



Oregon

**State Board of Examiners for
Engineering & Land Surveying**

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LAW ENFORCEMENT COMMITTEE

Meeting Summary

October 13, 2011

Members Present:

Carl Tappert, Chair

Ken Hoffine

Grant Davis

Sue Newstetter

Staff Present:

Mari Lopez

James R. (JR) Wilkinson

Allen McCartt

Others Present:

Joanna Tucker-Davis, AAG

Jim Helton, PE

Craig Anderson, PE

Mort McMillen, PE

A meeting of the Law Enforcement Committee (LEC) was called to order at 8:00 a.m. in the conference room of the Oregon State Board of Examiners for Engineering and Land Surveying (OSBEELS) office at 670 Hawthorne Avenue SE, Suite 220, Salem, OR 97301. LEC Chair Carl Tappert recognized the professional engineers present to discuss their cases. He noted that since their law enforcement cases were to be reviewed early on the agenda, the meeting would follow the agenda's order.

Informal Conferences

No informal conferences were scheduled.

Committee Meeting:

2594

The LEC discussed that respondent, a PLS and former Director of Surveying Services for a Portland based design group, had failed to give proper notice when a company field crew entered upon and set monuments on the complainant's property while conducting a survey for an adjoining property. The investigation found that the respondent sealed, signed, and submitted a Property Line Adjustment (PLA) to the Clackamas County Surveyor for filing on behalf of the adjoining property owner. However, the respondent was unable to submit evidence demonstrating that notice of entry was provided. In addition, the investigation revealed that the respondent had not updated his contact information as required by Oregon Administrative Rule (OAR) 820-010-0605.

At the LEC meeting on August 11, 2011, the LEC approved issuing the respondent a Notice of Intent to assess a \$2,000 civil penalty (NOI) for failure to provide right of entry notice and for failure to update his address violating Oregon Revised Statute (ORS) 672.047 and OAR 820-010-0605(1). Board Investigator McCartt informed the LEC that the NOI was issued, but the respondent failed to respond within 21-days as required. McCartt also explained that he attempted to contact the respondent to remind him that his response was due. However, the respondent did not respond. As a result, the LEC would need to discuss recommending that the Board issue a Default Final Order.

Assistant Attorney General (AAG) Joanna Tucker-Davis reminded the LEC that when the NOI was issued the civil penalty was set at the maximum allowed under statute for two separate violations. However, the LEC typically accounts for mitigating factors to reduce the civil penalty amount. LEC Chair Tappert commented that the LEC has settled past cases by lowering the civil penalty for right of entry and address change violations when the respondent was present to answer questions. Yet, the respondent did not appear. McCartt also affirmed that the respondent was cooperative until he moved and contact was lost. Board Investigator Wilkinson added that the respondent claimed the surveying project began before his employment started and that notice was not given by the prior surveyor. Nevertheless, the respondent stated he would accept responsibility for the oversight. Upon discussion, **the LEC recommended that the Board approve issuing a Default Final Order for a \$1,000 civil penalty.**

2596

Prior to any LEC discussion, LEC member Susan Newstetter, PLS, announced she filed the complaint against the respondent, a PE, and would recuse herself. McCartt then introduced the case by stating the allegation of unlicensed practice against the respondent contributed to the violations found against the respondent in case #2595. This was the reason for this case being scheduled for discussion prior to case #2595.

McCartt continued that the respondent co-signed a December 3, 2007, proposal cover letter to develop a wastewater treatment facility for an Oregon city, by using “PE, Senior Engineer Associate.” When contract questions later arose, Newstetter, who was the contract administrator for the City, discovered that the respondent was not registered. McCartt also added that the December 2007 proposal from the co-engineering firm identified the respondent’s Oregon comity application as “in process.” Subsequently, the City requested a list of personnel involved in the project and their role. The co-engineering firm responded on February 6, 2008, by stating the respondent was the project’s “Facilities Plan Project Engineer.” They also identified the respondent as the “project engineer” in a letter to the Oregon Department of Environmental Quality on December 24, 2009. In January 2010, the respondent was granted a temporary permit to practice engineering in Oregon and was approved for professional practice on March 9, 2010.

In response to a LEC question about the time gap between his December 2007 signature on the proposal and his December 2009 comity application, the respondent replied that the “in process” notation in the proposal was his attempt to indicate that he was not registered. He first submitted an application in 2002, but did not complete it because he accepted full time employment in Idaho that did not require an Oregon registration. He set aside his Oregon application and forgot to complete the application process. The respondent expressed by use of the “in process” phrase he was trying to not represent himself as an Oregon registrant.

The respondent in case #2595 stated there were studies and work that needed to be completed prior to the need for a professional engineer. LEC member Grant Davis disputed that an engineer was not required until a later date because the contract was awarded based on the assumption that there was an Oregon registered PE on the project. Tappert agreed noting there was a time gap between his representation as a PE in the proposal and his comity application. He asserted that the LEC should issue the respondent in case #2695 a Notice of Intent (NOI) for the violation. After the NOI is issued, the respondent can request an informal conference where settlement details can be worked out.

AAG Tucker-Davis clarified there is a question about the use of the title. She noted that some rules in OAR Chapter 820, Division 20, Rules of Professional Conduct use the term “registrants” while other rules of Division 20 use “applicants.” Hoffine responded that the respondent claimed to be a registrant when he was not. She agreed stating only the unlicensed practice allegation falls within the Board’s purview and not violations of the Rules of Professional Conduct because at the time he was neither a registrant nor an applicant. Tappert reasoned that Anderson attempted to clarify his status in the proposal, but the time gap counted against him. Davis then insisted that the respondent understood there was an issue, but did nothing to correct the matter. Nevertheless, AAG Tucker-Davis pointed out that it was only a violation of unlicensed practice and not a professional practices violation.

Upon consideration, the LEC determined to issue the respondent a Notice of Intent to assess a \$1,000 civil penalty for unlicensed practice. Tappert offered that since the respondent lived in Idaho the LEC could conduct a telephonic informal conference, if requested.

2595

The LEC shifted the discussion to the respondent in case #2596, a PE and principal for the co-engineering firm, who submitted the City proposal that identified persons as registrants when they were not. For example, the proposal contained a table of personnel assigned to the project within his and his partners’ companies. Tappert observed that the table identified a person as an engineer in training (EIT), but also gave him the title of Project Engineer. He asked if this was misleading. The respondent replied there are two parts to a proposal. The first is to identify the project team and where they are registered. An EIT was identified in a support role.

Regardless, the respondent believed the Board needed to educate the industry about protected titles because he used generally understood industry terms to identify personnel. He noted that he began as an EIT and his first job offer was for an associate engineer position. As he was promoted, he kept the engineer title until he became a supervising engineer with his PE registration. He offered other examples, including Oregon Department of Transportation (ODOT) employment announcements for engineers that only required an EIT certificate. He asserted he was following industry standards and it was not done to deceive anyone. He understood the application for the respondent in case #2596 was in process and did not do a background investigation. The respondent in case #2596 signed the proposal as a PE and it was a mistake. The respondent in case #2595 also admitted there was a typographic error when his wife, the President of the engineering firm, was identified as a PE when she was not. Lastly, he used the title of field surveyor in the table to show their role in the project and not their qualifications.

The respondent emphasized there is no guidance on what terms can be used to show unlicensed persons doing engineering work or to show engineers at different levels of responsibility. He expressed frustration that persons can have engineering degrees, but they cannot use the title of “engineer.” He continued that he met due diligence to identify their roles and to not misrepresent their skill set. He understood that the respondent in case #2596’s application was in process, and regardless of that mistake, there was another licensed person on the project.

On a separate matter, the respondent was concerned that he was not contacted by the complainant until he got the respond to allegations letter from OSBEELS. Newstetter then joined the conversation and admitted she should have contacted them. She continued, however, that this matter was raised because of a contractual matter not before the Board. Her role as the contract administrator was to protect her client the City and very late in the process it was discovered that the respondent in case #2596 was not registered when everyone assumed otherwise. This placed the grant for the City’s project in jeopardy. Tappert pointed out that it is not uncommon for proposals to give professional titles to unlicensed persons. However, the statutes are clear that “engineer” is a protected title. He added that discussions are ongoing with ODOT and other agencies about the use to the title.

AAG Tucker-Davis then informed the LEC that when using the title “engineer” there is a distinction between governmental units and private firms. She noted there are “industrial exceptions” to the registration requirements that might apply to private firms, but not to governments. The exceptions to the engineering laws are under Oregon Revised Statute (ORS) 672.060.

The respondent claimed he implemented changes to their practices. However, he took exception to having a complaint matter that has widespread misuse in both private firms and government. He would like clear guidance. He understands now that a person cannot be an engineer in Oregon without being registered, but what is the alternative? Davis responded by noting the statute is clear that the term “engineer” is reserved for licensed persons. Each firm or agency can make a determination as to the alternative.

Tappert returned the discussion to the proposal wherein the respondent showed a person as an EIT, but gave him the title of engineer. There were other examples, but he stated the LEC goal is to get compliance and increase awareness. Hoffine endorsed the comment adding that McMillen appears to understand the issue. Upon consideration, **the LEC recommended that the Board close the case by issuing the respondent a letter of concern regarding the use of the term engineer**, which protects the title for all Oregon registered engineers. The LEC emphasized that professionals should not use the protected titles of “engineer” or “surveyor” for unlicensed staff.¹

2605

Wilkinson introduced the case by asking for LEC review and discussion. He stated that the respondent, a PLS, prepared two maps for a property line dispute that involved complainant. The first issue is that the respondent failed to mark the maps either as preliminary or to seal and sign the documents, which are straightforward violations. However, the complainant asked

1) OAR 820-020-0045, Obligation Not to Engage in Unprofessional Behavior, (5) An applicant or registrant will not assist or aid the unsupervised or unlawful practice of engineering, land surveying, or photogrammetric mapping.

whether the respondent was negligent or incompetent in his survey. Wilkinson pointed out that the respondent also prepared a Project Report to describe his approach and resolution. He asked the LEC to review the maps and Report and to offer their opinions on whether or not the respondent acted in conformity with accepted land surveying standards.

Wilkinson explained that ten lot properties abut a large property tract along their south line. One of the lot owners purchased the large tract and the respondent surveyed the property. A deed gap was found, so the owner's attorney wrote nine lot owners on October 6, 2005, including the complainant, asking them to quiet title by adverse possession the deed gap to his client since the gap extended along the full length of the abutting properties. Attached to the attorney letter was an unsealed survey map by the respondent that depicted the abutting properties, a fence, and the deed gap. He showed the existing fence as running straight and parallel to the depicted property lines. The attorney wrote the owners that "your legal description ends at the fence at your south boundary. That will not change." The owners did not dispute the quiet title claim. A General Judgment awarded the owner the deed gap. When the respondent subsequently staked the property line, the neighbors discovered the fence was not on the property line and that it actually ran in an approximate diagonal manner across the 91.08-foot deed gap, which set the stage for the complaint and the allegation of negligence.

In response to a question about the neighbors, Wilkinson confirmed that they did not contest the quiet claim. He assumed it was the result of the existing fence location being represented as their back property line. Tappert noted the attorney's letter stated the fence was the recognized boundary and the respondent's map depicted the fence as the boundary, which was found not true. The question for the LEC, he continued, was to determine if the respondent was negligent in not tying the fence during his first survey so that the neighbors were informed of its actual location relative to their deeded property lines. AAG Tucker-Davis commented the neighbors had not realized there was a dispute over the line. If the respondent had depicted the fence line on the map as on the ground then they would have known about the magnitude of the gap and been able to make an informed decision about the quiet claim. Wilkinson was unaware if any litigation had been filed about reversing the quiet claim. The LEC determined to refer the matter to a professional reviewer.

2614

The LEC discussed that Lane County Surveyor D. Michael Jackson, PLS, filed a complaint against the respondent, a PLS, for failure to file maps of survey within 45 days of setting permanent monuments. Jackson also included another example and noted that the respondent appeared to have a pattern of setting monuments without filing. The investigation found that the respondent set monuments for two properties, but had not filed maps of survey. The respondent did not dispute the allegations when he responded to the allegations. The LEC took note that ODOT surveyors had tied to the respondent's monuments that were found unrecorded. This heightened the need to have filed surveys. Wilkinson informed the LEC that he spoke to Jackson who said that the respondent was a good surveyor if not for his difficulty of meeting deadlines for filing of surveys. Upon consideration, the LEC determined to issue the respondent a Notice of Intent to assess a \$2,000 civil penalty for violations of ORS 209.250(1).

2656

The LEC discussed that complainant, a PE, especially qualified as a geotechnical engineer, alleged that respondent, an EIT and Certified Engineering Geologist (CEG), prepared a report entitled, "Subsurface Exploration and Geotechnical Report, Portland Community College Satellite Campus, Newberg, Oregon," which provided engineering recommendations not done by a professional engineer. The respondent stated his "main geotechnical concerns" and geotechnical design and construction recommendations in the report dated May 7, 2010, which was signed by the respondent and sealed with his CEG seal. In addition, the report was co-signed by another person as, Senior Engineer, who at the time was not registered as a PE with OSBEELS.

The Joint Compliance Committee (JCC), which was established by OSBEELS and the Oregon State Board of Geologist Examiners (OSBGE) to review matters of overlapping practice between a geotechnical engineer and a CEG, was unable to reach a quorum on September 22, 2011, so the members present reviewed the allegations without reaching any decisions or recommendations. For example, they discussed that OSBEELS member John Seward, PE, especially qualified as a geotechnical engineer, reviewed the report and opined that the respondent stepped beyond the practice of a CEG and into geotechnical engineering by offering engineering recommendations, including those on expected structural loads, continuous footing widths, and pavement standards. When the LEC reviewed his comments, they agreed with his conclusions.

AAG Tucker-Davis observed that this was an interesting case because of who did what in the report. If they both did the report together, then both together should move forward towards disciplinary action. The report does not distinguish between what the two authors offered to the report. For the person signing the report as Senior Engineer, his unlicensed use of the title means he engaged in the unlicensed practice of engineering. For the respondent, his contribution to the unlicensed practice of engineering comes from references to geotechnical engineering rather than to those within the practice of a CEG. The LEC questioned if the engineering design recommendations were made by the "Senior Engineer." Regardless of whether or not the conclusions were negligent as one LEC member postulated, there was no need for a professional review because it is unlicensed practice even if the building codes contain the information. Wilkinson informed the LEC that he has not opened a case against the other person. AAG Tucker-Davis suggested that a case should be opened for the use of the title Senior Engineer and then the two cases should move forward in a single NOI.

After further discussion, the LEC concluded that the respondent is a CEG whose practice crossed into engineering and that the other person engaged in unlicensed practice by use of the title. Davis asserted these issues represent two separate cases. As a result, the LEC directed a case be opened against the other person for signing the report "Senior Engineer." Wilkinson agreed, but suggested delaying the respondent's NOI until both cases were ready to issue NOIs. This would allow coordination of informal conferences, if so requested. The LEC agreed.

2661

The LEC discussed that the respondent, a PE, signed a renewal form certifying he had completed the required Professional Development Hours (PDH) units for returning a registration to active status. The respondent was randomly requested to subsequently participate in an audit of documentation to support the claimed PDH units. The respondent responded stating he no longer needed his Oregon registration and no longer had the records. He requested the Board

“discontinue” his registration. During the investigation, it was learned he was in the U.S. Navy at the time of his audit and attended civilian seminars, but he could not get copies to evidence his trainings. The LEC determined further investigation on June 9, 2011, regarding whether the respondent was on active military status during the audit because of an exemption. McCart confirmed that during the audit he was on active status and was not a civilian assigned to the U.S. Navy. **The LEC recommended that the Board close the case as allegations unfounded.**

2685

The LEC discussed that the respondent, a PE, signed his renewal form certifying that he had completed the required PDH units. The respondent was randomly requested to subsequently participate in an audit of documentation to support the claimed PDH units. After no response was received by the Board, the respondent was sent a second notice to which he replied with a CPD Organizational Form wherein he claimed 1,215 PDH units. The respondent also advised he is a full-time Professor of Mechanical Engineering at an Oregon university and taught classes in fluid mechanics, turbomachinery, and vibrations and asserted his teaching activities should give him enough PDH for continuation of his PE license. The Board wrote to inform the respondent that full-time faculty teaching college courses do not apply towards PDH units and requested that he submit a CPD Organizational Form with 30 qualifying PDH units and supporting documentation. The respondent provided no further documentation, so he was notified that his case was referred to the LEC for further review.

Wilkinson contacted the respondent who explained that he wanted to retire his registration and did not want to comply with the CPD requirements. During the conversation, the respondent gave examples of activities that complied with the requirements had he submitted them for review. In addition, Wilkinson also informed him that he may retire his registration, which would take effect when received, but he was able to lawfully practice engineering during his audit period. Compliant documentation was needed for that time. The respondent subsequently called Wilkinson to inform that he would submit his CPD documentation. When the documentation was reviewed, some activities were discounted as not conforming, but otherwise he had exceeded the minimum 30 PDH units. Upon consideration, the LEC determined to issue the respondent a NOI to assess a \$2,000 civil penalty for failure to maintain records, to submit the information when requested by the Board, and to cooperate with the audit in violation of OAR 820-010-0635(5) and OAR 820-020-0015(7)(8).

2695

The LEC discussed that the respondent, a PLS and CWRE, signed his renewal form certifying that he had completed the required Professional Development Hours (PDH) units. The respondent was randomly requested to subsequently participate in an audit of documentation to support the claimed PDH units. The respondent responded to the audit notice by stating he requested his status be made “inactive” since he moved to the Bahamas where he claimed to not have the opportunity to obtain PDH units and where he was not practicing. In response to investigator inquiries, Swart stated he signed the renewal form in error.

McCart informed the LEC that the respondent is working in the travel industry, which can be seen on his Web site. His site demonstrates he has access to the internet and its vast resources, including PDH opportunities. Furthermore, his Web site contains a page entitled The Land Surveying Store where the respondent offers links to a vast array of land surveying information.

McCartt also conveyed that the respondent's registration file does not contain a request for inactive status. In response to a question about mail delivery, McCartt confirmed his stateside address is valid stating the respondent has been responsive to postal mail, even given the delay, but his response to emails is more prompt. The LEC determined to issue a NOI, but also directed that staffs review his renewal forms and sort his registration status during the audit period.

Update: After the LEC meeting, staffs reviewed his registration file and determined that he is in the middle of his current renewal cycle and therefore has further opportunity to demonstrate compliance with CPD rules. As a result, staffs moved forward with issuing the respondent a Notice of Intent (NOI) to assess a \$3,000 civil penalty for violation of ORS 672.200(4), OAR 820-010-0635(1),(5), and OAR 820-020-0015(7), and OAR 820-020-0025(1).

2703

Before discussing that respondent, a PLS, PE, and CWRE, signed a renewal form certifying he had completed the required PDH units, Newstetter announced she had a business relationship with the respondent's now-deceased brother. She informed the LEC, however, that her opinion would not be affected by that past relationship. The LEC continued noting that the respondent was randomly requested to subsequently participate in an audit of documentation to support the claimed PDH units. In his response to the audit, the respondent stated he had not completed the required PDH units. The respondent also wrote that as of April 2010 he had ceased working as a CWRE and that he has not done any engineering for quite some time.

Once his file was transferred to the LEC for review, he replied to the investigation noting he had no justification for failing to meet the requirements. He also agreed with the importance of continuing professional development. However, he did not complete the required PDH units. The respondent stated he is the only registered professional land surveyor the County and was its County Surveyor. He added that he lives and works in a remote county away from many of the resources that are readily available in the more populous parts of the State. The respondent was willing to resolve the matter, but in the meantime had resigned as the County Surveyor. The LEC determined to issue the respondent a Notice of Intent to assess a \$3,000 civil penalty for violation of ORS 672.200(4), OAR 820-010-0635(1),(5), OAR 820-015-0026(1), OAR 820-020-0015(7), and OAR 820-020-0025(1).

2732

The LEC discussed that the respondent was an April 2011 examinee whose examination results were being withheld from release by the National Council of Examiners for Engineering and Surveying (NCEES) due to exam irregularities. Wilkinson clarified that NCEES applied five different statistical models to the April 2011 examinations in order to identify examinees who may have engaged in unauthorized behavior, including copying or collusion. The analyses continued when there was an unusual commonality of answer responses, particularly incorrect answers, for pairs of examinees seated in proximity to each other. In this instance, it was the respondent and his tablemate. The LEC reviewed preliminary evaluations for both persons on August 11, 2011, and determined that the respondent would undergo additional scrutiny due to the number of answers without showing work and his tablemate would not. For reasons unknown, both pairs of examinees received the same exam booklets with questions in the same order thus increasing the opportunity for exam subversion.

Tappert observed that one of five statistical models indicated cheating might have occurred. He inquired as to the standard the Board has to meet in order to prove its case. AAG Tucker-Davis replied whether it is more likely than not. The LEC discussed that the respondent had a drop in his exam results between the morning session when he was seated next to his tablemate and the afternoon session when he was not. In addition, the respondent had a large number of questions answered without showing his work. While a singular statistical model indicated a problem, the collaborating facts were minimal to support the contention of exam subversion. The LEC questioned if there was enough evidence to proceed towards a sanction. Upon consideration, **the LEC recommended that the Board issue the respondent a letter of concern stating the case was investigated because concerns were raised by the statistics**, including a model and answer responses, but the case was closed due to insufficient evidence. Therefore, the Board would notify NCEES to release his exam results.

2733

The LEC discussed that the respondent was an April 2011 examinee whose examination results were being withheld from release by the National Council of Examiners for Engineering and Surveying (NCEES) due to exam irregularities. In this instance, it was the respondent and his tablemate. The LEC reviewed preliminary evaluations for both persons on August 11, 2011, and determined that the respondent would undergo additional scrutiny due to the two statistical models that highlighted his exam and the proctor reports that documented the respondent was “looking around” during the exam. For reasons unknown, both pairs of examinees received the same exam booklets with questions in the same order thus increasing the opportunity for exam subversion.

The LEC reviewed the proctor reports displaying comments that the respondent was looking around during the exam. Tappert noted his behavior caught the eye of the proctors as being suspicious, so it was documented unlike any other examinee. Wilkinson confirmed that no proctor brought this behavior to the respondent’s attention. If proctors had noticed any other irregularities by examinees, it would have been reported separate from the NCEES statistical reports. In addition, the LEC took note that the respondent failed to show much of his work. AAG Tucker-Davis asked if doing the work in his head offered an explanation for his lack of showing work. No was the reply. Furthermore, the LEC disagreed with his understanding that he was not to write on the exam. The LEC acknowledged that two statistical models, lack of showing work, and the proctor reports tended to support the conclusion that it is more likely than not that the respondent engaged in copying.

In order to determine what the respondent violated, the LEC reviewed ORS 672.200(4), which refers to violations of the Rules of Professional Conduct. In this case, it would point to an exam subversion violation of OAR 820-020-0040(1)(e) and to penalties defined by OAR 820-020-0040(2)(d),(e). The LEC noted that ORS 672.045(10) also would apply. As is done with all cases, the LEC discussed setting the Notice of Intent (NOI) sanction level at the maximum allowed under OAR 820-020-0040(2). Once the NOI is issued, the respondent would have the opportunity to meet with the LEC to discuss what happened and any mitigating factors. The LEC determined to issue the respondent a NOI to void his examination results, deny certification, and forbid testing for three years beginning with the April 2011 examination.

New Business:

Preliminary Evaluation:

The LEC discussed that the Board received an inquiry from the Oregon Department of Justice regarding the registration status of the respondent, a PE (retired) and LSIT. At the time, the respondent's registration was in delinquent status. Therefore, he was not authorized to engage in the professional practice of engineering, including the offering of professional testimony by OAR 820-010-0520. In addition, the respondent used the title of PE in both his letterhead and in his signature to the report in violation of ORS 672.007. The respondent subsequently contacted the Board stating he was unaware that he was delinquent and that he would submit the paperwork to reactivate his registration, which was completed.

Wilkinson explained that the respondent was hired by the opposing attorney to review an Oregon-OSHA excavation investigation and a citation and to report his analysis. The respondent claimed the report was prepared under his certification as a Construction Document Technologist (CDT) and not under his PE registration. Wilkinson requested that the LEC review the report to identify if the report was the practice of engineering, or whether there was merit to his argument that he prepared the report as a CDT.

Tappert observed that the respondent signed the report as PE. While he may claim the title only indicates his expertise and background and not his registration status, his signature with "PE" statutorily means he holds a professional registration. Tappert added that the respondent must have also believed that it was engineering because he used the title to lend weight to his conclusions. The LEC discussed that the report appears to be based on his engineering expertise because he reviewed OSHA regulations, stability of the excavation, and offered his opinions. The respondent had concluded the excavation near a tree root ball was stable, which offered a significant conclusion regarding design. The LEC also questioned his conclusion that a tree's root ball offered bank stability. Nevertheless, the report appeared to be the practice of engineering despite its limits. Davis questioned whether he was hired because he was a PE or because he was a CDT. Hoffine then commented that the court would not have thought less of his capability if he had been retired. AAG Tucker-Davis suggested securing a copy of the hearing recording or transcript in order to determine that nature of his testimony. The LEC determined to open a law enforcement case.

Unfinished Business:

2615

Wilkinson updated the LEC on the outcome of discussions with the respondent, a Registered Geologist (RG) and Certified Engineering Geologist (CEG). The respondent offered through his firm, and its Web site to provide his clients professional RG and CEG services with several activities that overlapped practices with a geotechnical engineer. The JCC reviewed the case and found that the respondent was offering services within the overlap area, but was unlawfully using the term "engineering," in the title of his company so the case was referred to the LEC for disposition on August 11, 2011. The LEC determined to inquire as to the current status of the firm.

Wilkinson followed-up and reported to the LEC that the respondent had accepted a full-time position that included a non-compete clause. In addition, the respondent had informed Wilkinson that he had not renewed his firm's corporate registration and would not in the future, which was verified. Lastly, the respondent had disabled his Web site. As a result, it appeared to

Wilkinson that the respondent had taken all steps necessary to ensure that he did not restart his firm under a non-compliant name. **The LEC recommended the Board close the case with a letter of concern that the respondent not use the term “engineering” in any future professional endeavors unless registered with OSBEELS.**

Preliminary Evaluation:

The LEC first discussed that the complainant submitted allegations against the respondent, a PLS, regarding concerns about forged or altered survey and deed documents at their meeting on August 11, 2011. However, the complainant had not provided any evidence of the allegations, but his attorney had contacted investigators and requested that the LEC set aside the complaint so his client can assemble and submit the evidence at a later date. The LEC agreed. At the time of the October LEC meeting, the information had not been submitted. Nevertheless, a copy of a deed report prepared for Long was reviewed by the LEC.

Tappert noted the allegations involved a lot line adjustment, but there is no evidence to support the claim. Wilkinson confirmed noting the complainant’s attorney called investigators and the discussion was about the lack of evidence to support the allegations. It was explained that a closed preliminary evaluation does not preclude a case to be opened later when new evidence is submitted to document the allegations, which is required by OAR 820-015-0010(1). The LEC determined to not open a case and to inform the complainant that he may submit a complaint at a later date once the evidence is assembled. Wilkinson added that the respondent will not receive notice of the preliminary evaluation because the lack of evidence does not warrant opening a case and seeking a response.

Settlement Agreements:

The LEC reviewed the list of Cases Subject to Collections, Cases Subject to Monitoring, and Case Status Report. Wilkinson informed the LEC that all CPD respondents who signed settlement agreements during the August LEC meeting, except for one, paid their civil penalties. In addition, he estimated that he had eight cases in his Inbox to open, which would raise the law enforcement case load to approximately 95 cases. Lastly, he pointed out that the LEC authorized the issuing of six NOIs that will be on December’s agenda. The LEC decided to schedule informal conferences at half-hour intervals and to schedule additional time for selected cases. No other comments were offered.

The meeting adjourned at approximately 10:35 a.m.