the department within 48 hours after the entry of conviction pursuant to Section 440.26, (4m) (b), Stats.

14. Mr. Kiefert did not appear at the hearing held in this matter.

### **CONCLUSIONS OF LAW**

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

2. Respondent's conduct as described in Findings of Fact 8 through 12 herein, constitutes a violation of s. 440.26 (4m) (b); s. 440.26 (6) (a) 1; s. 440.26 (6) (a) 2 and s. 440.26 (6) (a) 4, Stats., and s. RL 35.01 (2) and RL 35.03 (1), Code.

3. The crimes for which Mr. Kiefert was convicted substantially relate to the practice of a private detective.

4. By failing to appear at the hearing held in this matter, respondent is in default under s. RL 2.14 Wis. Adm. Code.

### **ORDER**

**NOW, THEREFORE, IT IS ORDERED** that the private detective license (#10452) of ROBERT D. KIEFERT be, and hereby is, REVOKED.

**IT IS FURTHER ORDERED** that:

1. The private detective agency license (#16112) of Inteltec be, and hereby is REVOKED.

2. The decision of the Department of Regulation and Licensing to deny the renewal application of Robert D. Kiefert on March 27, 2003 be, and hereby is, AFFIRMED.

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

This order is effective on the date on which it is signed on behalf of the Department of Regulation and Licensing.

## **OPINION**

The Division of Enforcement alleges in its Complaint that by engaging in the conduct described therein, respondent violated s. 440.26 (4m) b, 440.26 (6) (a) 1, s. 440.26 (6) (a) 2 and s. 440.26 (6) (a) 4, Stats., and s. RL 35.01 (2) and RL 35.03 (1), Code. The evidence presented establishes that the violations occurred.

### **I. Applicable Law**

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

(4m) Reporting Violations of Law. (a) Definition. In this subsection, "violation" means a violation of any state or local law that is punishable by a forfeiture.

(b) Reporting requirement. A person who holds a license or permit issued under this section and who is convicted of a felony or misdemeanor, or is found to have committed a violation, in this state or elsewhere, shall notify the department in writing of the date, place and nature of the conviction or finding within 48 hours after the entry of the judgment of conviction or the judgment finding that the person committed the violation. Notice may be made by mail and may be proven by showing proof of the date of mailing the notice.

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

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

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

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

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

(2) Violating, or aiding or abetting the violation of, any law the circumstances of which substantially relate to the practice of a private detective or private security person. A credential holder who has been convicted of a felony, misdemeanor or ordinance

violation, as defined in s. 440.26 (4m), Stats., shall send to the department within 48 hours after the judgment of conviction or the judgment finding that the person committed the violation, a copy of the complaint or other information which describes the nature of the crime or conviction and the judgment of conviction in order that the department may determine whether disciplinary action must or should be taken against credential holder.

**RL 35.03 Effect of suspensions, revocation or nonrenewal of agency license on agency employees.** (1) Suspension, revocation or nonrenewal of an agency license shall terminate private detective or private security personnel activity by all employees of the agency.

**RL 2.14 Default.** If the respondent fails to answer as required by s. RL 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence. The disciplinary authority may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the disciplinary authority enters an order or within a reasonable time thereafter.

## **II. Background**

### **(A) Application for Renewal of Private Detective License**

Mr. Kiefert was first granted a private detective license on February 21, 2001. On September 10, 2002, Mr. Kiefert submitted an application to renew his private detective license. The renewal application for a private detective license requires that the applicant answer the following question:

Have you been convicted within the past two years of a felony, misdemeanor or a violation of any State or local law (other than traffic) that is punishable by a forfeiture, OR, are charges pending?  
(If YES, provide information.)

Mr. Kiefert's response to the question stated above was to check the box marked "Yes" and circle the words "Charges Pending".

On February 20, 2003, Mr. Kiefert was convicted in Dane County Circuit Court of the following misdemeanors: entry into/onto building/construction site/room; disorderly conduct and carrying a concealed weapon. On or about March 19, 2003, Mr. Kiefert's Probation Officer informed the Department that Mr. Kiefert had been convicted of entry into/onto building/construction site/room; disorderly conduct and carrying a concealed weapon.

On March 27, 2003, The Department of Regulation and Licensing denied Mr. Kiefert's application for a license to practice as a private detective on the following grounds:

Documentation on file that establishes that you have been convicted of misdemeanor crimes, the circumstances of which substantially relate to the practice of a private detective. You also failed to notify the department within 48 hours after the entry of conviction pursuant to

## **(B) Unprofessional Conduct**

The Division of Enforcement alleges in its Complaint that by engaging in the conduct described therein, respondent violated s. 440.26 (4m) b, 440.26 (6) (a) 1, s. 440.26 (6) (a) 2 and s. 440.26 (6) (a) 4, Stats., and s. RL 35.01 (2) and RL 35.03 (1), Code. The evidence presented establishes that the violations occurred.

## **III. Evidence Presented**

### **(A) Criminal Convictions**

Mr. Kiefert was convicted on February 20, 2003 in Dane County Circuit Court of entry into/onto building/construction site/room; carrying a concealed weapon and disorderly conduct. His misconduct and the circumstances surrounding his convictions, as described in the three Criminal Complaints filed against him in Dane County in 2002, is summarized below.

#### **(1) Conviction for Entry Into/Onto Bldg/Construction Site/Room**

Based upon the Criminal Complaint filed in Dane County on April 30, 2002, the complainant reported the following [Circuit Court Case No. 2002CF001030]:

Your complainant is a Court Officer with the City of Stoughton Police Department, and for this complaint is relying on the written police reports submitted by City of Stoughton Police Department Police Officers Dan Jenks, Sean Poole, and Robin Powers.

Officer Jenks reports that on April 25, 2002, at approximately 2:10 A.M., he met with an individual who identified himself as Daryl Oestreich, who stated he had been in Stoughton earlier that night and he currently worked part time for an individual identified by him as Robert Kiefert, who runs a security business, and that on Wednesday, April 24, 2002, Oestreich had made contact with Kiefert to see if Oestreich could receive a due paycheck that Kiefert owed him, and Kiefert told him that Oestreich could pick the check up later at Gabrielle's Restaurant in Stoughton at around 11:30 P.M.

Officer Jenks reports that Oestreich stated that he was familiar with Gabrielle's Restaurant which is located at 524 West Main Street in Stoughton, Dane County, Wisconsin, and that he met with Kiefert at about 11:30 P.M., but Kiefert had an individual along with him who Oestreich identified as David Bunnell. Officer Jenks reports that Oestreich stated that as they walked to the front door of Gabrielle's Restaurant because Kiefert stated he needed to get some belongings out of the restaurant, Kiefert attempted to use the key, but the key did not work for any of the doors. Oestreich stated that Kiefert then asked Oestreich to go back to the Suburban vehicle and ask Bunnell to go to the back of the restaurant next to the trash dumpster and Oestreich stated that as he was seated in the Suburban, Bunnell opened the door from the inside of the restaurant, causing Oestreich to be immediately suspicious. Oestreich stated that Kiefert stated he wanted to take his items out of the rear door of the restaurant and load them into the truck quickly so that the neighbors would not be suspicious and Oestreich stated he helped carry items including a microwave, shades, a small blender, a bread maker, some stereo equipment, a Vince Lombardi wall plaque, and a 5 gallon bucket with various items in it, and he followed Kiefert to the cash register, which Kiefert opened and took money from it. Kiefert told Oestreich that the money was technically not Kiefert's, but Dan owes me.

Officer Jenks reports that Oestreich stated that Kiefert told Bunnell and Oestreich to go clean the basement bathroom, and upon arrival at that location, Oestreich reported he saw a wooden board with an exhaust fan which had fallen from a window, and there were leaves and mud on the floor, which they cleaned up, and it appeared to Oestreich that this is where Bunnell had broken into the restaurant,

Officer Jenks reports that he contacted an individual who identified herself verbally as Sarah A. Leonard, who stated that Kiefert is not the owner of the business, or a lessee of the building and did not have permission to enter or remove items from the restaurant.

Officer Poole reports that at approximately 2:50 A.M., on April 25, 2002, he received a call that the suspects had returned and were again inside the building, Gabrielle's Restaurant. Officer Poole reports that he responded to that location, and observed City of Stoughton Police Officer Robin Powers outside the restaurant. Officer Poole reports that he observed the side door of the restaurant open and Kiefert and Bunnell then exited the restaurant. Officer Poole reports that he contacted the individual who identified himself verbally as David Bunnell, Officer Poole reports that Bunnell stated that he was just helping Kiefert move some of Kiefert's belongings out of the restaurant and was under the impression that Kiefert had permission to be there.

Officer Powers reports that she contacted the individual who was identified at the scene as Robert Kiefert, who stated that it was all a mistake and that he leased the building from Dan Leonard, has had problems with Leonard in the past, that Leonard owes Kiefert money and had now changed the locks on him, that he had met a current employee of Gabrielle's to let him in with a key, and he was just taking his belongings. Kiefert stated that he had gone to the restaurant to retrieve several items that belonged to him, and was let in by a current employee, and he took several items including a George Foreman Grill, two microwaves, two vacuum cleaners, a mixer, a blender, a food processor, and a poster of Vince Lombardi. Kiefert stated that all of these items belonged to him and that he had receipts for each.

Officer Powers reports that she contacted Bunnell who stated that he had entered the restaurant through a window behind the dumpster, crawled down through the window, and let Kiefert in, and then helped Kiefert remove several items including a couple of microwaves.

## **(2) Conviction for Carrying a Concealed Weapon**

Based upon the Criminal Complaint filed in Dane County on June 10, 2002, the complainant reported the following [Circuit Court Case No. 2002CM002327]:

Stoughton Police Officer Patrick Lewis reports that on March 27, 2002, he responded to Gabrielle's Restaurant, located at 524 W. Main Street, in the City of Stoughton, Dane County, Wisconsin, where he made contact with an individual who verbally identified himself as Nicholas Rasmussen. Officer Lewis reports that Rasmussen stated that he had received a number of threatening and harassing phone calls from an individual he identified as Bob Kiefert. Rasmussen stated that he and Kiefert had been friends, however, when he spends time with his girlfriend or family, Kiefert becomes jealous and upset. Rasmussen stated that he now wished to end the relationship with Kiefert and this was causing a problem, as Kiefert was acting very possessive and demanding.

Rasmussen stated approximately three nights ago, Kiefert had called and became very upset and started yelling at Rasmussen and making some threats. Rasmussen reported that Kiefert stated, "This was fucking bullshit" and "I'm not going to play your fucking games". Rasmussen stated that he was really not sure what Kiefert meant by this. Rasmussen stated that he was very blunt with Kiefert and stated that he did not want to have anything to do with him anymore and no longer wanted to be friends and at this point Kiefert became irate and was yelling and screaming and threatened him. Rasmussen stated that Kiefert told him, "If we cross paths again, I'll have your flesh". Rasmussen stated that he was very scared of Kiefert because Kiefert is self-employed as a security guard and continually wears a police-type security uniform and carries a handgun on a duty belt. Rasmussen reported that he received the phone call at his house located at 1005 Stoughton Avenue, #3, in the City of Stoughton, Dane County, Wisconsin.

Rasmussen reported that he is very fearful of what Kiefert might do because of past behavior as well. Rasmussen referred back to an incident that he stated took place in the middle to end of the month of February, 2002. Rasmussen stated that he and Kiefert and a number of other individuals, identified as Robert Schmidt, and Robert Cornelle, were working in the Gabrielle's Restaurant before the restaurant opened. Rasmussen stated that Kiefert and Schmidt got into an argument about the work that was being done, and that Kiefert went over to a briefcase and removed his handgun that he normally carries on his duty belt. Rasmussen stated that Kiefert then inserted a loaded magazine into the weapon and then racked the slide of the gun and pointed it directly at Schmidt.



Stoughton Police Sgt. Brian Gowan reports that on March 29, 2002, he made contact with an individual who identified himself as Robert Schmidt. Schmidt reported that on February 13, 2002, he was doing some work at Gabrielle's Restaurant when Robert Kiefert approached him about taking some air gauges. Schmidt reports that Kiefert became upset and reached into his briefcase and grabbed a pistol, charged it, and pointed it at Schmidt. Schmidt reported that Kiefert pointed the weapon at Schmidt's mid-section area. Schmidt reported that this caused him to fear for his safety, thinking that Kiefert was possibly going to shoot him. Schmidt reported that Kiefert then placed the pistol in his coat pocket and left the area.

Schmidt reported that a few days later he was working at Gabrielle's again when he and Kiefert had to go to Menard's. Schmidt reported that he was not thrilled about doing this, but he had not been paid for his job, so he thought he should finish it so he could get his money. Schmidt reported that he asked Kiefert if he had the weapon in his vehicle, and Kiefert stated, "It's under the seat". Schmidt reported that they drove to Menard's in Madison and that upon returning to Gabrielle's, Kiefert made a statement something to the effect of "where's my gun, or I mean my briefcase".

Sgt. Gowan reports that on March 31, 2002, he made contact with Robert Kiefert. Kiefert admitted that he confronted Schmidt about taking the gauges, and that Schmidt denied taking the gauges several times. Kiefert admitted that at that time he had his sidearm, described as a 9 mm pistol, kept in his briefcase at Gabrielle's. Kiefert admitted that he then reached into the briefcase, took out his handcuffs first, then reached in and placed a magazine in the gun. Kiefert stated he did not chamber a round, however, he then displayed the gun. Kiefert stated he then put it in his right pocket. Sgt. Gowan reports that he asked Kiefert if he was trying to intimidate Schmidt with the weapon, and Kiefert replied, "You could say that".

Sgt. Gowan reports that on March 29, 2002, he made contact with the Department of Regulations and Licensing for private investigator/security officer section. Sgt. Gowan reports that he spoke with an employee from that section and was advised that Robert Kiefert does not have the authorization to carry a firearm while on duty or concealed, although he does have a valid security officer license and private investigator license.

### **(3) Conviction for Disorderly Conduct**

Based upon the Criminal Complaint filed in Dane County on December 23, 2002, the complainant reported the following [Circuit Court Case No. 2002CF02994]:

City of Stoughton Police Officer Robin Powers reports that on December 21, 2002, she was dispatched to 416 Devinshire Road, Stoughton, Wisconsin, where she contacted a subject who identified himself verbally as John Solis. Solis advised that he had been at home at his residence at that location this evening when he received a cell phone call from his son. Solis advised that his son indicated that, a vehicle was following him home and he was worried about what would happen when he got there. John Solis advised he proceeded out of the residence, and upon doing so, he observed his son in the driveway near his vehicle with his girlfriend inside of the vehicle. At this point, he also observed a Chevy Suburban of a light color with a darker stripe in the street in front of his residence. At that time, the vehicle was slowly pulling forward and the occupants were looking towards his house. Solis advised he raised his arms from his sides, asking what was going on and the vehicle suddenly stopped and then backed up in front of the residence. He described the passenger in the vehicle as a white male in his 20s and he stated this subject rolled down the window, and an older white male in his 40s who was driving the vehicle then yelled something at him.

Solis advised he walked towards the vehicle because he could not hear what the individual was saying, at which time the driver stated "Do not come in this vehicle or I will shoot you." Solis stated he said "Fine" and then asked what was going on. Solis advised the driver then got extremely upset and began yelling at him about his son driving erratically and dangerously on the roadway. Solis stated he attempted to have a calm conversation with the driver, asking him what his son had done, but the driver became very agitated, loud and threatening. He stated that the individual also said he would be contacting the police, and "If they attempted to identify this vehicle, I will shoot you." Solis stated the driver then drove off, Solis further advised that his wife became upset and scared so she had called the police and gave them the license plate of the vehicle, which Solis advised was 493DGL.

Officer Powers also spoke with Ryan Solis, who advised he had been southbound on U.S. Highway 51, approaching

the bank on County Highway B when he observed a Suburban behind him. He advised that the driver appeared to be very impatient, wanting to get by him and was tailgating him. Ryan advised that he had had a couple of speeding tickets earlier and that his father had advised him if he got another one, it would be the end of his driving. Ryan advised that do to this, he was driving everywhere approximately 50 miles per hour to ensure he didn't get another speeding ticket. Ryan advised he believed this was the reason for the individual behind him being upset.

Ryan Solis advised that the truck passed him after they passed the bank and continued on ahead of him a short distance before suddenly pulling over to the side of the road. Ryan Solis stated that he then passed the vehicle that was pulled over the road, at which point the vehicle again pulled up behind him and began following him home. He stated that he continued into town and turned left on Roby, continuing down to Kingsland, turning onto that road and then turning into Buckingham Place before pulling onto Devonshire and pulling into his driveway. He stated that he was scared doing this as the driver continued to follow him at every turn and he didn't know what the driver would do. Ryan Solis advised that he contacted his father on his cell phone and asked him to come outside and told him about the incident. Solis also advised that the subject in the vehicle began yelling at them and threatened to shoot them if they came in the vehicle or if they identified the vehicle.

Officer Powers reports she did recall numerous contacts with an individual who drove a vehicle matching the description and who had a history of incidents involving threats and firearms. She advised this individual was Robert Kiefert and he did reside nearby on Jackson Street. Officer Powers responded to Jackson Street and observed Kiefert's vehicle at home with a license plate matching that given by the complainants. Officer Powers contacted a subject who identified himself verbally as Robert Kiefert, at which time Kiefert advised he had, in fact, been involved in an incident with another vehicle a short time before. Kiefert advised that he had been on U.S. Highway 51, and the vehicle in front of him would speed up and slow down at speeds between 40 and 55 miles per hour and the individual also continually tapped his brakes and appeared to be playing games.

Kiefert advised a purple minivan passed the vehicle, and he observed the driver flip the minivan driver off. Kiefert advised when he passed the vehicle, the driver also flipped him off. Kiefert stated he proceeded for a short distance before pulling over to the side and letting the vehicle pass and pulling in behind it to get his license plate. Kiefert advised that he did this and decided to follow it home to determine where he lived. Kiefert further advised that when he reached the residence, an older male came out of the house at which time he advised the individual not to put his arm in his vehicle or he would shoot him. Kiefert stated that he advised the subject that his son was driving erratically and dangerously and that he should do something about it. Kiefert advised that he then left the house and returned home. Kiefert further advised he never contacted the police about the incident.

## **(B) Failure to Report Convictions and Ordinance Violation**

The evidence presented establish that Mr. Kiefert failed to report to the Department of Regulation and Licensing that he was convicted of misdemeanors on February 20, 2003 and that he was convicted of an ordinance violation, issuance of worthless checks, on September 25, 2002.

### **(1) Conviction of Misdemeanor Crimes**

On February 20, 2003, Mr. Kiefert was convicted in Dane County Circuit Court of the following misdemeanors: entry into/onto building/construction site/room; disorderly conduct and carrying a concealed weapon.

### **(2) Violation of Municipal Ordinance**

On September 25, 2002, Mr. Kiefert pled no contest and was found guilty of issuing worthless checks on July 4, 2002 to Pick-N-Save, a grocery store, in violation of City of Stoughton Ordinance No. 9.943.24. Mr. Kiefert paid restitution to the store prior to the date scheduled for the trial. The fine was waived by the Court based upon its finding that Mr. Kiefert was indigent. *Exhibits 5 and 5A.*

Mr. Kiefert admitted in his Answer to the Complaint that three checks were bounced through his business account

causing issued checks to be denied. He said that he made payment to the debtors immediately. *Answer, paragraph 11A.*

The evidence presented establish that Mr. Kiefert did not notify the Department of Regulation and Licensing in writing of the date, place and nature of the Court's finding of his guilt for issuance of worthless checks, as required under s. 440.26 (4m) (b), Stats.

### **III. Analysis of Evidence**

#### **(A) Conviction of Crimes Substantially Related to the Practice**

The evidence presented establish that the crimes, entry into/onto building/construction site/room; carrying a concealed weapon and disorderly conduct, for which respondent was convicted on February 20, 2003, substantially relate to practice as a private detective.

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

(2) Violating, or aiding or abetting the violation of, any law the circumstances of which substantially relate to the practice of a private detective or private security person. ....

Section 111.321 and 111.322, Stats., prohibit a licensing agency from discriminating against an individual on the basis of a conviction record. Section 111.335 (1) (c), Stats., provides that notwithstanding s. 111.322, it is not discrimination because of conviction record to terminate from licensing any individual who has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the licensed activity.

The purpose of the exception structured by the Legislature in s. 111.335 (1) (c), Stats., was discussed by the Wisconsin Supreme Court in *County of Milwaukee v. Labor and Industry Review Commission*, 139 Wis. 2d 805, 407 N.W. 2d 908 (1987). Although the Court's discussion focused on the employment area, the societal interests discussed are relevant to the licensing area. The Court stated, Id. at 821, that:

It is evident that the legislature sought to balance at least two interests. On the one hand, society has an interest in rehabilitating one who has been convicted of crime and protecting him or her from being discriminated against in the area of employment. Employment is an integral part of the rehabilitation process. On the other hand, society has an interest in protecting its citizens. There is a concern that individuals, and the community at large, not bear an unreasonable risk that a convicted person, being placed in an employment situation offering temptations or opportunities for criminal activity similar to those present in the crimes for which he had been previously convicted, will commit another similar crime. This concern is legitimate since it is necessarily based on the well-documented phenomenon of recidivism.

In reference to assessing the risk of recidivism, the Supreme Court stated, Id. at 823-824, that:

In balancing the competing interests, and structuring the exception, the legislature has had to determine how to assess when the risk of recidivism becomes too great to ask the citizenry to bear. The test is when the circumstances, of the offense and the particular job, are substantially related.

Assessing whether the tendencies and inclinations to behave a certain way in a particular context are likely to reappear later in a related context, based on

the traits revealed, is the purpose of the test. ...

It is the circumstances which foster criminal activity that are important, e.g., the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person.

Mr. Kiefert's behavior, as described in the excerpts taken from the Criminal Complaints filed against him, reflects character traits of dishonesty and lack of self-control and self-discipline. If permitted to continue to practice as a private detective license, Mr. Kiefert would be presented with ample opportunities to engage in similar misconduct. As a private detective, Mr. Kiefert would be entrusted with maintaining the security of valuable goods and products, as well as securing businesses and establishments from intrusion by other dishonest individuals. That position of trust would provide him with easy access to the valuable goods and products that he would be entrusted to secure. The risk of recidivism is too great to ask the public to bear.

#### **(B) Failure to Report Convictions and Ordinance Violation**

The evidence presented establish that Mr. Kiefert failed to report to the Department of Regulation and Licensing that he was convicted of misdemeanor on February 20, 2003 and that he was convicted of an ordinance violation, issuance of worthless checks on September 25, 2002.

On February 20, 2003, Mr. Kiefert was convicted in Dane County Circuit Court of the following misdemeanors: entry into/onto building/construction site/room; disorderly conduct and carrying a concealed weapon.

On or about March 19, 2003, Mr. Kiefert's Probation Officer informed the Department Mr. Kiefert had been convicted of entry into/onto building/construction site/room; disorderly conduct and carrying a concealed weapon. *Complaint, paragraph 9 and Exhibit D attached thereto.*

Mr. Kiefert alleges in his Answer to the Complaint that the contact made to the Department by the Probation Officer was made on his behalf and at his request. He said that his request was made on time by him and that the lateness of contact with the Department was due to error on behalf of the Probation Officer and bureaucratic channels. He said that he felt it was in his best interest to have the Probation Officer make contact on his behalf under the circumstances. *Respondent's Answer, paragraph 9A.*

Mr. Kiefert, not his Probation Officer, had the responsibility to notify the Department in writing, within 48 hours after the entry of the judgment of conviction, of the date, place and nature of his convictions for entry into/onto building/construction site/room, disorderly conduct and carrying a concealed weapon. His failure to report the convictions to the Department constitute a violation of s. RL 35.01 (2), Stats.

#### **IV. Discipline**

Having found that Mr. Kiefert violated laws relating to practice as a private detective, a determination must be made regarding whether discipline should be imposed, and if so, what discipline is appropriate.

The Department of Regulation and Licensing is authorized under s. 440.26 (6), Stats., to revoke, suspend or limit a private detective license, or reprimand the holder of the license, if it finds that the licensee has engaged in the type of conduct prohibited by 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. MacIntyre*, 41 Wis. 2d 481 (1969).

It is recommended that Mr. Kiefert's private detective license, as well as the agency license, be revoked and that he be ordered to pay the costs of the proceeding. This measure is designed primarily to assure protection of the public. The evidence

establishes that he has been convicted of crimes that substantially relate to practice as a private detective, and that he failed to notify the Department within 48 hours of his convictions. His behavior reflects character traits of dishonesty and lack of self-control and self-discipline. If permitted to continue to practice as a private detective license, Mr. Kiefert would be presented with ample opportunities to engage in similar misconduct. He has shown, by his conduct that he is unable to practice as a private detective in a manner that safeguards the interest of the public.

## **V. Costs of the Proceeding**

Section 440.22(2), Stats., provides in relevant part as follows:

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

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against the respondent is a discretionary decision on the part of the Board, and that the Board's discretion extends to the decision whether to assess the full costs or only a portion of the costs. The Administrative Law Judge's recommendation that the full costs of the proceeding be assessed is based primarily on fairness to other members of the profession.

The Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions, and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following a full evidentiary hearing, that licensee should bear the costs of the proceeding.

This approach to the imposition of costs is supported by the practice of the Wisconsin Supreme Court, which is granted similar discretionary authority by SCR 22.24 to impose costs in attorney disciplinary hearings. The Court acknowledges the logic of imposing the cost of discipline on the offender rather than on the profession as a whole, and routinely imposes costs on disciplined respondents unless exceptional circumstances exist. In the Matter of Disciplinary Proceedings against M. Joanne Wolf, 165 Wis. 2d 1, 12, 476 N.W. 2d 878 (1991); In the Matter of Disciplinary Proceedings against Willis B. Swartwout, III, 116 Wis. 2d 380, 385, 342 N.W. 2d 406 (1984).

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

Dated at Madison, Wisconsin this 6<sup>th</sup> day of April, 2004.

Respectfully submitted,

Ruby Jefferson-Moore  
Administrative Law Judge