



Oregon

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

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LAW ENFORCEMENT COMMITTEE

Meeting Summary

August 12, 2010

Members Present:

Dan Linscheid, Chair

Carl Tappert

Ken Hoffine

Ed Butts

Staff Present:

Jenn Gilbert

James R. (JR) Wilkinson

Allen McCartt

Others Present:

Grant Davis, SE (observer)

Joanna Tucker-Davis, AAG

Mike Meyer, PLS

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.

Informal Conferences

2572

The LEC met with the respondent and his attorney to discuss a Notice of Intent of Assess a \$1,000 Civil Penalty (NOI) for violations of Oregon Revised Statute (ORS) 672.007(1)(a),(c) and ORS 672.045(2). The Board received a complaint from the respondent regarding a City Engineering Department upgrades to the City's sewer and storm drain systems. A preliminary review of the complaint showed the allegations were not within the Board's authority. However, the respondent signed his complaint to the Board as "PE," but was not registered with OSBEELS.

The respondent's attorney informed the LEC that the respondent was licensed by the State of Maryland in 1966. He recited the employment and design experience of the respondent starting with his mechanical engineering degree from Purdue University and graduate work at Rutgers University. The respondent eventually settled in Oregon where he has a manufacturing company in the basement of his office.

The respondent's attorney continued that the respondent filed the complaint as a citizen because he felt the person handling the project next to his building was not taking proper care. He further described that the building is set on bedrock and three sump pumps drained the basement to the City's storm system. Subsequently, the City received federal money for construction of sanitary and storm systems. However, the design flooded his basement about 30" and tests showed feces were present. He went to the City Council with his concerns, but nothing was done. After another City Council meeting, they finally issued a work change order. The new system design still flooded his basement, which is what he complained about.

The respondent's attorney stated that when the respondent applied for registration in Oregon he had not realized his Maryland license had lapsed. However, the respondent is renewing in Maryland and will apply by comity in Oregon. He added that the respondent was not an engineer who was doing engineering, but was one who was writing a complaint to say that he had a little more education than a private citizen. He hoped someone would listen. The respondent's attorney emphasized that they sued the City and have scheduled a settlement conference.

LEC member Carl Tappert observed that the respondent's MD registration had expired. In reply, the respondent stated it was reactivated "as of today." He pointed out that MD was on a 20-year renewal cycle when he was licensed in 1986. His company was to pay for the renewal. Then in 1989, MD went to yearly renewals. However, he was never notified. The respondent added that he was allowed to renew after 24 years. He will apply in Oregon once he assembles his education and experience credentials.

LEC Chair Dan Linscheid asked whether the redesign still resulted in 30" of standing water in the basement. The respondent's attorney produced drawings to demonstrate that the City block acted like a shoe box at a slope and the water rushes to one corner, which is the respondent's building. It drained before; now, all the storm water drains to this building. Also, the water table was below the building, but now water seeps through the wall with feces from a sewer line that leaked. The respondent's attorney notes the Department of Environmental Quality (DEQ) says the contamination level is not at a point where it is deadly, but near there. When the respondent complained, the City redesigned the storm water pipe and it still was 6" too high. If lowered, it would go into an abandoned storm drain.

The respondent's attorney explained the difficulty of getting records from the City. He received design copies from the contractor who did the job and when he examined them he found a work order change. He emphasized that had they done the work the way it was set forth in the change order, then at least half of the problem would have been taken care of. He concluded that construction was not to the work order.

Tappert refocused the discussion on the fact that the respondent used the title of PE in his complaint to the Board. The respondent was not registered in Oregon, or anywhere at the time, and the project itself is a separate issue. The respondent replied that he is a PE in Maryland, but is unable to do work there until he is reregistered or paid the fee. He asked, "When is a PE not a PE in Maryland" and added that he was instantly reinstated.

A discussion ensued between the LEC and the respondent about the protected PE title. The respondent asserted that he is a professional engineer in MD and could, therefore, use the title of engineer in Oregon. Assistant Attorney General (AAG) Tucker-Davis clarified that if a person is holding out as an Oregon PE, then they must be either registered in Oregon or they must clearly indicate where their registration is held. The respondent countered that he has not stamped anything and had not illegally used the PE title. Tappert replied that ORS 672.007 defines the acts that constitute the practice of engineering, which includes the use of the PE title without registration. The respondent's attorney encouraged the Board to attend engineering trade shows because nearly everyone who attends says they are a PE and some are violating the law.

Linscheid stated that complaints are investigated as they are received. Board President Grant Davis added that the Maryland registration the respondent referred to was expired. Tappert agreed, observing that the respondent used the PE title to give weight to his complaint by implying extra experience and knowledge. The statute was written to prohibit people in Oregon who do not hold the Oregon registration from receiving the benefit of the title. The respondent's attorney responded that they will request an administrative hearing and fight through the Court of Appeals. The LEC determined to refer the case to the Office of Administrative Hearings (OAH). In addition, the LEC recommended filing for a Motion for Summary Determination since there was agreement as to the facts.

2578

The LEC met with the respondent, a PLS and PE, to discuss a Notice of Intent to Revoke Registration and Assess a \$5,000 Civil Penalty (NOI) for violations of ORS 672.200(2),(4), ORS 209.250(2),(3), Oregon Administrative Rule (OAR) 820-020-0015(1),(2), and OAR 820-020-0025(2). A County Surveyor alleged that the respondent was negligent or incompetent in the practice of land surveying by continuously submitting incomplete survey work for review. The respondent prepared a property line adjustment (PLA), which was filed by the County Surveyor's office and a partition plat, which was recorded by the County Clerk.

The respondent began by pointing out that the NOI alleged a total of 47 code, law, or statutory violations. Board Investigator James R. (JR) Wilkinson replied that there were multiple submissions of the same map with repeated violations of the same statute or rule. The NOI did not itemize the allegations in that manner. In response to a question about whether the complainant would be present, Linscheid explained that a NOI is issued by the Board to a respondent. The Board is not resolving a conflict between parties, but is conducting an administrative review. In addition, he confirmed that the LEC members had received and read the respondent's response.

The respondent noted that the complainant did not allege invalid basis of bearings. Regardless, he described his basis of bearing because ORS 209.250(3)(d) requires that it be shown.

In reply, Linscheid observed that the respondent found three monuments and held each one "in a proportioning way." The phrase was unfamiliar to Linscheid who has reviewed hundreds of maps as the Yamhill County Surveyor, so he asked the respondent to explain. The respondent stated he used a reference survey by another PLS, and since that PLS used a proportioning technique on certain monuments he did the same. He continued that the basis of bearing issue

was not with the survey, but was with the plat. However, nothing was stipulated in the NOI on that set of allegations. AAG Joanna Tucker-Davis commented that a reissued NOI can include the violations of ORS 209.250(3)(d). The respondent disputed all of the allegations and did not wish to receive an amended NOI. Nevertheless, LEC member Ken Hoffine expressed confusion about the phrase and the basis of bearing.

The respondent referenced a survey that was done by another surveyor on September 27, 1985. After some discussion, Hoffine understood what that PLS did, but not what the respondent did and he added that “in a proportioning way” is not a standard of practice. The respondent answered that the monuments did not fit exactly and he knew proportioning was done, so he used proportioning in his solution. The phrase was to inform other surveyors.

There were questions about the Board’s review and the NOI. The respondent disagreed with the allegations of failure and incompleteness stating his work was complete. He claimed that plats and surveys are a work in progress, but the PLA went through smoothly. His plat went through three or four reviews, while other surveyors go through seven or eight reviews. Also, he questioned whether the same allegations that applied to his submittals also applied to his final, approved partition plat. He asked whether the Board was trying to “undo” the recorded plat.

Hoffine responded by analogy that if a PE designed an approved building and later it was discovered that it would not withstand wind shear, it is the Board’s responsibility to examine whether the PE was negligent or incompetent. Even if approved, the building still may not meet a standard of practice or code. If the engineer is found to be negligent or incompetent, then the Board should take action against that person. He continued by noting his twenty years of experience and the hundreds of surveys he has reviewed and when he reviewed the respondent’s map he could not understand what the respondent had done.

The respondent explained that he does not use proportioning much, but thought it was appropriate in this instance. Hoffine replied that the respondent may not be wrong, but the respondent did not explain how he set a point on-line without any control. The respondent read his narrative adding that the PLA boundary resolution was a retracement of the plat surveyor’s footsteps. He used plat data to reestablish the points, but there were compromises that challenged the integrity of the original plat because of a 10’ to 12’ discrepancy to the west and north. Hoffine remarked that there were no other monuments found in order to properly place the monument. The respondent then asserted that the County Surveyor reviewed the survey and found it in compliance with ORS 209.250.

Linscheid clarified that the process used to review surveys is not necessarily the same process to review plats and partitions. Boundary determinations are reviewed under ORS Chapter 92, Subdivisions and Partitions, and are not reviewed under ORS Chapter 209, County Surveyors. ORS Chapter 209 defines map of survey requirements, but the boundary determination issue did not arise until the plat was submitted. He added it is uncommon for a plat to undergo multiple reviews. He also doubted whether there was a collaborative effort between the County Surveyor and a private surveyor to reach a boundary resolution. He emphasized that when a map is submitted for review, it should be ready to be filed. Had the respondent made the changes required by the County Surveyor after the first review then he would not have had the fourth

review. The County Surveyor identified all the problems, but the respondent did not change subsequent maps. Linscheid concluded noting there were repeated mistakes on the same map.

The respondent produced a County checklist to show his map was in compliance. After the LEC commented on the list, the respondent replied that maps are a work in progress. He also recounted an instance where the County Surveyor informed members of the Professional Land Surveyors of Oregon (PLSO) to set monuments last because of potential changes in boundaries.

The issue is not about who approved the plat, Tucker-Davis reminded the LEC, but about the knowledge and process the respondent used to reestablish the south boundary of the plat. The respondent asserted that if a study were made in this County, the number of his reviews is fairly normal. The extra reviews were due to his boundary resolution. Hoffine disagreed because he did not see where the control came from to set monuments. He continued that on the plat review it complied with ORS Chapter 209, but it did not resolve the boundary conflicts. The respondent countered with questions about the ramifications because the deeds and legal descriptions are intact. Now boundary resolution issues arise along the south line. He stated he used a number of monuments to control the line.

Tappert stated the question as whether a reasonably competent surveyor should have known that control was required before being told by the County Surveyor during the review process. If the County Surveyor has to describe step-by-step everything that is required on the map, then that work is not the work of a professional land surveyor, but of a technician. The respondent again showed the checklist admitting that he missed things, but the County Surveyor's office shows compliance with ORS 209.250(3)(f). Hoffine agreed; however, that effort was not there at the beginning. The respondent remarked that since the boundary resolution was approved on the map of survey, he submitted it for the PLA.

Linscheid interjected stating there is a distinction between filing and approval. He explained there are no approvals on surveys, only a check for the elements required by ORS 209.250. He added that perimeter surveys are required for a boundary determination and sometimes they come under close scrutiny. He noted Yamhill County requires title insurance reports for deeds and adjoiner deeds. When filed as a partition plat, it will become record regardless of what deeds may have said. That is the determination that overrides preceding deeds of record. He then asked whether the respondent had spoken with the County about any potential problems. In reply, the respondent received a call and was told to work with reviewers to get a satisfactory resolution. He claimed he made changes to get it approved, filed, and recorded. Eight months later, a complaint was filed by the County Surveyor who accepted the survey.

Hoffine clarified that the problems were with his methodology and whether the practices were logical, in the good of the public, and met the standard of care. Whether or not it was approved is not pertinent. The issues with the survey were identified in the first review and persisted. He pointed out that the respondent did not perform proper ties to existing corners, which was his concern. The respondent was appreciative of the feedback, but he reported the work reflected the process.

However, it was only because the County went back to the boundary resolution issue that the distinction between the PLA and the filed survey became important. Linscheid continued that the County forced the respondent to go back into the field and find the existing monuments, which he should have been done for the survey. The respondent admitted he is not perfect. Linscheid replied, "We don't want perfection, only compliance with statute and rules." Hoffine agreed by adding that a surveyor can either find the problems and make corrections in order to avoid the same mistakes as in the past, or a surveyor can find ways to go around the problem.

The respondent answered there were differences and there were changes. He expressed his concerns to the County Surveyor, but they held fast to what they wanted, so he made the changes per their request. The respondent noted that only the south line had problems. The other sides were a good match, some within hundredths. He admitted that his early work was not the same as the later work. In the end, the survey was filed. The partition was approved and recorded.

The respondent then asked whether Linscheid, as Yamhill County Surveyor, would have filed a complaint. After an affirmative response, the respondent expressed satisfaction that the end product agreed as close as it did to the first product. Linscheid remarked that if he had someone in his office with similar problems, he would have filed the survey and submitted the complaint because the person is demonstrating a lack of respect for the professional practice of surveying in Oregon and negligence or incompetence may have been involved. In addition, Linscheid emphasized that the eventual filing doesn't exonerate what happened in order to get it to a point that it can be filed. He asserted that a survey should be in compliance after one review, but that did not happen here.

There are two sides of a coin, the respondent declared. He wished he had the final resolution at the first submittal, but he didn't. A reviewer can come up with something different no matter what you turn in. While it may not be that way, it appears that way.

Upon consideration, the LEC offered the respondent a 90-day suspension and a \$2,500 civil penalty. Tucker-Davis explained it would be a recommendation to the Board that would not take effect until September 14, 2010. The respondent will need to complete any survey work before his suspension is effective. His PE registration is not affected. However, the respondent disagreed with the allegations. The LEC offered to accept settlement language of "the Board finds, but the respondent does not admit." Since this is a sanction, the settlement agreement is a public document. The respondent also disputed that he was negligent or incompetent. The LEC went into another executive session and upon reconvening offered to strike incompetence, drop the civil penalty to \$1,000, but hold firm on negligence and the 90 day suspension. Linscheid reminded the respondent that it was negligent to know about the problems on the first review, but not address it until the third review. The respondent countered that the final work product was approved, so the LEC agreed to remove it from the settlement agreement. The respondent requested a payment plan and expressed further concern about the valid basis of bearing phrase in the agreement. Upon consideration, the LEC determined to remove the reference from the agreement. The respondent agreed. **The LEC recommended the Board approve the settlement agreement.**

2579

The LEC met with the respondent a PLS and SE, and his attorney to discuss a Notice of Intent to Revoke Registration and to Assess a \$5,000 Civil Penalty (NOI) for violating ORS 672.020(2), ORS 672.200(2),(4), OAR 820-010-0620(2), OAR 820-010-0621, OAR 820-020-0015(2),(10), and OAR 820-0020-0025(1). Complainant Carol Moeller, Administrator for the Oregon Board of Architect Examiners (OBAE), alleged that the respondent was not in responsible control and was incompetent in the practice of engineering when he designed a non-exempt structure in Portland.

The respondent's attorney began by asking whether the LEC received a copy of their settlement proposal. She offered that the respondent would accept a two-year suspension of his license and any work pending after December 31, 2010, would be reviewed and sealed by a licensed, structural engineer. Tucker-Davis questioned whether that offer was only for a suspension of his structural registration, but not for his environmental engineering registration. The respondent's attorney clarified that the respondent has both engineering and land surveying registrations and the agreement would cover only the engineering registration. She continued that the case does not involve environmental engineering, so he would like to continue to perform environmental engineering, but understood that they are both encompassed in one registration. Tucker-Davis also pointed out another issue the Board can not pre-approve, which is his reinstatement in two years. In reply, the respondent's attorney noted that his two-year suspension is contingent on nothing else happening that is negligent or incompetent. If something new occurred, the Board could bring new allegations distinct from the terms and parameters offered in the proposal. That is something the Board can determine.

Linscheid stated that it is important that there is an admission to the allegations. The respondent's attorney replied that the settlement is designed so there is no admission of liability. The respondent would agree the terms are contingent upon no further conduct that violates the provisions alleged to be violated. To aid settlement, Linscheid offered the phrase, "Board found, but the respondent denies or does not admit." The respondent's attorney agreed. Tappert added that any work after December 31 must be stamped by someone other than the respondent. Future work has to be under the supervision and control of a registrant. The respondent's attorney acknowledged that the respondent would be working with an engineer under their control.

Davis commented that the work of a structural engineer is limited to only those designs called for under ORS 672.107. Civil engineers can do virtually everything else. As a result, very little of what the respondent does requires a structural engineer. A settlement should consider all engineering work.

Upon consideration, the LEC made a counteroffer. Tucker-Davis explained that the LEC would make the following recommendation to the Board for a final approval on September 14, 2010: 1) the respondent would retire effective December 31; 2) no offer of reinstatement is made; 3) the respondent will provide a list of all current pending projects by September 31; 4) the respondent will provide a list of projects that were either finished or transferred to another engineer by December 30; and 4) the respondent will accept no new work between now and December 31. The Board would waive the civil penalty and an admission is not necessary. However, if the

conditions of the settlement are not complied with then the civil penalty comes back as does the revocation.

The respondent's attorney asked a series of questions, including if the respondent would be allowed to retake the examination and then apply for licensure. She also requested that the newsletter state that he denied the findings in the settlement. And, there are projects that will not be completed until next year. Lastly, she expressed concern about breach of contract actions by clients because he is now retiring his license. She stated that clients ultimately have the choice about whether to assign their project to another engineer.

Tucker-Davis commented that the respondent can not do engineering work after December 31. In addition, there was additional discussion about the term "transfer" because of contract negotiations. To accommodate, the LEC determined that the respondent should provide a list that identifies the engineer who is in responsible charge of the project.

The respondent asked about circumstances when he gets calls from contractors asking to interpret certain provisions of the drawings that were done prior to his retirement. Tucker-Davis replied that if their request is defined as engineering by ORS 672.005(1), then that is a problem. The respondent's attorney replied that a client would not want to pay another engineer to interpret the respondent's design. Regardless, it still needs to be under the responsible charge of an engineer. Tappert added that if the project design was complete and involvement was thought over, but the client comes back for additional services and the respondent provides that service, it would be the unlicensed practice of engineering. The respondent has to refer that work to a licensed engineer.

Upon further discussion, the LEC adjusted the reporting dates. The first report would still be due by September 30, but the second report is due by December 3, which will provide the LEC the opportunity to review the list at its scheduled December meeting.

The LEC went into an executive session to discuss the issue of his potential application to take a future examination. The LEC was unwilling to make it a part of the settlement. The LEC offered retirement without reapplication in lieu of the civil penalty. **The LEC recommended the Board approve the settlement agreement.**

Cases Reviewed

2574

The LEC discussed that the complainant, a PE, CWRE, and Board member, alleged that the respondent, a PE, used the complainant's engineering seal and modified the his design plans thus posing a risk to public safety. The complainant originally designed a pump station and retaining wall that required modifications due to site conditions found during construction. The respondent made the modifications.

The LEC first reviewed this case on February 11, 2010; however, the LEC did not have a quorum with the complainant recused from discussion. Regardless, the complainant at that time presented new information he wished to add to his complaint. The LEC directed that the new

information be submitted to the professional reviewer for additional evaluation. An evaluation report dated August 2, 2010, was provided by the professional reviewer, a PE, which the LEC reviewed. The complainant was recused from discussion.

Linscheid noted selected reviewer comments including, “*lateral soil pressure used in the calculations is 10 pcf,¹ which is below the code minimum of 30 pcf and normal values for sandy soils.*” He added that the reviewer found the design does not meet code, does not follow normal engineering standards, and may pose a risk to public safety. However, Tucker-Davis questioned the use of the term “normal” because it does not convey whether there was negligence or incompetence in the design. Later in the report the reviewer states “the actions of the respondent are not consistent with actions of other reasonably prudent practitioners.” She cautioned the need to clarify what the standard is and whether this work fell below the standard of care.

In reply to a comment that the minimum standard is code, Tucker-Davis remarked that it could be the case that an engineer misses a code requirement, but it necessarily would not be negligent or incompetent. If the design is not safe, then that is an issue because no reasonably prudent engineer would do it that way. Hoffine expressed his opinion that the respondent did not follow the standards of fundamental practices, even if things were done differently. Tucker-Davis then read the reviewer’s conclusions where he “*strongly encourage that the project owner be notified of the non-conformance and potential life-safety issues, and that corrective action be taken to mitigate the deficiencies for both the retaining wall and the pump house building.*” She believed this was a strong statement about negligence or incompetence and would support a sanction.

Tappert reviewed the reviewer analyses that the use of the seal was an oversight, that the respondent did a complete redesign and did not modify the complainant’s design, and that the design is fundamentally flawed. The complainant informed that the respondent went to look at the cut for the building and made an onsite evaluation that the soil was stable. However, the lateral soil pressure does not meet code and, due to this fact, the wall is under-reinforced. Tappert endorsed the Hoffine conclusion adding that a NOI should be issued to revoke because of negligence and/or incompetence.

To determine the civil penalty amount, the LEC reviewed the project and the acts that constitute the practices of engineering. A civil penalty is assessed for evidence of each act as a sheet or plan and is not assessed as a violation of statute or rule. Tucker-Davis reminded the LEC that there can be multiple violations per sheet. Each sheet evidences the act of engineering and it may violate multiple statutes and rules, but it is still a single act for sanctioning purposes. For example, the sill bolts are a separate design allegation, but they are on the same plans. As such, there is not a separate sanction for each instance of substandard practice. Wilkinson admitted that additional evidence might be found in the file as the NOI is drafted to change the final sanction amount; however, the minimum civil penalty would be \$2,000.

Tappert questioned whether the LEC should revoke for a single design believing that the civil penalty would be sufficient. In reply, Linscheid asked if he would have the same opinion if it collapsed and harmed or killed someone. Tappert was unsure adding that it has unknown potential from faulty design, but it has not failed. No reason to presuppose. Hoffine commented

¹ pcf: pounds per cubic foot.

this may be a single mistake, but it shows he should not design retaining walls. He affirmed revocation and civil penalty. Wilkinson observed that the case file does not contain evidence of other negligent acts. The LEC determined to issue a Notice of Intent to Revoke Registration and Assess a \$2,000 Civil Penalty for use of the seal and practicing outside his area of competence

2580

The LEC discussed that the respondent was sanctioned for \$5,000 by the Oregon Board of Architect Examiners (OBAE) for the unlicensed practice of architecture. Board Investigator Allen McCartt informed the LEC that complainant OBAE Administrator Carol Moeller had submitted a complaint to OSBEELS against a PE. During the preliminary review for case #2579, it was determined that the respondent had engaged in the unlicensed practice of engineering. The evidence showed that the respondent initiated the project when he signed an agreement between himself and his client to design a “three story, six unit loft building,” which is a non-exempt structure requiring professional services. After the agreement was signed, he approached the PE respondent in case #2579 for services. However, the respondent is neither an architect nor engineer. The LEC determined to issue the respondent a Notice of Intent to Assess a \$1,000 Civil Penalty for the unlicensed practice of engineering violating ORS 672.020(1) and ORS 672.045(1)(2).

2581

The LEC discussed that the complainant alleged that the President of a Consulting Engineering firm was in violation of not giving proper right of entry notice and damaging vegetation while conducting a survey on his property. When the president replied, he wrote that a PLS was assigned as Project Surveyor. As a result, the respondent in the case was changed to the PLS. Nevertheless, Linscheid observed that the engineering firm was awarded an Oregon Department of Transportation (ODOT) contract. ODOT sent a letter to property owners potentially affected by the contracted work.

The ODOT letter dated June 22, 2007, informed local area property owners that the engineering firm’s “survey crews will be working in your area.” The letter continued “*survey crews will make every effort to notify landowners and people living on or nearby the property in advance, leaving a written notice when necessary.*” The LEC discussed that ODOT contracted the engineering firm to conduct the survey, but also discussed whether ODOT should receive a letter of concern. After discussion, the LEC will hold the respondent responsible because the licensee is answerable for complying with right of entry, but ODOT might have contributed to the problem by sending out the letter.

Hoffine observed that the letter left the impression that notice was already done, so any surveyor might reach the same conclusion. However, the law allows written notice only after an “in person” notice is attempted. Tappert agreed noting the law requires notice by the contracted surveyor who is the respondent, not ODOT. The LEC determined to issue the respondent a Notice of Intent to Assess a \$1,000 Civil Penalty for violating ORS 672.047.

2584

The LEC discussed that the complainant alleged that the respondent, owner of a Land Planning and Development company, was engaged in the unlicensed practice of land surveying when he

located the property corners and established and/or reestablished the property line she shares with her neighbor. Her neighbor hired the respondent to assist him with property improvements, including construction of a fence along the property line they share with the complainant. The respondent contacted the complainant by writing two letters, both stating he had located property corners.

Hoffine noticed that the landowner identified the property corners to the respondent. He believed that the respondent was acting as a fencing contractor. Linscheid disagreed noting that the respondent made an authoritative determination of the property line when he wrote to the complainant. In reply, Hoffine stated it could have been done at the behest of the landowner. McCartt clarified that the landowner told him that he showed the respondent the corners. Later, when McCartt contacted the respondent he told McCartt that he used a bad choice of words in the letters.

The LEC also discussed the conflicted property line. McCartt explained that the complainant had negotiated the property line with the neighbor's father, so when the property was left to the son the fence line was discovered to be 30' into their property. The respondent was caught in the middle. The complainant had two surveyors come to her property and then ignored their advice. The fence was determined to not be on the property line. The complainant was granted a driveway easement. **The LEC determined to close the case as allegations unfounded.**

The Board completed a random audit of registrants for compliance to the Continuing Professional Development (CPD) requirements set forth in OAR 820-010-0635 and OAR 820-015-0026. CPD requirements are defined by OAR 820-010-0635. OAR 820-015-0026(1) states an individual found violating the CPD rules may face a suspension of their professional registration(s). For violations of professional conduct that occur from failing to cooperate under OAR 820, Division 20, a registrant may face revocation and a maximum civil penalty of \$1,000 per instance. The following individuals were investigated for failure to attain their necessary professional development hours (PDH). Each case discussed below has unique circumstances that were taken into consideration as to the penalty.

2606

The LEC discussed that the respondent, a PE, signed his renewal form certifying he had completed his CPD requirements. When audited, the respondent failed to provide CPD documentation and requested retirement. However, a retroactive retirement will not forego the violation and sanction. Further contact with the respondent resulted in his submitting a Continuing Professional Development Organizational Form. He eventually provided supporting documentation to show internet business training, but later he felt it did not fulfill the continuing education requirements for a professional engineer. As a result, the LEC determined to issue the respondent a Notice of Intent to Assess a \$1,000 Civil Penalty for violating OAR 820-010-0635(1),(5), OAR 820-015-0026, OAR 820-020-0015(7), and OAR 820-020-0025(1).

2607

The LEC discussed that the respondent, a PE, signed his renewal form certifying he had completed his CPD requirements. When audited, the respondent failed to provide CPD

documentation and requested retirement. He informed the Board that he had retired in 2007 and had signed the renewal form by mistake. However, a retroactive retirement will not forego the violation and sanction. The respondent failed to meet continuing education requirements, submitted no PDH documentation, and he was untruthful. As a result, the LEC determined to issue the respondent a Notice of Intent to Assess a \$3,000 Civil Penalty for violating OAR 820-010-0635(1), OAR 820-015-0026, OAR 820-020-0015(7), and OAR 820-020-0025(1).

2608

The LEC discussed that the respondent, a PE, signed his renewal form certifying he had completed his CPD requirements. When audited, the respondent submitted a CPD Form listing the PDH units he had obtained outside of his audit period. He wanted to show his diligence in maintaining compliance with the CPD requirements. He also claimed his inability to show documentation was due to the following: 1) his California registration does not require CPD; 2) he placed his Oregon registration into exempt status in 2004; 3) he was unaware of the elimination of the exempt status; and, 4) he was not required to submit CPD documentation when he renewed in January 2009. However, the respondent failed to meet continuing education requirements, submitted no PDH documentation, and he was untruthful. As a result, the LEC determined to issue the respondent a Notice of Intent to Assess a \$3,000 Civil Penalty for violating OAR 820-010-0635(1),(5), OAR 820-015-0026, OAR 820-020-0015(7), and OAR 820-020-0025(1).

2609

The LEC discussed that the respondent, a PE, signed his renewal form certifying he had completed his CPD requirements. When audited, the respondent submitted a CPD Form listing the PDH units he had obtained outside of his audit period. He wanted to show his diligence in maintaining compliance with the CPD requirements. However, the respondent failed to meet continuing education requirements, submitted no PDH documentation, and he was untruthful. As a result, the LEC determined to issue the respondent a Notice of Intent to Assess a \$3,000 Civil Penalty for violating OAR 820-010-0635(1),(5), OAR 820-015-0026, OAR 820-020-0015(7), and OAR 820-020-0025(1).

2610

The LEC discussed that the respondent, a PE, signed his renewal form certifying he had completed his CPD requirements. When audited, the respondent responded that he retired from practice due to a medical disability and requested retirement status. In addition, he had discarded his PDH documentation when he retired. The Board received a physician report to verify his disability. It revealed he was declared disabled in 2006. After some discussion, it was determined that the medical condition began decades ago, but only recently manifested the symptoms that prohibited his continued practice. **The LEC determined to accept his retirement and to close the case as compliance met.**

2620

The LEC discussed an inquiry from, a PE, regarding the 2005 disbarment of the respondent, as a New York attorney and as a Patent Attorney. The respondent was disbarred for falsifying law school transcripts, letters of recommendation, and resumes. While the allegations first appeared

to be outside the Board's jurisdiction, staff opened the OSBEELS case to receive documentation from the NY Courts that showed the employers the respondent reported on his 2000 New York Bar application conflicted with dates and locations he reported to OSBEELS for his professional engineer application in December 2003. After discussion about the conflicted employment timelines, Wilkinson informed the LEC that the OSBEELS application states, "Record must be continuous regardless of the nature of employment." The respondent failed to report his law school attendance or attorney employers on his OSBEELS application and therefore forged his OSBEELS application in violation of ORS 672.045(10).

In addition, the LEC discussed a retirement form the respondent submitted two days after he was told to offer retirement as part of settlement negotiations. The form was intercepted in accounting and placed in the law enforcement file. The LEC also was informed that the NY Notice of Petition to disbar reported that the respondent claimed the forgeries were done without his knowledge by his thirteen year-old daughter. The LEC determined to issue a Notice of Intent to Revoke Registration and Assess a \$1,000 Civil Penalty for violating ORS 672.045(10).

New Business

Preliminary Evaluation:

The LEC discussed a preliminary evaluation of a complaint regarding the respondent, a PE. The complainant alleged that respondent was "trying to practice mechanical engineering and falsifying timesheets." The LEC discussed the distinction between supervising personnel in a human resources manner and supervising engineering work products. Upon review of the evidence, it appeared that the respondent was converting engineering work orders to installation work orders. However, the respondent is a professional engineer and the evidence did not show that she altered the engineering works of another engineer. In addition, the allegation of falsified timesheets is a business matter outside the Board's jurisdiction. As a result, the LEC determined to not open a law enforcement case.

Preliminary Evaluation:

The LEC discussed a preliminary evaluation of a disciplinary notice from the respondent, a PE, regarding disciplinary action taken against him by the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors. The evaluation found that the firm the respondent worked for entered into an agreement with an architectural firm to provide mechanical, electrical, and plumbing engineering designs for an Oklahoma medical research tower. However, the firm was found in violation of the Oklahoma statute that prohibited the offering of services or the practice of engineering without a Certificate of Authorization. Because the respondent sealed and signed all the mechanical and plumbing sheets using his Oklahoma seal, the Oklahoma Board found that the respondent should have known that the firm was not authorized to offer services in Oklahoma. The respondent was found to have aided and assisted the unauthorized practice of the firm and agreed to a \$750 civil penalty and a reprimand. However, neither the violation nor the civil penalty gives rise to a level required to take action under OAR 820-020-0015(6). The LEC determined to not open a law enforcement case.

LEC Discussion:

The LEC discussed a staff memorandum regarding a proposed field investigation involving a PLS. The LEC opened case #2630 against a PLS due to questions about the evidence he used to

reestablish three original General Land Office (GLO) corners. During the initial discussions about the case, the LEC also directed that the field investigation include representatives of the Bureau of Land Management (BLM) and U.S. Forest Service (USFS).

The LEC learned that Evelyn Kalb, PLS and attorney, had agreed to be the Board's professional reviewer. While she is not an approved reviewer, she is a recognized expert that the Board can contract with for her analysis. Linscheid suggested a BLM and USFS contact. He would make first contact and staff would make the arrangements with them or their assigned representatives. Regardless, the Board will send a letter requesting their formal assistance in the investigation and outlining expectations.

Tucker-Davis expressed concern that this involves private property. While right of entry is granted to professional land surveyors, Board staff and the proposed representatives are not all professional land surveyors. She observed that the Board should ensure that each affected property owner is notified and that written permission is granted for all participants to enter their properties. Wilkinson informed the LEC that the County Surveyor has already provided a list of affected property owners. It is a matter of contact.

There was additional discussion about what conclusive evidence might mean. Linscheid replied the BLM *Manual of Surveying Instructions* defines what is required. Agency representatives will need to provide a written determination on how they would direct their surveyors on the acceptance of evidence. Tucker-Davis added that even if they don't accept the evidence, it does not necessarily mean the respondent was negligence or incompetence. Only the Board can make that determination. Kalb would be there to render an opinion to guide the LEC in its deliberations. In addition, the review is not about whether the corners and relevant property lines are in the correct positions, which is a legal matter, but about whether the evidence was direct to place the corner in the position in which it was established. Wilkinson confirmed that relevant maps of survey, corner restoration forms, and photographs of the corners were provided. They will be scanned and sent to participants for their review prior to the field visit.

This is a controversial issue, Hoffine observed, but an out-front approach. He added that it is establishing precedence because a field investigation is needed to determine if a land surveyor is conforming to accepted practice. The Board is coordinating with other agencies to reach a reasoned decision. However, this could be a matter of difference of opinion. Tucker-Davis reminded the LEC that everyone might be witnesses, including BLM and FS representatives. They need to be aware of that the potential. Linscheid and Hoffine decided to not participate in the field visit. The LEC directed continued effort.

Expert Reviewer Application:

The LEC reviewed a Statement of Qualifications (SOQ) for a PE, for approval as a professional reviewer and expert witness. The LEC reviewed the SOQ and found his qualifications and application met the requirements of the professional reviewer program. **The LEC recommended approving the PE as a professional reviewer.**

Unfinished Business:

Crowley 2539: Judgment Debtor Examination

Tucker-Davis explained to the LEC what it would take to conduct a debtor examination on Larry Crowley, #2539. The Board issued a Default Final Order against Crowley for the unlicensed practice of engineering. He also has offered engineering services through a failed firm and he has secured engineering employment only to be dismissed later. She reported that the Board has injunction authority under ORS 672.215, which can be used to stop current behavior, but there is no indication of his current activities with which to seek the injunction against.

She continued that Crowley owes the Board \$9,000 on his civil penalty and, since he has not paid, the Department of Justice (DOJ) employs specialists who are qualified to conduct a Debtor's Examination. During the examination, Crowley would be asked about why he is not paying his debt. The examination would be an opportunity to determine what he is currently working on and if it involves the unlawful practice of engineering. Crowley would get a legal notice to appear. When he appears, the AAG would ask him questions. If he ignored the notice, the AAG could ask the judge for a contempt of court case. She concluded that their AAG and Board staffs have met on the issue, but were waiting for the appeal period on the Default Order to expire. She asked for authorization to proceed. **The LEC recommended approval of the Debtor Examination.**

Joint Compliance Committee: Three cases referred to the JCC

The LEC discussed a staff memorandum that listed three cases that were referred to the Joint Compliance Committee (JCC). The list included case #2589, #2590, and #2615. In response to a question about case #2589, Wilkinson informed the LEC that the respondent's geotechnical work was on the lot that was involved in the *Street of Dreams* calamity. Her defense is that her scope of work was very limited. The JCC will review the case and offer their recommendations as per the JCC Operational Flow Chart.

Settlement Agreements:

Settlement Agreements: Cases Subject to Collections and Cases Subject to Monitoring

The LEC briefly reviewed the lists of Cases Subject to Collections and the Cases Subject to Monitoring. Wilkinson informed the LEC that he spoke with Dale Marx who was under the impression that he had paid his civil penalty to settle case #2425. Staff will need to conduct an internal review to determine if the money was received. Marx also has a monitoring case #2291 that requires him to take an ethics course. He is aware of the agreement, but due to a drop in the economy and "tough times" he has not had the resources to complete the course. Marx also asked about the potential retirement of his professional reviewer. Wilkinson informed him that once Marx has complete his course and his suspension ends to start the reviewer period, then it would seem appropriate to discuss the retirement of his proposed reviewer. Marx is working currently under the supervision and control of another PLS.

Wilkinson also informed the LEC that Calvin Bontranger has been making regular payments. In addition, staff opened a new case against the respondent in case #2499, but he responded to the allegation that he did not set new monuments in violation of his settlement agreement. However, his plat shows monuments. Staff will need to complete the investigation in order to reveal any violations of statute, rule, or his agreement.

Case Status Report, Total cases open: 57

Wilkinson reported that the Case Status Report shows 57 cases. However, he just opened the new CPD referrals for a total of 78 cases. Also, he spoke with a RPP regarding a professional report on the respondent in case #2568. The report was being drafted, but the RPP did not believe a field visit was necessary. Linscheid noticed that the respondent in case #2348 has an open case adding that he thought the respondent was in Utah. Wilkinson replied that the respondent returned to Oregon and submitted a complaint against a firm, which was opened. However, the respondent signed the emailed complaint as "PLS" with an Oregon address. Since he is revoked in Oregon, a case was opened. The respondent then continued to submit information using the title and has accumulated several thousand dollars in potential penalties for the use of the PLS title without registration. Lastly, the respondent in case #2494 is back on the list for signing a partition plat after he was revoked. At first, he denied signing the plat, but later retracted his denial. A law enforcement case was opened to address the unlicensed practice of land surveying issue and to clarify whether he was in violation of his settlement agreement.

The meeting adjourned at approximately 2:12 p.m.