

BEFORE THE IOWA ARCHITECTURAL EXAMINING BOARD
OF THE STATE OF IOWA

<p>IN THE MATTER OF EDWARD L. CABLE</p> <p>REGISTRATION NO. 1575</p> <p>RESPONDENT</p>	<p>CASE NO. 89-02</p> <p>COMPLAINT AND STATEMENT OF CHARGES</p>
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COMES NOW, the Complainant K. Marie Thayer, at the direction of the Board, and states:

1. She is the Executive Secretary of the Iowa Architectural Examining Board and files this Complaint solely in her official capacity.

2. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 17A, 118 and 258A (1989).

3. On January 26, 1973 Edward L. Cable, the Respondent, was issued Iowa registration number 1575.

4. The Iowa registration is in full force and effect at the present time and at all times was material heretofore.

5. The Respondent is charged with a violation of a rule of professional conduct promulgated by the Board, in violation of Iowa Code Section 118.29 (1989) as defined by 193B Iowa Administrative Code Section 4.1(1)(b) in that the Respondent failed to take into account all applicable state and municipal building laws and regulations in the design and construction of a juvenile detention center in Black Hawk County, Iowa.

6. The Respondent violated 193B Iowa Administrative Code 4.1(1)(a) by failing to act with reasonable care and competence in applying the technical knowledge and skill which is ordinarily applied by architects of good standing practicing in the same community, by failing to timely submit the juvenile detention center plans to the State Fire Marshall or his office.

7. The Respondent violated 193B Iowa Administrative Code 4.1(1)(a) by failing to submit juvenile detention center plans to the State Fire Marshall or his office for review until after the start of construction.

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.

K. Marie Thayer
K. Marie Thayer
Executive Secretary
Complainant

On the 13th day of November, 1990 the Iowa Architectural Examining Board found probable cause to file this complaint and to order a hearing in this case.

Barbara T. Welander
Barbara T. Welander
President
Iowa Architectural
Examining Board

COPY

BEFORE THE IOWA ARCHITECTURAL EXAMINING BOARD
OF THE STATE OF IOWA

IN THE MATTER OF:)	CASE NO. 89-02
EDWARD L. CABLE)	DIA NO. 91DOCPL-1
REGISTRATION NO. 1575)	
Respondent)	FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

On November 13, 1990 the Iowa Architectural Examining Board (Board) filed a Complaint and Statement of Charges against Edward L. Cable (Respondent). The Complaint alleged that the Respondent had violated Iowa Code sections 118.29 (1989) as defined by 193B I.A.C. 4.1(1)(a) and (b).

An Order and Notice of Hearing set the hearing for February 12, 1991 at 9:30 a.m. The hearing was held, as scheduled, at the Department of Commerce, 1918 S.E. Hulsizer, Ankeny, Iowa. The following Board members were present for the hearing: Barbara T. Welander, President; Kenneth J. Steffen; Richard W. Pattschull; Ruth Roberts, public member; Gwen Boeke, public member; and James Wilkins. The Respondent appeared, but was not represented by counsel. John Parmeter, Assistant Attorney General, appeared for the State. The hearing was closed to the public, at the request of the Respondent, pursuant to Iowa Code section 258A.6(1). Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided and, following deliberations, was instructed to prepare this Board's Order.

THE RECORD

The record includes the Complaint and Statement of Charges, Order and Notice of Hearing, the testimony of the witnesses, and the following Exhibits:

- State's Exhibit A: Complaint dated May 8, 1990
- State's Exhibit B: Formal plans for Bremer County Detention Facility prepared by BDG
- State's Exhibit C: Memorandum dated January 9, 1989 (Bogges to Leber)
- State's Exhibit E: Letter dated November 9, 1988 (Cable to Johnson)
- State's Exhibit I: Letter dated January 30, 1990 (Black Hawk County to Reuter)
- State's Exhibit J: Letter dated February 7, 1989 (Cable to Bogges)

FINDINGS OF FACT

1. On January 26, 1973 the Respondent was issued Iowa registration number 1575, which is in full force and effect at the present time. (Board file).
2. On April 22, 1988 the North Iowa Juvenile Detention Services Commission (Commission), consisting of Boards of Supervisors for twelve counties, met and agreed to hire the Respondent for the Juvenile Detention Center Project (JDC), to be built in Black Hawk County, Iowa. Sara Peterson and Steve Smith were appointed to represent the Commission on the project. (State's Exhibit A; testimony of Douglas Sires)
3. The Commission had obtained a grant for construction which required the project to be substantially completed by January 1989. This was an extremely tight time frame for a project of this size. On May 3, 1988 Respondent met with Smith and Peterson to discuss specifics about the site and floor plan. Smith and Peterson agreed that there would be no sprinkler systems within the cells (bedrooms) even if it required appropriate reviews and appeals. Smith and Peterson understood that there would be additional cost if the appeal was denied. (State's Exhibit A; testimony of Douglas Sires, Respondent)
4. In 1983, Respondent had successfully obtained a waiver from the State Fire Marshall to omit sprinkler systems in cells at the Iowa Security and Mental Facility in Oakdale, Iowa. Based on this past experience, Respondent felt he would be successful in obtaining a waiver for this project. However, the approval process for the Oakdale permit was controversial and took six months. The reason for omitting these sprinklers is twofold; the risk that a detainee might hang himself from a sprinkler and the real possibility that detainees could repeatedly set off the sprinklers, causing chaos in the facility. The Board concurs that these are serious concerns. (State's Exhibit A; testimony of Douglas Sires)
5. At the May 3, 1988 meeting, Smith and Peterson also agreed that there should be only one exit for the building, and the door should open into the building. State Fire Marshall regulations required two exits with door swing in the direction of egress. Respondent assured Smith and Peterson that he would submit the necessary plans for approval. (State's Exhibit A; testimony of Douglas Sires)
6. The Standard Form of Agreement Between Owner and Architect signed by Respondent and the Commission states, "The Architect shall assist the owner in connection with the owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the project." This provision did not relieve Respondent of his responsibility to seek the waivers on behalf of his client, when he agreed to do so. The Respondent denied that he orally agreed to assume full

responsibility to seek the waivers. However, the Board found the testimony of Doug Sires to be more credible. The owner's representatives had no experience in building or building codes and Respondent did eventually seek the waivers. (State's Exhibit A; testimony of Douglas Sires, Respondent)

7. On July 19, 1988 Respondent was retained to design a Youth Shelter (YS) which was to be attached to the Juvenile Detention Center (JDC). In Respondent's opinion, the Code review of the JDC would change because of the attached YS. (State's Exhibit A; testimony of Respondent)

8. On August 4, 1988 construction bids were received for the JDC, and the contract was awarded to Lockard Construction Co. of Waterloo for \$335,130 on August 11, 1988. On August 29, 1988 Ken Lind, Black Hawk County Planning and Zoning Commission, issued a building permit for the project. (State's Exhibit A, testimony of Sires, Respondent)

9. Respondent states that he sent the plans for the JDC and the YC to the State Fire Marshall for review on September 21, 1988. Respondent has a letter of submittal in his file indicating that this was done. The State Fire Marshall, however, has no log of such a submittal by Respondent on that date. On November 4, 1988 Respondent hand delivered the plans to the State Fire Marshall. The Board is unable to determine whether the plans were in fact sent on September 21, 1988, but such a determination is not critical to the Board's decision in this case. (State's Exhibit A; testimony of Steven Boggess, Douglas Sires, and Respondent)

10. On October 7, 1988 Black Hawk Sprinkler submitted sprinkler plans to the State Fire Marshall. On November 4, 1988 Respondent hand carried the JDC and YS plans to the State Fire Marshall's office, and plan review was started by Peter Green. On November 9, 1988 Respondent sent a written request to the State Fire Marshall for waiver of the requirement to have sprinkler heads in each bedroom. On November 10, 1988 the JDC Commission was made aware of the necessity of the waiver, concurred, and sent letters to the State Fire Marshall. (State's Exhibits A, E; testimony of Boggess, Respondent)

11. On November 17, 1988 Peter Green of the State Fire Marshall's office wrote to the Chairman of the Bremer County Board of Supervisors and stated that since the facility was being built in Black Hawk County which has a building code, a request for a waiver should be made to the Black Hawk County Building Department's Board of Appeals. Steve Boggess, of the State Fire Marshall's office, testified that he disagreed with this letter. (Respondent's Exhibit 1)

12. The State Fire Marshall did have jurisdiction to issue a certificate of occupancy for the detention center. Plans do not have to be submitted for this purpose, and the certificate can be issued based on a satisfactory inspection prior to occupancy. In

actual practice, in most projects architects submit preliminary plans to the State Fire Marshall's office. Under the circumstances present in this case, good judgment would dictate that plans be submitted and waivers sought from the appropriate agencies as early as possible. Respondent knew, from his prior experience at Oakdale, that waiver of the sprinkler requirement may not be simple or quick. In addition, Respondent was planning to seek waivers on the requirement that the building have two exits, with doors swinging out. Given the tight construction schedule, the prudent architect would have sought early approval of his plans. To do otherwise risks adding unnecessary construction time and expense to the project. (testimony of Steve Boggess, Douglas Sires, Respondent)

13. On December 21, 1988 the State Fire Marshall stamped the JDC construction documents "Disapproved". No reasons were given for disapproval, which was not the normal procedure used by the State Fire Marshall's office. On January 9, 1989 Steve Boggess prepared a list of citations for the violations noted on the drawings by Robert A. Leber. Eight items were listed. There were more items than should be noted on a review of final plans, however, the Board is primarily concerned with two items: the sprinkler system and the exits. Respondent knowingly designed the project in violation of regulations requiring sprinkler systems in each cell and two exits, opening out. Although he knew that waivers would be required on these items, Respondent waited many months before submitting plans to the State Fire Marshall's office. (State's Exhibits A, C; testimony of Steve Boggess, Douglas Sires, Respondent)

14. On January 30, 1989 the Black Hawk County Building Inspector granted a waiver to the JDC on the inclusion of sprinkler systems in each cell. The owner agreed to make necessary changes to meet the State Fire Marshall's other exceptions to the plans, including the addition of an exit and reversing the door swing on both exits. The total cost for all changes was \$31,579.10. The Respondent paid \$7,786.10 and the owner paid \$23,793.00. The State Fire Marshall's office made an inspection for Fire Safety Certification and issued a certification for occupancy pending completion of three additional code items. On June 8, 1989 the North Iowa Juvenile Detention Service Commission sent a Complaint to the Board concerning the Respondent. (State's Exhibits A, I, J; testimony of Steve Boggess, Douglas Sires, Respondent)

15. A peer review committee, consisting of Douglas Sires and Norman Rudi, two experienced registered architects, was assigned to review the complaint against Respondent. The Committee reviewed all of the documents and interviewed many of the people involved in the project. State's Exhibit A was prepared by the Committee. The Committee cited several extenuating circumstances which affected the outcome on this case, including: 1) possible resentment between the State Fire Marshall and Respondent stemming from the Oakdale project; 2) the extremely tight construction schedule for the project; 3) different design

philosophies for detention facilities; 4) the addition of the Youth Shelter as a complicating factor; 5) possible loss by State Fire Marshall of initial plans, if they were submitted in September 1988; and 6) the length of time it took the State Fire Marshall to disapprove the plans, once they were submitted (seven weeks). Nevertheless, the Committee concluded and the Board agrees, that the reasonably prudent architect would have submitted preliminary plans to the State Fire Marshall's office in May, as soon as the need for a waiver was apparent. (State's Exhibit A; testimony of Douglas Sires).

CONCLUSIONS OF LAW

1. Iowa Code section 118.29 (1989) provides:

118.29 Rules.

The board may adopt rules consistent with this chapter for the administration and enforcement of this chapter and may prescribe forms to be issued. The rules may include, but are not limited to, standards and criteria for licensure, license renewal, professional conduct; misconduct, and discipline. Violation of a rule of conduct is grounds for disciplinary action or reprimand or probation at the discretion of the board. The board may enter into a consent order with an architect which acknowledges an architect's violation and agreement to refrain from any further violation. A willful or repeated violation of a rule of conduct is grounds for disciplinary action as provided in section 118.13.

2. 193B I.A.C. 4.1(1)(a) and (b) provide:

193B-41.1(118,17A) Rules of conduct.

4.1(1) Competence.

a. In practicing architecture, an architect shall act with reasonable care and competence, and shall apply the technical knowledge and skill which is ordinarily applied by architects of good standing, practicing in the same locality.

b. In designing a project, an architect shall take into account all applicable state and municipal building laws and regulations. While an architect may rely on the advice of other professionals (e.g. attorneys, engineers and other qualified persons) as to the intent and meaning of the regulations, once having obtained such advice, an architect shall not knowingly design a project in violation of these laws and regulations.

3. 661 I.A.C. 5.52(1) and (3) are provisions of the State Fire Marshall's regulations which relate to the exits required for particular types of buildings.

4. 661 I.A.C. 5.50(7) and NFPA 13-4-2.1.1 and NFPA 13-4.1.1.1 are regulations pertaining to sprinkler requirements.

5. The preponderance of the evidence established that the Respondent knowingly designed the North Iowa Juvenile Detention Center in violation of state and municipal building laws and regulations, specifically 661 I.A.C. 5.52(1) and (3), 5.50(7) and NFPA 13-4-2.1.1 and 13-4.1.1.1. Therefore the Respondent has violated 193B I.A.C. 4.1(1)(b).

6. The preponderance of the evidence established that 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 Marshall's office for the JDC. Knowing that it had taken six months to receive a waiver in a similar case, the Respondent should have sought early approval of his project. To do otherwise was poor judgment, and cost his client more than was necessary. Therefore, the Respondent has violated 193B I.A.C. 4.1(1)(a).

DECISION AND ORDER

Due to several extenuating circumstances present in this case, as cited by the peer review committee, the Board will not take any disciplinary action against the Respondent's license. However, the Respondent is hereby cited for violating 193B I.A.C. 4.1(1)(a) and (b) and is hereby warned that any future violations of these provisions may result in disciplinary action against his license.

Dated this 26th day of March, 1991.

Barbara T. Welander
Barbara T. Welander
President
Iowa Architectural Examining Board

ML/jmm

MAR 27 1991

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by depositing a copy thereof in the U. S. Mail, postage prepaid, in envelopes addressed to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on March 27, 1991

Josh Young