

# 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

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FINAL DECISION  
AND ORDER  
LS0310092RSG

SEAN JONES,  
RESPONDENT.

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

ORDER

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

The 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

IN THE MATTER OF THE DISCIPLINARY  
PROCEEDINGS AGAINST

PROPOSED DECISION  
LS0310092RSG

SEAN JONES  
RESPONDENT.

PARTIES

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

Sean Jones  
6016 33rd Avenue  
Kenosha, WI 53142

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 October 9, 2003. The Respondent did not file an Answer to the Complaint. The hearing was held on December 11, 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 December 18, 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. Sean Jones, d.o.b. 01/11/72, was granted a permit to practice as a private security person by the Department of Regulation and Licensing on June 2, 2000 (permit #14409).

2. Mr. Jones' last-known address on file with the Department of Regulation and Licensing is 6016 33rd Avenue, Kenosha, WI 53142.

3. On April 23, 1999, Mr. Jones was convicted in Cook County, Illinois Circuit Court of one count of Misdemeanor Assault and one count of Misdemeanor criminal Damage to Property.

4. On or about May 25, 2000, the respondent filed an application for a private security person permit with the Department of Regulation and Licensing. The application contained the following language on Page 2 of the form, to which Mr. Jones answered "No":

A. Have you **EVER** been convicted of a **MISDEMEANOR** or a **FELONY** or **DRIVING WHILE INTOXICATED (DWI)**, in this or any other state **OR** are criminal charges or DWI charges currently pending against you? If YES, give details on an attached sheet, including the name of the profession and the agency.

5. On June 2, 2000, Mr. Jones was issued a permit to practice as a private security person. That permit expired On September 1, 2002.

6. On February 28, 2001, respondent was convicted in Kenosha County, WI of operating a vehicle without a valid driver's license (second offense), a misdemeanor, and obstructing an officer, also a misdemeanor.

7. The crime, obstructing an officer, for which respondent was convicted on February 28, 2001, substantially relate to practice as a private security person.

8. On January 30, 2002, respondent was convicted in Kenosha County, WI of resisting an officer, a misdemeanor.

9. On or about July 21, 2003, Mr. Jones filed an application for renewal of his permit.

The renewal application for a private security person permit requires that the applicant answer the following question, to which Mr. Jones answered "No":

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.)

10. Respondent did not notify the Department of Regulation and Licensing, of his convictions for the misdemeanors referenced in paragraphs 6 and 8 above, within 48 hours after the entry of the judgment of convictions.

11. On August 4, 2003, respondent's renewal application for a private security permit. was denied on the grounds that he was convicted of misdemeanor crimes, the circumstances of which substantially relate to the practice of a private security guard, and that he failed to notify the Department within 48 hours after the entry of the judgment of convictions.

12. Respondent did not file an Answer to the Complaint and 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 3-11 herein, constitutes a violation of s. 440.26 (6) (a) 1, s. 440.26 (6) (a) 3 and s. 440.26 (6) (a) 4, Stats., and s. RL 35.01 (2) and (17), Code.

3. By failing to file an Answer to the Complaint and 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 permit (#14409) of SEAN JONES, to practice as a private security person be, and hereby is, **REVOKED**.

**IT IS FURTHER ORDERED** that 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 (6) (a) 1, s. 440.26 (6) (a) 3 and s. 440.26 (6) (a) 4, Stats., and s. RL 35.01 (2) and (17), Code. The evidence presented establishes that the violations occurred.

#### **I. Applicable Law**

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

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

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

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

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

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

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

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

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

## **II. Evidence Presented**

### **(A) Application for Private Security Person Permit**

Mr. Jones was issued a permit as a private security person on June 2, 2000. In his application for a private security person permit, which was filed on or about May 25, 2000, Mr. Jones answered "NO" to the following question:

- A. Have you **EVER** been convicted of a **MISDEMEANOR** or a **FELONY** or **DRIVING WHILE INTOXICATED (DWI)**, in this or any other state **OR** are criminal charges or DWI charges currently pending against you? If YES, give details on an attached sheet, including the name of the profession and the agency.

On April 23, 1999, Mr. Jones was convicted in Cook County, Illinois Circuit Court of one count of Misdemeanor Assault and one count of Misdemeanor criminal Damage to Property. He was placed on probation for one year and ordered to pay fines and restitution.

## **(B) Renewal Application**

The renewal application for a private security person permit requires that the applicant answer the following question, to which the respondent answered "NO":

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.)

On February 28, 2001, respondent was convicted in Kenosha County, WI of operating a vehicle without a valid driver's license (second offense), a misdemeanor, and obstructing an officer, also a misdemeanor.

On January 30, 2002, respondent was convicted in Kenosha County, WI of resisting an officer, a misdemeanor.

On or about July 21, 2003, Mr. Jones submitted his renewal application for a private security permit. His renewal application was denied on the grounds that he was convicted of misdemeanor crimes, the circumstances of which substantially relate to the practice of a private security guard, and that he failed to notify the Department within 48 hours after the entry of the judgment of convictions.

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

The evidence presented establishes that the crime, obstructing an officer, for which respondent was convicted on February 28, 2001, substantially relate to practice as a private security person.

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.

In this case, Mr. Jones was convicted on February 28, 2001, of obstructing an officer. He provided false information several times to a police officer regarding his age and identity. In the Criminal Complaint filed in that case, Mr. Jones' conduct and the circumstances surrounding his conviction for obstructing an officer was described, in part, as follows:

On February 2, 2001, at approximately 4:00 p.m., Officer Sandra Pelky was on routine patrol duty with the Pleasant Prairie Police Department, traveling southbound on 39 Avenue, when she observed a vehicle operator whom she believed she recognized from a stop she had conducted a week earlier, for Operating after Revocation. Officer Pelky then ran the plate of this vehicle which came back with a suspended registration. Officer Pelky activated her squad's emergency lights just south of Springbrook Rd. 39 Avenue. The vehicle turned right onto Springbrook Rd. and made a left into the parking lot of a bank. Officer Pelky approached the driver, who was talking on a cell telephone. Officer Pelky asked the driver for his driver's license and he stated that he did not have it with him. The defendant stated that his license was at home and that he had no other type of identification on him. The driver identified himself as David K. Shavazz, DOB: 9/24/76. The defendant stated that he had just turned 25 years old. Officer Pelky ran the driver's and passenger's information through the Department of Transportation and the passenger came back with a suspended driver's license, however, the driver did not come back on file. When Officer Pelky questioned the driver (who was later identified as the defendant) how he could have just turned 25 if he was born in 1976, the defendant stated that the officer did not hear him correctly and that he was born in 1975. The defendant then stated: "why you pickin' on me, cuz I'm black right. . . you a racist b...h, aint you." Officer Pelky asked the defendant if he had just turned 25 as he had said, however the defendant continued to ramble on about the officer's racism. Officer Pelky ran the defendant a second time through DOT and his information did not come back on file.

Officer Pelky asked the defendant if he had any paperwork whatsoever which would assist in his identification, in response to which he stated, "F..k that, I ain't got nothing and if you can't find it in your computer, that's your fault." Officer

Pelky then advised the defendant he would have to pay for his citations in cash and explained the procedure. The defendant responded by yelling that he would not have to pay for anything and that he lives in Chicago, so the police (here) would have to come and get him. The defendant was extremely angry and yelling, accusing the entire police department of racism and threatening to sue the entire department because he was being harassed. Officer Pelky called for two additional squads due to the defendant's disorderly conduct. Officers Myles, Carpenter and Durkee all responded. The defendant was yelling obscenities and making loud racial accusations in the bank parking lot as many customers entered and exited the bank, taking notice of the ruckus.

Officer Pelky and other officers on the scene advised the defendant that he was under arrest and ordered him to exit the vehicle. When Officer Pelky took the keys from the ignition, the defendant yelled at her for "stealing private property." The defendant advised all officers to "stay the F..k away" and further advised that he was seated in private property and therefore the officers could not arrest him. Officers had to ask him numerous times and advise him of the consequences for his failure to comply before the defendant got out of the car. The defendant then offered the DOB: 9/24/78, saying "try that one, you'll see I got a license." The defendant went on and on about suing everyone and alleging racial motives on the part of the officers. While in back of the squad, the defendant told Officer Pelky to try another name, David D. Conley. Officer Pelky also found that name "not on file." When the defendant learned he was going to the jail, he stated. "all right, I lied, my real name is Sean Jones, DOB: 1/11/72." The defendant indicated that the previous identities he provided were his cousins names and DOBs from Chicago. The defendant came back suspended in Illinois with no valid driver's license in Wisconsin. The defendant then stated that he lied because he was trying to get licensed in Wisconsin after being suspended for poor driving in Illinois. The defendant's driving record reveals that has been convicted one time for operating a motor vehicle without a valid operator's license in the three years preceding the commission of this offense. He was arrested on August 30, 2000 in Kenosha County and convicted of that offense on September 13, 2000.

When Officer Pelky advised the defendant that he would be arrested for Obstructing for his lies, he responded by saying "Go ahead, I'll get a signature bond tomorrow and be out in the morning anyway." When advised he would have to pay for his citations before leaving due to his out-of-state residence, the defendant stated, "I won't pay for nothin." Officer Pelky obtained a photograph of the defendant to confirm his identity, however his criminal history revealed that Sean Jones was an alias to Dean Jones from Illinois (same social security number) who is "wanted" in Chicago for Armed Robbery.

Mr. Jones' behavior, as described in the excerpts above taken from the Criminal Complaint filed against him, reflects a character trait of dishonesty. If permitted to continue to practice as a private security person, Mr. Jones would be presented with ample opportunities to engage in similar misconduct. As a private security person, Mr. Jones 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.

### **III. Discipline**

Having found that Mr. Jones violated laws relating to practice as a private security person, 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 permit to practice as a private security person, or reprimand the holder of the permit, if it finds that the permittee 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).

The Division of Enforcement recommends that Mr. Jones' private security permit be revoked and that he be ordered to pay the costs of this proceeding.

Based upon the evidence presented, the Administrative Law Judge recommends that Mr. Jones' private security permit 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 in the record establishes that Mr. Jones failed to disclose his convictions in Illinois on his application for a permit and failed to disclose his convictions in Wisconsin on his application for renewal of his permit. He also lied to the police officer in the Kenosha County obstruction case when asked about his identity and date of birth. His behavior, as described herein, reflects a character trait of dishonesty. If permitted to continue to practice as a private security person, Mr. Jones 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 security person in a manner that safeguards the interest of the public.

#### **IV. 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 15<sup>th</sup> day of March, 2004.

Respectfully submitted,

Ruby Jefferson-Moore  
Administrative Law Judge