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## Disciplinary Authority of the North Carolina Board of Examiners for Engineers and Surveyors

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The North Carolina Board of Examiners for Engineers and Surveyors (“Board”) is charged with the responsibility of administering the provisions of the North Carolina Engineering and Land Surveying Act (N.C. Gen. Stat. Ch. 89C), which includes promoting the general welfare and protecting the public by safeguarding life, health and property.

In addition to evaluating candidates for licensure and administering examinations, the Board investigates alleged violations of the licensure law. The authority of the Board to investigate alleged violations and impose disciplinary sanctions is provided by Ch. 89C. Chapter 89C also gives the Board the authority to promulgate rules by which to carry out its investigative and disciplinary powers (Title 21, Ch. 56 of the North Carolina Administrative Code). Through Ch. 56, the Board also sets forth the Rules of Professional Conduct (“Rules”) that are binding on all Professional Engineers. A full discussion of the Rules is beyond the scope of this article.

Any person may submit evidence of unlawful practice of engineering, fraud, deceit, gross negligence, incompetence, misconduct, or violations of the Rules against any individual licensee or any business holding a certificate of authorization. The complaint must be in writing, shall be sworn to and notarized, and shall contain corroborating evidence. There are on average 25-50 complaints filed against individual professional engineers in a given year. Licensees may also be disciplined if convicted of a felony or any crime involving moral turpitude. Moral turpitude crimes are typically those involving dishonesty, but could include sex offenses. Disciplinary action is also possible when: (1) a licensee is declared insane or incompetent by a court; or (2) a licensee is found to be professionally incompetent by the Board.

The most common reasons that professional engineers are disciplined are: (1) producing deficient or substandard work; (2) been disciplined in another jurisdiction; (3) failing to comply with continuing professional competency requirements; (4) practicing prior to licensure, on an expired certificate, or while suspended; (5) failing to exercise direct supervisory control or responsible charge; (6) failing to properly certify documents or include address; (7) practicing outside area of competence; (8) failing to be objective and truthful; (9) representing themselves as being an architect or capable of providing architectural services; and (10) convicted of a felony or crime involving moral turpitude.

There are four phases to the disciplinary process. They are: (1) review committee; (2) settlement conference; (3) contested case hearing; and (4) judicial appeal. Preliminary review occurs after the Board receives a properly filed complaint. If the Board’s Executive Director (“ED”) determines the complaint is corroborated by the

evidence the licensee is notified in writing of the charges. Typically, the ED will direct that a field investigation be performed. The investigator will interview the person filing the complaint and the licensee. At this point the licensee should consider retaining an attorney to correspond with the investigator. Anything the licensee says to the investigator will become part of the investigation. The attorney can establish a dialogue with the investigator resulting in information that could potentially influence the decision of discipline against the licensee. The licensee is requested to respond to the written charges and show compliance with all requirements for retention of his/her license. If the licensee fails to respond he/she may be subject to an additional charge of failure to cooperate with the investigation, which is itself a violation of the Rules.

At this stage of the case, the investigation by the Board is confidential. Nevertheless, the licensee should try and obtain all the evidence possible from the Board, preferably before responding to the Board or meeting with the investigator. The licensee may be able to request copies of drawings from the investigator during the investigation, for example. The complaint and the identity of the party bringing the complaint will remain confidential until the investigation is complete, however.

After the ED obtains preliminary evidence, the matter is referred to the Board's review committee which is comprised of the ED, the legal counsel for the Board, and one member of the Board who is a P.E. After the review committee reviews the evidence it makes a recommendation to the Board that: (1) the complaint be dismissed; (2) when the licensee admits guilt, that the Board accept the admission of guilt and order the licensee to comply with the Board Rules and statutes in the future, with no further action taken; (3) the complaint be presented to the Board for a contested case hearing; or (4) the Board gives notice of a contemplated action to the licensee. The contemplated actions can include: (1) require re-examination for licensing; (2) withhold the renewal of a license; (3) suspend a license; (4) revoke a license; (5) impose a civil penalty not to exceed \$5,000; and/or (6) issue a reprimand.

The decision of the Board on recommendations of the review committee is given to the licensee in writing. When the Board provides notice of a contemplated action the licensee must, within 20 days of receiving the notice, request in writing a settlement conference or contested case hearing, otherwise the Board will take the contemplated action. The settlement conference may also be requested when the Board issues a notice of citation for contested case hearing.

After receiving a notice of citation for contested case hearing or a notice of contemplated action, if the licensee has not already, he/she should consider stopping any further discussion of charges with the Board orally, communicate everything in writing, and preferably through an attorney. There might be some opportunity for informal settlement discussions with the Board by the licensee's counsel, but it could be risky for the licensee to try and settle the case in person. Once counsel understands the case and the licensee and counsel decide on a strategy, the licensee can then proceed to the conference or hearing.

As noted above, prior to the issuance of a notice of citation for contested case hearing or notice of a contemplated action, the investigation is confidential. After the issuance, however, the Board will provide a copy of the complaint, the name of the party who filed the complaint, the investigator's written record of the interview with the licensee, and a list of the Board's evidence. The evidence may include drawings and other documents that the licensee should request be provided by the Board. The Board, however, does not have to provide its witness statements and any such testimony will only be at the contested case hearing. If the licensee requests a settlement conference, the conference is held with the Board's settlement committee at the Board's office in Raleigh. The settlement committee is comprised of: (1) Board member who served on the review committee; (2) one public member from the Board; (3) the legal counsel of the Board; and (4) Board's ED.

While no sworn testimony is taken at the settlement conference that could be introduced at the contested case hearing, anything said by the licensee at the settlement conference could lead to other charges being brought against the licensee by the Board. The licensee should strongly consider bringing an attorney to the settlement conference. The licensee may face a real dilemma at the settlement conference. The settlement committee will probably not look favorably upon the licensee who lets his/her attorney do all the talking. The licensee may appear uncooperative to the Board. On the other hand, the licensee may say something that might lead to a new line of investigation and expand the charges. The licensee and his/her attorney should have a thorough discussion prior to the settlement conference about how much talking the licensee should plan to do at the hearing and what topics the licensee should and should not cover.

After the settlement conference, the settlement committee will essentially decide whether to recommend to the Board whether to proceed with the contested case hearing, or notice of contemplated action, or whether to dismiss the charges or accept admission of guilt with no further action. The settlement committee makes a recommendation to the Board just like the review committee has previously made. Thus, the settlement conference affords the licensee a valuable opportunity to reset the Board's actions.

On average, only 0-2 contested case hearings are conducted by the Board each year. If the contested case hearing happens, the licensee should definitely consider retaining an attorney if he/she has not already. The contested case hearing is very much like a trial and not an informal meeting like the settlement conference. Evidence is introduced by the Board and licensee through exhibits and testimony. A court reporter creates a transcript of the proceedings and an official record is created. The contested case hearing is held at the Board's office in Raleigh. The Board retains outside counsel to assist in the prosecution of the charges against the licensee. The full Board acts as the adjudicator.

The contested case hearing follows the procedures in the Administrative Procedures Act (N.C. Gen. Stat. § 150B) ("APA"). If the APA is silent, the North Carolina Rules of Civil Procedure apply to the hearing. Subpoenaing of documents and witnesses for depositions are allowed. The Board will make its witness statements

available to the licensee at the hearing only if used by the witness during the hearing, and the licensee may use the statements during cross-examination.

The Board will render its decision within 90 days after the hearing. The licensee has a right to appeal the Board's decision to the Wake County Superior Court or the county in which the licensee resides. The decision of the Superior Court may be appealed to the North Carolina Court of Appeals. At any one given time there is usually one appeal of a contested case hearing pending the Court of Appeals due to the length of the process.

The large majority of licensees will not have to deal with a complaint brought against him/her to the Board. For those that do, however, it is best to treat the complaint very seriously. Obviously, suspension or revocation of the professional engineer's license can be devastating to a career. When a complaint is brought against a licensee, the licensee should consider retaining an attorney as early in the process as possible in order to protect his/her rights.

## **Bio**

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