

TELSEB

11/09/04 13:10 FAX 5152817551

IOWA ATT'Y GENERAL

Signature, Executive Order 002/004

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

IN THE MATTER OF:	}	Case No. 02-09
EARL F. MCKINNEY	}	CONSENT ORDER
Respondent.	}	

The Iowa Engineering and Land Surveying Examining Board (Board) and Earl F. McKinney (Respondent) enter into this Settlement Agreement and Consent Order (Order), pursuant to Iowa Code section 17A.10 (2003) and 193 IAC 7.42:

1. The Board has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 542B, and 272C (2003).
2. Respondent is a licensed professional engineer in Iowa.
3. The Board has charged Respondent with violating Iowa Code section 542B.21(b) (2003), which authorizes the Board to impose discipline based on:
 - Revocation or suspension of licensure to engage in the practice of engineering or land surveying, or other disciplinary action by the licensing authority of another state, territory, or country.
4. Respondent admits that his license to practice professional engineering was revoked in the State of Kentucky in 2002, but further states that this decision is currently on appeal before the Kentucky appellate courts. 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 Agreement. The Consent Order is the final agency order in the contested case.
5. Respondent agrees the State's counsel may present this Agreement to the Board and may have ex parte communications with the Board while presenting it.
6. This Agreement 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.
7. This Agreement and the Statement of Charges are public records available for inspection and copying in accordance with the requirements of Iowa Code chapter 22 (2003).

FROM :

FAX NO. : 502 736 8129

11/11/04 01:41pm P. 003
Nov. 05 2004 03:18AM P3

11/05/04 14:10 FAX 8122817861

IOWA ATT'Y GENERAL

003/004

8. Failure to comply with the provisions of this Agreement shall be grounds for disciplinary action pursuant to Iowa Code section 272C.3(2)(a) (2003). 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.

9. This Agreement is subject to approval of the Board:

(a) If the Board fails to approve this Agreement, 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.

(b) If the Board approves this Agreement, it shall fully dispose of all issues in this case.

IT IS THEREFORE ORDERED:

Respondent shall voluntarily surrender his license to practice professional engineering in the State of Iowa effective December 1, 2004. Respondent shall submit his certificate and renewal card to the Board's office no later than December 10, 2004.

In the event the Final Order issued by the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors on July 11, 2002, is fully reversed on appeal, the Board, upon receipt of verification of the reversal, shall immediately reinstate Respondent's license, subject to appropriate payment of license renewal fees and verification of continuing education, as applicable at that time.

In the event the Kentucky Final Order is partially reversed, Respondent may file an application to reinstate his Iowa license using the procedures set forth in 193 Iowa Admin. Code 7.38.

Whether the Kentucky Final Order is fully or partially affirmed or reversed, Respondent may file an application to reinstate using the procedures set forth in 193 Iowa Admin. Code 7.38 on or after December 1, 2006. The Board retains full discretion to determine at this time of application to reinstate whether (1) the basis for the voluntary surrender no longer exists, and (2) it would be in the public interest to reinstate Respondent's license to practice professional engineering in Iowa, with or without appropriate terms and conditions.

AGREED AND ACCEPTED:

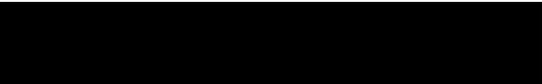
The Respondent



Earl F. McKinney

Date: 11/11/04

**The Iowa Engineering and Land
Surveying Examining Board**



By: [Signature], Chair

Date: 11-18-04

FILED 11/18/04 (Date)

TELSEB

002/004

Signature, Executive Officer

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

IN THE MATTER OF:

EARL F. MCKINNEY

Respondent.

Case No. 02-09

CONSENT ORDER

The Iowa Engineering and Land Surveying Examining Board (Board) and Earl F. McKinney (Respondent) enter into this Settlement Agreement and Consent Order (Order), pursuant to Iowa Code section 17A.10 (2003) and 193 IAC 7.42:

1. The Board has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 542B, and 272C (2003).
2. Respondent is a licensed professional engineer in Iowa.
3. The Board has charged Respondent with violating Iowa Code section 542B.21(6) (2003), which authorizes the Board to impose discipline based on:
 - Revocation or suspension of licensure to engage in the practice of engineering or land surveying, or other disciplinary action by the licensing authority of another state, territory, or country.
4. Respondent admits that his license to practice professional engineering was revoked in the State of Kentucky in 2002, but further states that this decision is currently on appeal before the Kentucky appellate courts. 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 Agreement. The Consent Order is the final agency order in the contested case.
5. Respondent agrees the State's counsel may present this Agreement to the Board and may have ex parte communications with the Board while presenting it.
6. This Agreement 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.
7. This Agreement and the Statement of Charges are public records available for inspection and copying in accordance with the requirements of Iowa Code chapter 22 (2003).

8. Failure to comply with the provisions of this Agreement shall be grounds for disciplinary action pursuant to Iowa Code section 272C.3(2)(a) (2003). 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.

9. This Agreement is subject to approval of the Board:

(a) If the Board fails to approve this Agreement, 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.

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Whether the Kentucky Final Order is fully or partially affirmed or reversed, Respondent may file an application to reinstate using the procedures set forth in 193 Iowa Admin. Code 7.38 on or after December 1, 2006. The Board retains full discretion to determine at the time of application to reinstate whether (1) the basis for the voluntary surrender no longer exists, and (2) it would be in the public interest to reinstate Respondent's license to practice professional engineering in Iowa, with or without appropriate terms and conditions.

AGREED AND ACCEPTED:

The Respondent



Earl F. McKinney

Date: 11/11/04

**The Iowa Engineering and Land
Surveying Examining Board**

By: Board chair Chair
signature on
attached
Date: faxed copy

DEFAULT: If you fail to appear at hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and 193 IAC 7.27(17A).

PROSECUTION: Licensee disciplinary cases are prosecuted by an Assistant Attorney General acting on behalf of the public interest (the State). Copies of all pleadings filed with the Board should be provided to:

Pamela D. Griebel
Assistant Attorney General
Iowa Department of Justice
2nd Floor, Hoover State Office Building
Des Moines, Iowa 50319
Phone: 515-281-6858
Fax: 515-281-6771

RESPONDENT'S COUNSEL: Copies of all pleadings filed with the Board should be provided to:

Peter L. Ostermiller
Attorney at Law
Kentucky Home Life Building
18th Floor
239 South Fifth Street
Louisville, KY 40202

SETTLEMENT: The procedural rules governing the Board's settlement process are found at 193 IAC 7.42(546, 272C). If you are interested in pursuing settlement of this matter, please contact Assistant Attorney General Pamela D. Griebel, at the above number.

COMMUNICATIONS: You may not contact Board members by phone, letter, or in person about the attached Statement of Charges. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all other parties in the case. You should direct any questions to Assistant Attorney General Pamela Griebel at 515-281-6858, or the Board's Executive Secretary at 515-281-7360.

Signed and dated this 5th day of August 2004.


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

FILED 8/5/04 (Date)

TELSEB

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

Signature, Executive Officer

IN THE MATTER OF:)	
)	CASE NO. 02-09
EARL FREDERICK MCKINNEY)	
2020 LIBERTY ROAD #105)	STATEMENT OF CHARGES
Lexington, KY 40505)	
)	
RESPONDENT)	

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 (2003).
3. On February 22, 1980, the Board issued the Respondent Iowa professional engineering license number 9253.
4. Respondent's engineering license is currently in lapsed status.

Count I

Respondent is charged with a violation of Iowa Code 542B.21(6).

Circumstances

On July 11, 2002, the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors ordered the revocation of license number PE 5580 issued to Earl F. McKinney of Lexington, Kentucky. The Respondent appealed the Board's decision and the Franklin Circuit Court, Division I, Commonwealth of Kentucky, affirmed the Board's decision on September 23, 2003, and subsequently denied the Respondent's motion to alter, amend or vacate on November 7, 2003. The Respondent appealed the Court for emergency relief seeking to stay enforcement of

the judgment affirming the Board's revocation of his engineering license. The Court ordered that the appellant's motion for intermediate relief be denied on January 29, 2004. The Final Order entered by the Kentucky State Board of Licensure for Professional engineers and Land Surveyors on July 11, 2002, is incorporated here by reference as attached.

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 5th day of August 2004.

A solid black rectangular box used to redact the signature of the Executive Secretary.

Gleean M. Coates, Executive Secretary

Iowa Engineering and Land Surveying Examining Board

FINDING OF PROBABLE CAUSE

On June 3, 2004, 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.



Lyle G. TeKippe PE/LS, Chair

cc: Engineering and Land Surveying Examining Board
Pamela Griebel, Assistant Attorney General
Peter L. Ostermiller, Attorney at Law
Department of Inspections and Appeals

DEFAULT: If you fail to appear at hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and 193 IAC 7.27(17A).

PROSECUTION: Licensee disciplinary cases are prosecuted by an Assistant Attorney General acting on behalf of the public interest (the State). Copies of all pleadings filed with the Board should be provided to:

Pamela D. Griebel
Assistant Attorney General
Iowa Department of Justice
2nd Floor, Hoover State Office Building
Des Moines, Iowa 50319
Phone: 515-281-6858
Fax: 515-281-6771

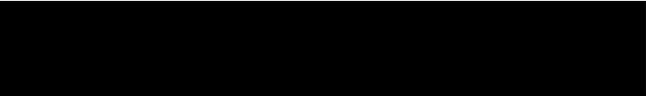
RESPONDENT'S COUNSEL: Copies of all pleadings filed with the Board should be provided to:

Peter L. Ostermiller
Attorney at Law
Kentucky Home Life Building
18th Floor
239 South Fifth Street
Louisville, KY 40202

SETTLEMENT: The procedural rules governing the Board's settlement process are found at 193 IAC 7.42(546, 272C). If you are interested in pursuing settlement of this matter, please contact Assistant Attorney General Pamela D. Griebel, at the above number.

COMMUNICATIONS: You may not contact Board members by phone, letter, or in person about the attached Statement of Charges. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all other parties in the case. You should direct any questions to Assistant Attorney General Pamela Griebel at 515-281-6858, or the Board's Executive Secretary at 515-281-7360.

Signed and dated this 20th day of August 2004.


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

FILED 9/16/04 (Date)

IELSEB

Board/Commission

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

Signature, Executive Officer

IN THE MATTER OF:)
)
Earl F. McKinney)
615 Delzan Place, Suite 101)
Lexington, KY 40503)
)
RESPONDENT)

CASE NO. 02-09

ANSWER

Comes the Respondent, Earl F. McKinney, and for his Answer in the above-captioned matter, states as follows:

1. The Respondent, Mr. McKinney, acknowledges the procedural events and matters of public record referred to in the Circumstances portion of the Statement of Charges in the above-captioned matter.

2. That the Respondent states that his Appeal to the Kentucky Court of Appeals styled, *Earl F. McKinney v. Kentucky State Board of Licensure for Professional Engineers and Land Surveyors*, 03-CA-02555-MR, is presently pending before said Kentucky Court of Appeals, and the parties have filed their respective Briefs with the Court.

3. That although the Administrative Action taken by the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, ("Kentucky Board"), has been deemed final, said Administrative Action is still subject to judicial review as provided for in the applicable Kentucky Revised Statutes and the Kentucky Constitution providing a constitutional right of appeal.

4. That the Respondent, Mr. McKinney, respectfully submits that the Administrative Action taken by the Kentucky Board would not support reciprocal revocation of Mr. McKinney's Iowa Professional Engineer's License as set forth in Count I of the Statement of Charges.

WHEREFORE, the Respondent, by counsel, prays as follows:

1. For a dismissal of the Statement of Charges, with prejudice.
2. For such other relief as the Respondent may be entitled.

Respectfully submitted,



Peter L. Ostermiller
239 South Fifth Street
1800 Kentucky Home Life Building
Louisville, KY 40202
(502) 736-8100

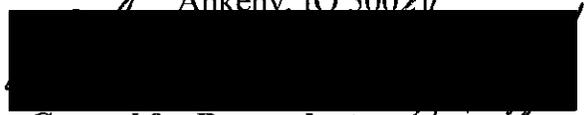
Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was mailed this 13th day of September, 2004, to:

Pamela D. Griebel
Assistant Attorney General
Iowa Department of Justice
2nd Floor, Hoover State Office Building
Des Moines, IO 50319

Gleean Coates
Executive Officer
Engineering & Land Surveying
Examining Board
1920 SE Hulsizer Road
Ankeny, IO 50020



Counsel for Respondent

FILED 11/15/04 (Date)

FEUSEB

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

Signature, Executive Officer

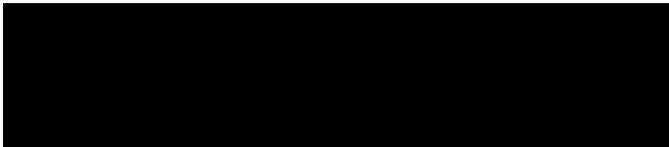
IN THE MATTER OF:)	
)	Case No. 02-09
EARL F. MCKINNEY)	
)	State's Application to Continue
)	
Respondent.)	

The State moves the Board to continue the hearing set for Thursday, November 18, 2004, as follows:

1. The State has received a faxed copy of a signed Consent Order which, if acceptable to the Board, will fully resolve all pending issues in this case. Respondent's counsel has reported that the original signed Consent Order has been mailed.
2. It would be in the best interest of administrative justice and economy for the board to delay the hearing to give the Board the opportunity to consider the Consent Order at its meeting on November 18, 2004.
3. The hearing date has not previously been continued.

Respectfully submitted,

THOMAS J. MILLER
ATTORNEY GENERAL OF IOWA



PAMELA D. GRIEBEL
Assistant Attorney General
Hoover Building, 2nd Fl.
Des Moines, IA 50319
Tel. (515) 281-6858
FAX: (515) 281-7551

Copy to:

Peter Ostermiller
239 South Fifth Street
1800 Kentucky Home Life Building
Louisville, KY 40202

Administrative Law Judge Margaret LaMarche
Inspections & Appeals, Lucas Building, LOCAL MAIL

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon each of the attorneys of record of all parties in the above-entitled cause by enclosing the same in an envelope addressed to each such attorney at his respective address as disclosed by the pleadings of record herein, with postage fully paid, and by depositing said envelope in a United States Post Office depository in Des Moines, Iowa, on the 15th day of November, 2004.



FILED 11/15/04 (Date)

IELSEB

Signature, Executive Officer

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

IN THE MATTER OF:)	
)	Case No. 02-09
EARL F. MCKINNEY, PE)	
3171 Roxburg Drive)	
Lexington, KY 40503)	NOTICE OF HEARING
)	CONTINUANCE
Respondent)	

YOU ARE HEREBY NOTIFIED that a hearing that was to be held in the matter on November 18, 2004 at 2:30 p.m. at the offices of the Engineering and Land Surveying Examining Board at 1920 S.E. Hulsizer Road, Ankeny, Iowa, has been continued until further order of the Board. The Respondent has signed a Consent Order that, if acceptable to the Board, will resolve all pending issues. If the Board rejects the settlement, hearing can be rescheduled at the November 18, 2004, Board meeting.

You may contact the Board's Executive Officer at 515-281-7360 or Assistant Attorney General, Pamela Griebel at 515-281-6858, if you have any questions.

Dated this 15th day of November 2004.

Gleean M. Coates, Executive Officer
Iowa Engineering & Land Surveying Examining Board

cc: Engineering and Land Surveying Examining Board
Pamela Griebel, Assistant Attorney General
Margaret LaMarche, Administrative Law Judge
Peter L. Ostermiller, Attorney for Respondent