

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BOARD OF PRIVATE DETECTIVE AND
PROTECTIVE AGENT SERVICES**

In the Matter of: The License Denial of
Danny Solie, d/b/a, J & J Investigations

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

Administrative Law Judge Bruce H. Johnson conducted a hearing in this contested case proceeding beginning at 9:30 a.m. on Thursday, August 17, 2000, at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota. The record closed on August 17, 2000, when the hearing ended.

Michael R. Pahl, Assistant Attorney General, Suite 200, 525 Park Street, St. Paul, Minnesota 55103-2106, represented the Board of Private Detective and Protective Agent Services (the Board) at the hearing. Steven A. Anderson, Attorney at Law, 115 Roberts Avenue, N.E., P. O. Box 430, Warroad, Minnesota 56763 represented the Applicant, Danny Solie.

NOTICE

This Report is a recommendation and not a final decision. The Board of Private Detective and Protective Agent Services will make the final decision after reviewing this report and the hearing record. The Board may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minnesota Law,^[1] the Board may not make its final decision until after the parties have had access to this report for at least ten days. During that time, the Board must give all parties adversely affected by this report an opportunity to file objections to the report and to present argument to support their positions. Parties should contact Marie Ohman, Executive Director, Board of Private Detective and Protective Agent Services, Town Square, 445 Minnesota Street, St. Paul, Minnesota 55101, to find out how to file objections or present argument.

THE ISSUE

Whether Mr. Solie has proved by a preponderance of the evidence that he satisfies the good character, honesty, and integrity requirements of Minnesota law^[2] and is therefore qualified under for licensure as a private detective.

Based upon the record in this matter, the Administrative Law Judge (ALJ) makes the following:

FINDINGS OF FACT

1. Mr. Solie is now 47 years old and resides at 203 Pleasant Avenue, Box 371, Warroad, Minnesota 56763. He has been married for 25 years, and he and his wife have lived at that address since 1986. He is currently self-employed as a day trader.^[3]

2. Mr. Solie moved to Warroad in 1979 when he was hired as a full-time Roseau County deputy sheriff. His duties primarily involved patrol, traffic enforcement, and serving civil process.^[4] Approximately half of his time was spent conducting criminal investigations. He remained a deputy sheriff until December 31, 1982, when the Roseau County Sheriff's Office stopped providing police protection for many of the cities in that county.

3. The City of Warroad was among the cities for which the Sheriff stopped providing police protection. So, in 1983 Warroad organized its own police department.^[5] The City hired Mr. Solie as a patrol officer on January 1, 1983, and eight months later appointed him Chief of Police.^[6] Criminal activity in the Warroad community consisted primarily of property crimes, such as burglary and theft, and assaults of various kinds. Besides administering the police department and sharing in patrol duty, Mr. Solie spent approximately 25% of his time conducting criminal investigations.^[7]

4. From the fall of 1988 through April 1989, Mr. Solie engaged in inappropriate conduct while on duty as Chief of Police for the City of Warroad.^[8] That conduct included, among other things:

a. Verbally and physically abusing one or more waitresses at a local restaurant by making explicit and unwelcome sexual remarks and by touching a waitress' breasts and buttocks in public and without her consent;^[9]

b. Gambling while on duty and in uniform;^[10]

c. Using an official police vehicle to deliver bait for his private business;^[11] and

d. Threatening reprisals against a victim of his unwanted sexual advances.^[12]

5. While the charges of misconduct were being investigated, the City of Warroad suspended Mr. Solie from his position as Chief of Police with pay in July 1989.^[13] On October 26, 1989, the City served him with notice of its intent to terminate him from his position on the following grounds:

“A. Inappropriate physical sexual conduct and inappropriate verbal abuse.”

“B. Misuses (sic) of city vehicle and city time to personally benefit you in the operation of your private business.

Your direction of subordinate city police officers, on city time, to conduct/benefit your private business.”

“C. General conduct unbecoming a police officer.”^[14]

6. On December 15, 1989, the City placed Mr. Solie on an involuntary leave of absence without pay.^[15]

7. Mr. Solie requested a hearing on the proposed discharge as Chief of Police, and that hearing was conducted in February 1990 before Administrative Law Judge John W. Harrigan. At the hearing Mr. Solie was represented by counsel, denied the allegations of misconduct, and presented evidence to support his own position.^[16]

8. On February 20, 1990, ALJ Harrigan submitted Findings of Fact, Conclusions of Law, and a Recommendation to the Warroad City Council. He found and concluded that Mr. Solie had engaged in verbal and physical sexual misconduct, gambling while on duty and in uniform, and misuse of a city vehicle and that he had made threats to a victim of his sexual misconduct. ALJ Harrigan recommended that there was just cause to discharge Mr. Solie as Chief of Police.^[17]

9. Accepting the ALJ's Findings of Fact, Conclusions, and Recommendation, the City of Warroad terminated Mr. Solie's employment as Chief of Police, effective December 31, 1989.^[18]

10. In late 1988 and early 1989, Phyllis Flick Overocker was employed as a waitress in a Warroad restaurant and was an individual whom Mr. Solie had sexually harassed while he was employed as Chief of Police. She subsequently brought a civil action in Roseau County District Court against Mr. Solie for battery, defamation, intentional infliction of emotional distress, and negligent infliction of emotional distress. On December 29, 1993, a Roseau County jury found that Mr. Solie did, in fact, commit battery and defamation against Ms. Overocker and awarded her damages of \$40,000.00.^[19] The District Court subsequently entered judgment on that verdict.^[20]

11. Before the civil jury rendered its verdict and Ms. Overocker's claim was reduced to judgment, Mr. Solie's wife, Mary, organized some corporations to own and operate three restaurants. Mrs. Solie owned most of the stock, while Mr. Solie owned none of it. Each of the three restaurants was funded initially with loans for which both

Mr. and Mrs. Solie signed personal guarantees. Mr. Solie played a vital role in the day-to-day operations of the businesses. He actually managed all three but received no compensation for those services. The ownership of the three business was arranged with advice from counsel and with knowledge of Ms. Overocker's claims for battery and defamation.^[21] In fact, the ownership arrangement was designed to insulate the business from any liquidated claim that Ms. Overocker might subsequently obtain against Mr. Solie.^[22]

12. On May 27, 1994, Mr. Solie filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Act in the United States Bankruptcy Court for the District of Minnesota. He scheduled the \$40,000.00 judgment debt that he owed to Ms. Overocker and sought to discharge it.^[23] On June 28, 1995, the Bankruptcy Court entered an order declaring the judgment debt to be nondischargeable in bankruptcy because the Bankruptcy Act^[24] excepted debts based on willful torts.^[25]

13. On September 15, 1995, the Bankruptcy Trustee filed a complaint to revoke Mr. Solie's discharge in bankruptcy, primarily on the ground that he had fraudulently failed to disclose and had attempted to conceal an ownership interest in the three Danny's Pizza restaurants.^[26] Mr. Solie denied the allegations in the Trustee's complaint.^[27] The issues in that adversary bankruptcy proceeding were never adjudicated. Rather, Mr. Solie and the Trustee entered into a stipulation allowing the Court to revoke Mr. Solie's discharge.^[28] The Bankruptcy Court subsequently entered orders dismissing the adversary proceeding and revoking Mr. Solie's discharge in accordance with the parties' stipulation.^[29]

14. In January 1997 Ms. Overocker began a civil action in Roseau County District Court in an attempt to collect her judgment against Mr. Solie from assets of the corporations owned by Mrs. Solie. That collection effort was based on allegations by Ms. Overocker that a fraudulent transfer had occurred. The District Court directed a verdict against Ms. Overocker, and she appealed. But the Court of Appeals affirmed the District Court, holding that a judgment creditor cannot reach property held in the name of a corporation owned by a debtor's spouse, even if its value had been enhanced by the debtor's gratuitous labor.^[30]

15. On November 18, 1999, Mr. Solie submitted an application to the Board to obtain a license to engage in the business of private detective/investigator for a fee.^[31] As required by law,^[32] Mr. Solie submitted along with his application written references from seven community leaders in Northwestern Minnesota who had known him for at least five years and who were not related to him by blood or marriage.^[33] All seven references were favorable to Mr. Solie and expressed the opinion that he possessed good character. He also submitted statements of his and his wife's financial condition as of December 14, 1999.^[34]

16. In his application Mr. Solie claimed an ownership interest in the three restaurants owned by his wife's corporations.^[35] The financial statement that Mr. Solie submitted to the Board contained no information about ownership of the restaurants but

indicated that his wife owned 100% of the stock of a corporation identified as J & J Properties.^[36]

17. The Board considered Mr. Solie's application for licensure as a private investigator at its May 22, 2000 meeting. Mr. Solie attended the meeting, answered the Board's questions about his application, and was given an opportunity to provide additional information to support his application.^[37] The Board's Executive Director provided the attending members with an informational packet consisting of Mr. Solie's application and the results of a background investigation of Mr. Solie that she had conducted on the Board's behalf.^[38]

18. After considering the record, Mr. Solie's responses to the Board's questions, and the statements that he made in his own behalf, the Board voted to deny Mr. Solie's application for licensure on the ground that he had failed to demonstrate good character, honesty, and integrity to its satisfaction.^[39]

19. Mr. Solie still claims that Ms. Overocker falsely accused him of verbal and physical sexual misconduct. He indicates that he has intentionally arranged his financial affairs to avoid paying the \$40,000 judgment that he still owes her and that he intends to continue avoid paying it.^[40]

20. Mr. Solie has been and is still active in community affairs in Warroad. He is formerly Region 1 Chair of the Minnesota Police Chiefs' Association. He is now or has been President of the local Lion's Club, a volunteer fireman, a Boy Scout leader, a member of Friends of Education, a member of the Warroad Chamber of Commerce, and a member of the board of directors of the Minnesota Restaurant Association.^[41] Anthony L. Cherne, a retired mechanical contractor with homes in both Minneapolis and Warroad, testified at the hearing that he had known Mr. Solie for twenty years and had found him to be an honest and dedicated person with a good reputation in the Warroad community.^[42]

21. The Administrative Law Judge adopts as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Findings of Fact, the ALJ makes the following:

CONCLUSIONS

1. Minnesota law^[43] gives the ALJ and the Board authority to conduct this proceeding, to consider the issues raised here, and to make findings, conclusions, and orders.

2. The Board has complied with all of the substantive and procedural requirements of Minnesota law for initiating and conducting this contested case proceeding.

3. The statute that governs licensure of private detectives provides that “[n]o person is qualified to hold a license who has . . . failed to demonstrate to the board good character, honesty, and integrity.”^[44]

4. Mr. Solie bears the burden in this proceeding of proving by a preponderance of the evidence that he satisfies the good character, honesty, and integrity requirements of the licensing statute and is therefore qualified for licensure as a private detective.^[45]

5. Demonstration of good character requires an applicant for licensure to establish that he or she possesses “honesty, fairness and respect for the rights of others and for the laws of the state and the nation.”^[46]

6. In a prior administrative proceeding, an ALJ found that Mr. Solie committed acts of verbal and physical sexual harassment,^[47] engaged in gambling while on duty and in uniform,^[48] used public property for private gain,^[49] and had threatened reprisals against a victim of his sexual harassment.^[50] He was also adjudicated in a district court civil proceeding to have committed battery and defamation.^[51] That conduct demonstrates a lack of respect for the rights of others and for the laws of the state and the nation and a lack of good character.

7. Mr. Solie’s past misconduct creates a presumption that similar misconduct will recur in the future.^[52] And his adamant refusal to accept personal responsibility for his past misconduct, as evidenced by continuing efforts to avoid payment of his judgment debt, strengthens the presumption of recurring misconduct. The evidence that he tendered of good character was insufficient to overcome that strengthened presumption, and he therefore failed to meet his burden of proving by a preponderance of the evidence that he satisfies the good character and honesty requirements of the licensing act.

8. The Board erred in failing to initially consider written character recommendations that Mr. Solie submitted along with his license application. But since the references are included in this record, and given the compelling evidence that Mr. Solie continues to deny personal responsibility for his past misconduct, that error was harmless.

9. The Administrative Law Judge adopts as Conclusions any Findings, which are more appropriately described as Conclusions.

10. The bases and reasons for these Conclusions are those expressed in the Memorandum that follows, and the ALJ incorporates that Memorandum into these conclusions.

Based upon these Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends:

- (1) That the Board CONFIRM its decision to deny Mr. Solie's application for licensure as a private detective/investigator for fee; and
- (2) That it DISMISS Mr. Solie's appeal with prejudice.

Dated this _____ day of September 2000.

BRUCE H. JOHNSON
Administrative Law Judge

NOTICE

Under Minnesota law,^[53] the Board must serve its final decision upon each party and the Administrative Law Judge by first-class mail.

MEMORANDUM

Minnesota's occupational licensing statute for private detectives and protective agents provides that "[n]o person is qualified to hold a license who has . . . failed to demonstrate to the board good character, honesty, and integrity."^[54] When the Board denies private detective licensure to an applicant for that reason, the applicant has a right to pursue an administrative appeal.^[55] But in that appeal proceeding the applicant has the burden of proving by a preponderance of the evidence that he or she does satisfy the good character, honesty, and integrity requirements of the licensure statute and is therefore qualified for licensure as a private detective.^[56]

Although the licensure statute does not define the term "good character," a number of appellate courts that have reviewed licensure decisions have fashioned operational definitions of that term. The U.S. Supreme Court in *Konigsburg v. State Bar of California* originally articulated one definition that appellate courts, including Minnesota's, have frequently relied upon.^[57] There, good moral character was defined as "honesty, fairness and respect for rights of other and for the laws of the state and the nation."^[58] Many courts, including the Minnesota Supreme Court, have used that definition.^[59] So, the ALJ concludes that the *Konigsburg* definition is an appropriate standard for determining whether or not Mr. Solie has met his burden here.

Mr. Solie argues that the only inappropriate conduct that he engaged in back in 1988 and 1989 was the use of inappropriate language in his interactions with Ms. Overocker. But that argument ignores the findings and conclusions made by an ALJ in connection with a 1990 administrative proceeding to discharge him as Warroad police chief and a verdict rendered against him by a civil jury in December 1993. The ALJ found and concluded that Mr. Solie had sexually harassed at least one waitress in public, not only with words but also physically by touching her breasts and buttocks.^[60] Sexual harassment of that sort clearly involves disrespect for the rights of others, as well as disrespect for the laws of the state and the nation.^[61] Moreover, the Minnesota Supreme Court has held that sexual harassment of that kind is a manifestation of "moral turpitude," yet another traditional way of establishing that an applicant lacks good character.^[62] The ALJ in the earlier proceeding also found and concluded that Mr. Solie had engaged in gambling while on duty and in uniform,^[63] used public property for private gain,^[64] and had threatened reprisals against a victim of his sexual harassment.^[65] That conduct also demonstrates a lack of respect for the rights of others and the law. A civil jury also rendered a verdict against Mr. Solie for battery and defamation, and a district court entered a \$40,000.00 judgment against him based on that verdict. That verdict and judgment also establishes a lack of respect for the rights of others and for the law. And since defamation necessarily involves making a false statement,^[66] it also establishes dishonesty.

In essence, Mr. Solie argues here that both the prior ALJ and civil jury erred, and that the most that he was guilty of was making inappropriate remarks to Ms. Overocker. But under the doctrine of collateral estoppel, this ALJ may not consider that argument. Collateral estoppel prevents a party from relitigating or denying facts that have been adjudicated in earlier proceedings.^[67] It clearly applies to facts adjudicated in district

court.^[68] And in *Graham v. Special School Dist. No. 1*,^[69] the Minnesota Supreme Court made it clear that the doctrine also applies to facts that have been adjudicated administratively, such as those established in Mr. Solie's earlier discharge proceeding.^[70] In short, the ALJ must assume for purposes of this appeal that Mr. Solie engaged in the conduct that the prior ALJ and civil jury found he engaged in.

Where, as here, "patterns of misconduct reflect unfavorably on an applicant's moral character and fitness to practice [a profession], the applicant must overcome the 'presumption that similar conduct will recur in the future'."^[71] In an attempt to meet that burden, Mr. Solie introduced the seven written character references that he submitted to Board,^[72] as well as the testimony of Anthony Cherne, all expressing opinions that Mr. Solie now possesses good character. But in situations where a presumption of recurring misconduct exists, a licensing body's focus should be on "whether the [applicant] has demonstrated . . . that he has undergone a moral change."^[73] And an important factor in demonstrating a moral change is the applicant's "recognition of the wrongfulness of his conduct."^[74] Here, there was compelling evidence that Mr. Solie continues to strenuously resist recognition of the wrongfulness of his earlier misconduct. He readily conceded that over the last ten years he had intentionally arranged his financial affairs to avoid paying the \$40,000 judgment that he owes Ms. Overocker. He also attempted unsuccessfully to have that debt extinguished in bankruptcy proceedings, and he candidly testified at the hearing that he has no intention of paying the debt and thereby acknowledging the underlying misconduct.^[75] Put another way, Mr. Solie's subsequent efforts at debt avoidance reinforce the presumption of recurring misconduct and outweigh any evidence that he presented suggesting that his character is now good.

Finally, the evidence established that in reaching their decision the Board members not only failed to consider but also did not even read the seven written character references that Mr. Solie submitted in support of his application. The requirement to submit at least five written character references to support an application for licensure as a private detective is statutory.^[76] And one can only conclude that the legislature intended the board to read and consider the written references when making their licensure decisions. It was therefore error for the Board to fail to do so in its initial consideration of Mr. Solie's case. But from a broader perspective, there is a presumption of recurring misconduct here, and Mr. Solie continues to be recalcitrant in accepting personal responsibility for his misconduct. And since the Board will consider the references that are now in this record in arriving at a final decision in this matter, the ALJ concludes that its failure to initially read and consider those references was harmless error that will not vitiate its final decision.

B. H. J.

^[1] Minn. Statutes, section 14.61 (1999 Supp.). (Unless otherwise specified, all references to Minnesota Statutes are to the 1999 edition.)

- [2] Minnesota Statutes, section 326.3381, subdivision 3(3).
- [3] Testimony of Danny Solie.
- [4] *Id.*; Exhibit 2.
- [5] *Id.*
- [6] *Id.*
- [7] Exhibit 2.
- [8] See *generally* Exhibit 2 at pp. 6-10 (particularly Finding of Fact No. 89).
- [9] *Id.*
- [10] Exhibit 1 at p. 7 (Conclusion No. 19).
- [11] *Id.* at pp. 12 and 14 (Findings of Fact No. 81 and 88 and Conclusion No. 20).
- [12] *Id.* (Finding of Fact No. 84 and Conclusion No. 24).
- [13] *Id.* at p. 6 (Finding of Fact No. 2).
- [14] *Id.* (Finding of Fact No. 3).
- [15] *Id.* (Finding of Fact No. 8).
- [16] Exhibit 2 at pp.5-15.
- [17] *Id.*
- [18] Exhibit 2 at p. 49.
- [19] Exhibit 2 at pp. 22-23. The District Court ordered a directed verdict on the intentional and negligent infliction of emotional distress claims.
- [20] *Id.* at pp. 20-21.
- [21] *Overocker v. Solie*, 597 N.W.2d 579, 580-81 (Minn. App. 1999) (See Exhibit 2 at pp. 25-27).
- [22] Testimony of Danny Solie.
- [23] Testimony of Danny Solie.
- [24] 11 U.S.C. § 523 (a)(6).
- [25] Exhibit 2 at p. 39; Exhibit 4.
- [26] Exhibit 2 at pp. 30-32.
- [27] *Id.* at pp.33-34.
- [28] *Id.* at pp. 35-36.
- [29] *Id.* at pp.37-38.
- [30] *Overocker v. Solie, supra.*
- [31] Exhibit 2 at pp. 45-48.
- [32] Minnesota Statutes, section 326.3382, subdivision 2(a)(1).
- [33] See Exhibits A through G. The statute actually only requires five references.
- [34] Exhibit 5. Minnesota Statutes, section 326.3382, subdivision 3(c), requires applicants to submit proof of financial responsibility.
- [35] Exhibit 2 at p. 47.
- [36] See Exhibit 2 at p. 47 and Exhibit 5.
- [37] Exhibit 3.
- [38] Exhibit 2. Testimony of Marie Ohman.
- [39] Exhibit 3.
- [40] Exhibit 3; testimony of Danny Solie.
- [41] Testimony of Danny Solie.
- [42] Testimony of Anthony Cheme.
- [43] Minnesota Statutes, section 14.50 and section 326.3387, subdivision 2.
- [44] Minnesota Statutes, section 326.3381, subdivision 3(3).

^[45] Cf. *In re Haukebo*, 352 N.W.2d 752, 754 (Minn. 1984).

^[46] *Konigsburg v. State Bar of California*, 353 U.S. 252, 263-64 (1957), quoted with approval in *Haukebo, supra*, 352 N.W.2d at 754.

^[47] Exhibit 2 at pp. 2-11.

^[48] *Id.* at p. 7 (Conclusion No. 19).

^[49] *Id.* at pp. 12 and 14 (Findings of Fact No. 81 and 88 and Conclusion No. 20).

^[50] *Id.* (Finding of Fact No. 84 and Conclusion No. 24).

^[51] *Id.* at pp. 20-23.

^[52] *In the Petition of Noske*, 470 N.W.2d 116, 118 (Minn. 1991), quoting *In re Haukebo, supra*, 352 N.W.2d at 755.

^[53] Minnesota Statutes, section 14.62, subdivision 1.

^[54] Minnesota Statutes, section 326.3381, subdivision 3(3).

^[55] Minnesota Statutes, 326.3387, subdivision 2.

^[56] Cf. *In re Haukebo*, 352 N.W.2d 752, 754 (Minn. 1984).

^[57] 353 U.S. 252 (1957).

^[58] *Id.* at 263-64.

^[59] See *In re Haukebo, supra*; see also, for example, *State v. State Board of Medical Examiners*, 115 So.2d 833, 839 (La. 1959).

^[60] Exhibit 2 at pp. 5-15.

^[61] See, e.g., the federal Civil Rights Act, 42 U.S.C. section 1983, and the Minnesota Human Rights Act, Minnesota Statutes, Chapter 363.

^[62] *In re Haukebo, supra*, 352 N.W.2d at 754.

^[63] Exhibit 1 at p. 7 (Conclusion No. 19).

^[64] *Id.* at pp. 12 and 14 (Findings of Fact No. 81 and 88 and Conclusion No. 20).

^[65] *Id.* (Finding of Fact No. 84 and Conclusion No. 24).

^[66] See *Bol v. Cole*, 561 N.W.2d 143, 146 (Minn. 1997).

^[67] *Northwestern Nat'l Life Ins. Co. v. County of Hennepin*, 572 N.W.2d 51 (Minn. 1998).

^[68] See *In Re Special Assessment for Water Main Extension in the Village of Byron*, 255 N.W.2d 226, 228 (Minn. 1977).

^[69] 472 N.W.2d 114 (Minn. 1991).

^[70] See also *Northwestern Nat'l Life Ins. Co., supra*.

^[71] *In the Petition of Noske*, 470 N.W.2d 116, 118 (Minn. 1991), quoting *In re Haukebo, supra*, 352 N.W.2d at 755.

^[72] Exhibits A through G.

^[73] *In re Kadrie*, 602 N.W.2d 868, 870 (Minn. 1999). [Citations omitted.]

^[74] *Id.*, citing *In re Swanson*, 405 N.W.2d 892, 893 (Minn. 1987).

^[75] Some Board members suggested that Mr. Solie's efforts to avoid paying his judgment debt to Ms. Overocker was independent evidence of lack of good character. (Testimony of Walt Powers; Exhibit 3 at p. 10.) Since those efforts also establish a refusal by Mr. Solie to accept personal responsibility for his misconduct, the ALJ finds it unnecessary to reach a conclusion on whether legal efforts to avoid a debt may be considered by the Board as independent evidence of bad character.

^[76] Minnesota Statutes, section 326.3382, subdivision 2(a)(1).