

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

**In the matter of Michael S. Schweyen
PROFESSIONAL ENGINEER
License Number 40091**

STIPULATION AND ORDER

Board File No. 2013-0102

TO: Michael S. Schweyen
2900 48th Street North West
Rochester, Minnesota 55901-5848

The Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design ("Board") is authorized pursuant to Minnesota Statutes section 214.10 (2012) and Minnesota Statutes section 326.111 (2012) 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 Michael S. Schweyen ("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 was first issued a Professional Engineer license by the Board on February 1, 2000. 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 as a Professional Engineer in the State of Minnesota on February 1, 2000.

b. On June 30, 2012, Respondent's Minnesota Professional Engineer license expired.

c. Respondent reinstated his Minnesota Professional Engineer license on March 29, 2013. Respondent's license status is current with an expiration date of June 30, 2014.

d. Respondent's Minnesota Professional Engineer license expired from July 1, 2012 to March 29, 2013.

e. During the period his license was expired, from July 1, 2012 to March 29, 2013, Respondent was employed as a "District Traffic Engineer" by the Minnesota Department of Transportation. Respondent is still employed in that capacity by the Minnesota Department of Transportation.

f. With his letter to the Board dated August 10, 2013, Respondent included a copy of his business card. The card contains a Minnesota Department of Transportation logo and the address of the Minnesota Department of Transportation District location. The business card also states: "Michael S. Schweyen, P.E., P.T.O.E., District Traffic Engineer." Respondent stated: "I rarely use my business card. I do not carry business cards with me. Although I may have, I do not know that I handed any of my business cards to anyone during the period of my expired license."

g. In this same letter dated August 10, 2013, Respondent included

plan sets/sheets for thirteen (13) State projects he signed during the lapse of his Minnesota Professional Engineer license from July 1, 2012 to March 29, 2013. The types of work on the various State projects and the number of those projects that the Respondent signed during the lapse of his Minnesota Professional Engineer license from July 1, 2012 to March 29, 2013 are as follows:

- g.1 State rumble strip projects – three (3)
- g.2 State traffic control, striping projects - five (5)
- g.3 State traffic management system projects – one (1)
- g.4 State permanent signing tabulation projects – one (1)
- g.5 State rumble strips, traffic control, striping projects – three (3)

h. With his letter to the Board dated September 18, 2013, Respondent included a copy of his official position description during the lapse of his Minnesota Professional Engineer license as the ‘District Traffic Engineer’ with the Minnesota Department of Transportation. Under the ‘Required Certifications, Licenses, and Registrations’ it states: Required: – Minnesota registration as a Professional Engineer.

i. Based upon the ‘Job Specific Technical Competencies’ as a District Traffic Engineer for the Minnesota Department of Transportation, as defined in the Minnesota Department of Transportation official position description, Respondent practiced “professional engineering” without a license, within the meaning of Minnesota Statutes section 326.02, subdivision 3, when he held the position of District Traffic Engineer for the Minnesota Department of

Transportation without a current Minnesota Professional Engineer license from July 1, 2012 to March 29, 2013.

j. Respondent stated that the lapse of his Minnesota Professional Engineer license was inadvertent and unintentional.

k. Respondent took special corrective actions and was very cooperative with the Board.

3. Violations. Respondent admits that the facts specified above constitute violations of Minnesota Statutes section 326.02 subdivisions 1 and 3, and Minnesota Statutes section 326.03, subdivision 1 (2012) and are sufficient grounds for the action specified below. Specifically, the Committee's position is that the Respondent held himself out as a Professional Engineer in Minnesota without a license, within the meaning of Minnesota Statutes section 326.02, subdivision 1, and practiced professional engineering, as defined in Minnesota Statutes section 326.02, subdivision 3 (2012), in Minnesota during the lapse of his Minnesota Professional Engineer license, between July 1, 2012 and March 29, 2013.

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 Four Thousand Dollars (\$4,000.00). Respondent shall submit a civil penalty of Four Thousand Dollars (\$4,000.00) by check or money order to the Board within sixty (60) days of the Board's approval of this Stipulation and Order.

c. Respondent shall cease and desist from violating any laws, rules or

orders entrusted to enforcement by the Board.

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 (2012), 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 (2012), 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 (2012), 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 (2012). 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 (2012). 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 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

Michael Schweyen
Michael S. Schweyen

Dated: March 5, 2014

SUBSCRIBED and sworn to before me on this the 5th day of March, 2014.

Teresa A Klompenhower
(Notary Public)

My Commission Expires:
January 31, 2016



COMPLAINT COMMITTEE

Bruce Johnson
Bruce Johnson, PG
Committee Chair

Dated: 3/20, 2014

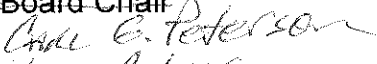
ORDER

Upon consideration of the foregoing Stipulation and Order and based upon all the files, records, and proceedings herein, all terms of the Stipulation and Order are approved and adopted and hereby issued as an Order of this Board this the 21st day of March, 2014.

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

By: 

Douglas C. Cooley, PE
Board Chair


Carl E. Peterson
Vice Chair

