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BEFORE THE WEST VIRGINIA STATE BOARD OF
REGISTRATION FOR PROFESSIONAL ENGINEERS

WV PE BOARD

IN RE: WILLIAM L. TONEY, JR.

C2016-09

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers by Edward L. Robinson, P.E., its President, (hereinafter “the Board”) for the purpose of agreeing to resolve a disputed Complaint seeking disciplinary action against William L. Toney, Jr. (hereinafter “Respondent Toney”). As reflected in this document, the parties have reached an agreement concerning the proper disposition of this 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 Toney is an engineer licensed in West Virginia, holding license number 11844, currently residing in the State of Kansas.
3. Respondent is the same William L. Toney, Jr., who has been disciplined by this Board in connection with C2012-09 and C2014-15.
4. It came to the attention of this Board that Respondent’s West Virginia seal and signature were affixed to architectural drawings submitted for a permit to the City of Lewisburg, West Virginia.
5. The Board, by motion at its regular meeting on September 15, 2015, initiated C2016-09, alleging that Respondent had misused his seal and, in so doing, had violated several of the Rules of Professional Responsibility.

6. Respondent filed a timely response stating he had never seen the drawings, had not signed or sealed the drawings, and that it was a forgery that could be done by anyone with a scanner and computer.

7. After further investigation, it was discovered that a former employee of one of Respondent's engineering firms which is no longer in business often, with Respondent's permission and reportedly after the supervision and verification required by West Virginia Engineering Law, affixed Respondent's seal and signature to the engineering work.

8. This former employee, R.W. Russell, is listed on the drawing as the Principal of Design Development Group.

9. The Board, despite significant efforts, has been unable to locate Mr. Russell or verify whether there was ever a business by the name of Design Development Group, but finds that, under the best case scenario, Respondent's practice of permitting his seal and signature to be placed on drawings by his former employee led to this employee's access to and use of Respondent's seal and signature on the drawings submitted to the City of Lewisburg.

10. The Board finds this practice subjects Respondent to discipline for not being responsible for the use of his seal.

11. The Board further finds that this is not the type of violation that relates to the quality of Respondent's engineering work so as to require limitations on or the termination of Respondent's privilege to practice engineering as set forth in the Consent Order resolving C2014-15, but continues to have concerns regarding the number of complaints and violations that have been addressed by this Board regarding this Respondent.

12. The Board has taken into account the following factors in reaching this settlement: the Board's inability to locate witnesses necessary to determine the disputed facts, Respondent's

previous violations, and Respondent's candor in admitting that he permitted the former employee to place his seal on engineer work.

13. The Board has incurred administrative costs in connection with C2016-09 in excess of One Thousand Dollars (\$1,000.00) in the investigation, initiation and resolution of this Complaint.

CONCLUSIONS OF LAW

14. The Board is the state entity with the power and duty to regulate the practice of engineering in the State of West Virginia, and matters related to such practice are within the jurisdiction of the Board. W. Va. Code § 30-13-1 *et seq.*

15. The Board may discipline any professional engineer who has failed to comply with any of the provisions of Article 13 or any of the rules promulgated under Article 13. W. Va. Code § 30-13-21(a)(4).

16. Each registrant is solely responsible for the use of his or her seal. W. Va. Code R. § 7-1-7.3(e).

17. The registrant is responsible for the improper use of the seal on work not prepared either by the registrant or under his or her direct supervision. W. Va. Code R. § 7-1-7.3(h).

18. West Virginia engineering law consistently references only the registrant as being the person who places a seal and signature on engineering work.

19. Based on the totality of the circumstances, while the possibly rogue use of Respondent's seal by a former employee may have been beyond Respondent's control, the fact that Respondent had a practice of not being solely responsible for use of his seal evidences a pattern and practice of being in violation of W. Va. Code R. § 7-1-7.3(e) and constitutes the improper use of his seal in violation of W. Va. Code R. § 7-1-7.3(h).

CONSENT OF RESPONDENT

William L. Toney, by affixing his signature hereon, agrees to the following:

20. Respondent is aware of his right to be represented by counsel and to pursue this matter through appropriate administrative and/or court procedures, including his right to a formal hearing before the Board, and Respondent intelligently and voluntarily waives these rights provided the Board accepts the terms and conditions set forth in this Consent Order.

21. Respondent Toney acknowledges he is solely responsible for the use of his seal and admits he allowed his former employee to affix his seal and signature on prior work, which likely led to that employee's affixing his seal and signature to drawings which Respondent did not review or perhaps even know about.

22. 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 C2016-09. This paragraph is binding upon Respondent even in the event that the Board does not approve this Consent Order.

23. Respondent acknowledges that this Consent Order is being executed for the purpose of avoiding further administrative action with respect to the above-styled matter. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning C2016-09 in consideration of this Consent Order.

24. Should the Board not approve this Consent Order, Respondent waives any objections to the Board or any of its members participating in the adjudication of this matter. This paragraph is binding on the Respondent even if the Board does not approve this Consent Order.

25. Respondent acknowledges that the Board may reject this proposal, notice and complete the hearing and, upon adjudication, impose such sanctions of a disciplinary nature as it deems appropriate.

26. 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 same may be the subject of any appeal or other civil or administrative action except an action to enforce the terms of this Consent Order in the Circuit Court of Kanawha County. Respondent further acknowledges that he was on notice that the Board would consider the prior disciplinary actions taken by this Board against Respondent with regard to any future disciplinary matter involving Respondent's quality of work which may come before this Board.

27. Respondent understands that the complaint, the written response, this Consent Order, and perhaps other documents not exempted from disclosure are public records which must be made available upon legal request in accordance with the state's Freedom of Information Act.

28. 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).

29. 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 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.

30. Respondent acknowledges that proof of any material misstatement or misrepresentation made in connection with this matter will result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation of any license or certification issued to Respondent by the Board, 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.

ORDER

1. On the basis of the foregoing, and upon entry of this Consent Order, the Board hereby **ORDERS** that this Consent Order shall serve as settlement of Complaint number C2016-09 pursuant to West Virginia Code § 30-13-22(b).

2. The Board **REPRIMANDS** Respondent for engaging in practices that facilitated the loss of control of the use of his seal, for which Respondent is solely responsible.

3. The Board **ORDERS** that Respondent shall not relinquish possession of his physical seal to any person at any time, nor shall he allow any other person to affix his seal to any document, and Respondent shall report to the Board any known use of any electronic or other representation of his seal within thirty (30) days of his discovery of such use.

4. The parties agree that Respondent shall pay administrative costs in the discounted amount of Five Hundred Dollars (\$500.00), which shall be paid within thirty (30) days from the date of entry, 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 shall be immediate cause for further disciplinary action by the Board.

7. This Consent Order may be summarily enforced in the Circuit Court of Kanawha County without further notice to Respondents upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed to herein (\$500.00), 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 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. This shall not prohibit the Board from considering this disciplinary action or the former disciplinary actions, or the circumstances giving rise to the same, with regard to any future disciplinary matter involving Respondent which may come before this Board.

9. After the second disciplinary action taken against Respondent by the Board, Respondent was put on notice that there would or may be limitations on or termination of his license in the event of a subsequent disciplinary action based on the quality of Respondent's engineering work. Respondent is now put on notice that the Board shall not be limited to considering such sanctions only due to subsequent disciplinary action based on the quality of Respondent's engineering work, but may impose or require a sanction which may be more severe than would ordinarily be warranted by the specific violation if considered by the Board to be reasonable and necessary due to the number of disciplinary actions taken against Respondent by this Board and the nature of the subsequent violation.

10. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the civil penalties and administrative costs agreed to herein.

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:



WILLIAM L. TONEY, JR.

9/13/16
DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 13th day of October, 2016.

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

By: 

EDWARD L. ROBINSON, P.E.
BOARD PRESIDENT