

**BEFORE THE ARCHITECTURAL EXAMINING BOARD
OF THE STATE OF IOWA**

| | | |
|-----------------------------------|---|-----------------------------|
| IN THE MATTER OF: |) | |
| |) | Case no. 03-16 |
| EDWARD CABLE |) | |
| 558 NORTH RIVER DRIVE |) | |
| NORTH SIOUX CITY, NE 57049 |) | Statement of Charges |
| |) | |
| RESPONDENT |) | |

COMES NOW the Complainant, Glenda Loving, and states:

1. The Complainant is the Executive Secretary of the Iowa Architectural Examining Board and files these charges solely in her official capacity.
2. The Board has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 272C and 544AB (2003).
3. The Board issued the Respondent, Edward L. Cable, Iowa registration number 1575 on January 26, 1973.
4. Respondent's architecture registration is in active status with an expiration date of June 30, 2004.

Count I

Respondent is charged with failure to comply with a Board order in violation of Iowa Code section 272C.3(2)(a)(2003).

Circumstances

1. On May 13, 2003, the Board and the Respondent signed a Consent Order, a true copy of which is attached as Exhibit A.
2. The Consent Order required that the Respondent complete the NCARB monograph on professional conduct by July 1, 2003 in addition to all other requirements outlined in the Order. The hours earned from the monograph do not apply to future renewals.
3. On June 30, 2003, the board received a letter from the respondent indicating that "Due to a scheduling problem on my part, I did not get the NCARB work completed by today but I hope to complete such with results to you by next Monday." The board never received the results.
4. On August 8, 2003, the Executive Officer contacted NCARB by email regarding whether or not the Respondent had completed the NCARB monograph on professional conduct. On August 18, NCARB responded by email indicating that there is no record of an order request from the Respondent.
5. On August 5, 2003, via certified mail, return receipt requested, the Board attempted to correspond with the Respondent to notify him that he was out of compliance with the Consent Order because he had not submitted the required documents. The Post office record indicated that notice was left on August 8, 2003 and returned to sender on September 5, 2003.

6. The week of September 1, 2003, the Respondent was contacted by telephone regarding the letter. He indicated that he would go to the post office to retrieve it.
7. On September 8, 2003, via fax, the Respondent contacted the board and indicated that he had been to the post office and no record existed of the letter.
7. On September 9, 2003, the Iowa Architectural Examining Board found probable cause to file this Statement of Charges and to order a hearing be set in this case.

WHEREFORE, the Complainant prays that a hearing be held in this matter and that the Board take such action as it deems appropriate under the law.

Signed and dated this 11th day of September, 2003

Department of Commerce,
Professional Licensing and Regulation Division

FILED 9/11/03 (Date)

Architectural
Examining Board
Signature: Executive Officer


Glenda Loving, Executive Officer
Iowa Architectural Examining Board

BEFORE THE IOWA ARCHITECTURAL EXAMINING BOARD
OF THE STATE OF IOWA

| | | |
|----------------------|---|---------------------|
| IN THE MATTER OF: |) | |
| |) | DIA NO. 03DOCAR002 |
| EDWARD L. CABLE |) | |
| PO BOX 1616 |) | FINDINGS OF FACT, |
| Sioux City, IA 51102 |) | CONCLUSIONS OF LAW, |
| |) | DECISION AND ORDER |
| RESPONDENT |) | |

On September 11, 2003, the Iowa Architectural Examining Board (Board) filed a Statement of Charges against Edward L. Cable (Respondent). The Statement of Charges alleged that the Respondent violated Iowa Code section 272C.3(2)(a)(2003) when he failed to comply with a Board Order.

A Notice of Hearing was issued setting the hearing for November 13, 2003. A telephone prehearing conference was held on November 7, 2003 at 2:00 p.m. The state submitted a Prehearing Conference Report and exhibits 1-6. The prehearing conference record was held open until November 10, 2003 for the Respondent to submit his additional exhibit, which was marked Exhibit 7. The parties stipulated to the admission of the seven exhibits.

The hearing was held on November 13, 2003 at 10:00 a.m. in the conference room at the Iowa Department of Commerce, 1920 S.E. Hulsizer, Ankeny, Iowa. The hearing was closed to the public at the Respondent's request, pursuant to Iowa Code section 272C.6(1)(2003). The following Board members were present for the hearing: Dale McKinney, Architect, Chairperson; Teri A. Petrzalek, Architect; Jeffrey Morgan, Architect; Martha Green, Architect; Gordon E. Mills, Architect; Susan McKinney and Ann Diehl, public members. The Respondent appeared and was not represented by counsel. The state was represented by Pamela Griebel, Assistant Attorney General. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, assisted the Board in conducting the hearing. The testimony was recorded by a certified court reporter.

After hearing the testimony and examining the exhibits, the Board convened in closed executive session to deliberate its decision, pursuant to Iowa Code section 21.5(1)(f)(2003). The

Administrative Law Judge was instructed to prepare the Board's order, in conformance with their deliberations.

THE RECORD

The record includes the State's Prehearing Conference Report, the testimony of the Respondent, and the following exhibits:

- Exhibit 1: Notice of Hearing, Statement of Charges (with 5/13/03 Consent Order attached), Proof of Service
- Exhibit 2: Case No. 03-02, Notice of Hearing and Statement of Charges
- Exhibit 3: Respondent Letter, 6/30/03
- Exhibit 4: NCARB emails
- Exhibit 5: Respondent Fax and Post Office Tracking
- Exhibit 6: Prior Board Orders
- Exhibit 7: NCARB Monograph Order Form and check, submitted 11/10/03

FINDINGS OF FACT

1. The Respondent was issued Iowa registration number 1575 on January 26, 1973. The Respondent allowed his Iowa registration to lapse on June 30, 2002 and later reinstated his Iowa registration effective July 8, 2003. The Respondent's Iowa architecture registration is currently in active status with an expiration date of June 30, 2004. (State Exhibit 1; Stipulation of the Parties)

Prior Disciplinary History

2. The Respondent has a history of previous discipline by this Board. On November 13, 1990, a Statement of Charges was filed charging the Respondent with violating a rule of professional conduct promulgated by the Board, in violation of Iowa Code section 118.29. A hearing was held and on March 26, 1991, the Board issued its final decision. The Board determined that the

Respondent knowingly designed the North Iowa Juvenile Detention Center in violation of state and municipal building laws and regulations. The Board also determined that the Respondent failed to act with reasonable care and competence and failed to apply the technical knowledge and skill which is ordinarily applied by architects of good standing, practicing in the same locality, when he waited many months before submitting plans to the State Fire Marshal's Office for the Juvenile Detention Center. The Board issued a citation and warning to the Respondent for his violations. (Exhibit 6)

3. On March 25, 2003, the Board filed a second Statement of Charges against the Respondent, charging him with unethical conduct and practice harmful and detrimental to the public when he practiced architecture and held himself out as an architect after his registration had lapsed on June 30, 2002. (Exhibit 2)

On May 13, 2003, the second Statement of Charges was resolved when the Respondent and the Board entered into a Consent Order. Pursuant to the terms of the Consent Order, the Respondent was reprimanded for practicing architecture with a lapsed registration and was ordered to pay a civil penalty of \$500 no later than July 1, 2003. In addition, the Consent Order included the following remedial orders:

C. Remedial Orders

(1) Respondent shall cease to perform or to hold out as authorized to perform professional architectural services in the state of Iowa until he has been duly reinstated by the Board.

(2) Respondent shall provide the Board with a duly-notarized affidavit no later than June 1, 2003, listing all activities he has performed in the state of Iowa from and after July 1, 2002, which required registration as an architect. The list shall include, but not be limited to, all documents Respondent certified or sealed in the state of Iowa.

(3) By June 15, 2003, Respondent shall mail written notice to all clients for whom he performed architectural services in the state of Iowa from and after July 1, 2002. The notice shall advise the client that Respondent's registration has lapsed. Copies of the letter shall be submitted to the Board no later than June 20, 2003.

(4) If Respondent certified or sealed any architectural documents in the state of Iowa, Respondent shall take all steps required under rule 193B Iowa Admin. Code 2.6 to reinstate his registration by July 1, 2003. Respondent, once reinstated, shall recertify and reseal, as applicable, all documents certified or sealed while his registration has expired. Respondent shall provide proof of compliance no later than July 15, 2003.

(5) Respondent shall complete NCARBs monograph on professional conduct by July 1, 2003, in addition to all other requirements. The contact hours shall not apply to future renewals.

The last requirement was added at the time that the Consent Order was approved by the Board and its addition was initialed and dated by the Respondent. (Testimony of Respondent; Exhibit 1)

The Current Violation

4. On June 30, 2003, the Respondent sent a letter to the Board's Executive Secretary, which stated:

Due to a scheduling problem on my part, I did not get the NCARB work completed by today but I hope to complete such with results to you by next Monday. I apologize to both you and the Board.

(Exhibit 3) The Respondent claimed that when he sent this letter he was relying on information from his secretary, who told him that he would not have to order anything from the National Council of Architectural Examining Boards (NCARB) and could complete the monograph by logging on the internet to take the test. However, the Respondent admits that after sending the letter, he did not attempt to order or complete the (NCARB) monograph. (Testimony of Respondent)

5. The Respondent's registration was reinstated by the Board effective July 8, 2003. (Stipulation of Fact). Although the Respondent submitted his continuing education and reinstatement request to the Board, he denies that he knew his registration had been reinstated. The Respondent denies receiving his registration card in the mail. The Respondent claims that he believed that the Board would delay his reinstatement until

after he completed the NCARB monograph. This testimony was not credible. (Testimony of Respondent)

6. On August 4, 2003, the Board sent the Respondent a certified letter, which noted that the Board had not yet received confirmation of the Respondent's completion of the monograph and which required him to provide evidence of his completion of the monograph by August 15, 2003. The Respondent was warned that failure to comply would likely result in the Board's filing of a Statement of Charges. (Exhibit 5)

The Respondent acknowledged that the certified letter was sent to his correct mailing address. On September 8, 2003, the Respondent sent a fax to the Board's Executive Secretary stating that when he went to the post office, they did not have the letter or a record of having a letter. However, a post office tracking document reveals that the post office left a notice for the Respondent on August 8, 2003, but the letter remained unclaimed as of September 5, 2003. (Exhibit 5)

7. On August 8, 2003, the Board's Executive Secretary sent an email to the Manager/Professional Development Program for NCARB to inquire whether the Respondent had in fact completed the required course. As of August 18, 2003, NCARB had not received an order request for the professional conduct monograph from the Respondent. (Exhibit 4)

On September 11, 2003, the Board filed a Statement of Charges against the Respondent charging him with violating a Board Order by failing to complete the required NCARB monograph. The Statement of Charges and Notice of Hearing were personally served on the Respondent by the sheriff on September 18, 2003. (Exhibit 1)

On October 9, 2003, the Board's Executive Secretary again emailed the Manager/Professional Development Program at NCARB, and asked whether the Respondent had ordered and/or completed the required monograph. As of October 14, 2003, the Respondent had not ordered the required monograph from NCARB. (Exhibit 4)

8. The Respondent admits that as of the date of the hearing, he had not completed the NCARB monograph on professional conduct. The Respondent ordered the monograph from NCARB on November 10, 2003, just three days before the hearing. (Exhibit 7) He expected to receive the monograph on November 13 or 14,

2003 and promised that it would be completed within two days after its receipt. (Testimony of Respondent)

CONCLUSIONS OF LAW

Iowa Code section 544A.1(2003) provides that the practice of architecture affects the public health, safety, and welfare and is subject to regulation and control in the public interest. Only persons qualified by the laws of the state are authorized to engage in the practice of architecture in the state.

Iowa Code section 272C.3(2)(a)(2003) provides, in relevant part:

2. Each licensing board may impose one or more of the following as licensee discipline:
 - a. Revoke a license, or suspend a license either until further order of the board or for a specified period, ...upon failure of the licensee to comply with a decision of the board imposing licensee discipline;

The preponderance of evidence established that the Respondent violated Iowa Code section 272C.3(2)(a)(2003) when he failed to complete the NCARB monograph on professional conduct by July 1, 2003, as required by the May 13, 2003 Consent Order. On May 13, 2003, the Respondent voluntarily agreed to comply with all of the terms of the Consent Order, including completion of the NCARB monograph on professional conduct. While this requirement was essential to the Board's acceptance of the Consent Order, it was far from onerous. The Respondent concedes that he had no excuse for not completing the NCARB monograph on professional conduct prior to July 1, 2003 and he has no excuse for not completing the monograph prior to his hearing with the Board.

The Respondent's failure to comply with the terms of the Consent Order involves more than procrastination and lack of attention to detail. He has demonstrated a pattern of disregard for the Board and for his legal obligations as a registered architect in the state of Iowa, and his conduct raises serious doubts about his credibility. The Respondent wrote to the Board on June 30, 2003 and committed to completing the monograph within a week, but then took no action whatsoever to follow through on this commitment. In addition, he never contacted the Board to report his progress or explain his failure to follow through as promised. When the Board attempted to contact him, he failed to pick up the Board's certified letter at the post office. Even after the Board had the sheriff personally serve the Respondent

with a Statement of Charges on September 11, 2003, he still did not communicate with the Board, nor did he order or complete the NCARB monograph. The Respondent finally ordered the monograph three days prior to his hearing.

The Board and its staff have been forced to commit an inordinate amount of time and effort to enforce the Consent Order. It was the Respondent's responsibility, not his secretary's responsibility, to determine what was necessary to achieve timely compliance with the Consent Order and to communicate with the Board.

ORDER

IT IS THEREFORE ORDERED that Iowa registration number 1575, issued to Edward L. Cable, is hereby SUSPENDED, effective immediately upon service of this Decision and Order. IT IS FURTHER ORDERED that said suspension shall continue for a minimum period of one (1) year after the Respondent provides the Board with written verification of his successful completion of the NCARB monograph on Professional Conduct.

IT IS FURTHER ORDERED that the Respondent shall pay a civil penalty of \$1,000.00.

IT IS FURTHER ORDERED that the Respondent's Iowa registration will not be reinstated until he appears before the Board in a reinstatement hearing and establishes that he has complied with the terms of this Order and further establishes that the basis for the suspension of his registration no longer exists and that it is in the public interest for his registration to be reinstated. At the reinstatement hearing, the burden of proof will be on the Respondent. 193 IAC 7.38(5).

Prior to reinstatement of his registration, the Respondent must verify that:

A. He did not perform any professional activities in the state of Iowa that required registration as an architect when his license was suspended;

B. During the first year of his suspension, he completed twenty-four (24) contact hours of continuing education in formal programs of education offered by an accredited provider. Only those continuing education programs involving a testing component will satisfy this requirement

and Respondent must provide written documentation of successful completion of all hours to the board.

If the Respondent's registration is suspended for more than one year, he will be required to complete twelve (12) additional contact hours of continuing education for each subsequent year that his registration is suspended. This additional continuing education must also be through formal programs of education with a testing component and written documentation of successful completion must be provided to the board.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6(6) and 193 IAC 7.41, that the Respondent shall pay a hearing fee of \$75.00, within thirty (30) days of the service of this order. Payment shall be made in the form of a check or money order made payable to the state of Iowa and delivered to the professional licensing and regulation division. The Respondent will also be responsible for paying all applicable costs of the transcript and services of the court reporter. The amount of the additional fees and expenses, if any, is itemized and attached to this Order.

Dated this 3rd day of December, 2003.



Dale McKinney, Architect, Chairperson
Iowa Architectural Examining Board

cc: Edward L. Cable
PO Box 1616
Sioux City, Iowa 51102
(PERSONAL SERVICE)

Pamela Griebel
Assistant Attorney General
Department of Justice
Hoover State Office Building
(LOCAL)

Judicial review of the Board's action may be sought in accordance with the terms of the Iowa administrative procedure Act, from and after the date of this final order. Consistent with Iowa Code section 17A.19(3), if a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after issuance of the board's final decision. 193 IAC 7.37.

Department of Commerce
Professional Licensing and Regulation Division
FILED 12/3/03 (Date)
Architectural Examining
Board/Commission
Glenda Young
Signature, Executive Officer