

**BEFORE THE BOARD OF PRIVATE SECURITY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA**

IN THE MATTER OF DOCKET NO. CC-09-0351-PSP REGARDING:

THE APPLICATION FOR LICENSURE
OF BRYAN D. LANE, Process Server
License Pending.

} Case No. 213-2010

} **PROPOSED FINDINGS OF FACT;
CONCLUSIONS OF LAW; AND
RECOMMENDED ORDER**

I. INTRODUCTION

Bryan D. Lane (“License Applicant”) applied to the Board of Private Security (the “Board”) for a process server license on February 2, 2009. In applying for the license, License Applicant made statements that were inconsistent with the criminal background check that followed. A complaint was generated alleging unprofessional conduct under Montana Code Annotated § 37-1-316(3), which prohibits fraud, misrepresentation, deception, or concealment of a material fact in applying for a license. The screening panel for the Board found reasonable cause to believe that License Applicant had violated 37-1-316(3), and License Applicant was served a Notice of Proposed Board Action and Opportunity for Hearing. License Applicant requested a hearing. Subsequently, an Amended Scheduling Order was issued in this matter on August 20, 2009.

The Department of Labor and Industry (the “Department”) timely filed its motion for summary judgment, along with a brief in support and an affidavit, in compliance with

the Scheduling Order. License Applicant failed to timely respond, and the Department's motion is ripe for decision. Based upon the said motion and the affidavits, pleadings, and other papers on file in this matter, the following findings of fact, conclusions of law, and recommended order are made.

II. FINDINGS OF FACT

1. License Applicant submitted a "Process Server Application" (the "Application") to the Board on February 2, 2009. *Affidavit of Dennis Clark ¶ 2 (September 4, 2009), and Exhibit 1 thereto.*

2. Upon his oath, License Applicant signed the Application, by which he declared "under penalty of perjury" that the information included in the Application was true and complete to the best of License Applicant's knowledge. *Aff. of Clark ¶ 2, and Exhibit 1 thereto.*

3. On the Application, License Applicant answered "no" to each of the following questions:

Question #8: Have you ever been convicted of a crime?

...

Question #11: Have you ever had a suspended sentence?

Aff. of Clark ¶ 2, and Exhibit 1 thereto.

4. As part of the license application process provided by law, and pursuant to the release provided in the Application, the Board duly obtained a copy of a report from a fingerprint-based search of the Montana Criminal History Record File and the Criminal History Files of the FBI with respect to License Applicant (the "Report"). *Aff. of Clark ¶ 3, and Exhibit 2 thereto.*

5. The Report shows that License Applicant was convicted of one count of possession of drug paraphernalia on July 28, 1997, in Richland County, Montana, and that the conviction resulted in a six month suspended sentence. *Aff. of Clark ¶ 3, and Exhibit 2 thereto.*

6. The Report also shows that License Applicant was convicted of two more crimes (one count of possession of dangerous drugs and one count of possession of drug paraphernalia) on March 7, 2002, in Valley County, Montana. *Aff. of Clark ¶ 3, and Exhibit 2 thereto.*

7. License Applicant's reason for failing to disclose any of the three drug-related convictions when submitting the Application was he thought the convictions would not be placed on his permanent record or would be removed from his record after 6 months. *Aff. of Clark ¶¶ 4 through 5, and Exhibits 3 and 4 thereto.*

8. License Applicant's explanation of why he did not answer the questions correctly proves that his answers to questions #8 and #11 in the Application were false.

9. License Applicant's aforementioned conduct amounts to misrepresentation, deception, or concealment of a material fact in the Application. *Aff. of Clark ¶ 6.*

10. The Department timely filed its motion for summary judgment, along with a brief in support and an affidavit, in compliance with the Scheduling Order. License Applicant failed to timely respond, and **there are no genuine issues of material fact in this matter.**

III. CONCLUSIONS OF LAW

1. The Board has jurisdiction over License Applicant (Mont. Code. Ann. § 37-1-137), and the provisions of the Montana Administrative Procedure Act, the Montana Rules of Civil Procedure, and the Montana Rules of Evidence govern these proceedings (Mont. Code Ann. § 37-1-310).

2. Rule 56 of the Montana Rules of Civil Procedure provides for summary judgment when there is no genuine issue of material fact. Rule 56(c), M.R. Civ. P. ["The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."].

3. License Applicant committed unprofessional conduct pursuant to Montana Code Annotated § 37-1-316(3) when he failed to disclose the aforementioned three drug-related convictions and when he failed to disclose the suspended sentence he received as a result of one of those convictions. Mont. Code Ann. § 37-1-316, MCA ("The following is unprofessional conduct for a licensee or license applicant governed by this chapter: . . . (3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure[.]").

4. The questions in the Application are clear and unambiguous.

5. License Applicant was required to disclose whether he had “ever been convicted of a crime” and whether he had “ever had a suspended sentence.” Instead, believing that the information would not appear in the Report, the Applicant did not reveal his prior convictions or suspended sentence when he submitted the Application.

6. When licensing individuals for the occupation of process server, the decision of the Board to deny a license under these circumstances is within the authority and discretion of the Board, which discretionary authority is consistent with § 37-60-103, MCA:

The purpose of this chapter is to increase the levels of integrity, competency, and performance of . . . process servers to safeguard the public health, safety, and welfare against illegal, improper, or incompetent actions committed by . . . process servers.

7. The Board properly denied the Application on the basis of License Applicant’s failure to disclose the aforementioned three criminal convictions and on the basis of Licensee Applicant’s failure to disclose the suspended sentence received as a result of one of those convictions.

8. The Department is entitled to judgment as matter of law in this case. *See Pennaco Energy, Inc. v. Mont. Bd. of Env’tl. Review*, 2008 MT 425, ¶ 17, 347 Mont. 415, ¶ 17, 199 P.3d 191, ¶ 17.

IV. RECOMMENDED ORDER

Based upon the foregoing findings of fact and conclusions of law, it is recommended that the Board of Private Security deny a process server license to License Applicant.

Dated this 4th day of November, 2009.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

/s/ DAVID A. SCRIMM

DAVID A. SCRIMM
Hearing Examiner

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.