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STATE OF MINNESOTA
BOARD OF ARCHITECTURE, ENGINEERING,
LAND SURVEYING, LANDSCAPE ARCHITECTURE, GEOSCIENCE
AND INTERIOR DESIGN

In the matter of Dean Rafferty
PROFESSIONAL ENGINEER
License Number 12018

STIPULATION AND ORDER

Board File No. 2010-0076

TO: Mr. Dean Rafferty
4708 Phlox Lane
Edina, Minnesota 55435

The Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design ("Board") is authorized pursuant to Minnesota Statutes section 214.10 (2010) and Minnesota Statutes section 326.111 (2010) to review complaints against architects, professional engineers, land surveyors, landscape architects, geoscientists, and certified interior designers, and to take disciplinary action whenever appropriate.

The Board received information concerning Dean Rafferty ("Respondent"). The Board's Complaint Committee ("Committee") reviewed the information. The parties have agreed that the matter may now be resolved by this Stipulation and Order.

STIPULATION

IT IS HEREBY AGREED by and between Respondent and the Committee as follows:

1. Jurisdiction. The Respondent has held a license to practice professional engineering from the Board since July 29, 1976. Respondent is subject to the jurisdiction

of the Board with respect to the matters referred to in this Stipulation.

2. Facts. This Stipulation is based upon the following facts:

a. Respondent was first licensed to practice professional engineering in the State of Minnesota on July 29, 1976.

b. On April 26, 2010, at 10:45 AM, Respondent's license to practice professional engineering in the State of Minnesota was renewed on-line.

c. Respondent was disciplined by the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors, on November 19, 2009. A true and correct copy of the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors Consent Order, that was issued on November 19, 2009 is attached as Exhibit A.

d. Respondent did not disclose the November 19, 2009 disciplinary action taken by the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors, when he renewed his Minnesota Professional Engineer license on-line on April 26, 2010 at 10:45 AM. In order to continue the on-line renewal process, the Board's computer system asks the licensee, "Since July 1, 2008, have you had a license disciplined, denied, surrendered, suspended or revoked?" There is a button to check 'yes' or 'no' to this question. Respondent selected "no" in his on-line response to the question. If Respondent had selected "yes," the Board's computer system would not have let him continue and would have given him an error message: "You cannot renewal your license online if you had a license disciplined, denied, surrendered,

suspended or revoked. Please contact Lynette DuFresne at 651-757-1510 for assistance." Directly below this question, the Board's on-line renewal screen asks the licensee, "I swear or affirm that I have read the foregoing renewal application and continuing education reporting screens and that the statements are true and complete." The next step to complete is a box to click that states, "I accept." Additionally it states, "(You must check this box to continue)." Respondent affirmed his 2012 on-line renewal application on April 26, 2010 at 10:45 AM. Respondent clicked on the box to continue as his Minnesota Professional Engineer license was renewed on April 26, 2010.

3. Violations. Respondent admits that the facts specified above constitute violations of Minnesota Statutes section 326.111, subdivision 4 (a) (1) and (5) (2010), and Minnesota Rules 1805.0200, subparts 2 and 4 (c) (2009), and are sufficient grounds for the action specified below.

4. Enforcement Action. Respondent and the Committee agree that the Board should issue an Order in accordance with the following terms:

a. Reprimand. Respondent is reprimanded for the foregoing conduct.

b. Civil Penalty. Respondent shall pay to the Board a civil penalty of One Thousand Five Hundred Dollars ($1,500.00). Respondent shall submit a civil penalty of One Thousand Five Hundred Dollars ($1,500.00) by cashier's check or money order to the Board within sixty (60) days of the Board's approval of this Stipulation and Order.

c. Ethics Course. Within six months (6) of the Board's approval of

this Stipulation and Order, Respondent shall successfully complete, and submit acceptable documentation thereof to the Board, two (2) hours of course(s) in professional ethics, which is/are approved in advance by the Complaint Committee. Completion of any courses for the two (2) hours of professional ethics instruction earned within six months (6) of the Board approval of this Stipulation and Order, that are being submitted for the purpose of fulfilling the professional ethics instruction required by this Order, shall not count toward any continuing education requirements in the 2012-2014 renewal period or beyond.

5. Additional Discipline for Violations of Order. If Respondent violates this Stipulation and Order, the Board may impose additional discipline pursuant to the following procedure:

a. The Committee shall schedule a hearing before the Board. At least thirty days prior to the hearing, the Committee shall mail Respondent a notice of the violation alleged by the Committee and of the time and place of the hearing. Within fourteen days after the notice is mailed, Respondent shall submit a response to the allegations. If Respondent does not submit a timely response to the Board, the allegations may be deemed admitted.

b. At the hearing before the Board, the Complaint Committee and Respondent may submit affidavits made on personal knowledge and argument based on the record in support of their positions. The Complaint Committee may submit affidavits responding to any affidavits submitted by Respondent. The evidentiary record before the Board shall be limited to such affidavits and this Stipulation and

Order. Respondent waives a hearing before an administrative law judge and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

c. At the hearing, the Board will determine whether to impose additional disciplinary action, including additional conditions or limitations on Respondent's practice or suspension or revocation of Respondent's license.

6. Waiver of Respondent's Rights. For the purpose of this Stipulation, Respondent waives all procedures and proceedings before the Board to which Respondent may be entitled under the Minnesota and United States constitutions, statutes, or the rules of the Board, including the right to dispute the allegations against Respondent, to dispute the appropriateness of discipline in a contested case proceeding pursuant to Minnesota Statutes Chapter 14 (2010), and to dispute the civil penalty imposed by this Agreement. Respondent agrees that upon the application of the Committee without notice to or an appearance by Respondent, the Board may issue an Order containing the enforcement action specified in paragraph 4 herein. Respondent waives the right to any judicial review of the Order by appeal, writ of certiorari, or otherwise.

7. Collection. In accordance with Minnesota Statutes section 16D.17 (2010), in the event this order becomes final and Respondent does not comply with the condition in paragraph 4(b) above, Respondent agrees that the Board may file and enforce the unpaid portion of the civil penalty as a judgment without further notice or additional proceedings.

8. Board Rejection of Stipulation and Order. In the event the Board in its discretion does not approve this Stipulation and Order or a lesser remedy than specified herein, this Stipulation and Order shall be null and void and shall not be used for any purpose by either party hereto. If this Stipulation is not approved and a contested case proceeding is initiated pursuant to Minnesota Statutes Chapter 14 (2010), Respondent agrees not to object to the Board's initiation of the proceedings and hearing the case on the basis that the Board has become disqualified due to its review and consideration of this Stipulation and the record.

9. Unrelated Violations. This settlement shall not in any way or manner limit or affect the authority of the Board to proceed against Respondent by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or admission of Respondent justifying disciplinary action which occurred before or after the date of this Stipulation and Order and which is not directly related to the specific facts and circumstances set forth herein.

10. Record. The Stipulation, related investigative reports and other documents shall constitute the entire record of the proceedings herein upon which the Order is based. The investigative reports, other documents, or summaries thereof may be filed with the Board with this Stipulation.

11. Data Classification. Under the Minnesota Government Data Practices Act, this Stipulation and Order is classified as public data upon its issuance by the Board, Minnesota Statutes section 13.41, subdivision 5 (2010). All documents in the record shall maintain the data classification to which they are entitled under the Minnesota

Government Data Practices Act, Minnesota Statutes Chapter 13 (2010). They shall not, to the extent they are not already public documents, become public merely because they are referenced herein. A summary of this Order will appear in the Board's newsletter. A summary will also be sent to the national discipline data bank pertaining to the practice of professional engineering.

12. Entire Agreement. Respondent has read, understood, and agreed to this Stipulation and is freely and voluntarily signing it. The Stipulation contains the entire agreement between the parties hereto relating to the allegations referenced herein. Respondent is not relying on any other agreement or representations of any kind, verbal or otherwise.

13. Counsel. Respondent is aware that he may choose to be represented by legal counsel in this matter. Respondent knowingly waived legal representation.

14. Service. If approved by the Board, a copy of this Stipulation and Order shall be served personally or by first class mail on Respondent. The Order shall be effective and deemed issued when it is signed by the Chair of the Board.

RESPONDENT

Dean Rafferty

Dean Rafferty

Dated: Sept. 23, 2010

COMPLAINT COMMITTEE

By: Billie Lawton

Billie Lawton, Public Member,
Committee Chair

Dated: 10-22-10, 2010

ORDER

Upon consideration of the foregoing Stipulation and based upon all the files, records and proceedings herein, all terms of the Stipulation are approved and hereby issued as an Order of this Board on this the 22nd day of October, 2010.

MINNESOTA BOARD OF
ARCHITECTURE, ENGINEERING,
LAND SURVEYING, LANDSCAPE
ARCHITECTURE, GEOSCIENCE AND
INTERIOR DESIGN

By: Kristi A. Kubes
Kristine A. Kubes, J. D.
Board Chair

BEFORE THE OKLAHOMA STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

STATE OF OKLAHOMA ex rel. OKLAHOMA STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS,	)	FILED OCT 14 2009 OKLA. BOARD OF LIC. FOR PROF. ENGRS. & LAND SURVEYORS
Complainant,	)	
vs.	)	**Case No. 2009-097**
Name: Dean Allan Rafferty **Certificate of Licensure: P.E. No. 16073** **Address: 333 S. 7 Street, Suite 1200** **Minneapolis, MN 55402**	)	
Respondent.	)	

FORMAL COMPLAINT

COMES NOW the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors (hereinafter the "Board") by and through its attorney, O. Clifton Gooding, and based upon the recommendation of the Board's Investigation Committee, its investigator and as ordered by the Board, brings this Formal Complaint against the above named Respondent, Dean Allan Rafferty ("Respondent").

NOTICE OF HEARING

1. On November 19, 2009 the Board will be in session at 9:00 o'clock a.m. at 201 N.E. 27th Street, Oklahoma City, Oklahoma, at which time this Formal Complaint will be considered by the Board and a formal fact finding hearing will be held pursuant to Oklahoma Administrative Procedures Act, 75 O.S. § 301, *et seq.*, the Statutes Regulating Professional Engineering and Land Surveying, 59 O.S. § 475.1 *et seq.*, and the duly promulgated Rules of the Board OAC § 245:2 *et seq.*

2. Respondent, in accordance with the above mentioned statutes and rules, has the right to appear personally or to be represented by an attorney and will be afforded the

EXHIBIT A

opportunity to respond, compel the testimony of witnesses, present evidence, and argue all issues involved.

3. Respondent is ordered by the Board to appear at said hearing on said date. If a Respondent is not present in person or through legal counsel, then the proceeding will be held in the absence of such Respondent, and the Board, in its discretion, may summarily take appropriate action as authorized by law. The Board will notify the absent Respondent/s of its final decision in writing.

JURISDICTION

Jurisdiction for this Formal Complaint is based upon:

1. The statutes regulating Professional Engineering and Land Surveying, 59 O.S. § 475.1 *et seq*.

2. The Rules of the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors (OAC § 245:2 *et seq*.).

STATEMENT OF ALLEGATIONS/CHARGES AGAINST THE RESPONDENT

It is alleged that Respondent has violated 59 O.S. § 475.1 *et seq*. and the Board Rules (OAC § 245:2 *et seq*.) as follows:

STATEMENT OF FACTS

1. Respondent is licensed as a Professional Engineer and holds Certificate of Licensure No. 16073.

2. On July 17, 2009, The Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors ("The Board") sent Respondent notification that he was selected to be audited as part of the Board's random audit of engineer's Professional Development Hours ("PDH's"). Respondent was given until August 17, 2009, to submit to The Board's office evidence of supporting documentation of earning the PDH's claimed for his license renewal.

3. Notification was mailed via regular mail and by certified mail that was signed for on July 23, 2009.

4. The Board sent, on August 13, 2009, via email, notification that the Board had not received proof of participation of the PDH's claimed on the Respondent's renewal application and that Respondent had until August 17, 2009 to provide the same.

5. Respondent failed to provide the required evidence of supporting documentation of completion of earning the PDH's claimed on his renewal application to The Board office by August 17, 2009.

5. As of October 8, 2009, The Board has not received evidence of supporting documentation of completion of the PDH's claimed on the renewal application from Respondent.

COUNT I

6. The Allegations contained in the Statement of Facts above are incorporated herein by reference.

7. By failing to provide evidence of supporting documentation of earning the PDH's claimed in his renewal application, Respondent has practiced fraud or deceit when renewing his Certificate of Licensure for the time period of December 1, 2006 through November 30, 2008, in violation of 59 O.S. §§ 475.1 and 475.18 (A) (1) and OAC §§ 245:15-23-2 (1) and is therefore, subject to the Administrative Penalties set forth in 59 O.S. §§ 475.20(B) and OAC §§ 245:15-23-3 and 18.

COUNT II

8. The Allegations contained in the Statement of Facts and Count I above are incorporated herein by reference.

9. Respondent has failed to meet the Board's requirements for Continuing Education for Professional Development Hours ("PDH's"), therefore Respondent is in violation of 59 O.S. §§ 475.1 and 475.18 (A) (4) and OAC §§ 245:15-23-2 (3) and is therefore, subject to the Administrative Penalties set forth in 59 O.S. §§ 475.20(B) and OAC §§ 245:15-23-3 and 18.

REQUESTED FINDINGS OF THE BOARD AND PENALTY

The undersigned requests the Board, after considering all the testimony, evidence and argument, to find:

1. Respondent is in violation of any or all of the aforementioned statutes and rules.
2. That appropriate action be taken against Respondent, which may include:
   - A. An Administrative Penalty;
   - B. Reprimand;
   - C. Censure;
   - D. Suspension;
   - E. Revocation; and,
   - F. Such other action as the Board deems appropriate.

Respectfully submitted,

By: _____

O. Clifton Gooding (OBA #10315)
THE GOODING LAW FIRM
A Professional Corporation
1200 City Place Building
204 North Robinson Avenue
Oklahoma City, OK 73102
405.948.1978 - Telephone
405.948.0864 - Facsimile
cgooding@goodingfirm.com - Email

Attorneys Oklahoma State Board of
Licensure for Professional Engineers
and Land Surveyors

BEFORE THE OKLAHOMA STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

FILED

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OKLA. BOARD OF LIC. FOR PROF. ENGRS. & LAND SURVEYORS

STATE OF OKLAHOMA ex rel. OKLAHOMA STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS,	)	
Complainant,	)	
vs.	)	Case No. 2009-097
Name: Dean Allan Rafferty Certificate of Licensure: P.E. No. 16073 Address: 333 S. 7 Street, Suite 1200 Minneapolis, MN 55402	)	
Respondent.	)	

CONSENT ORDER

COMES NOW the Complainant, Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors (the "Board") and the Respondent, Dean Allan Rafferty ("Respondent").

FINDINGS OF FACT

For the purposes of the entry of this Consent Order, the following facts are hereby stipulated to by the parties and adopted by the Board:

STATEMENT OF FACTS

1. Respondent is licensed as a Professional Engineer and holds Certificate of Licensure No. 16073.

2. On July 17, 2009, The Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors ("The Board") sent Respondent notification that he was selected to be audited as part of the Board's random audit of engineer's Professional Development Hours ("PDH's"). Respondent was given until August 17, 2009, to submit to The Board's office evidence of supporting documentation of earning the PDH's claimed for his license renewal.

3. Notification was mailed via regular mail and by certified mail that was signed for on July 23, 2009.

4. The Board sent, on August 13, 2009, via email, notification that the Board had not received proof of participation of the PDH's claimed on the Respondent's renewal application and that Respondent had until August 17, 2009 to provide the same.

5. Respondent failed to provide the required evidence of supporting documentation of completion of earning the PDH's claimed on his renewal application to The Board office by August 17, 2009.

6. As of October 8, 2009, The Board has not received evidence of supporting documentation of completion of the PDH's claimed on the renewal application from Respondent.

COUNT I

Complainant hereby Dismisses Count I of the Complaint.

COUNT II

8. The Allegations contained in the Statement of Facts and Count I above are incorporated herein by reference.

9. Respondent has failed to meet the Board's requirements for Continuing Education for Professional Development Hours ("PDH's"), therefore Respondent is in violation of 59 O.S. §§ 475.1 and 475.18 (A) (4) and OAC §§ 245:15-23-2 (3) and is therefore, subject to the Administrative Penalties set forth in 59 O.S. §§ 475.20(B) and OAC §§ 245:15-23-3 and 18.

CONCLUSIONS OF LAW

1. The Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors has jurisdiction of this case pursuant to:

a. Statutes Regulating Professional Engineering and Land Surveying, 59 O.S. § 475.1 *et seq.*

b. The Rules of the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors, OAC § 245:15, *et seq.*

2. Respondent was properly notified of the charges and acknowledged his right to counsel.

3. Respondent has made no objection to the timeliness of the notice or to the specificity of the statement of charges.

4. The Findings of Fact stipulated to by Respondent constitute violations of the Statutes Regulating Professional Engineering and Land Surveying and the Rules of the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors, pertaining to the professional practice of engineering upon which the Board may take disciplinary action against Respondent.

CONSENT

Dean Allan Rafferty, by affixing his signature hereto, acknowledges that:

1. Respondent has been specifically advised to seek the advice of counsel prior to signing this Consent Order; and

2. Respondent acknowledges that he has the following rights, among others:

   a. The right to a formal fact finding hearing before the Board;

   b. The right to reasonable notice of said hearing;

   c. The right to compel the testimony of witnesses;

   d. The right to cross-examine witnesses against him;

   e. The right to obtain judicial review of the Board's decisions; and,

   f. The right to counsel.

3. Respondent waives all such rights to a formal hearing as set forth above in paragraph two (2).

4. Respondent stipulates to the facts set forth above, and Respondent specifically waives his individual rights to contest these findings in any subsequent proceeding before the board; and

5. Respondent consents to the entry of this Consent Order.

ORDER

In accordance with the foregoing findings of facts and conclusions of law, and the agreement and consent of the Respondent, it is hereby ordered as follows:

1. Dean Allen Rafferty should be and hereby is found guilty of the charges set forth in Count II of the Formal Complaint as he has failed to meet the Board's requirements for Continuing Education for Professional Development Hours ("PDH's"), therefore Respondent is in violation of 59 O.S. §§ 475.1 and 475.18 (A) (4) and OAC §§ 245:15-23-2 (3).

2. In accord with 59 O.S. § §§ 475.20 (B) and OAC §§ 245: 15-23-3 and 15-23-18, Dean Allen Rafferty, is hereby assessed an administrative penalty in the amount of Two Hundred Fifty Dollars ($250.00) as and for the violations set forth in Count II above, which shall be paid within thirty (30) days from the date of the entry of this Consent Order.

3. Dean Allen Rafferty shall be audited in the next renewal cycle of his license.

4. A copy of this Consent Order shall be transmitted to Respondent's home state of licensure and shall be listed on the National Council of Examiners for Engineers and Surveyors Enforcement Exchange.

5. Dean Allen Rafferty is hereby **Reprimanded** by the Board for the violations set forth in Count II herein.

DISCLOSURE

Pursuant to the Oklahoma Open Records Act, 51 O.S. § 24-A.1 through 24-A.21, the signed original of this Consent Order shall remain in the custody of the Board as a public record and shall be made available for public inspection and copying upon request.

Dean Allen Rafferty

Dean Allen Rafferty

Date: Nov. 2, 2009

CERTIFICATION OF BOARD ATTORNEY

I believe this Consent Order to be in the best interests of the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors and the State of Oklahoma for the violations as alleged in the Formal Complaint.

Dated this 19th day of November, 2009.

By: _____
O. Clifton Gooding (OBA #10315)
THE GOODING LAW FIRM
A Professional Corporation
1200 City Place Building
204 North Robinson Avenue
Oklahoma City, OK 73102
405.948.1978 - Telephone
405.948.0864 - Facsimile
cgooding@goodingfirm.com - Email

Attorneys Oklahoma State Board of
Licensure for Professional Engineers
and Land Surveyors

ORDER OF THE BOARD

NOW on this 19th day of November, 2009, Respondent has admitted voluntarily, with knowledge of his rights under law, the allegations contained in Count II of the Formal Complaint. It further appears that the foregoing Consent Order is just and equitable in order to safeguard life, health, and property, and to promote the public welfare in the State of Oklahoma.

IT IS THEREFORE ORDERED that the Respondent's stipulations to the violations contained in Count II of the Formal Complaint are accepted and the above Consent Order incorporated herein shall be the order of the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors.

Dated this 19th day of November, 2009.

OKLAHOMA STATE BOARD OF
LICENSURE FOR PROFESSIONAL
ENGINEERS AND LAND SURVEYORS

By: _____
Mark A. Fuller, Chair

AFFIDAVIT OF SERVICE BY MAIL

RE: In the matter of Dean Rafferty,
PROFESSIONAL ENGINEER
License Number 12018

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Lynette DuFresne, being first duly sworn, deposes and says:

That at the City of St. Paul, County of Ramsey and State of Minnesota, on this the 25th day of OCTOBER, 2010, she served the attached **Stipulation and Order**, by depositing in the United States mail at said city and state, a true and correct copy thereof, properly enveloped, with first class and certified postage prepaid, and addressed to:

Mr. Dean Rafferty
4708 Phlox Lane
Edina, Minnesota 55435

CERTIFIED MAIL
Return Receipt Requested
7010 0780 0001 5886 1701

Lynette DuFresne

Subscribed and sworn to before me on
this the 25th day of October, 2010.

Beverly A. Carey
(Notary Public)

BEVERLY A. CAREY
NOTARY PUBLIC
MINNESOTA
My Commission Expires Jan. 31 2015