



**STATE OF TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE
TENNESSEE BOARD OF ARCHITECTURAL AND ENGINEERING EXAMINERS
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243
615.741.2241**

Board Meeting Minutes for June 6, 2024
First Floor Conference Room 1-A
Davy Crockett Tower

Tennessee Board of Architectural and Engineering Examiners met on June 6, 2024, and the following business was transacted:

BOARD MEMBERS PRESENT: Alton Hethcoat, Blair Parker, Frank Wagster, Melanie Doss, Rick Thompson, Dr. Ashraf Elsayed, Jeff Nalley, James Collins, Eddie Jett

BOARD MEMBERS ABSENT: Brian Tibbs, Rob Barrick, Jason Carder

STAFF MEMBERS PRESENT: Glenn Kopchak, Alexandria Griffey, Tammy Roehrich, Ashley Trobaugh, Laura Martin

BOARD MEETING

CALL TO ORDER / ROLL CALL / NOTICE OF MEETING

Melanie Doss called the meeting to order at 9:00 am and Director Glenn Kopchak took roll call.

ANNOUNCEMENTS

Director Kopchak announced that Chief Counsel Laura Martin will be providing support for the Board until a new program attorney is selected to fill the recent vacancy.

AGENDA

Rick Thompson made a motion to accept the agenda. This was seconded by Blair Parker. The motion passed by unanimous voice vote.

APRIL MINUTES

Blair Parker made a motion to approve the April minutes. This was seconded by Dr. Ashraf Elsayed. The motion passed by unanimous voice vote.

PROFESSIONAL SOCIETY REPORTS

Suzanne Herron, President of American Society of Civil Engineers, TN Section, announced the results from the regional competition that was held at UT Martin. Christian Brothers University placed second in the Steel Bridge category, University of TN, Knoxville, placed first in the Survey category, and Lipscomb University placed first in the Concrete Canoe category. Suzanne Herron also announced that the Universities have advanced to the National Competition.

Hannah Durham, President Elect of American Society of Interior Designers (ASID), and Tiffanie Clegg, VP of Advocacy at the International Interior Design Association (IIDA-TN Chapter), reported updates for their organization to include providing community outreach, upcoming national meeting scheduled for August 11-13, 2024, that is geared toward board leadership training, and state conference scheduled for September 19, 2024.

DIRECTOR'S REPORT

Budget Report

Director Kopchak summarized the financial report for the months of February through April. Director Kopchak reported that an increase of expenditures in March was due to technology expenses stemming from processing and network services. There were no other items of concern, and the board is trending in surplus.

TN Engineers' Conference

The TN Engineers' Conference is scheduled for September 29 – October 1, 2024, in Franklin, TN. Blair Parker made a motion to approve travel for all Engineers to attend. This was seconded by Frank Wagster. The motion passed by unanimous voice vote.

NCEES Southern Zone Meeting Update

Director Glenn Kopchak provided an update to the board about the NCEES Southern Zone Meeting. He reported that the State of Tennessee was well represented at the meeting. James Collins sat on the Examination Policy and Procedures Committee, and Jason Carder sat on the Resolutions Committee, with both providing updates to attendees at the meeting.

UK Mutual Recognition Agreement

Dr. Ashraf Elsayed made a motion to approve James Collins and Jason Carder's ceremonial signing of the UK Mutual Recognition Agreement. This was seconded by Blair Parker. The motion passed by unanimous voice vote.

PUBLIC COMMENT PERIOD RELATED TO ITEMS ON THE AGENDA

There were no presentations from the public.

LEGAL

Legal Report (presented by Laura Martin)

1. 2024005021

First Licensed: 12/09/2016

Expiration: 12/31/2024

Type of License: Professional Architect

History (5 yrs.): None.

Complaint alleges that respondent, a professionally licensed architect, was a former employee of the complainant, a firm named for a professionally licensed architect who has apparently since deceased. While employed with complainant, the respondent was involved in multiple aspects of the business of complainant and participated in the design and preparation of numerous instruments of service. Complainant alleges that on or about, December 1, 2021, after Respondent's resignation from employment with complainant, Respondent filed Articles of Organization for a new firm under respondent's name with the TN Secretary of State. Respondent continued, through the new firm, to communicate and work with the developers and owners on many of the same projects in which complainant firm served as architect of record.

Respondent claims that the intellectual property in question was jointly owned by both the complainant and respondent's firms. They claim this shared ownership arose from a collaborative relationship between the entities, and the intellectual property was originally created by respondent, for use within their venture and that the access complainant had to this information was solely due to their past association. Respondent claims that following the death of the architect for whom the complainant firm is named for, their surviving family members sought to assert ownership rights, seemingly unaware of the pre-existing agreements between the respondent and the deceased architect.

Without documentation of the respondent's claim that this sharing of intellectual property was agreed upon by both parties, the board has authority to discipline the respondent for misconduct claims, including;

- Rule 120-02-08
 - modifications made to another architect's drawings/ specifications improperly.
- Rule 0120-02-.06 – -
 - for misrepresenting to the client who the respondent's associations are since the work was accepted under complainant's firm but was continued through respondent's firm
 - Representing about 12 projects on respondent's website with unconditional credit when complainant firm was at one point the architect on record for such projects.

Lastly, the complainant's attorney has notified they are considering civil litigation since many of the alleged wrongdoings by the respondent are not within the purview of the board. However, at this time no formal proceedings have been filed.

Reviewed by Board member: Rick Thompson

Recommendation: Discuss

Board Decision: Place case in Litigation Monitoring and re-present at a future meeting.

2. 2024002531

First Licensed: 09/23/2019

Expiration: 09/30/2025

Type of License: Professional Engineer

History (5 yrs.): None.

Respondent submitted certificates for 24 hours of PDH for the September 2023 registration renewal. After review, only 16 hours were within renewal period. As per Rule, no PDH are rolled over to the next renewal period making Respondent deficient of 8 hours. Respondent subsequently provided more than 8 hours to become compliant.

Reviewed by Board member: Rob Barrick

Mitigating Factors:

Aggravating Factors: Non-compliant with PDH

Recommendation: Send Letter of Warning and pass the Laws and Rules Exam.

Board Decision: Concur.

3. 2024005621

First Licensed: 02/08/1994

Expiration: Closed

Type of License: Professional Engineering Firm

History (5 yrs.): None.

Complainant states that his employer firm failed to disclose the responsible charge retired in July 2023 and did not replace the position or file a Firm Disclosure. Research online shows a press release that the Responsible Charge retired June 30, 2023 and would remain as part-time employee and advisor.

Complainant has recently obtained an Engineer license on 2/28/2024 and filed a Firm Disclosure on 2/29/2024 stating him as Responsible Charge. The company has merged into a PLLC on 2/23/2024 with delayed date of 4/1/2024.

The former company has closed but there was a Firm Disclosure on file since 2016 with the retired/part-time/advisor as Responsible Charge.

Reviewed by Board member: Jason Carder

Mitigating Factors: No violation found.

Aggravating Factors:

Recommendation: Close.

Board Decision: Concur.

4. 2023063751

First Licensed: 01/17/2020

Expiration: 01/31/2026

Type of License: Professional Architect

History (5 yrs.): None.

Earlier in the year, Complainant responded to two Requests for Qualifications issued by the State. Complainant was ranked first for both RFQ responses, and was awarded one of the projects. As part of an internal “lessons learned” process, Complainant has a practice of requesting copies of competitor submissions and of reviewer scoresheets for any state projects — regardless of whether awarded or not — and did so for each of these projects. Complainant received copies of the competitors’ submissions. Within Respondent’s responses to the RFQ for both of the projects, each submission listed multiple projects that were, in fact, completed by Complainant— including two of the five featured projects in each submission. According to Complainant, Respondent was not a member of the design team, or involved in any way, for these listed projects. While Respondent’s submissions correctly acknowledged the engineering and landscape architecture consultants who worked on certain projects, they did not correctly acknowledge that Complainant was the Architect of Record and sole designer for the projects listed. Respondent listed twenty-four total projects that are of similar scope to the State projects that were marketed. Seven of the twenty-four projects were completed by Complainant, not by Respondent. In their responses to these Requests for Qualifications, Respondent used written descriptions, renderings and photographs that appear to be illegally copied and/or downloaded from Complainant’s website, which is copyrighted. Within Respondent’s submissions, the marketing descriptions used for the State projects were copied word-for-word from Complainant’s website. Complainant alleges violations of Acceptance of Work, Public Statements, and Misconduct.

Respondent denies the allegations and understood that the project list in the Request For Qualifications (RFQ) can include projects from the proposing firm or its consultants. Respondent clearly stated that the projects listed include projects from Respondent and the consultants collectively. Respondent’s consultants worked with Complainant on some projects listed, but do not believe that Respondent violated any rules by including the consultants’ projects on the project list, as they were following the guidelines in the RFQ solicitation documents. Further it states, “A sampling of our design team’s collective similar experience is listed below.” The “design team” is commonly used and understood as the Designer and its consultants combined in the A/E industry. Respondent believes that the proposal is clear that the 24 listed projects are Respondent and its consultants’ work. Since those projects were included for the consultants’ experience, Respondent did not specify the Architect of Record. The renderings, photographs, written descriptions in question are on the project sheets that Respondent included for the consultants’ project experience, and the contents were submitted to Respondent by Respondent’s consultants for their project experience. These projects happen to be collaborative works of the consultants and Complainant. Respondent did not download the information from Complainant’s website. Respondent confirmed that the project information was provided by the consultants to feature their projects.

After review, it was determined that the complaint stems from how one interprets the information requested by Section B.2 of the Request for Qualifications issued by the State. It is unclear who is right

or wrong in their interpretation, so the information appears ambiguous. What is clear is when a project is presented in a proposal, all designers should be credited, not just the consultants for the project that might be a member of the proposer's design team. According to Rule 0120-02-.06, If a registrant uses visual representations of prior projects or experience, all registrants whose seal appears on plans, specifications and/or contract documents must be clearly identified." In reviewing the information presented, it appears that the Respondent is in violation of this portion of the Rule. This portion of the Rules should supersede any interpretation or misinterpretation of the RFQ, since "all registrants....must be clearly identified". The other allegations do not seem to warrant any penalty based on the ambiguity of the RFQ.

Reviewed by Board member: Frank Wagster

Mitigating Factors: Ambiguity in the interpretation of the RFQ

Aggravating Factors: Did not clearly identify all registrants whose seal appears on the plans

Recommendation: Authorize a civil penalty of \$500.00 by Consent Order and formal charges for not clearly identifying all registrants whose seal appears on the plans and pass the Laws and Rules Exam.

Board Decision: Concur.

5. 2024007141

First Licensed: 01/26/1999

Expiration: 02/28/2026

Type of License: Professional Engineer

History (5 yrs.): None.

Respondent self-reported that they mistakenly failed to renew their license when it expired January 31, 2023. Respondent realized their mistake on January 31, 2024, when they attempted to renew their license and found that it was expired. Respondent communicated this to the board via telephone and email on February 1, 2024. Respondent has since re-applied and had their license re-instated. During the time when the license was lapsed, respondent provided engineering and stamped drawings for 19 projects without realizing their license was inactive. The respondent stresses this mistake was unintentional but entirely their responsibility.

Mitigating Factors: The respondent self-reported. The respondent clearly did not realize they were working on an expired license.

Aggravating Factors: Respondent practiced on an expired license for a full year.

Recommendation: Send a letter of caution

Board Decision: Defer this matter to the next meeting and have an Engineer member review information regarding projects that were completed during the expired period.

6. 2024007221

First Licensed: 07/25/2017

Expiration: N/A

Type of License: Engineering Firm

History (5 yrs.): None.

Respondent self-reported that their Certificate of Authority in North Carolina is suspended in December 2023 due to tax related issues. Because the Certificate of Authority was suspended, so was their engineer license. The firm reports that they worked with accountants and the issue has been resolved and license reinstated in March 2024.

Reviewed by Board member: Eddie Jett

Mitigating Factors:

Aggravating Factors:

Recommendation: Send Letter of Caution.

Board Decision: Concur.

7. 2024014301

First Licensed: N/A (Unlicensed)

Expiration: N/A

Type of License: Architectural Firm

History (5 yrs.): None.

Complainant alleges Respondent is advertising architect and architectural services and does not have a licensed architect. It is visible on their physical signs and in digital advertising. Respondent states they only work on projects that are less than three stories and less than 5,000 square feet, per the exemption. Any projects that are not exempt are referred to local licensed architects.

Reviewed by Board member: Brian Tibbs

Mitigating Factors: Projects that are exempt under TCA 62-6-102(b)(1).

Aggravating Factors: Using appellations of Architecture without being licensed.

Recommendation: Authorize a civil penalty of \$1,000.00 by Consent Order and formal charges for using appellations of Architecture on social media and website. Also, order Respondent to remove appellations from all social media and website.

Board Decision: Concur.

8. 2024017611

First Licensed: 10/22/1989

Expiration: 03/31/2026

Type of License: Professional Architect

History (5 yrs.): None.

Respondent self-reported that he had practiced on an expired license. The license expired on 6/30/2023. Respondent states that he had been taking care of his wife who was going through back surgeries and recovery, failing to renew. Respondent stamped plans on two projects during the expired time however these projects were small residential renovations that were both less than 5,000 square feet, therefore being exempt.

Reviewed by Board member: Brian Tibbs

Mitigating Factors: Projects were small renovations and exempt under TCA-2-102(b)(1)

Aggravating Factors:

Recommendation: Send Letter of Caution and pass the Laws and Rules Exam.

Board Decision: Concur.

9. 2024015921

First Licensed: 12/30/2014

Expiration: 03/31/2026

Type of License: Professional Engineer

History (5 yrs.): None.

Respondent apparently self-reported that they had practiced on an expired license however the Respondent states they misunderstood the question. Respondent's current position with TVA is a power utilization engineer (PUE) that does not require a PE license. Since the previous license expired, Respondent has not performed any electrical engineering work that required a PE license.

Reviewed by Board member: Rob Barrick

Mitigating Factors: No violations found.

Aggravating Factors:

Recommendation: Close.

Board Decision: Concur.

10. 2024020131

First Licensed: 06/24/2005

Expiration: 06/30/2023

Type of License: Professional Engineer
History (5 yrs.): None.

Respondent apparently self-reported that they had practiced on an expired license when they went to renew in June 2023. However the Respondent states they misunderstood the question and mistakenly checked yes. Respondent was practicing but under direct supervision of a licensed engineer at his employment.

Reviewed by Board member: Jason Carder

Mitigating Factors: Working under licensed supervision for employer.

Aggravating Factors:

Recommendation: Close.

Board Decision: Concur.

11. 2024024551

First Licensed: 01/20/2009
Expiration: 01/31/2023
Type of License: Professional Engineer
History (5 yrs.): None.

Respondent self-reported providing services while license was expired. Respondent stated they have continued to be employed at a facility that does not require a PE nor does his position. Respondent mistakenly checked yes to the question. Respondent further states he does not offer engineering services at the facility he is employed, but rather research advisory services.

Reviewed by Board member: Eddie Jett

Mitigating Factors: No violations found

Aggravating Factors:

Recommendation: Close.

Board Decision: Concur.

12. 2024025541

First Licensed: 11/28/2007
Expiration: 11/30/2025
Type of License: Professional Architect
History (5 yrs.): None.

Respondent submitted certificates for 24 hours of PDH for the September 2023 registration renewal.

After review, only 5 hours were within renewal period. As per Rule, no PDH are rolled over to the next renewal period making Respondent deficient of 16 hours. Respondent states during the last period for retaining PDH, he was diagnosed with cancer and has been traveling to Texas to receive care ever since. During recovery, Respondent was placed on reduced hours and pay until October 2023. Respondent is trying to complete the 16 hours as fast as possible to be compliant.

Reviewed by Board member: Rob Barrick

Mitigating Factors: Health issues affecting completion

Aggravating Factors: Non-compliant with PDH

Recommendation: Send Letter of Warning.

Board Decision: Send Letter of Warning and require Respondent to take and pass the laws and rules exam.

RE-PRESENTATION

13. 2023025121

First Licensed: N/A (Unlicensed)

Expiration: N/A

Type of License: Engineering Firm

History (5 yrs.): None.

Complainant alleges Respondent is advertising "in house engineering" on its website and LinkedIn profile. Respondent is not registered as an engineering firm.

Respondent claims they do not self-perform engineering but instead partner with engineers and firms to perform the services. Respondent claims they do have electrical engineers on its payroll but do not design or stamp drawings. The website states "[Respondent] partners with elite engineers to provide owners..."

After review of the website, the Services Offered page states as follows: "Each and every electrical installation is fully staffed with [Respondent's] personnel. We can offer you valuable engineering expertise if necessary, ensuring a cost-effective, common-sense approach."

Under Experience it states: "**[Respondent]** has more than 20 years of averaged experience from designing to engineering and complete installation of electrical systems. Our personnel of managers, electricians, electrical engineers, and support are all outstanding in their respective fields."

Reviewed by Board member: Rob Barrick

Mitigating Factors:

Aggravating Factors:

Recommendation: Authorize a civil penalty of \$1,000.00 by Consent Order and formal charges for advertising engineering services without being registered.

Board Decision: Authorize a civil penalty of \$2,000.00 by Consent Order and formal charges for advertising engineering services without being registered and have Respondent remove all "Engineering" designations from their website.

New Information: This matter has encouraged thorough conversations with the Respondent's attorney and the use of appellations. Respondent believes that all of the instances referenced in the Consent Order and complaint, when viewed in context and not isolation, clearly demonstrates the limited use of the term "engineering" is in relation to design-build projects with engineering services being performed by Respondents "partners with elite engineers", not Respondent. Respondent asserts that Tennessee does not have an absolute ban on the use of the term engineering. An unreasonable, strict interpretation of these statutes would prevent an EIT from using the "Engineer in Training" appellation because it uses the term "engineer" with a qualifying adjective. According to Respondent, such a prohibition was clearly not the intent of that section and context is everything. There are many situations where these statutes do not require registration. For instance, TCA 62-2-103 sets forth at least six different exemptions to any such requirement. This is in addition to the lack of applicability of these statutes on any federal project or for services for which registration is not required (i.e., value engineering; industrial engineering; nuclear engineering; biomedical engineering; chemical engineering; aerospace engineering; etc.). Section 62-2-102 sets forth several other exemptions to the registration requirement.

Earlier, Respondent mentioned that its use of the appellations were in relation to design-build projects. The Board has a policy regarding design-build by contractors. As Respondent believes they fall under this policy, it states, contractors, without inhouse registrants, offering "design/build" services are in no way authorized to perform actual architectural, engineering, or landscape architectural services. Such professional services must be performed by duly qualified registrants in conformity with the provisions of TCA 62-2-101 et.seq. Contractors may offer "design/build" services to the public without having to comply with the firm disclosure and supervision requirements of TCA 26-6-601, provided no "architectural," "engineering," or "landscape architectural" services are offered inhouse. Further, Respondent claims that they follow the policy by offering design/build services by organizing the design team, comprised of Tennessee registered engineers competent in the work to be performed, prior to the time services are formally proposed. Additionally, these engineers are involved in any activity in preparation for or leading to a signed contract.

New Recommendation: Close

New Board Decision: Keep Board's original decision to authorize a civil penalty of \$2,000.00 by Consent Order and formal charges for advertising engineering services without being registered and have Respondent remove all "Engineering" designations from their website.

14. 2023035981**First Licensed: 10/03/1992****Expiration: 11/30/2024****Type of License: Professional Engineer****History (5 yrs.): 2021 – One complaint closed with letter of warning for failure to provide clear scope of project to client.**

Complainant contracted with Respondent on 03/28/2022 for site plans to show grading, water, SWPPP NOI, and for landscaping for the RV Park. Complainant alleges Respondent submitted plans that were not buildable and there were manholes 25' out of the ground. Complainant has been trying to work with Respondent for over a year and still does not have workable plans. Complainant also claims Respondent changed the payee on a check payable to the State for permits because it had to be paid online.

Respondent worked on plans from Spring of 2022 until June 13th and received a site plan/ project approval for 125 RV units following Complainant's wishes and direction. Respondent began to make construction plans shortly with level mass grade scenario approved with retaining walls and gravel roads. Respondent was attempting to make it affordable for Complainant to build. Complainant received grading quotes and decided to slope the RV park much more. Respondent regraded to accommodate. The entire layout and grades had to be redone from scratch to achieve this. The city sewer department told Respondent that manholes were needed. Complainant did not want manholes and recently ordered Respondent to take manholes out of the project, because other RV Parks do not have them. The city is maintaining the project must have public sewer standards met, even on the private side of the Pump Station with force main. The Planning Commission approved the project with manholes, Complainant does not want to pay for additional services needed to fully complete project. In early June Complainant and Respondent met at the office and Complainant stated the city is requesting a State Permit to start grading. A few days later, Respondent met with Complainant to have the SWPPP NOI TDEC permit signed. Respondent spent several hours on the TDEC website trying to upload docs and determined that TDEC no longer accepts checks and fees are paid online. Complainant informed Respondent of changes with the entry location and the electric info from the co-op. The plans that were uploaded to TDEC, and supplied by Complainant, were draft only as plans were in state of flux in June. Complainant wanted to remove storm pipes and inlets so Respondent prepared plans that was minimal and were sent to the city department for review. Once Respondent completed the SWPPP again with changes from June 8, 2023 until July 26, 2023, Respondent tried again to upload. Respondent deposited the permit check into the business account to pay for the fees online. Respondent was not able to successfully upload with the changes made until July 27 for TDEC review. Respondent indicates that the parties have spoken and vowed to work together on the project. Respondent will provide a new agreement with Complainant due to many changes wanted to be cost effective. Respondent further emphasizes the plans Complainant submitted were not the plans approved and reflect attempts to get base right before final hydraulic and sewer work can be completed without changing 30 sheets now multiple times.

Reviewed by Board member: Alton Hethcoat

Mitigating Factors:

Aggravating Factors:

Recommendation: Discuss

Board Decision: Defer to the February meeting.

New Information: Based on the review, the plans included numerous errors and omissions that would be critical to construction, as well as compliance with standard utility, drainage, grading, parking requirements that would normally be components of any Subdivision Regulations. More importantly, the errors and omissions would negatively impact the safe use of the facilities. Respondent also changed the name on a check that was issued by the Complainant to the State of TN for regulatory review fees, scratched out "State of Tennessee", inserted his own name, then cashed the check. When confronted by the Complainant, the Respondent stated that the State of TN would only take a credit card and was reimbursing himself for the cost of the review fee. When the Complainant checked with the State of TN, they found no record of the payment by credit card for the review fees.

New Recommendation: Authorize the voluntary surrender of the license for 6 months by Consent Order and formal charges and present the next set of stamped plans, after the suspension, to the Board for review.

New Board Decision: Authorize the voluntary suspension of Respondent's license for 6 months, with all projects to cease and desist. After the suspension, authorize probation for 6 months, with a list of all work product to be reviewed by the Board by Consent Order and formal charges. The Board will randomly select at least three (3) projects for expert review and present to the Board during the probationary period. Further, the Respondent shall take and pass the laws and rules exam.

New Information: Respondent's attorney sent additional information regarding this case. During the time this complaint has been active, the complainant has continued to work with the respondent and use their services. They allege that the reason for most of the allegations made by complainant are because of the 19-change orders that have been requested by the complainant to date. Allegedly each time they requested changes the respondent would send the proposed new plans to the complainant, and these were for quick review and not intended to be submitted for approval. It seems when plans have been submitted, they were approved. Respondent also alleges that many of these change orders were attempts to remove or relocate the manholes that the city required, meaning the requested changes would have made the plans were not compliant with city codes. Regarding the check, the complainant says they asked for a \$1000 check to pay TDEC fees. Once they realized that TDEC now required all fees to be paid online they attempted to get the fees paid and they never intended to defraud the complainant. They did submit a receipt showing the fee of \$1000 to TDEC to have been paid.

New Recommendation: Discuss.

New Board Decision: Keep Board decision to authorize the voluntary surrender of the license for 6 months by Consent Order and formal charges and present the next set of stamped plans, after the suspension, to the Board for review.

ADJOURNMENT

There being no additional business, Melanie Doss adjourned the meeting at 11:17 a.m.