



Oregon

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

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LAW ENFORCEMENT COMMITTEE

Meeting Summary

February 9, 2012

Members Present:

Ken Hoffine, Acting Chair

Grant Davis

Sue Newstetter

Carl Tappert, excused absence

Staff Present:

Mari Lopez

Jenn Gilbert

James R. (JR) Wilkinson

Allen McCartt

Others Present:

Joanna Tucker-Davis, AAG

George Cathey, PLS (retired), CWRE (retired)

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. Ken Hoffine acted as the LEC Chair given the planned absence by LEC Chair Carl Tappert.

Informal Conferences:

Board Investigator Wilkinson reminded the LEC that at the December 2011 meeting they authorized issuing Notices of Intent (NOI) regarding two registrants of cases #2649 and #2673 who reside in South Korea. Both registrants failed to meet their Continuing Professional Development (CPD) requirements and are currently in delinquent status. Furthermore, neither respondent answered the allegations in their respective NOI nor requested informal conferences.¹ Wilkinson continued that the LEC agenda was left open for the possibility of late scheduling. Given no responses to the NOIs, the Board can issue Default Final Orders. However, these cases bring forth important points for LEC discussion.

If Default Final Orders are issued suspending foreign registrations for 90-days, Wilkinson asked, then how does staff monitor their activities to ensure compliance? He explained that notification is sent regarding a registrant's suspension or revocation to Oregon's Building Officials, or to County Surveyors, depending on the registrant's profession, but that is not possible with foreign registrants. In addition, overseas delivery of Default Final Orders presents other challenges.

¹ Case #2649 respondent responded to his NOI by writing, "I'm afraid that can't respond to your telephonic informal conference because I can't speak English well."

Assistant Attorney General (AAG) Tucker-Davis reminded the LEC that NOIs are typically issued with the maximum sanction allowed, which in these cases included suspensions at 90-days. The LEC can reduce NOI sanctions when considering a Default Final Order, but the LEC cannot exceed NOI sanction levels. She added that once a registrant has served the 90-day suspension, whether in delinquent status or not, they may return to active status. If they are delinquent, they may return to active status as long as they meet the requirements of Oregon Administrative Rule (OAR) 820-010-0520(1).²

Sue Newstetter expressed concern about a delinquent registrant being suspended for 90 days and two years later they want to renew. The 90-day suspension occurred while their registration was delinquent. Tucker-Davis replied that they would need to pay the civil penalty, with interest, and meet OAR 820-010-0520(1) requirements. If a registrant does not want to pay the civil penalty, but wants to return to active status, then the Board has the option at that time to issue a NOI to not renew for failure to pay.³ Tucker-Davis continued that at the point of reapplying for licensure they could respond to the NOI allegation that they failed to pay. For these two cases, however, the investigative records show they received their NOIs by either FedEx or by email. She was unsure what else can be done. Wilkinson agreed that staff should flag registrants in the database for failure to pay civil penalties.

Tucker-Davis continued that OAR 820-010-0605(1) defines service to the registrant's last address on file as registered or certified mail, which is done by the U.S. Postal Service and cannot be done overseas. She asserted the law does not contemplate service of notice to a foreign resident. She observed the Board is issuing legal documents consistent with what is required. However, questions may later arise about whether FedEx is an equivalent service. Wilkinson responded that deliveries can be tracked to international addresses. Verification of acceptance of service by the respondent is a different matter. Grant Davis asked about renegotiating civil penalties because of these issues. Tucker-Davis explained that the Board can withdraw a final order. If it is a matter of communication, and for some foreign registrants it has taken numerous exchanges to get them to submit compliant documentation, then the Board can revisit the more "difficult" cases based on new evidence and reach a different resolution.

² OAR 820-010-0520, Registrants or Certificate Holders Not Qualified to Practice.

Registrants or certificate holders who are delinquent, retired, inactive, suspended or revoked by the Board, are not authorized to engage in the professional practice of engineering, land surveying, photogrammetric mapping, or the professional activities of a certified water right examiner as defined in ORS Chapter 537 and OAR Chapter 690. Except as provided in section (2), registrants or certificate holders who are delinquent, retired, inactive, suspended or revoked may not hold out as professional engineers, professional land surveyors, professional photogrammetrists, or certified water right examiners.

(1) Delinquent registrants or certificate holders. Registrants or certificate holders become delinquent because they fail, within a period of five years from the renewal date, to renew their certificate of registration or to pay their renewal fees or satisfy the required PDH units. A delinquent registrant or certificate holder may return to active status: (a) Upon application to the Board; (b) By paying the delinquent renewal fee required by OAR 820-010-0305(3); (c) By paying the biennial renewal fee required by OAR 820-010-0505; and (d) If applicable, by satisfying and submitting proof of completion on a form approved by the Board of all delinquent PDH units, at a rate of 15 PDH units per year delinquent, to a maximum of 30 PDH units as stated in OAR 820-010-0635. ****

³ OAR 820-020-0045, Obligation Not to Engage in Unprofessional Behavior. ****

(3) An applicant or registrant must make timely and full payment to the Board of all Board assessed fees, fines and penalties. ****

On the other hand, Board examinations, statutes, and rules are in English. If a registrant has difficulty with the language, as Cho stated, then how can registrants comply if they don't understand the requirements? Davis questioned whether they can correctly interpret and apply building codes to Oregon projects, for example, which is at core of protecting public health and safety. Wilkinson replied that it is unlikely these two registrants were practicing engineering in Oregon, but it raises the question. Tucker-Davis pointed out that a registrant may not be working in Oregon, but they still need to comply with Oregon registration requirements, and the Board must comply with lawful notice requirements. She suggested that the Board could require foreign registrants to appoint Oregon-based agents for process serving. Nevertheless, the LEC reviewed the following two cases and made recommendations.

2649

The LEC discussed that the respondent, a PE, is a South Korea resident who signed a renewal form certifying he completed the required PDH units. However, the respondent did not respond to the audit until the second notice when the Board received a CPD Organizational Form claiming 60 PDH units. However, no supporting documentation was included, and he subsequently failed to respond to the allegations or to the allegations presented in the NOI. The LEC determined to issue the respondent a Default Final Order to suspend registration for 90 days and to assess a \$2,000 civil penalty for violation of ORS 672.200(4), OAR 820-010-0635(1),(5), OAR 820-015-0026(1), and OAR 820-020-0015(7),(8). **The LEC recommended that the Board approve issuing a Default Final Order.**

2673

The LEC discussed that the respondent, a PE, is a South Korea resident who signed a renewal form certifying he completed the required PDH units. The respondent failed to respond to audit letters. When a letter sent by FedEx was delivered, the Board did not receive any documentation. A separate attempt was made by email. When the respondent responded, he noted he had moved twice. Wilkinson informed the respondent of the steps necessary to gain compliance, including updated contact information. However, he did not respond to letters sent to his updated address. The LEC found the respondent has not cooperated with the audit despite apparent contact. The LEC determined to issue the respondent a Default Final Order to suspend registration for 90 days and 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 820-010-0605, and OAR 820-020-0015(7),(8). **The LEC recommended that the Board approve issuing a Default Final Order.**

Committee Meeting:

2599

The LEC discussed that the complainant, alleged that the respondent, violated ORS 672.020 by offering engineering services without registration. The complainant purchased a steel building from the respondent and his company, but a professional engineer was required to design the footings and site plans. The complainant claimed the respondent offered his engineering services and subsequently received two of the respondent's billing invoices noting "deposit for site engineering." The investigation found that the respondent had contracted a PE to design the foundation and the site plan. The PE submitted a proposal to the respondent for the "Steel Building Footings & Site Plans." When the respondent responded to the Board's company

questionnaire, he explained that he does not perform engineering services and that he recommends the PE to his clients. He denied passing himself off as an engineer.

Tucker-Davis observed this was an interesting case because the Oregon Board of Architect Examiners (OBAE) seeks sanctions against a corporation under the theory that the company offered unlicensed architecture and not a single person. Davis questioned whether OSBEELS can levy a fine against a corporation. Tucker-Davis explained a corporation is a person under ORS 672.325 and can be fined. Executive Secretary Mari Lopez wondered that since OBAE rules recognize corporations if this would make a difference. Tucker-Davis replied that the question is who was offering the engineering, was it a corporation or individual? She added that ORS 672.007(1)(a) defines the acts constituting the practice of engineering to include “a person,” which also would include a corporation. She pointed out, however, that the use of “individual” in statute or rule means human being and that there are exceptions for corporations under ORS 672.060. If the evidence points to an individual then the Board can seek sanctions against that individual, but if the evidence points to a corporation then the Board should seek sanctions against the corporation. Davis examined the invoices and stated it appeared that the respondent was offering his company’s engineering services. Newstetter agreed noting his invoice is under the corporate name.

Board Investigator McCartt then informed that the respondent claimed to be a licensed contractor under ORS 701, which was found not true. When interviewed, the respondent explained his actions as a liaison between the client and the contractor to construct the building and for the engineer to design the building. McCartt concluded that he was not a contractor and was not compliant with OAR 820-010-0715, which allows a contractor to offer engineering services.

In addition, McCartt explained that the investigation found the respondent, through his company, was adding pass-through charges at nearly double the engineering rate. When the PE found out he was upset and concerned that he had been doing something improper by assisting unlicensed practice. Hoffine declared that when the respondent added pass-through costs he was selling engineering services. McCartt asked if it would make a difference if he had not added to the amount of pass-through. Davis replied that the amount he added to the costs made it no longer a reasonable handling fee. As a result, the respondent was offering engineering services.

Tucker-Davis refocused the LEC on the question of assessing the individual or corporation. She observed that the respondent is the owner and the offering looks tied to him. McCartt confirmed that the respondent spoke to the client and engineer. The engineer did not speak with the client. Tucker-Davis added that the Board can always amend the notice to sanction the corporation.

In response to a question about how the case came to the Board, McCartt reported that the complainant purchased the building and a problem emerged with the loading ramp. The original design was for trucks to access the loading dock, but the purchaser decided to use semi-tractors, which caused a grade redesign by a different 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 672.007(1)(a), ORS 672.020(1), ORS 672.045(1),(2), and OAR 820-010-0720(1).

2600

The LEC discussed that the complainant alleged that the respondent, a PLS, was negligent and/or incompetent in his means for determining the line of Ordinary High Water (OHW) along a bank of the Rogue River where it runs adjacent to his upland property. The complainant asserted that the respondent manipulated the wording of ORS 274.005(3)⁴ by omitting the word “annually” from his survey narrative definition of the line of OHW. He believed this created an error in the pertinent data as to how the OHW determined the boundary.

The investigation found that the Oregon Department of State Lands (DSL) corresponded with the complainant regarding complaints that he was restricting or prohibiting public access to state owned lands by “trenching and planting activities” on state-owned lands fronting his ranch property along the Rogue River. They further informed the complainant that the Rogue River was navigable at the location adjacent to his property. Therefore, “the beds and bank of the river, below the line of ordinary high water, are owned by the State of Oregon.” The issue was delineating the actual line of OHW to clarify the complainant’s property from state-owned property. The complainant also was informed that the line of OHW in relation to his property was not clear. As a result, DSL would review for acceptance a survey that marked the OHW line and the limit of his property. Subsequently, the complainant hired a PLS who set monuments to determine the OHW line. Approximately two and half years later, DSL contracted another PLS, the respondent, “to survey and monument the meander line of ordinary high water along the westerly bank of the Rogue River,” which runs adjacent to the complainant’s East and South property boundary. The respondent set monuments to determine the OHW line. However, the respondent’s determination of the OHW line conflicted with the prior PLS’s OHW line, thus affecting the location of the complainant’s property boundary.

McCartt informed the LEC that County Surveyor stated he was familiar with the situation and noted that both surveyors produced good surveys. The County Surveyor also stated he spoke with the complainant and told him the respondent did a thorough survey. Likewise in an interview with the prior PLS, he commented that he and the respondent evaluated the same information, but disagreed in the determination of the OHW line. He felt it was a difference of opinion based on the information available at the time of each survey. The prior PLS concluded the OHW line at that location is in a constant state of fluctuation.

The LEC agreed two surveyors can reach different resolutions with neither being wrong given many factors, including deed interpretations, time span between surveys, differences caused by seasonal fluctuations, and changes in the river system. Therefore, the respondent was not negligent and/or incompetent. Hoffine added that there is no set procedure for determining the OHW line. Establishing the line requires interpretation skills. The only comment offered was for the respondent to offer more narrative detail. **The LEC recommended the Board close the case as allegations unfounded.**

2601

The LEC discussed that the respondent, President of a corporation was engaged in the unlicensed practice of engineering by advertising for and offering to perform engineering services on his

⁴ ORS 274.005(3) states, “Line of ordinary high water means the line on the bank or shore to which the high water ordinarily rises annually in season.”

corporation's Web site without identifying the registered professional engineer that will perform the services constituting the practice of engineering.⁵ Upon review of the corporation's Web site, it was found the corporation advertised to design and construct heavy-duty bridges and to plan and "build roadways for private and industrial property owners." The investigation also found that the respondent's corporation was issued an Oregon State Commercial General Contractor number. McCartt informed the LEC that company recently updated their Web site, but he questioned the timing of such a change.

Tucker-Davis observed that in this case the LEC should consider issuing any proposed sanction against the corporation. McCartt added that corporation advertises engineering as an appurtenant to their construction activities and that the work is done by a registrant. However, they had not disclosed their engineer as required per OAR 820-010-0715. Davis commented that the purpose of the rule is to allow contractors to bid on projects, which allows for design-build projects.

Lopez commented that the corporation was informed in March 2010 about the issue, but when McCartt evaluated the Web site last month it had not changed. McCartt confirmed adding he had asked the corporation General Manager about not changing the Web site because the owner was not communicating with the Board. There was no reply. Wilkinson commented that in most cases when investigators contact individuals and explain compliance that most persons take immediate action to comply, but not this corporation. Davis added that the corporation appeared to not take the matter seriously nor did they ask about bringing it into compliance. Lopez concluded that most similar cases are closed as compliance met, but not with this case. Davis stated the LEC should issue a Notice of Intent (NOI).

Tucker-Davis reminded the LEC that the NOI in this case should be issued against the corporation and not the individual. This case is much stronger against the corporation than against an individual, which contrasts the allegations against the respondent of case #2599.

⁵ OAR 820-010-0715, Construction Contractors Offering Engineering:

(1) For the purpose of this rule, the following definitions apply:

(a) "Offering services" means manifesting a willingness to provide services, either orally or in writing, such that another person may reasonably believe that their assent to the services is invited and will establish an agreement.

(b) "Appurtenant" services are those services that relate to the construction trade, which include constructing, altering, repairing, or improving real estate.

(2) The engineer registration requirements of ORS 672.002 to 672.325 do not prevent a construction contractor from offering services constituting the practice of engineering when all of the following conditions are met:

(a) The construction contractor holds an active license under ORS 701;

(b) The services offered by the construction contractor, constituting the practice of engineering, are appurtenant to construction services to be provided by the contractor;

(c) The services constituting the practice of engineering are performed by an engineer or engineers registered under ORS 672.002 to 672.325; and

(d) The offer by the construction contractor discloses in writing that the contractor is not an engineer and identifies the registered engineer or engineers that will perform the services constituting the practice of engineering.

(3) An engineer performing or identified as an engineer that will perform the services constituting the practice of engineering as provided in subsection (2) of this rule must notify the Board in writing, within thirty (30) days if, after the contractor is retained by the owner, the engineer ceases to provide engineering services identified in the offer by the construction contractor.

(4) Construction contractors who violate any provision of this rule may be practicing engineering or using an engineer title in violation of ORS 672.020 and 672.045. As such, the contractor may be subject, under 672.325, to sanctions and civil penalties of up to \$1,000 per violation.

McCartt asked the LEC whether the Web site was now compliant, or was the two-year delay the issue. Tucker-Davis replied that the exceptions address “may” perform services. This allows them to offer services as long as the offering is consistent with OAR 820-010-0715. They have on the front page compliant language, but on another page they do not. The LEC determined to issue a NOI against the corporation for \$1,000 for the lengthy period without compliance violating OAR 820-010-0715. While the LEC recognized some Web site changes, the rule requires identification of the engineer(s) who will perform the services. Tucker-Davis clarified that the corporation changed the Web site only after McCartt contacted them, so the NOI will focus on that period of time between the respond to allegations letter and Board contact.

Upon LEC review of the corporation’s Web site, Hoffine remarked that most engineers will not touch a rail-car bridge because most people refuse to pay the additional inspections to ensure safety. An engineer’s due diligence to ensure safety will add costs to rail-car bridge designs. Davis added that identifying the engineer who will do all a firm’s work is impossible. If the statute reads that way it is unenforceable. Davis emphasized that the identified individual may not be available, or that the project is outside their competence. There is no flexibility in the current rule. Hoffine agreed noting that the LEC should be reasonable and practicable in enforcement. Lopez asked if there is a need for rule revision. There was general agreement to refer the matter to the Rules and Regulations Committee for discussion. However, that does not change the current requirements under OAR 820-010-0715.

2602

The LEC discussed that complainant, a PE, alleged that the respondent was engaged in the unlicensed practice of engineering by using the title “Engineering” in is company name without employing a registered professional engineer. Upon investigation, it was found that the respondent’s Web site showed he offered “materials testing and inspection services to the construction industry,” but was not offering to or performing engineering services, other than the use of the “Engineering” title. McCartt explained that when the respondent received his request to respond to the allegations letter he called and spoke with Wilkinson who informed him of the restricted use of “engineering” in his firm name. When the respondent responded to the allegations he submitted a copy of the Business Registry showing the new company name without the “engineering” title and a copy of his Web site documenting the name change. McCartt also confirmed that the respondent’s former business registration had not been renewed and was therefore inactive. The LEC recognized the case was opened for unlicensed practice, but the respondent took immediate steps to comply, which was contrary to the respondent in case #2601. **The LEC recommended the Board close the case as compliance met.**

2604

The LEC discussed that complainant Brent A. Griffiths, Lead Enforcement Officer for the Building Codes Division (BCD), submitted a plumbing inspector’s application from the respondent, a PE. The respondent supported his BCD application by including a copy of his State of California (CA) registration as a professional engineer in civil engineering. However, the respondent used the reserved title of “P.E.” on his résumé, on a hearing request letter, and on an email sent to convey the letter of request. When the respondent responded to the allegations, he stated he was unaware of the restriction and it was not his “intention to violate any laws or

statutes of any state.” At the time of his BCD application, the respondent was enrolled with OSBEELS as an engineering intern. Subsequent to receiving the allegations, however, the respondent was issued his Oregon professional engineer registration.

Tucker-Davis commented that the respondent stated on his résumé that his engineering registration was in CA, which was supported by his CA certificate. However, the respondent used PE in the letter and email without reference to CA. As a result, he made clear his registration status in some instances and not in others. Hoffine commented that this was a mistake since he was not selling his services as a PE. Wilkinson agreed noting he is a Building Official for a Southern Oregon City. In response to question if there was further evidence of transgressions, Wilkinson said no. He added that when the respondent was contacted he was apologetic about the violation, was concerned about how it might affect his licensure, and would not have violated the law had he known about the restricted title. Davis suggested issuing the respondent a letter of concern to ensure that individuals are properly representing their registration status and to be cognizant of Board rules as a professional. **The LEC recommended the Board close the case with a letter of concern.**

2605

The LEC discussed that the complainant alleged that the respondent, a PLS, was negligent in conducting a survey of her neighbor’s property. She explained several Lane County lot owners became involved in boundary line disputes with their neighbor who purchased a large tract of land south of and adjacent to their lot properties. She alleged “had [the surveyor] provided all of us with an accurate and correct survey, all these issues could have been avoided.”

The investigation found that the respondent prepared a map of survey for his client and attorney who filed a quiet title action based on a deed gap the respondent discovered between the lots and the large southerly tract. The attorney proposed using an existing fence line as the boundary line. The neighbors agreed to the quiet title action based on the respondent’s depiction of the fence location. The deed gap was awarded. Later, the respondent was hired to stake the property line for fence reconstruction and the fence line was found running in a more or less diagonal manner across the deed gap, which was shown on a second map by the respondent contrary to the first map. The neighbors filed suit. The respondent had not located the fence prior to its first depiction and he had not sealed and signed the maps.

Davis asserted that the respondent mislead his client, attorney, and neighbors in the representation of the fence location on the first map. Neighbors accepted the fence line as their property line and did not contest the quiet title claim. The respondent subsequently located the fence and produced a second map showing that the fence location on the first map was incorrect. He also noted the concerns expressed by the Board’s professional reviewer, another PLS. Tucker-Davis observed that the fence line was not where it was represented. He sent an unsealed map to an attorney who distributed it to his client’s neighbors in an effort to get them to relinquish properties in face of adverse possession claims. Hoffine commented this was a gross misrepresentation. Davis agreed noting there was harm to the public.

Wilkinson clarified that there are three violations, including negligence for the incorrect fence location on the first map and failing to seal and sign both maps. Lopez added that the Board’s

professional reviewer reported a right-of-entry violation by a property owner he interviewed. She questioned if the violation had occurred for all nine property owners. Wilkinson replied this might be true, but added that he was set to interview the other property owners when the attorney asked him to not “stir the hornet’s nest” because the owner of the large tract was facing trespass charges. The attorney was trying to negotiate a settlement. Wilkinson was unaware of the current status. As a result of the right of entry violation, nevertheless, the respondent faced a total of four violations.

Hoffine commented that the respondent likely did not mean to deceive the landowners. Wilkinson agreed it was reasonable to assume that, but it raised the issue of low precision/high precision surveys the Board has confronted in the past. Wilkinson explained that he examined a 1978 survey for one of the lots and it showed the fence was not in harmony with that portion of property line. It appeared to him the respondent had not done basic research, especially since lot owners made decisions based on the representation of the fence line. Hoffine thought that the respondent should have gone back to correct the matter. Wilkinson replied that the board’s professional reviewer came from the point that the respondent knew there was conflict and that the fence was central to conflict. The respondent assumed the position rather than verifying its location. The LEC determined to issue a Notice of Intent to assess a \$4,000 civil penalty for violating ORS 672.025(2), OAR 820-010-0621, OAR 820-020-0015(2), ORS 672.200(2),(4), and ORS 672.047(4).

Update: As staffs were preparing the NOI and writing the minutes, they recalled prior law enforcement cases with similar circumstances and the LEC decisions to suspend the registrants rather than revoke their registrations (e.g., cases #2472 and #2613). The LEC did not discuss whether the circumstances here warranted a suspension or revocation. A poll of the LEC by email was taken and agreement was not achieved. Subsequently, staffs determined that the Board should discuss the matter during their March 2012 Board meeting and provide direction.

2616

The LEC discussed that the complainant alleged the respondent, a PLS and CWRE, failed to provide notice of right of entry. The complainant described the events in question by noting “a new permanent monument pounded into the ground about one foot in on our side of the existing fence line.” She also found “*several wooden stakes with tape pounded in that were approximately three feet to four feet in on our side of the fence to denote a new property line all the way down the back of our property.*” The new property line continued onto her neighbor’s property. When she called her neighbor about the survey, she learned they both had not received notice of right of entry.

In his response to the allegations, the respondent observed that he called the complainant to apologize for the failing to provide notice and she informed him that the County Surveyor had instructed her to file the complaint. The respondent asserted a County Surveyor “*should make people aware of their rights within the right of entry laws, but I also think there is some room in there to start a dialogue with the surveyor in question.*”

The LEC held a lively discussion about the comment, including Newstetter who held the belief that a County Surveyor should not be in the middle of an entry or property line dispute, other

than to make people aware of their rights under right of entry. Hoffine opined differently in that a County Surveyor has an obligation to inform, but to not refer everything to the Board. Issues should be worked out on a local level. Newstetter observed that right of entry is used as a weapon when people are not happy with a survey. Hoffine agreed noting mistakes are made when survey crews talk to neighbors, occupants, or owners and they disagree. He suggested that when there is a dispute the County Surveyor should have them talk with the surveyor. Lopez reminded the LEC that the Board cannot tell County Surveyors how to run their offices.

Regardless, Newstetter pointed out that the respondent admitted he did not give right of entry notice, which is a hard lesson to learn. She saw he apologized to the complainant, but that does not dismiss him from failing to notify. The LEC determined to issue the respondent a Notice of Intent to issue a \$1,000 civil penalty for failing to give right-of-entry notice violating ORS 672.047(4).

2677

The LEC discussed that the respondent, a resident of South Korea and an Oregon PE, signed his renewal form certifying 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 OSBEELS received back marked as “vacant unable to forward.” As a result, a third notice sent by FedEx to the respondent’s business address showed confirmation of delivery, but OSBEELS received no response.

Upon referral to the Regulation Department, an email inquiry was sent to an email address listed on file. The respondent responded the same day by noting he had changed employers in 2007. Afterwards, he submitted a Registrant Information Update form with his updated business address and a CPD Organizational form claiming 36 PDH units. However, he provided no supporting documents and thirteen of the 36 PDH units were disqualified because they were not within the specified audit period. As a result, the respondent was requested to submit supporting documentation for the PDH units claimed.

McCartt informed that the respondent subsequently submitted a CPD form that listed 79 PDH units with 19 units outside his audit period and 12 units without supporting documentation. Therefore, the respondent provided 48 PDH units of qualified CPD credit and was compliant. Tucker-Davis asked whether the issue here was his failure to either cooperate with the audit or to submit an address change. McCartt replied that postal mailings did not reach him, but emails did. He also added that the respondent provided his certificates in Korean, but he also submitted translations for each one. Tucker-Davis asked if the respondent failed to cooperate because of address problems. If he complied, then it is an address change violation. McCartt clarified that investigators typically receive a statement about why they failed to comply, but the respondent offered no comments. He did not say if he had received the letters. The letters did not come back, but they can also get lost. The LEC determined to issue a Notice of Intent to assess a \$1,000 civil penalty for failing to submit a change of address violating OAR 820-010-0605.

In response to a question if there has been a decrease in the number of CPD cases, Lopez responded that audits are now just starting for those registrants who fall under the new system

that requires the CPD Organizational Form to be submitted along with the renewal payment. She added that the new requirement has discouraged people from renewing and are thus retiring their registrations because they know the requirement. The LEC agreed this was good because registrants are making a choice about complying with the requirements.

2697

Before beginning the discussion of the next case, Tucker-Davis announced that she provided written legal advice to the LEC. She requested that the LEC enter into executive session to review its contents. **Acting Chair Hoffine read the script to meet in executive session under ORS 192.660(2)(f). The LEC met in closed session. Upon reconvening in public session and welcoming the public back into the meeting, Hoffine announced no decisions were made.**

The LEC discussed that the complainant, a PE and CWRE, alleged that the respondent of an environmental consulting firm, in Mt. Shasta, CA, prepared a report that he questioned whether or not it represented the unlicensed practice of acoustical engineering. The investigation found that the respondent submitted reports to the City of La Pine in response to an application by an energy company to construct and operate a biomass power generation project, which is a 25 megawatt electrical generating biomass power plant designed to combust 200,000 pounds of wood per hour. The respondent reported his analyses wherein he identified a dozen homes and residential parcels that exist to the southwest of the project and “will be within audible distance of this facility.”

Davis observed that the respondent used calibrated instruments for his acoustical measurements, analyzed his results and compared them to the regulatory standards, determined potential hazard(s), and testified as to his results and the hazards. He added that just reporting data was not a problem, but drawing conclusions from the data and the regulations and then making recommendations to the project design is a problem. Davis concluded that the respondent engaged in unlicensed engineering. The LEC determined further investigation, including gathering more information about his contracts with client(s) and contacting the California and Nevada boards to ascertain if complaints involving the respondent had been investigated.

2724

The LEC discussed that the Board received a complaint from, a PE, especially qualified as a geotechnical engineer, regarding an EIT and Certified Engineering Geologist (CEG). The complainant alleged the CEG prepared a report that provided engineering recommendations not done by a professional engineer. The signature page was signed and sealed by the CEG, but it also showed the signature of another EIT as “Senior Engineer.” At the time, the other EIT was not registered with the Board and could not use the engineer title, so the LEC directed that a separate law enforcement case be opened against the other EIT.

Wilkinson reminded the LEC that this case is related to the respondent in case #2656. His Notice of Intent is ready to issue. However, the LEC needed to discuss whether the LEC found violations to support the respondent in this case’ Notice of Intent. Tucker-Davis pointed out that the respondent signed the report as Senior Engineer. Wilkinson replied that the respondent claimed it was done under the CEG’s supervision. Tucker-Davis asserted that was not a defense

to signing the report. The LEC determined to issue the respondent a Notice of Intent to assess a \$2,000 civil penalty (NOI) for use of the engineer title and for engaging in the practice of engineering violating ORS 672.007(1)(a) and ORS 672.020(1).

2656

The LEC discussed that the complainant, a PE, especially qualified as a geotechnical engineer, alleged that the respondent, an EIT and Certified Engineering Geologist (CEG), prepared a report in which he provided engineering recommendations not done by a professional engineer. The respondent sealed the report with his CEG seal under his firm name which used the term “engineering,” in the title of his company. He also “prepared this geotechnical report” with a list of his “main geotechnical concerns” and offered “[g]eotechnical design and construction recommendations.” The LEC concluded that the respondent is a CEG whose practice crossed into engineering and determined to issue a Notice of Intent for unlicensed use of the title and for unlicensed practice. However, they also noted that another signed the report and had therefore engaged in unlicensed practice too (see case #2724). The LEC authorize issuing the respondent his NOI. As a result, the LEC directed that staff coordinate informal conferences for the respondents of both cases #2656 and #2724.

2750

The LEC discussed that the respondent, an EIT, sealed and signed a “Professional Letter of Reference – Professional Engineer” for a Missouri applicant. When the Missouri Board contacted OSBEELS to confirm the respondent’s registration, they were informed that the respondent is an EIT who was not authorized to sign any document as a professional engineer. The investigation found that the respondent affixed an embossed seal, which was similar in design to those authorized for use by an Oregon PE, to the Missouri reference letter using a registration date unrelated to his EIT certification. Furthermore, the respondent used the title of Civil Engineer and offered an opinion as a professional engineer to the Missouri Board. When the respondent responded to the allegations he admitted to using “extremely poor judgment” and accepted full responsibility. In addition, the respondent took the October 2011 PE examination and was waiting for his results.

Davis declared that the respondent made a fake seal. Wilkinson added that the respondent made an *embossed* seal, which was not an authorized form of a seal. Hoffine commented that the respondent’s commanding officer asked him to write the letter. Furthermore, McCartt explained that he received a call from the Missouri Board. He asked if the respondent’s actions were outside the scope of his military duties. Tucker-Davis replied that he did not sign a military document; rather, it was a public sector document he submitted for acceptance to the Missouri Board. Davis commented it was not relevant to the respondent forging the document.

Lopez reminded the LEC that she is required to release his examination score. Davis argued his score should not be released and he should not be allowed to retake the professional examination for five years. Tucker-Davis asked if the LEC wanted to revoke his EIT certification. Davis replied the forged seal went over the line. It was not a simple mistake. The LEC agreed and discussed that the respondent violated ORS 672.007, ORS 672.200, and ORS 672.045. They also want him to retake the examination and pay a \$1,000 civil penalty because he made the seal.

This was not a simple misuse of the title or signing a report using the title. He had time to consider his actions.

Lopez also informed that if the Oregon Board revokes his EIT certificate other members of the National Council of Examiners for Engineering and Surveying (NCEES) may not consider him for licensure. She clarified that states will not necessarily deny him, but the LEC needed to consider that as an unintended outcome. Hoffine replied that he could still apply to Oregon. Lopez agreed, but if he is revoked in Oregon he may or may not have another opportunity to take the fundamentals exam in another state because of what happened here. Davis commented there is a way for him to return. Newstetter asserted the consequences have to match the action. This crossed the line. The LEC determined to release his examination score and to issue a NOI to revoke his EIT certification and assess a \$1,000 civil penalty.

New Business:

Preliminary Evaluation:

The LEC discussed that the respondent, a PE and CWRE, submitted documentation showing disciplinary action had been taken against him and his engineering firm, by the registration boards of South Carolina and Louisiana. South Carolina issued civil penalties totaling \$1,750 against engineering firm, for offering engineering services in their state without a Certificate of Authorization (COA) in place. Louisiana issued the respondent a \$500 civil penalty for “being a Principal Engineer in an Engineering Firm” that was offering services without a COA in place. Wilkinson informed that Oregon does not have a COA requirement equivalent to those in South Carolina or Louisiana. As a result, the LEC agreed to not open a law enforcement case.

Preliminary Evaluation:

The LEC discussed that the Oregon Board of Architect Examiners (OBAE) submitted a complaint against the respondent, a SE and President of engineering firm. The OBAE wrote “[the respondent] may have acted as the ‘Professional of Record’ for the tenant improvement project at the Sand and Sea Motel in Seaside,” and alleged an “offering of engineering services without disclosing the professional of record.” Wilkinson acknowledged that OSBEELS does not have authority regarding the “undisclosed professional of record” and a law enforcement case should not be opened. However, upon further investigation it was found that the respondent was acting as a contract management firm to oversee an Oregon coast condominium project that replaced leaking and damaged frontal glass. The engineering dictated the design of the window framing. When asked if they were offering engineering services, Wilkinson replied that this was a retrofit project for windows designed by registrants of the glass company. Other work was included in the respondent’s contract; however, the primary objective was glass replacement. More important, the respondent has an on-staff engineer and can advertise their engineering services consistent with OAR 820-010-0720. The LEC determined to not open a law enforcement case.

Unfinished Business:

2613 – George B. Cathey request for waiver of remaining civil penalty

The LEC recognized that George B. Cathey, PLS (retired), CWRE (retired), was present and had submitted a letter noting that he retired both his surveying registration and his water right examiner certificate and that once he leaves federal employment he would be “experiencing a

major reduction in income.” Since he had “faithfully complied with all conditions to date,” he requested to be excused from the balance of his fines. The LEC reviewed his payment history regarding two cases. The #2499 penalty of \$4,000 was for failure to file maps of survey and the #2613 penalty of \$1,000 was for certifying he had set monuments when in fact he had not. After a detailed review of his case files and payment history, the LEC found that he has been making regular payments for #2499, but has yet to begin payments for #2613, which was “rolled in” with his #2499 payments. He has paid \$2,400 to date and owes a balance of \$2,600.

Cathey started by noting his pending retirement from federal employment and a consolidation of his finances. His income will be greatly reduced. He also observed he has been compliant with the Board’s requirements and has made timely payments, but added that the fines were punitive. He signed the settlement agreement because he believed in the process. However, his retirement funds will not cover all his expenses.

He continued that without his registration he has no ability to engage in professional practice and asked the Board to relieve him of the remaining debt. When he responded to a question about his current employment, he stated he works for the Army Corps of Engineers (ACOE) as their lead surveyor. He does not sign documents because projects that require a seal and signature are done by licensed contractors. Furthermore, when the ACOE is engaged in boundary issues they are required to file records of survey, which also are done by contractors.

Cathey confirmed he is registered in Washington State. His plan is to retire from the ACOE in April. Cathey replied no when Hoffine asked if he had plans to survey in Washington State. However, his Washington registration allowed him to keep his job. He has not experienced reduced pay because of his Oregon license retirement. Cathey clarified that his position does require a license, but he has one from Washington. Regardless, he will experience a reduced income and will not be able to survey in Oregon. Davis then warned him about using “surveyor” in Oregon without registration. Cathey stated he was familiar with the restricted use of title by retired professionals. Hoffine pointed out that the LEC needed a recommendation for the Board.

Newstetter noted he has paid approximately half the total civil penalty due. If he shows official documentation of retirement, she suggested Cathey sign an agreement for abating the remaining balance. Davis agreed emphasizing it was dependent on him submitting federal retirement paperwork. Until retirement occurs, however, he should continue to make payments. After proof of retirement is reviewed, the LEC might agree to abate the remaining balance. Davis informed this was not a final decision and would be presented to the Board.

Wilkinson reminded the LEC that other individuals have approached the LEC about modifying their settlement agreements and the LEC did not agree. Is precedence being set? Newstetter clarified that there were unique circumstances that led to a settlement and, once those circumstances change, the LEC can subsequently modify a settlement agreement. Hoffine agreed noting that people have retired their registrations as part of a settlement agreement and the LEC abated the civil penalty. Davis also agreed noting that some people have come back to the LEC without demonstrating a willingness to meet their obligations. In this case, it has been approximately two years with a steady track record for making payments.

Tucker-Davis observed that the LEC would need a new agreement. She suggested the LEC could go to the March Board meeting to see if there was an interest. Then, Cathey can return to the LEC in April with his retirement documentation from the ACOE. The LEC could review the matter and reach a new agreement for the Board to consider in May. Newstetter offered the scenario for presentation to the Board. However, Board action would occur after his retirement is completed.

Wilkinson again reminded the LEC that other persons have approached the LEC about modifying their agreement and the LEC has not agreed. He added there is another individual with a high amount of owed civil penalties who is also retired. Davis replied that historically the LEC has waived civil penalties for retirement of license. However, Tucker-Davis cautioned the LEC that they should be prepared to treat them in a similar manner. Newstetter commented that any revisions are done on a case by case basis. Cathey interjected that in his case none of the public was harmed. He admitted to lapses in keeping up with deadlines. Hoffine expressed an interest to review Cathey's file.

The LEC recommended the Board consider a modification after receiving Cathey's retirement documents. The LEC would consider a new agreement and would determine the amount to abate. Cathey must provide documentation and attend the April LEC meeting in order to discuss an agreement that the Board would review in May.

Settlement Agreements:

The LEC reviewed the lists of Cases Subject to Collections and Cases Subject to Monitoring. While no specific comments were offered regarding the two reports, the LEC discussed broad changes to the reports' formats, including an accounting of total civil penalty paid and/or balance due. Wilkinson replied that he developed a spreadsheet to track payments in order to respond to auditors. The spreadsheet could be evaluated for inclusion into the two lists. McCartt then noted that civil penalty payments were made by several respondents. Wilkinson also informed that the Case Status Report showed 91 active cases, which is updated to 107 cases because of receipt of new complaints.

The meeting adjourned at 11:11 a.m.