

**BEFORE THE ENGINEERING AND LAND SURVEYING EXAMINING BOARD
OF THE STATE OF IOWA**

IN THE MATTER OF:

**ALVIN H MILLER
Tri-State Engineers
1919 210th Street
P.O. Box 357
Manchester, IA 52057**

RESPONDENT

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CASE NO. 00-03

Statement of Charges

COMES NOW the Complainant, Gleen Coates, and states:

1. The Complainant is the Executive Secretary of the Iowa Engineering and Land Surveying 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 542B (2001).
3. On June 16, 1965, the Board registered the Respondent as a professional engineer and land surveyor (No. 5227).
4. Respondent's professional land surveying license lapsed on December 31, 1986.
5. Respondent's professional engineering license is in active status.

Count I

Respondent is charged with failure to comply with a Board decision imposing discipline by practicing engineering during his suspension contrary to the Board's Amended Findings of Fact, Conclusions of Law, Decision and Order, September 16, 1999, in violation of Iowa Code section 272C.3(2)(a)(1999).

Count II

Respondent is charged with unethical conduct and practices harmful to the public by practicing engineering and failing to inform clients of his suspension in violation of Iowa Code sections 542B.21(3)(1999).

Circumstances

1. On June 11, 1986, the Board filed charges against the Respondent alleging negligence and incompetence in land surveying.
2. Effective March 6, 1987, the Board and Respondent entered into a Stipulation and Agreement in which Respondent agreed he prepared incomplete and insufficient plats of survey. Respondent further agreed to allow his land surveying registration to lapse at the end of 1986. He agreed not to reapply for licensure as a land surveyor in Iowa and agreed he would never in the future practice land surveying in Iowa.
3. Respondent's firm has not had a licensed land surveyor on staff since July 14, 1995, but Respondent has represented the firm to the public in telephone advertising as authorized to perform land surveying work in Iowa.
4. The Respondent's firm performed land surveying work as defined in Iowa Code 542B.2 on various occasions since July 14, 1995.
5. On February 18, 1999 the Board issued a Statement of Charges to Alvin H. Miller, PE, alleging that (Count I) Miller failed to comply with a Board decision imposing discipline by practicing land surveying in Iowa contrary to the March 6, 1987 Stipulation and Agreement in violation of Iowa Code 272C.3(2) a (1997) and (Count II) Miller is charged with unethical conduct and practices harmful to the public by practicing land surveying in Iowa and holding out to the public as authorized to practice land surveying in Iowa without proper licensure in violation of Iowa Code §§ 542B.1, 542B.21(3), 542B.27 and 193C IAC 4.2(1) and 4.8(5).
6. A hearing was held in this matter on July 14, 1999. The Respondent was reprimanded, assessed a civil penalty, and his license was suspended until the time that he successfully completed the "Intermediate Studies in Engineering Ethics" course, totaling 40 professional development hours, provided by the Murdough Center at Texas Tech University.

7. On January 12, 2000, the Board received a letter of complaint alleging that the Respondent continued to practice engineering during the time that his license was suspended.

8. The Board opened a discipline case and hired Lawrence A. Boyer, LS, to investigate the allegations of the complaint. The Board received Boyer's final report on January 3, 2001.

9. As more fully described in the investigative report, Respondent continued to consult with and advise clients on engineering matters during the period of suspension.

10. At its regular meeting on January 11, 2001, the Board found probable cause to file this Statement of Charges.

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 15th day of March 2001.

[Redacted Signature]

Glean M. Coates, Executive Secretary
Iowa Engineering and Land Surveying Examining Board

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 15, 2001.

[Redacted Signature]

FINDING OF PROBABLE CAUSE

On January 11, 2001, the Iowa Engineering and Land Surveying Examining Board found probable cause to file this Statement of Charges and to order a hearing be set in this case.



Dwayne C. Garber, Chair

cc: Engineering and Land Surveying Examining Board
Pamela Griebel, Assistant Attorney General
Department of Inspections and Appeals

BEFORE THE ENGINEERING AND LAND SURVEYING EXAMINING BOARD
OF THE STATE OF IOWA

IN THE MATTER OF:)	
ALVIN H. MILLER)	CASE NO. 00-03
)	SETTLEMENT AGREEMENT AND
RESPONDENT)	CONSENT ORDER
)	

The Iowa Engineering and Land Surveying Examining Board (Board) and Alvin H. Miller (Respondent) enter into this Settlement Agreement and Consent Order (Order), pursuant to Iowa Code section 17A.10 (2001) and 193C IAC 4.10:

1. The Board has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 542B, and 272C (2001).

2. Respondent is a licensed professional engineer in Iowa, license number 5227.

3. On March 16, 1987, the Respondent entered into a Stipulation and Agreement with the Board in which he agreed to allow his land surveying license to lapse and not to seek reinstatement as a land surveyor in Iowa. On February 19, 1999, the Board issued a Statement of Charges alleging that Respondent engaged in the practice of land surveying contrary to the terms of the 1987 Stipulation and Agreement. The Board issued its Amended Findings of Fact, Conclusions of Law, Decision and Order on September 16, 1999. The Respondent was reprimanded and assessed a civil penalty, which has been fully satisfied. Respondent's engineering license was suspended until he successfully completed a course on engineering ethics. Respondent successfully completed the course, but the Board received a complaint on January 12, 2000, alleging that the Respondent violated the September 16, 1999, Order by practicing engineering during the period of suspension.

4. On March 15, 2001, the Board filed a Statement of Charges alleging Respondent failed to comply with a Board disciplinary decision, in violation of Iowa Code section 272C.3(2)(a)(1999), and engaged in unethical conduct and

practices harmful to the public by practicing engineering and failing to inform clients of his suspension in violation of Iowa Code sections 542B.21(3)(1999).

5. Respondent has a right to a hearing on the charges, but waives his right to hearing and all attendant rights by freely and voluntarily entering into this Order. This Consent Order is the final agency order in the contested case.
6. Respondent agrees the State's counsel may present this Order to the Board and may have ex parte communications with the Board while presenting it.
7. This Order shall be part of the permanent record of Respondent and shall be considered by the Board in determining the nature and severity of any disciplinary action to be imposed in the event of any future violations. In addition, the Board shall advise the National Council for Examiners of Engineering and Surveying of the disposition of this matter.
8. This Order and the Statement of Charges are public records available for inspection and copying in accordance with the requirements of Iowa Code chapter 22 (2001).
9. Failure to comply with the provisions of this Agreement shall be considered prima facie evidence of a violation of Iowa Code section 542B.21(3) (2001) and 193C IAC 4.2, and shall be grounds for disciplinary action pursuant to Iowa Code section 272C.3(2)(a) (2001). However, no action may be taken against Respondent for violations of these provisions without a hearing as provided in Iowa Code section 542B.22, or waiver of hearing. Given the nature of the charges and Respondent's prior discipline, Respondent is placed on notice that a founded violation of this Order may additionally result in a district court action to enforce the Board's order or other appropriate relief.
10. This Order is subject to approval of the Board. If the Board fails to approve this Order, it shall be of no force or effect on either party, and it shall not be admissible for any purpose in further proceedings in this matter. If the Board approves this Order, it shall fully dispose of all issues in this case.

IT IS THEREFORE ORDERED:

A. Reprimand

Respondent is reprimanded for failing to comply with a Board disciplinary order and failing to advise clients of his prior suspension.

B. Voluntary Surrender

Respondent shall voluntarily surrender his engineering license by physically returning his license to the board office on or prior to June 22, 2001. Upon voluntary surrender of his license Respondent shall not practice or offer to practice professional engineering in the State of Iowa, and must inform any client or prospective client who contacts him for any type of service related to his prior engineering practice that he is no longer authorized to practice professional engineering in Iowa. Respondent represents that he does not intend to seek reinstatement of his engineering license. In the event Respondent wishes to seek reinstatement in the future, he may file an application to reinstate on or after June 22, 2003, pursuant to 193C IAC 4.49, or its successor. In addition to the provisions of Rule 4.49, Respondent must, as a condition of reinstatement, file an affidavit attesting to his full compliance with the terms of this Consent Order and pay a civil penalty of \$1,000.

AGREED AND ACCEPTED:

The Respondent

[Redacted Signature]

Alvin H. Miller

May 23, 2001
Date

The Iowa Engineering and Land Surveying Examining Board

[Redacted Signature]

By: Randall R. Beavers, Chair

5/31/01
Date

**Department of Commerce
Professional Licensing and Regulation Division**

FILED 5/31/01 (Date)

IELSEB

[Redacted Signature]

Signature, Executive Officer

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 6/1/01 2001

[Redacted Signature]