

**BEFORE THE WEST VIRGINIA STATE BOARD
OF REGISTRATION FOR PROFESSIONAL ENGINEERS**

IN RE: JAMES B. HILDRETH

C2010-11

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers (hereinafter "Board"), by Edward L. Robinson, P.E., its President, and its attorney, Debra L. Hamilton, Deputy Attorney General for the State of West Virginia, for the purpose of agreeing to disciplinary action to be taken against James B. Hildreth (hereinafter "Respondent"). As reflected in this document, the parties have reached an agreement concerning the proper disposition of the above-referenced matter, and the Board, upon approval of such agreement, does hereby **FIND** the following:

1. The matters set forth herein are within the jurisdiction of the Board, which is the state entity with the power and duty to regulate the practice of engineering in the State of West Virginia.
2. Respondent is a licensed professional engineer in the State of West Virginia holding license number 7719 and does business through both a sole proprietorship, Certificate of Authorization (COA) #C03060 and a corporation, Boyles & Hildreth Consulting Engineers, Inc., COA #C00061.
3. On September 29, 2009, the West Virginia Board of Registration for Professional Engineers initiated Complaint C2010-11 alleging Respondent violations of West Virginia engineering law in connection with his engineering consulting work on public contracts

for a local public service district [hereinafter PSD], which complaint was filed and served on October 22, 2009.

4. Respondent timely responded to the Complaint on November 2, 2009.
5. Thereafter to date, Respondent has been represented by counsel.
6. The gravamen of the allegations of the Complaint which forms the basis of this disciplinary action is two-fold:
 - a. Respondent and a former partner had an outstanding loan, and the former partner was often utilized by the contractors recommended by Respondent, but this potential conflict of interest or influencing circumstance was not timely disclosed to the PSD; and
 - b. Respondent's actions and non-actions with regard to the decision-making process for the award of the contracts, including initiating meetings with each member of the PSD Board, delayed the award of one of the bids and also violated the spirit of West Virginia law relating to open governmental proceedings in that Respondent could and should have addressed matters relating to the bid award during PSD Board meetings.
7. The Board finds that Respondent's existing joint financial liability with an entity utilized by prime contractors recommended by Respondent constitutes a potential conflict of interest and a circumstance which could influence or appear to influence Respondent's judgment or the quality of his service, requiring full prior disclosure to the PSD in order to not be in violation of the Rules of Professional Responsibility.

8. Respondent denies that the loan was a factor in making or not making any recommendation regarding the contract to be awarded by the local PSD, but admits that the outstanding loan could appear to influence his judgment.
9. The Board has specifically considered the following in this matter: the interests of and harm to the public, the considerable extent to which Respondent cooperated with the Board and the Board's investigation, and other appropriate matters.
10. Both the Board and Respondent have incurred significant costs during the pendency of this matter and, in the discretion of the Board, the Board deems it appropriate to assess only a partial amount of the thousands of dollars of costs that have been expended in the investigation and prosecution of this matter.

CONCLUSIONS OF LAW

11. The Board is a state entity created by West Virginia Code § 30-13-1 *et seq.* and is empowered to regulate the practice of professional engineering in the State of West Virginia.
12. The Board, in its discretion, is authorized to take disciplinary action against any person found to be in violation of West Virginia engineering law and may suspend or revoke or refuse to issue, restore or renew a license, place on probation, impose a civil penalty upon, or reprimand any licensee who has been found to violate one or more provisions of West Virginia engineering law, which includes any rules of the Board, including the Rules of Professional Responsibility. W. Va. Code § 30-13-21(a)(4).
13. Professional engineers "shall avoid conflicts of interest and faithfully serve the legitimate interests of their employers, clients, and customers ..." W. Va. Code R. § 7-1-12.2(d).

14. Professional engineers “shall make full prior disclosures to their employers or clients of potential conflicts of interest or other circumstances which could influence or appear to influence their judgment or the quality of their service.”
W. Va. Code R. § 7-1-12.4(e).
15. The Board is authorized to “assess civil penalties against any person who violates any provision of this article or any rule promulgated by the board for each offense in an amount determined by the board.” W. Va. Code § 30-13-21(b).
16. A general violation of applicable statutes and rules, including W. Va. Code § 30-13-21 or the Rules of Professional Responsibility, may subject a person to discipline by the Board, including a civil penalty up to Five Thousand Dollars (\$5,000.00). W. Va. Code R. § 7-1-15.1.
17. In determining the amount of a civil penalty to be assessed, the Board may consider such factors as the circumstances leading to the violation; the nature and severity of the violation and the risk of harm to the public; the extent to which the cited person or firm has cooperated with the Board and the Board's investigation; and other matters as may be appropriate. W. Va. Code R. § 7-1-15.4.
18. The assessment of administrative costs is within the Board's sole discretion. W. Va. Code § 30-13-21(d) (4) and W. Va. Code R. § 7-1-14.4.

CONSENT OF RESPONDENT

James B. Hildreth, individually, by affixing his signature hereon, agrees to the following:

19. Respondent is represented by counsel and is aware of his option to pursue this matter through appropriate administrative and/or court procedures and Respondent intelligently and voluntarily waives his right to do so.
20. Respondent acknowledges the provisions of W. Va. Code R. § 7-1-12.2(d) which requires Registrants to avoid conflicts of interest and faithfully serve the legitimate interests of their employers, clients, and customers.
21. Respondent acknowledges the provisions of W. Va. Code R. § 7-1-12.4(e) which requires full prior disclosure to clients of potential conflict of interest or other circumstances which could influence or appear to influence Respondent's judgment or the quality of his service.
22. Respondent believes that at all times relevant to the Complaint, he did faithfully serve the interests of his client but acknowledges that circumstances may have created the perception in the minds of some that the above Rules of Professional Responsibility were violated.
23. Respondent further acknowledges that such perception has created an issue of fact that can only be determined through lengthy proceedings before the Board and understands that disciplinary action could result from such proceedings.
24. Respondent accepts the findings of the Board and this disciplinary action.
25. Respondent consents to the entry of this Consent Order freely and voluntarily and without duress, restraint or compulsion.

26. Respondent acknowledges that the Board may reject this proposal and may hold a hearing to impose such sanctions of a disciplinary nature as it deems appropriate.
27. Respondent acknowledges that entering into the negotiation of this Consent Order constitutes a waiver of any and all objections regarding the timeliness of Board action on Complaint Number C2010-11. This paragraph is binding on Respondent even in the event that the Board does not approve this Consent Order.
28. This Consent Order is executed by Respondent for the purposes of avoiding further administrative action with respect to this Complaint. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning the Respondent prior to or in conjunction with consideration of this Consent Order.
29. Should the Consent Order not be accepted by the Board, it is agreed that presentation to and by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings and that any knowledge obtained by the Board shall not form the basis of any objection to any Board member serving on the hearing panel in the event this matter goes to hearing, any such objection being knowingly waived by Respondent. This paragraph is binding on Respondent even if the Board does not approve this Consent Order.
30. Respondent acknowledges that this Consent Order, the underlying Complaint, his response and other public records provided by Respondent or otherwise obtained by the Board must be made available upon legal request in accordance with the state's Freedom of Information Act.
31. Respondent agrees that the sum and substance of the Complaint and this agreement in part or in their entirety will be set forth in Board publications and on the Board website,

as well as other appropriate placements, including the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).

32. Respondent understands that this Consent Order constitutes a full and final settlement of this matter, and nothing in this Consent Order or the circumstances giving rise to the same may be the subject of any appeal or other civil or administrative actions except an action by the Board to enforce the terms of this Consent Order, but that nothing in this Consent Order prohibits the Board from considering this disciplinary action or the circumstances giving rise to same with regard to any future disciplinary matter involving Respondent which may be before this Board.
33. Respondent acknowledges that non-compliance with this Consent Order may result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation of any license or certification which may be issued to Respondent by the Board, and the addition of any other charges which may arise or ensue from Respondent's non-compliance with this Consent Order.
34. Respondent acknowledges that proof of any misstatement or misrepresentation made in connection with this matter will result in the rescission of this agreement, the reinstatement of Complaint C2010-11, the summary revocation of any license or certificate of authorization issued to the Respondent, and the addition of any other charges which may arise or ensue from providing false information to the Board in violation of West Virginia engineering law.
35. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.

ORDER

1. On the basis of the foregoing the Board hereby **ORDERS** that this Consent Order shall serve as an informal settlement of this Complaint pursuant to West Virginia Code § 30-13-22(b).
2. The Board **ORDERS** Respondent be reprimanded for the violation of the Rules of Professional Responsibility set forth above without imposition of civil penalty.
3. The Board **ORDERS** Respondent to pay administrative costs in the discounted amount of One Thousand Dollars (\$1,000.00).
4. The administrative costs imposed herein totaling must be paid within thirty (30) days of the date of entry set forth below, such amount to be made payable to the W. Va. P.E. Board.
5. The sum and substance of the Complaint and this agreement in part or in their entirety shall be set forth in Board publications and on the Board website, as well as other appropriate placements, including the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).
6. Any violation of the terms of this Consent Order by Respondent shall be immediate cause for further disciplinary action by the Board.
7. If the administrative costs imposed herein are not timely paid, this Consent Order may be summarily enforced in the Circuit Court of Kanawha County without further notice to Respondent upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed to herein (\$1,000.00), together with pre-judgment interest from the date of the President's signature hereon, post-judgment interest from the date of entry of the Judgment Order and all costs of any enforcement action(s), which judgment shall be fully executable in accordance with applicable law.

8. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the administrative costs agreed to herein.
9. This Consent Order constitutes a full and final settlement of this matter, and nothing in this Consent Order or the circumstances giving rise to same may be the subject of any appeal or other civil or administrative actions except an action by the Board to enforce the terms of this Consent Order. This shall not prohibit the Board from considering this disciplinary action or the circumstances giving rise to same with regard to any future disciplinary matter involving Respondent which may come before this Board.
10. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.
11. This Consent Order relates solely to matters within the jurisdiction of the West Virginia Board of Registration for Professional Engineers and does not evidence compliance with any other laws of the State of West Virginia or its political subdivisions, nor should any such compliance be implied.

AGREED TO BY:



JAMES B. HILDRETH
Respondent

9.16.2013
DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 17 day of SEPTEMBER, 2013.

**WEST VIRGINIA STATE BOARD OF
REGISTRATION FOR PROFESSIONAL ENGINEERS,**

By: 

EDWARD L. ROBINSON, P.E.
BOARD PRESIDENT

9/17/13
DATE