



# Oregon

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

670 Hawthorne Ave. SE, Suite 220

Salem, OR 97301

(503) 362-2666

Fax (503) 362-5454

E-mail: osbeels@osbeels.org

**Law Enforcement Committee Meeting Minutes**

**Wednesday, February 6, 2008, 9:00 a.m.**

**Oregon Board of Examiners for Engineering and Land Surveying**

Members Present:

Dan Linscheid, Chair

Ed Butts (excused absence)

Grant Davis

John Seward

Others Present:

Joanna Tucker-Davis, AAG

Mari Lopez

Jenn Gilbert

James R. (JR) Wilkinson

Law Enforcement Committee (LEC) Chair Dan Linscheid called the meeting to order in the conference room of the OSBEELS office at 9:00 a.m., Wednesday, February 6, 2008.

Chair Linscheid announced that the LEC conducted two informal conferences by telephone prior to the start of the LEC meeting. The LEC agreed to a payment plan to settle case 2454 for Carter Case. The LEC decided to issue Nabil Taha a letter of concern to close case 2459.

Cases Reviewed:

*2396 – Catherine Nelson/Doug Spencer*

*2397 – Steve Cooley/Doug Spencer*

The LEC began with a review of an email that included Oregon Department of Transportation (ODOT) plans and special provisions. The email also contained a series of questions prepared by Assistant Attorney General (AAG) Tucker-Davis to assist the LEC in its discussion on the interpretation of Board rules about final documents, particularly defining when a standard drawing is considered a final document requiring a seal. During the December LEC meeting, it was recognized there were rules in need of clarification about the distinction between final and standard documents. The review might also involve proposed rule revisions.

A standard drawing is done by an engineer for a specific project. The investigation for cases 2396 and 2397 involved the review of the ODOT standard drawings. However, it was unknown if the standard drawings were prepared by a registered professional engineer because they were not sealed. If a standard drawing is referenced by an engineer, then the registrant accepts the standard drawing as their own work applicable to their project. This creates issues in that the engineer who uses the unsealed standard drawing did not prepare or supervise its design.

The LEC reviewed Oregon Administrative Rules 820-010-0622, Modifying Designs or Documents Prepared by Another Professional Engineer. If an engineer uses a standard drawing for their project, then this rule applies. Subsection one set four criteria for an engineer to modify

the design sealed by another engineer. Subsection two states, “*Registrants modifying the designs or documents not sealed must provide all the engineering services that would have been required had they started the work from its origin.*” The unsealed ODOT standard drawings are not being managed consistent with OAR 820-010-0622(2).

The LEC reviewed the ODOT plans attached to the email. The plans prepared by Doug Spencer, PE, referenced sealed standard drawings. In another instance, Carol Cartwright, PE, sealed plans that referenced both sealed and unsealed standard drawings.

The LEC discussed that the unsealed standard drawings are of unknown origin or purpose, but have a historic background. A professional must apply a standard of care in evaluating the use of a standard drawing or detail for their project. An engineer, by reference to a standard drawing, is attesting that the standard design will perform per the sealed design. The LEC also observed a statement on the ODOT standard drawings that “all materials and workmanship shall be in accordance with the Oregon Standard Specifications.” The LEC was unsure as to the reference.

The LEC also discussed that OAR 820-010-0622(2) creates conflict. At ODOT, unsealed designs are incorporated into design packages for construction projects. When a registrant references an unsealed standard drawing on their sealed design, they are accepting liability for the standard’s design and content. On the other hand, to seal a standard drawing may then restrict another engineer as a reference because of the drawing’s intended use is unknown.

The LEC also discussed that OAR 820-010-0621(2), Final Documents, requires that non-final documents be marked “preliminary,” or with some other wording to indicate that the document is not a final work product. The ODOT included the following disclaimer on its standard drawings, “*The selection and use of this Standard Drawing, while designed in accordance with generally accepted engineering principles and practices, is the sole responsibility of the user and should not be used without consulting a Registered Professional Engineer.*”

The LEC observed that the ODOT disclaimer communicates a different message than “draft copy subject to change.” The ODOT wording conveys that the drawing is the final work of the designer. In fact, the ODOT issued the standard drawings as part of a bid package to contractors. There was additional discussion by the LEC regarding assignment of liability if unsealed standard drawings are used in construction that results in harm to the public. Regardless, if standard drawings are not required to be sealed, then the Board should revise the rule.

The discussion turned to whether or not the ODOT fits within any exceptions. The LEC reviewed ORS 672.060 and subsections (5) and (6). The LEC determined that the complaints were focused on the actions of the respondents and not on the ODOT. Registrants are certified by the Board to ensure that their engineering designs conform to a standard of practice. The LEC noted OAR 820-020-0015(1) in the Rules of Professional Conduct. It requires, “*Registrants shall at all times recognize that their primary obligation is to protect the safety, health, property and welfare of the public. If their professional judgment is overruled under circumstances where the safety, health, property or welfare of the public are endangered, they shall notify their employer or client and such other authority as may be appropriate.*”

The LEC questioned if the employer falls under the exception do also employees and contractors fall under the exception when they affix their seal and signature to an engineering design?

The Board needs to define their expectations on standard drawings regardless of the research needed to address the above questions. A new rule may be required to interpret final documents as standard drawings. If done, the proposed rule would require a public hearing.

The LEC closed its discussion by reviewing the new ODOT policy RD07-11(B) entitled, Use of Professional Engineer's Seal on Title Sheet of Construction Projects. Respondent Nelson issued the policy effective March 1, 2008, to no longer require an engineer's seal on the title page of the ODOT engineering design packets. The LEC recognized that this was an allegation in the complaint and with the new policy the ODOT has exhibited a continued willingness to modify practices in alignment with Board statute and rules.

*2434 – Mark Mouser/William Garity*

This case is substantially related to an earlier law enforcement case 2391 against Mark Mouser. Mouser prepared stream restoration grant applications that included land surveying and engineering activities. To close case 2391, the Board issued Mouser a letter of concern on March 16, 2006, which was prior to the receipt of the Garity complaint. Garity expressed specific concerns that Mouser had engaged in the unlicensed practice of land surveying when he is not licensed. However, the investigation revealed that the surveying aspects of the application were done during the period covered by the previous case and the letter of concern. The LEC recommended closing the case as “other” without issuing a sanction.

*2464 – Gordon Snyder/OSBEELS*

Gordon Snyder works for T-Mobile and submitted documents to the City of Springfield to support a T-Mobile application to construct a 120-foot steel monopole wireless communication facility within an existing shopping center. As part of the application, the City requested engineering documents in response to requirements set forth in the Springfield Development Code 32.130(3). Snyder prepared the documents, but the City denied the application in part due to Snyder not being a registered engineer. T-Mobile did not appeal the decision. The LEC discussed whether T-Mobile is justified in its use of an exception under ORS 672.060(6). The LEC concluded that further investigation is needed and that the AAG should prepare formal advice before reaching a final decision.

*2471 – Mark Chandler/Kimberly Johns*

Mark Chandler let lapse more than five years his Oregon Naval Architecture and Marine Engineering registration. Chandler lives in Oregon and sealed a naval engineering report for an Oregon client with his Washington state engineering seal. The LEC noted the U.S. Coast Guard (USCG) is the permitting agency and they accept any state's valid engineering seal. However, to offer or to practice engineering in Oregon requires a valid Oregon certificate, which Chandler does not possess. The LEC issued Chandler a Notice of Intent to Assess Civil Penalties for his unlicensed practice. It was noted that the Board will hold a Rules Hearing during the March

Board meeting to reinstitute the offering of examinations and registrations to those especially qualified in the branch of naval architecture and marine engineering.

*2493 – Baynard Mentrum/Shelly Clark-Duquette*

Baynard Mentrum is licensed architect number 1549. Staff for the City of Portland filed a complaint against Mentrum for obliterating engineering seals on structural calculations that he then sealed with his architect seal. The LEC discussed whether Mentrum was competent to perform structural calculations if he had to rely on removing the engineer's seal in order to pass a review. The AAG noted the ORS 672.060(1) exception for "a registered architect practicing architecture." After further discussion of competency and structural calculations, the LEC resolved to refer the case to the Architect Board. If what Mentrum prepared is not architecture, then the Architect Board should make that determination and refer the case back to OSBEELS. The current case will remain open until the Architect Board reaches a decision.

**Miscellaneous Issues:**

*LEC Policy and Disciplinary Procedures Update*

As a result of discussions held during the January Board meeting, the LEC Policy and Disciplinary Procedures were distributed to the LEC members for review to ensure that the policies are updated and that the procedures are accurate to the process. The LEC last reviewed the policy in July 2005. For example, new LE issues have arisen such as the need for a military affidavit in the event of a sanction and the recently approved assessment of an annual percentage rate to unpaid law enforcement penalties. The LEC decided to table the discussion to the April meeting.

*Butler-Union County*

The Board received a complaint from Robert E. Butler, PLS, on December 13, 2007. He wrote regarding the Union County Tax Assessor requiring him to change his plat on two occasions. His plat showed 18.5 feet for an easement that the Assessor insisted was a fee grant. Once he made the change, the Assessor required him to then modify his Surveyor's Certificate. These events occurred after the County Surveyor had signed the plat. The LEC observed that Butler should have brought this issue to the Board prior to changing his plat. Regardless, the guiding law is ORS 92.100, Approval of plat by city or county surveyor; procedures; approval by county assessor and county governing body; fees.

The LEC discussed the function of the county assessor to check the legal interest in property by ensuring the people signing for the property are the actual interest holders. If the objections are based on Butler's surveying determination, then the assessor likely exceeded her authority. If the objections are found meritorious, then incompetence may be an issue. However, the complaint was unclear if the changes were requested because of surveying related matters or because of tax payment and property ownership issues. The LEC directed the investigator to conduct a preliminary investigation to gather more information and documentation.

**LEC Closed Cases Subject to Monitoring:**

No discussion.

**LEC Closed Cases Subject to Collections:**

No discussion.

**Case Status Report:**

The LEC briefly reviewed the current case status list.

The meeting adjourned at 12:28 p.m.