

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

**IN RE: JAMES A. JONES
 JONES & JORDAN ENGINEERING, INC.**

C2010-12

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 disciplinary action to be taken against James A. Jones (hereinafter “Respondent”) and Jones & Jordan Engineering, Inc. (hereinafter “Respondent Firm”). 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 Firm, Jones & Jordan Engineering, Inc., is organized under the laws of the State of West Virginia with its principal place of business located in Beckley, West Virginia.
3. This third-party complaint was filed by on November 19, 2009, and served on Respondents on November 24, 2009.
4. Respondents filed a timely response on December 18, 2009, and a supplemental response on January 10, 2009.
5. In some regards, the issues raised in this complaint were also at issue in a federal court civil action in which Respondents were represented by counsel.
6. This matter involves a complex relationship between the parties involving a coal sublease dated January 16, 2004, wherein principals in Respondent Firm were also principals in the lessor company and Respondent Firm also contracted to “be exclusive engineers on all elements pertaining to this agreement [the sublease].”

7. Because of the complex nature of the relationship and issues which were commercial in nature and outside the jurisdiction of the Board, the Board, without granting a stay, agreed to delay consideration of the matter, in part to allow discovery between the parties in the judicial forum.
8. The civil matter was stayed pending court-ordered arbitration, and the Board continued to stay apprised of developments.
9. During the Fall of 2011, Respondents' counsel in the civil action notified the Board that the matter had been fully resolved in Respondents' favor, but, after review of the relevant documents, the Board ascertained that the ruling related only to the current validity of the coal lease and that the allegations of this Complaint were not and likely would not be addressed in the civil action.
10. The complaint was noticed for hearing on September 18, 2012, by notice served on August 9, 2012.
11. At Respondents' request, the hearing was continued and an informal conference was held instead after appropriate waivers were signed by the parties and the complainant.
12. The issues raised in the complaint which are the subject matter of this disciplinary action are the following:
 - a. Violations of W. Va. Code § 30-13(2) relating to allegations of misconduct;
 - b. Violations of W. Va. Code § 30-13(11) relating to allegations that Respondents engaged in dishonorable, unethical or unprofessional conduct likely to deceive, defraud or harm the public; and
 - c. Violations of W. Va. Code R § 7-1-12 relating to allegations that Respondent Jones violated the Code of Professional Responsibility which requires professional engineers to avoid conflicts of interest in order to fully serve the interests of their clients (W. Va. Code R § 7-1-12.2(d)), to be truthful in professional reports and statements (W. Va. Code

R § 7-1-12.3(d)), and to not accept compensation from more than one party for services on the same project (W. Va. Code R § 7-1-12.4(f)).

13. While there is evidence of violations of the Rules of Professional Responsibility, there is not conclusive evidence that Respondent Jones was responsible for the actions comprising such evidence and, in the interest of resolving this complex matter, the Board agrees to bring no disciplinary action against Respondent Jones and to proceed solely against Respondent Firm.
14. The Board makes the following findings, and Respondents admit same, all of which support the allegations that Respondent Firm engaged in misconduct and unprofessional conduct:
 - a. Someone signed the signature of their client (Complainant) to at least three forms which were submitted to the West Virginia Department of Environmental Protection (WV-DEP).
 - b. One of these three forms was notarized by an employee of Respondent Firm, which had a pattern and practice of notarizing signatures outside the presence of the signatory.
 - c. Respondent Firm did not provide a copy of these submissions to Complainant, nor otherwise respond to requests for information from Complainant, despite several requests for information regarding the status of Respondent Firm's work for the client.
 - d. There was no clear cessation of the contractual relationship between Respondent Firm and its client.
15. The Board finds that the lack of communication constitutes several acts of misconduct in the practice of engineering which continued over the course of at least several months, but agrees to treat this as one offense for purposes of this settlement.
16. The Board finds that Respondent Firm's allowance of a simulated signature of a client on documents submitted to a governmental agency without clear authorization and/or without subsequent provision of the documents to the client, and in one instance the notarization of a simulated signature outside the presence of the signatory, constitutes both an act of

misconduct in the practice of engineering and dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public.

17. The Board finds that the simulated signature occurred on at least three occasions, and that one of those simulated signatures was notarized, but the Board agrees to treat this as one offense of unprofessional conduct of a character likely to deceive the public for purposes of this settlement.
18. The Board finds that the Rules of Professional Responsibility set forth in West Virginia engineering law (W. Va. Code R § 7-1-12) provide both requirements and prohibitions that serve to guide professional engineering firms in adopting patterns and practices that facilitate a professional engineer's compliance with and adherence to the rules setting forth a professional engineer's obligations generally and the specific obligations to society, employers and clients, and other professional engineers.
19. The Board finds that certain patterns and practices at Respondent Firm regarding the signature and communication issues did not facilitate a professional engineer's compliance with and adherence to the Rules of Professional Responsibility.
20. Both James A. Jones and Kevin W. Jordan, as owners of Respondent Firm, have the power and authority to make admissions and otherwise act on behalf of Respondent Firm.
21. In determining the amount of a civil penalty agreed to herein, in addition to the circumstances leading to the violation and the interest of the public, which are factors always considered by the Board, the Board has considered what amount will be an economic deterrent to future violations, such that Respondent Firm will adopt policies and practices that meet or exceed State law governing the notarization of documents and the rules setting forth a professional engineer's obligations to its clients.
22. Factors considered by the Board in mitigation of Respondents' actions giving rise to disciplinary action include no prior history of violations, Respondents' cooperation with

this Board and its investigation, and the lack of evidence regarding specifically who was responsible for the simulated signature and the failure to communicate with its client.

23. The Board has incurred administrative costs in excess of \$5,500.00 in this matter, including reviewing the substantial record developed in the civil litigation and arbitration, obtaining a handwriting analysis, and having to notice the Complaint for hearing prior to Respondents' willingness to engage in meaningful settlement discussions.

CONCLUSIONS OF LAW

24. 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.
25. The Board's authority to take disciplinary action against any person found to be in violation of West Virginia engineering law extends to firms and authorizes the Board to revoke or suspend a Certificate of Authorization of a West Virginia engineering firm or place that firm on probation for a period of time and make the firm subject to conditions as the Board may specify. W. Va. Code § 30-13-21(d)(1), (2) and (3).
26. The Board may also assess a civil penalty and related costs against any firm for each count or separate offense in an amount set by the Board. W. Va. Code § 30-13-21(d)(4).
27. Professional misconduct is an action that could subject the Respondent Firm to discipline by the Board, including a civil penalty up to \$1,000.00 for each offense. W. Va. Code R. § 7-1-15.1.
28. Dishonorable, unethical or unprofessional conduct of a character likely to deceive or defraud the public could subject the Respondent Firm to discipline by the Board, including a civil penalty up to \$15,000.00 for each offense. W. Va. Code R. § 7-1-15.1.
29. In determining the amount of a civil penalty to be assessed, the Board may consider such factors as:
 - (a) Whether the amount imposed will be a substantial economic deterrent to the violation;
 - (b) The circumstances leading to the violation;

- (c) The nature and severity of the violation and the risk of harm to the public;
- (d) The history of previous violations;
- (e) The extent to which the cited person or firm has cooperated with the Board and the Board's investigation;
- (f) The economic benefits gained by the violator as a result of the noncompliance;
- (g) The interest of the public; and
- (h) Other matters as may be appropriate.

W. Va. Code R. § 7-1-15.4.

30. The Board, in its discretion, may assess administrative costs incurred in the performance of its enforcement or investigatory activities against any person or entity that violates any provision of West Virginia engineering law, which costs shall be paid to the West Virginia State Board of Registration for Professional Engineers by check or money order within a period of thirty (30) days from the date of the order entered by the Board. W. Va. Code R. § 7-1-14.4.

CONSENT OF RESPONDENTS

Respondent James A. Jones, individually, by affixing his signature hereon, agrees to the following and James A. Jones and Kevin W. Jordan, as owners of Respondent Firm, have the power and authority to make admissions and otherwise act on behalf of Respondent Firm and, by affixing their signatures hereon, agree to the following:

31. Respondents were represented by counsel during the informal conference and in the settlement negotiation.
32. Respondents are aware of their option to pursue this matter through appropriate administrative and/or court procedures, and Respondents intelligently and voluntarily waive their right to do so.
33. Respondent Firm agrees to the dismissal of this Complaint as to James A. Jones, individually, and agrees that this disciplinary action shall proceed solely against Respondent Firm.

34. Respondent Jones agrees that the Board, despite dismissing him from this Complaint, may take his involvement in the actions which gave rise to disciplinary action against Respondent Firm into consideration should Respondent Jones be the subject of an investigation by or disciplinary proceeding before this Board in the future.
35. Respondents accept the findings set forth above and consent to the entry of this Consent Order freely and voluntarily and without duress, restraint or compulsion.
36. Respondents acknowledge that the Board may reject this proposal and may hold a hearing to impose such sanctions of a disciplinary nature as it deems appropriate.
37. Respondents acknowledge 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 C2010-12. This paragraph is binding on Respondents even in the event that the Board does not approve this Consent Order.
38. This Consent Order is executed by Respondents for the purposes of avoiding further administrative action with respect to this Complaint. In this regard, Respondents authorize the Board to consider matters discussed at the informal conference and to review and examine all materials concerning the Respondents prior to or in conjunction with consideration of this Consent Order.
39. 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 Respondents. This paragraph is binding on Respondents even if the Board does not approve this Consent Order.

40. Respondents acknowledge that this Consent Order, the underlying Complaint and responses thereto, the documents related to the civil litigation, and any other court documents, documents from public entities, or documents made available to the Board by Respondents are public records which must be made available upon legal request in accordance with the state's Freedom of Information Act.
41. Respondents agree that the sum and substance of the Complaint and this Consent Order 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).
42. Upon acceptance by the Board, 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 by Respondents except an action to enforce the terms of this Consent Order.
43. Respondents acknowledge that non-compliance with this Consent Order may result in the rescission of this Consent order, the reinstatement of the Complaint, the summary revocation of any license or certification which may be issued to Respondents by the Board, and the addition of any other charges which may arise or ensue from Respondents' non-compliance with this Consent Order.
44. Respondents acknowledge that proof of any misstatement or misrepresentation made in connection with this matter will result in the rescission of this Consent Order, the

reinstatement of Complaint C2010-12, the summary revocation of the certificate of authorization issued to Respondent Firm, 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.

45. 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** that Respondent Jones be dismissed from C2010-12.
3. The Board **ORDERS** Respondent Firm to pay a civil penalty in the maximum amount of One Thousand Dollars (\$1,000.00) for one offense of misconduct in the practice of engineering with regard to the communication issue.
4. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Four Thousand Dollars (\$4,000.00) for one offense of unprofessional conduct of a character likely to deceive the public with regard to the signature issues.
5. The Board **ORDERS** Respondent Firm to pay administrative costs in the discounted amount of Three Thousand Dollars (\$3,000.00).
6. The administrative costs agreed to herein in the total amount of Three Thousand Dollars (\$3,000.00) must be paid within thirty (30) days from the date of the Board's entry of this Consent Order evidenced by the date of the President's signature, such payment to be made payable to the W. Va. P.E. Board.

7. The civil penalty agreed to herein in the total amount of Five Thousand Dollars (\$5,000.00) must be paid within six months from the date of the Board's entry of this Consent Order evidenced by the date of the President's signature, such payments to be made payable to the W. Va. P.E. Board for transfer to the general fund of the State of West Virginia upon receipt.
8. The sum and substance of the Complaint and this Consent Order 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 NCEES.
9. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board, including revocation of Respondent Firm's certificate of authorization to practice engineering in this State.
10. 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 to enforce the terms of this Consent Order.
11. If the civil penalties and 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 Respondents upon application by the Board for the entry of a Judgment Order for the total amount of the payment agreed to herein of Eight Thousand Dollars (\$8,000.00), 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.

12. 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.
13. 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 A. JONES, Individually and on behalf of
JONES & JORDAN ENGINEERING, INC.

3/6/2013
DATE



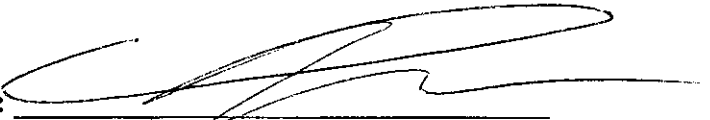
KEVIN W. JORDAN, on behalf of
JONES & JORDAN ENGINEERING, INC.

3/6/2013
DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this:

19th day of March, 2013.

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

By: 
EDWARD L. ROBINSON, P.E.
BOARD PRESIDENT

PREPARED BY:

**DEBRA L. HAMILTON (WV Bar ID1553)
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for the West Virginia Board of Registration for Professional Engineers

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