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STATE OF WISCONSIN
BEFORE THE MARRIAGE AND FAMILY THERAPY, PROFESSIONAL COUNSELING,
AND SOCIAL WORK EXAMINING BOARD
SOCIAL WORKER SECTION

In the Matter of the Disciplinary Proceedings
Against **DENISE LYNN BAILEY, C.S.W.**,
Respondent

FINAL DECISION AND ORDER
WITH EXPLANATION OF VARIANCE
DHA Case No. DRL-10-0075

Division of Enforcement Case No. 09 SOC 26

ORDER 0001283

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

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PROCEDURAL HISTORY

On or about October 27, 2010, the Department of Regulation and Licensing, Division of Enforcement ("Division") filed a formal Complaint against Respondent Denise Lynn Bailey alleging that while employed as a social worker at the Bayfield County Department of Human Services ("B.C.D.H.S."), Respondent: (1) accessed and revealed information she obtained through her employment (via the WiSACWIS database) to determine the date of bail hearing for a family friend who had been arrested for child abuse, (2) attended said friend's bail hearing, and (3) attempted to arrange bail for him, knowing full well that the allegations of her friend's child

abuse would be investigated by her office, in violation of Wis. Admin. Code §§ MPSW 20.02(13) and MPSW 20.02(10) (unprofessional conduct).

On or about November 15, 2010, Respondent filed an Answer to the Division's Complaint, denying any violations of code or law, and affirmatively alleging that at no time did she act in a way that was adverse to any position taken by B.C.D.H.S. A contested case hearing was held on March 8, 2011, Amanda Tollefsen, administrative law judge (ALJ), presiding.

On September 21, 2011, the Social Worker Section met and reviewed the Proposed Decision submitted by ALJ Tollefsen. Based upon its consideration of the proposed decision, the evidence of record and the recommendations of the ALJ, the Social Worker Section now adopts the following as its final decision and order in this matter.

FINDINGS OF FACT

1. The Respondent is Denise Lynn Bailey, born May 3, 1957. (Stipulation of Facts, ¶ 1).
2. Respondent is certified by the Social Worker Section as a social worker in the State of Wisconsin. She has been issued Certification No. 6733. Respondent was first certified on May 15, 1998. (Stipulation of Facts, ¶ 2).
3. Respondent's residential address is 7860 Hoffman Road, Iron River, Wisconsin 54847. (Stipulation of Facts, ¶ 3). Iron River is a very small town in Bayfield County¹, Wisconsin, and is approximately a one-half hour's drive from Washburn, Wisconsin. (See Tr. pp. 174, 216-217).
4. At all times relevant to this action, Respondent was working as a social worker at the Bayfield County Department of Human Services (B.C.D.H.S.) located in Washburn, Wisconsin. (Stipulation of Facts, ¶ 4).
5. As part of its responsibilities and duties, B.C.D.H.S. conducts investigations of allegations of child abuse. (Stipulation of Facts, ¶ 5). Respondent's responsibilities for B.C.D.H.S., however, were limited to juvenile intake and referrals, and did not include investigations of child abuse, unless she was on-call. (See Tr. p. 24, ll. 12-25, pp. 181-182).
6. On November 21, 2008, a friend of Respondent's ("T.L.") contacted Respondent and advised her that he thought that his daughter ("D.L.") had run away. (Stipulation of Facts, ¶ 6).
7. Following the telephone conversation referred to in the preceding paragraph, Respondent received a phone call from a friend during which phone call she was advised that T.L. had been arrested. In turn, Respondent contacted an on-call social worker at B.C.D.H.S.

¹ Wikipedia indicates that Bayfield County's population is approximately 15,000 persons.

("D.H.") for the purpose of verifying that T.L. had indeed been arrested. (Stipulation of Facts, ¶ 7). Respondent called D.H. on her home line. (Tr. p. 188, ll. 15-17). Respondent testified that she made the call because her first thought had been that D.L. must have been found, an argument probably ensued, and T.L. may have been arrested for disorderly conduct, and that she wanted to make sure that K.L., who was the wife of T.L. and her children were okay. (Tr. p. 185, l.17 – p. 186, l. 1). Respondent further testified that she called D.H. because D.H.'s office was right next to her office, and that it was not uncommon for the on-call worker to get calls from other social workers about something they had heard about. (Tr. pp. 187, l. 9-25). Respondent's supervisor (A.H.) testified that there was an expectation in the office that social workers not call the on-call social worker to inquire about a case, and that the only reason a social worker would call the on-call social worker would be to provide information about a particular case. (Tr. p. 29, l. 18 – p. 30, l. 7).

8. An on-call social worker is a social worker who is available after normal business hours to provide child protective services to juveniles when law enforcement notifies the on-call worker that the service is needed. (Tr., p. 28, ll. 7-23, Tr. p. 88, ll. 21-25). Law enforcement can also call the on-call social worker for other things, such as if they (law enforcement) are called to the home of an elderly person or a person with a mental illness. (Tr. p. 208, ll. 8-13). (It is unclear from the record whether authorities would call the on-call social worker for cases of disorderly conduct upon the return of a missing child). In the child protective services cases, the on-call social worker is responsible for starting the process of taking a child into protective custody, or returning the child to its family. (Tr. p. 28, ll. 21-23).

9. Respondent testified that she had no expectation that D.L. would be referred to the human services department for Bayfield County after her conversation with D.H. "because there was never any discussion -- that it was a child protection issue." (Tr. p. 189, ll. 12-20).

10. At some point during the evening of November 21, 2008, Respondent called the caregiver ("C.L.") at the foster home at which D.L. happened to be placed at to inquire about childcare for her relatives. (Tr. p. 49, ll. 2-9, Division's Exhibit 3, p. 2, ¶ 2). In the "Timeline of Events" she provided the Division on or about July 31, 2009, Respondent indicated that she did so after speaking with T.L., as she had talked to T.L. about having D.L. babysit for her niece's children (assuming D.L. turned up), and T.L. told her that D.L. had babysat for C.L.'s children the previous summer. (Division's Exhibit 3, p. 2, ¶ 2). Respondent's supervisor (A.H.) testified that she contacted C.L. after Respondent told her that she had contacted C.L., and that C.L. "felt that Respondent had been probing her for information during this phone call." (Tr. p. 49, l. 2-9). C.L., however, did not corroborate this testimony.

11. On November 22, 2008, K.L., who is also a personal friend of Respondent and the wife of T.L., advised Respondent that T.L. had been arrested. K.L. also advised Respondent that her daughter (D.L.) was missing and that a bail hearing for T.L. might be scheduled for Monday, November 24, 2008. (Stipulation of Facts, ¶ 8).

12. On November 24, 2008, K.L. visited Respondent while Respondent was at work at B.C.D.H.S. K.L. told Respondent that she had been unable to find out when the bail hearing for T.L. was scheduled. In turn, Respondent told K.L. that she would find out the time of such hearing from the Bayfield County District Attorney's office. (Stipulation of Facts, ¶ 9).

13. The date, time and place of the bail hearing for T.L. was a matter of public record. Such information is available to anyone who inquires. (Stipulation of Facts, ¶ 10).

14. Sometime thereafter (on November 24, 2008), Respondent used the confidential WiSACWIS database² to look up the date of birth of the child of K.L. and T.L. [D.L.]. The parties disagree as to the reason why Respondent accessed that date of birth, as to whether it was for a legitimate B.C.D.H.S. purpose, and as to whether she obtained this information for another social worker.³ A referral had been made to the B.C.D.H.S. concerning the daughter of K.L. and T.L. However, at no time was Respondent assigned any duties and responsibilities with respect to that matter; another social worker employed by B.C.D.H.S. was responsible for handling that matter. (Stipulation of Facts, ¶ 10).

15. Social workers are permitted to access the WiSACWIS database only to retrieve information that is directly related to cases or work the social worker is assigned to do, and sign a confidentiality agreement to this effect. (Tr. p. 31, l. 8 – p. 32, l. 1, p. 99, ll. 1-2, 19-23). Respondent has admitted that she was not assigned to case involving D.L. and T.L., but asserts that she looked up information at the request of another social worker with B.C.D.H.S., A.L. (Tr. pp. 197-198)). Respondent testified that A.L. “mention[ed] to her that she had heard about the situation with this family and asked if [Respondent] knew how old the child was.” (Respondent's Exhibit 2, p. 2). A.L. was not the social worker assigned to the case involving D.L. and T.L. - T.M. was. (See Tr. p. 32, ll. 17-22, p. 220, l. 4 – p. 221, l. 3)). Respondent testified these type of requests happened all the time in their office. (Tr. p. 201, ll. 8-13).

16. Respondent did not initially disclose the identity of A.L. to her supervisor (A.H.), indicating that someone else had asked her if she could look up D.L.'s date of birth, but that could not recall who asked her for this information. (See Tr. pp. 54-56). Respondent testified that she did not initially disclose A.L.'s identity because she did not want to get A.L. in trouble. (Tr. p. 200, ll. 2-25).

17. Respondent was further present on November 4, 2008, for a conversation between K.L. and the District Attorney on the sidewalk in front of the courthouse, in which K.L. relayed

² WiSACWIS is a compilation of data collected by social services agencies in Wisconsin about individuals who have received services from, or been involved with, social service agencies performing social service duties. (See Tr. p. 213, l. 9 – p. 214, l. 8).

³ Respondent maintains that she accessed WiSACWIS to determine D.L.'s at the request of another social worker; the Division, in its Complaint, appears to allege that Respondent did so in order to determine the time of T.L.'s bail hearing, but does not allege that Respondent shared this information with K.L., or anyone else. (See *infra*, see also Complaint and Answer).

that she could not seem to find out anything with respect to T.L.'s bail hearing and the District Attorney relayed that he would look into it (Division's Exhibit 3, p. 3, ¶ 3)

18. During off-duty time (November 24, 2008), Respondent attended the bail hearing that was conducted with respect to T.L. in the Bayfield County Circuit Case entitled: *State of Wisconsin v. [T.M.L.]*, Case No. 08-CF-94.

19. At no time did Respondent participate in the bail hearing for T.L. on November 24, 2008. Respondent's role in that criminal case was limited to observing the proceedings that took place at the bail hearing on November 24, 2008. (Stipulation of Facts, ¶ 10).

20. Attached to the parties' February 10, 2011, Stipulation of Facts is a copy of the CCAP record for T.L.'s criminal case. (Stipulation of Facts, ¶ 7). According to this CCAP record, T.L. was ordered to have no contact with D.L. following his November 24, 2008, bail hearing. (Division's Exhibit 4). Both K.L. and Respondent have testified that they did not hear that a no-contact provision had been imposed T.L. (Tr. pp 172, l. 4-21, p. 194, ll. 1-23). Respondent testified that she did not learn of the no-contact order until a couple of weeks later. (Tr. p. 194, ll. 12-14). Debra Vieaux, social worker supervisor for Dane County, and Respondent's expert witness, testified that it would have been impossible for Respondent not to understand that T.L.'s case would be referred to B.C.D.H.S. sitting in on a bond hearing where a condition of bond was no contact with said individual's daughter. (Tr. p. 13-21).

21. T.L. was charged with 2nd degree sexual assault of a child.⁴ (Division's Exhibit 4). It is unclear whether this charge was read at the November 24, 2008 bail hearing.⁵ The Complaint against T.L. was not filed until 12/16/08. (*Id.*). Respondent testified that she was not made aware of this charge at the time of (or prior to) T.L.'s bail hearing. (*See* Tr. p. 191, ll. 2-22, p. 194, ll. 1-14). K.L. testified that she "knew [T.L.] was there for what [D.L.] accused him of." (Tr. p. 177, ll. 22-25).

22. At the bail hearing referred to in the preceding paragraphs, bail was established. K.L. sought to post bail for her husband. To do so, she had only a personal check, which form of payment was not acceptable to the Bayfield County Sheriff's Department. K.L. asked Respondent if she could assist her in cashing a personal check. Respondent did so during her off duty time. In doing so, Respondent asked her supervisor and another social worker whether either could assist K.L. in cashing her personal check. Respondent's supervisor indicated that she was not in a position to assist in cashing the personal check, but another social worker with B.C.D.H.S. was able to do so. (Stipulation of Facts, ¶ 10). Respondent's supervisor (A.H.) did not advise Respondent that she should not be doing this. (Tr. p. 44, ll. 8-9). A.H. testified that

⁴ T.L. was eventually found not guilty of this charge by a jury. (*Id.*)

⁵ While the CCAP record for *State of Wisconsin v. [T.M.L.]*, indicates that T.L. was charged with 2nd Degree Sexual Assault of Child (Exhibit 4 at p. 4), the entry for the Bail/bond hearing (November 24, 2008) states only that bond was set and that T.L. was ordered to have no contact with D.L. (*Id.* at p. 5).

she did not know the charges against T.L. at this time, that she was not assigned the case involving D.L. and T.L., that she does not recall if she knew to whom the case was assigned to at this time, and that Respondent told her that they had helped families in these circumstances in the past (a fact which she confirmed with her manager, as she believed this was wrong). A.H. further testified that Respondent had indicated that she would not ask T.M. to cash K.L.'s check, as she assumed he would be getting the case involving D.L. and T.L. for investigation. (Tr. pp. 39, 41-47).

23. Respondent maintains that she never got the inkling that her department might be involved in dealing with the D.L. family, because she does not "see" child protection services cases. (Tr. p. 203, ll. 19-25, *see also* Tr. p. 197, ll. 11-14).

24. Respondent further maintains she took affirmative steps to remove herself from situation involving T.L. and D.L, including: (1) not asking the on-call social worker for any details other than the confirmation of the arrest, and calling said on-call worker on her own time (Exhibit 3, p. 2, ¶ 3, Tr. p. 205, ll. 7-12); (2) telling K.L. that if any information presented itself to her with respect to T.L. while at work, that she would not be able to share it with her due to DHS confidentiality policies (*Id.* at ¶ 4); (3) going to T.L.'s bail hearing on her lunch break (Tr. at p. 204, l. 13 - p. 205, l. 6); and (4) staying out of the conversation between K.L. and the District Attorney on the morning of November 24, 2008 (Tr. p. 205, ll. 18-20).

25. Respondent had no role in any juvenile proceedings that involved D.L. (Tr. p. 62, ll. 9-12, p. 63, l. 10-23, p. 197, ll. 15-20).

CONCLUSIONS OF LAW

1. The Social Worker Section of the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 457.26.

2. The burden of proof in disciplinary proceedings before the department or any examining board, affiliated credentialing board or board in the department is a preponderance of the evidence, which is defined as the greater weight of the credible evidence or more likely than not that the alleged events occurred.. Wis. Admin. Code § HA 1.01(9).

4. Pursuant to Wis. Stat. § 457.26(2), "Subject to the rules promulgated under s. 440.03 (1), the appropriate section of the examining board may reprimand a credential holder or deny, limit, suspend, or revoke a credential under this chapter if it finds that the applicant credential 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)."

5. Wisconsin Admin. Code § MPSW 20.02(10) defines “Unprofessional Conduct,” to include, “Revealing facts, data, information, records or communication received from a client in a professional capacity, except in the following circumstances:

- (a) With the informed consent of the client or the client’s authorized representative;
- (b) With notification to the client prior to the time the information was elicited of the use and distribution of the information; or
- (c) If necessary to prevent injury to the client or another person.”

6. Wisconsin Admin. Code § MPSW 20.02(13) further defines “Unprofessional Conduct,” to include, “Failing to avoid dual relationships or relationships that may impair the credentialed person’s objectivity or create a conflict of interest. Dual relationships prohibited to credentialed persons include the credentialed person treating the credentialed person’s employers, employees, supervisors, supervisees, close friends or relatives, and any other person with whom the credentialed person shares any important continuing relationship.”

7. Respondent’s conduct in accessing confidential information from the database, WiSACWIS, which was only available to her by virtue of her status as a social worker in her agency, constitutes a violation of Wis. Admin. Code § MPSW 20.02(10), “revealing facts, data, information, records or communication received from a client in a professional capacity.

8. Respondent’s conduct in assisting her friend K.L. in raising bail to obtain the release of her husband T.L. from custody, at her office and while having knowledge that his case could be investigated by her agency, constitutes failing to avoid a dual relationship or a relationship that may impair the credentialed person’s objectivity or create a conflict of interest in violation of Wis. Admin. Code § 20.02(13).

EXPLANATION OF VARIANCE

The Social Worker Section (hereinafter “Section”) finds it appropriate to vary the ALJ’s recommended discipline in this matter. In the opinion of the Section, the Respondent’s conduct demonstrates a significant lack of understanding of ethics, professional boundaries and dual relationships in the practice of social work. Respondent’s failure to recognize and avoid boundary violations and dual relationships is far more significant than a “single series of bad judgment calls in an attempt to help distraught friends.”⁶ Respondent accessed confidential information about D.L. and assisted the child’s mother, her friend, K.L. in obtaining bail money for the child’s father, T.L., from her co-workers. Respondent was aware that T.L.’s case would probably be investigated by her employer. At the very least, Respondent’s conduct sent a

⁶ The ALJ’s characterization of Respondent’s conduct as bad judgment and an attempt to merely help a friend in her proposed decision was not persuasive to the members of the Social Worker Section

confusing and inappropriate message to D.L. and her family as to whose interests B.C.D.H.S. represented. Respondent's conduct also placed her co-workers in a conflicting situation and compromised their ability to represent D.L.'s interests.

The purpose of this variance is to establish appropriate disciplinary terms to ensure that Respondent will not repeat such conduct in the future. This is particularly important because Respondent resides in a small rural community and she may know many of the individuals who are served by her employer.⁷ Respondent's lack of understanding of social work ethics suggests that she is capable of repeating the conduct since she does not recognize the obvious signs of her violations.⁸ In revising the terms of the proposed discipline, the Section seeks to deter the Respondent as well as other social workers from entering dual relationships or creating the impression of such under the guise of merely "helping a personal friend."

Violations of Statutes and Administrative Code:

The Division of Enforcement proved by the greater weight of the credible evidence, that: (1) by accessing WiSACWIS to look up the date of D.L.'s birthday⁹, Respondent "revealed facts, data, information, records or communication received from a client in a professional capacity," in violation of Wis. Admin. Code § MPSW 20.02(10); and, (2) by asking her supervisor and another social worker at B.C.D.H.S. whether they could assist K.L. in cashing a personal check so that she could post bail for T.L.¹⁰, Respondent "failed to avoid a dual relationship or a relationship that may have impaired the credentialed person's objectivity or created a conflict of interest," in violation of Wis. Admin. Code § MPSW 20.02(13).

1. D.L.'s date of birth constitutes "data, information, records or communication" received from a client in a professional capacity."

The Section does not agree with Respondent's narrow construction of Wis. Admin. Code § MPSW 20.02(10), as it would allow social workers to reveal any information their employer or another social worker within their employment received from a client, so long as that social worker did not personally obtain it from a client themselves, contrary to the purpose of the rule¹¹. (See Division's May 19, 2011, Reply Argument, pp. 1-4). Rather, the Section finds that § Wis. Admin. Code 20.02(10) is to be interpreted more broadly and reasonably, so that "... information... received from a client," includes information in a client's file. (*Id.*)

⁷ Indeed, Respondent took some steps to separate her actions from her employment.

⁸ Had this not been a first occurrence of professional misconduct for Respondent, the appropriate level of discipline could have been licensure revocation.

⁹ Stipulated Facts, ¶ 14, *see also* Divisions Proposed Findings of Fact and Conclusions of Law, Conclusion of Law ¶ 2.

¹⁰ Stipulated Facts, ¶ 13, *see also* Divisions Proposed Findings of Fact and Conclusions of Law, Conclusion of Law ¶ 3.

¹¹ Both parties agree that the purpose of § MPSW 20.02(1) is to keep client information confidential. (Division's May 19, 2011, Reply Argument, p. 3, Post Hearing Brief of Respondent, p. 22).

“Information received from a client,” as that term is used in § Wis. Admin, Code 20.02(10), is not limited to information a particular social worker obtains from a particular client. Such specificity is not included in the text of this code provision, and is not compatible with the purpose of the provision, or, indeed, of the entire administrative code. (*See Gilbert v. Medical Examining Board*, 119 Wis.2d 168, 349 N.W.2d (purpose of licensing statutes is not to benefit those persons licensed to practice under the statutes, but rather to protect the public by the requirement of a license as a condition precedent to practicing in a given profession).

2. Respondent’s action was tantamount to “revealing” or otherwise divulging D.L.’s date of birth, making discipline under § MPSW 20.02(10) warranted.

Although the parties stipulated that Respondent accessed the confidential WiSACWIS database to look up the date of birth of the child of K.L and T.L. [D.L.] (March 1, 2011 Stipulation of Facts, without authorization or a legitimate purpose, the evidence from the hearing shows that Respondent consistently maintained that she accessed D.L.’s date of birth at the request of a co-worker, who while in her office, asked her if she knew D.L.’s age. According to Respondent, because she was already in WiSACWIS, she looked this information up, and shared it with her coworker. (Tr. pp. 198, l. 2 – 199, l. 14, *see also* Respondent’s Exhibit 2, p. 2 (further indicating that said coworker “mention[ed] to her that she had heard about the situation with this family and asked if [Respondent] knew how old the child was”). While Respondent initially told her supervisor (A.H.) that she could not recall who requested this information, she later identified this individual in her January 14, 2011, Disclosure of Witnesses as A.L., claiming that she did not identify this individual earlier for fear that A.L. would be retaliated against by B.C.D.H.S. (Tr. p. 220, ll. 1-18). A.L. left her employment at B.C.D.H.S. in December 2008. (Tr. pp. 55-56).

Despite the fact that Respondent may have only accessed D.L.’s date of birth from the WiSACWIS database and not directly from a client, and never shared this information with anyone, she had no legitimate purpose for accessing the information from a restricted database. Although Respondent did not share D.L.’s age with anyone who did not have access to it on WiSACWIS does not negate the wrongfulness of the conduct. Even if Respondent only accessed D.L.’s birth date at another social worker’s request or advice, and then reverted it back to her, and did not reveal the information to anyone outside the agency, her conduct violated the confidentiality rule. Respondent’s use of WiSACWIS to “seek out information about [D.L.],” was not only a violation of the confidentiality agreement under which social workers are permitted to access WiSACWIS, but a violation of the Wisconsin Administrative Code [§ MPSW 20.02(10)]. The client confidentiality rule applies to information known to, or available to, a social worker by virtue of his or her status as a social worker. The Section finds that viewed in its entirety, Respondent’s conduct was tantamount to revealing or otherwise divulging D.L.’s date of birth, making discipline under § MPSW 20.02(10) warranted.

B. Respondent's assistance in cashing K.L.'s personal check for T.L.'s bail constituted a prohibited dual relationship:

The Section further agrees with the Division's argument that the prohibition on dual relationships extends to any relationship that may impair objectivity or create a conflict of interest and is not limited to situations where the social worker is actually treating the person with whom she has a dual relationship. The Section declines to support Respondent's narrow interpretation of the language in the rule because it undermines the rule's primary purpose. Rather, the Section agrees that the examples of prohibited relationships set forth in the rule are not exclusive and are not limited to those enumerated in the rule.

The evidence from the hearing shows that Respondent's actions in assisting her friend who was the wife of T.L. in obtaining the necessary cash for T.L.'s bail while at her place of work constituted a prohibited dual relationship under Wis. Admin Code § MPSW 20.02(13). The cashing of the K.L.'s check for bail was not only prohibited if Respondent had been assigned to investigate T.L.'s alleged abuse of his daughter, D.L. Respondent had a close personal relationship with T.L. and K.L., sufficient to cause her to have a dual relationship. It was entirely improper for Respondent to ask other social workers at B.C.D.H.S. to cash a personal check of K.L. to raise money for T.L.'s bail. Respondent's actions crossed a bright line in regard to dual relationships. By her actions, Respondent may have also created a conflict of interest for her co-workers and impaired their objectivity.

1. Respondent had reason to believe that the situation involving T.L. would likely be investigated by her office, and thus the possibility of a dual relationship with the K.L./T.L. family.

The Section agrees with the following conclusions of the ALJ that the evidence from the hearing demonstrated that Respondent had reason to believe the T.L.'s case would be referred to her office, and thus, of the possibility of a dual relationship with the K.L./T.L. family. The stipulated facts provide that between November 21, 2008, and November 24, 2008, Respondent: (1) was informed by T.L. (a close friend) that his daughter, D.L., was missing; (2) shortly thereafter, received a phone call from a friend during which she was advised that T.L. had been arrested; (3) contacted the on-call social worker at B.C.D.H.S. – who only receives information about arrests if they involve the B.C.D.H.S. – to verify that T.L. had been arrested, and was informed that he was; (4) the next day, spoke to K.L., (also a close friend, and T.L.'s wife), and was again advised that T.L. had been arrested, that D.L. was still missing, and that a bail hearing for T.L. might be scheduled for the following Monday (November 24, 2008); (5) on that following Monday morning, was visited by K.L. while at work, who informed her that she had been unable to find out when the bail hearing for T.L. had been scheduled; (6) contacted the District Attorney's office in an attempt to find out the time of T.L.'s bail hearing; (7) during off duty time, and at K.L.'s request, attended the bail hearing that was conducted with respect to T.L.; and (10) accessed WiSACWIS to look up D.L.'s birthday. (*See Findings of Fact, supra*).

The Section finds that the evidence in the record is sufficient to support that: (1) Respondent was worried about K.L. and her (remaining) children when she called B.C.D.H.S.'s on-call social worker on the evening of November 21, 2008; (2) Respondent called the caregiver (C.L.) at the foster home at which D.L. happened to be placed at this same evening, "to discuss childcare;" (3) K.L. knew what D.L. had accused T.L. of at the time of his arrest/imprisonment; (4) Respondent was present for a conversation between K.L. and the District Attorney on the sidewalk in front of the courthouse, in which K.L. relayed that she could not seem to find out anything with respect to T.L.'s bail hearing and the District Attorney relayed that he would look into it (Division's Exhibit 3, p. 3, ¶ 3); (5) T.L. was ordered not to have any contact with D.L. at his bail hearing, which Respondent attended; (6) A.L. mentioned to Respondent that she heard about the situation with "this family" and asked if [Respondent] knew how old D.L. was; and (7) Respondent was able to access D.L. on WiSACWIS, a database of persons who have received or who are receiving social services. (*See id.*)¹²

The Section finds that Respondent's actions gave her more than an "inkling" that his case would be referred to her office; the evidence shows that she (1) confirmed T.L.'s arrest with the on-call social worker, (who was only informed of arrests that required B.C.D.H.S. services), (2) she provided moral support to K.L. throughout the day Monday, November 24, 2008, (3) she attended T.L.'s bail hearing (at which he was instructed to have no contact with D.L.), and (4) she knew that D.L. was "missing." In addition, Respondent's access of WiSACWIS for information with respect to D.L. at the request of a co-worker at her office further confirms that she knew that B.C.D.H.S. would more than likely be involved in investigating the case. Based upon the totality of the circumstances, Respondent had every reason to believe that the situation involving T.L. was being investigated by her office, and thus alerted her to the possibility of a dual relationship with the K.L./T.L. family. Respondent's actions therefore constituted a violation of social work ethics and the prohibitions against dual relationships.

2. Respondent's actions in assisting K.L. in cashing a check for T.L.'s bail also meet the threshold of prohibited dual relationship.

The Section finds that Respondent engaged in a prohibited dual relationship when she assisted K.L. in cashing a check for T.L.'s bail. Respondent's actions in assisting K.L. in cashing a check for T.L.'s bail, constitutes a failure "to avoid dual relationships, or relationships that may impair the credentialed person's objectivity or create a conflict of interest," in violation of Wis. Admin. Code § MPSW 20.02(13). The Social Worker Section finds the testimony of Dianne Vieaux, a social worker supervisor with the Dane County Department of Human Services, more credible than the testimony of Respondent's expert witness, David J. Sarrow.

¹² The Division has presented no evidence (beyond speculation), however, to suggest that Respondent (1) received any additional information from the on-call social worker, K.L, the District Attorney, or A.L., other than that T.L. had been arrested, or (2) that she knew that D.L. was in C.L.'s custody at the time that she called her to inquire about child care.

Ms. Vieaux testified that a dual relationship was established as soon as Respondent became aware that T.L.'s case would be referred to her agency, (*see* Tr., p 77, ll. 21-24, p. 101, ll. 11-23)¹³, thus any action Respondent took to help K.L. with respect to T.L.'s case after that point was improper, because of the *risk* of impaired objectivity or conflict it could cause between the client, and any social worker within the agency (*see* Tr. pp. 95-96).¹⁴ According to Ms. Vieaux, "in order for social workers to do their job properly, they need to have the trust of the family and the trust of the community – that they are completely objective and they are making decisions based on the best interest of – family based on the law and based on good practice, not based on ... any other relationship." (Tr. p. 96, ll. 5-12, *see also* pp. 128-129 (very confusing message to victim to find out department giving money to abuser).

The Respondent's expert witness testified that Wis. Admin. Code § MPSW 20.02(13) "only intends to punish a "dual partnership" when the credentialed person is treating or providing professional services. Mr. Sarrow testified that his opinion was based upon Wis. Admin. Code § PSY 1.02(5m), which defines a "dual relationship" as "a situation in which a psychologist provides professional services to a person with whom the psychologist has another relationship such as, but not limited to, relatives, close friends, employees or employers, students or other supervisees."). The code of professional conduct for social workers is more stringent in that it prohibits social workers from treating close friends.¹⁵ The Section does not find Mr. Sarrow's opinion persuasive and does not accept the ALJ's conclusion that because the experts' interpretation of Wis. Admin. Code § MPSW 20.02(13) was different that there is no standard in field.¹⁶

Even without expert testimony or opinion, the plain language of Wis. Stat. § 20.02(13) which defines "Unprofessional Conduct," to include, "Failing to avoid dual relationships or relationships that may impair the credentialed person's objectivity or create a conflict of interest, is fairly clear. Dual relationships prohibit credentialed persons from engaging in professional conduct with employers, employees, supervisors, supervisees, close friends or relatives, and any other person with whom the credentialed person shares any important continuing relationship." While the parties focus their arguments on the meaning of relationships that may impair the credentialed person's objectivity or create a conflict of interest," and how this wording affects

¹³ Respondent's expert does not disagree. (Tr. p. 150, ll. 11-17).

¹⁴ Indeed, it appears that Ms. Vieaux believes that Respondent should have informed her supervisor of her "dual relationship" with the K.L./T.L. family as soon as she had reason to believe their case would be referred to B.C.D.H.S. and before she took any action, though she acknowledges that the Wisconsin Administrative Code does not require this.

¹⁵ Though D.L. would have been B.C.D.H.S.'s primary client, her family (including T.L. and K,L.) would also have been clients, inasmuch as the Goal of the Department of Family Services is to remediate the situation so that the family can be whole again. (Tr. p. 76, ll. 14-25 (Testimony of Debra Vieaux)).

¹⁶ The ALJ noted that neither Ms. Vieaux nor Mr. Sarrow has been established as an expert on the legislative history of this code provision, or in legal construction, and as such, their opinions as to the meaning of Wis. Admin. Code § MPSW 20.02(13) are not based upon any specialized expertise, and thus, are not determinative, but only advisory.

the meaning of “prohibited dual relationships,” (see respective briefing), the first five words of Wis. Stat. § 20.02(13) are the key.

The five words provide that it is unprofessional conduct to “*Fail... to avoid dual relationships.*” Although the parties referenced no authoritative case law interpreting this code provision, or the terms contained therein, it is accepted that a dual relationship is one that is both personal and professional in nature.¹⁷ The ALJ found it hard to say whether Respondent’s actions were more professional than personal; was Respondent merely assisting a friend who came to Respondent’s office unannounced and pleaded for help? However, the distinction between the personal versus professional aspect of Respondent’s conduct was not as difficult for the Section to discern based upon the following factors: 1) ***Respondent was at her place of employment when the conduct occurred;*** 2) ***Respondent asked other social workers at her place of employment to help K.L.;*** 3) ***Respondent’s place of employment was the same agency which was concurrently investigating the situation involving T.L. and D.L.*** The close nexus between Respondent’s workplace and her conduct tends to give the *imprimatur* of professional action by a social worker. Mr. Sarrow admitted at hearing that Respondent conduct is problematic because she sought financial assistance from her co-workers; he testified that “when dollars and cents get involved, it causes more concern”. (Tr. p. 152, ll. 7-20)

SUMMARY

Respondent should have known that T.L.’s case would likely be referred to B.C.D.H.S., and should have realized that if she was using her professional capacity to access information or funds to aid K.L., that her actions would have been unethical. In fact, Respondent’s argument that dual relationships happen all the time (especially in Bayfield County, population 15,000) should cause her to increase, not minimize, the importance of vigilance in avoiding even the appearance of a dual relationship. Yet, Respondent appears to be resistant to correction as shown by her resort to immaterial details to claim that both her employer and the Division had an incorrect understanding of the events and going forward with the hearing despite having stipulated to the facts. For this reason, Respondent’s discipline should include not only a specific period of suspension, but a requirement to ascertain whether she fully comprehends the rules of professional conduct and ethics for social workers.¹⁸ The Section does not believe that continuing education courses alone will be adequate. Instead, the Respondent will be required to complete an individualized *face-to-face* session or consultation of no less than 2 hours in length with an approved consultant who has expertise in social work ethics. The purpose of the consultation is to ensure that Respondent fully understands the concept of dual relationships and

¹⁷ Dual relationships can also include two professional relationships.

¹⁸ The Division recommended that Respondent’s license be suspended indefinitely, until she demonstrates to the satisfaction of the Section that she has benefitted from remedial education, and she be required to complete a minimum of three credits of college undergraduate social work education on boundaries in social work practice, followed by a demonstration that she has achieved a minimally competent understating of dual and multiple relationships in the practice of social work.

professional boundaries and can apply these concepts in her social work practice. The Section views the revised disciplinary requirements to be more consistent with the three purposes of discipline as addressed in *State v. Aldrich*, 71 Wis. 2d 206 (1976) are achieved by the disciplinary set herein. The three goals are: (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar contact. *State v. Aldrich*, 71 Wis. 2d 206 (1976).

Assessment of Costs

Finally, the Section further disagrees with the ALJ's recommendation as to the amount of costs that should be assessed against Respondent. The factors for consideration in assessing costs include:

- 1) The number of counts charged, contested, and proven;
- 2) The nature and seriousness of the misconduct;
- 3) The level of discipline sought by the parties
- 4) The respondents cooperation with the disciplinary process;
- 5) Prior discipline, if any;
- 6) The fact that the Department of Regulation and Licensing is a "program revenue" agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct;

In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz (LS 0802183 CHI).

Although the ALJ found certain mitigating factors, the seriousness of Respondent's misconduct, in the opinion of the Section, warrants imposition of full costs. In addition to the serious nature of the misconduct, the Department of Safety and Professional Services is a "program revenue" agency, and Respondent is required to pay the full costs associated in investigating and prosecuting this matter. It is unreasonable to pass the costs of this proceeding to other members of the Social Work profession that have not engaged in unprofessional conduct.

ORDER

IT IS NOW THEREFORE ORDERED that the license of the Respondent Denise L. Bailey to social work in the State of Wisconsin be and is hereby SUSPENDED for a period of thirty (30) days from the effective date of this order which shall be three (3) days from the date signed below to allow adequate time for time for receipt by mail.

IT IS FURTHER ORDERED that Respondent shall arrange for, at her own expense, a minimum of 2 hours of *face-to-face* consultation with a pre-approved consultant who has expertise in social work ethics. The purpose of the consultation is to determine if Respondent has gained an acceptable understanding of professional boundaries, dual relationships in the context of social work ethics. Respondent shall provide a copy of this decision and order to the pre-approved consultant. The *face-to-face* consultation shall occur no later than ninety (90) from the effective date of this decision and order, with a report to be submitted to the section by the consultant within thirty (30) days after the consultation.

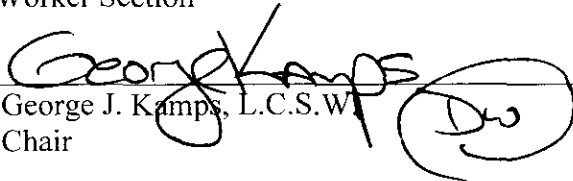
IT IS FURTHER ORDERED that Respondent shall pay the full recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § RL 2.18. Payment shall be made by certified check or money order payable to the Wisconsin Department of Regulation and Licensing and sent to:

Department Monitor
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
Telephone: (608) 267-3817
Fax: (608) 266-2264

Dated at Madison, Wisconsin on 12/15, 2011.

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board

Social Worker Section

By:  _____
George J. Kamps, L.C.S.W.
Chair