

Aaron Armstrong. Ms. Casey was also present at the Board offices, but sequestered from the hearing upon the oral motion of Respondent.

All witnesses were sworn, exhibits were received into evidence (Exhibits 1 - 17 for the Board and 1 for Metheny), the hearing was recorded electronically, and a transcript prepared and distributed to the parties.

After a review of the record and exhibits admitted into evidence at the hearing of this matter, after assessing the credibility of all testimony of witnesses of record and weighing the evidence in consideration of the findings as to credibility, and after consideration of the proposed findings of fact and conclusions of law as were filed by the parties, the undersigned makes the following findings of fact, conclusions of law, and recommended order.

To the extent that these findings and conclusions are inconsistent with any proposed findings of fact and conclusions of law submitted by the parties, the same are rejected by the hearing examiner. Conversely, to the extent that these findings and conclusions are generally consistent with any proposed findings of fact and conclusions of law submitted by the parties, the same are accepted and adopted. To the extent that the testimony of any witness is not in accordance with these Findings and Conclusions, such testimony is not credited. Any proposed finding of fact, conclusion of law, or argument proposed or submitted by a party but omitted herein is deemed irrelevant or unnecessary to the determination of the material issues in this matter.

CREDIBILITY OF WITNESSES, TESTIMONY, AND EXHIBITS

The undersigned hearing examiner was and is satisfied that all records and documents entered as exhibits are complete, authentic and valid, and that they were entered with the proper evidentiary foundations.

The undersigned hearing examiner was and is satisfied that the witnesses brought on by the parties credible and truthful except as noted below. Neither the demeanor of the witnesses nor the substance of any testimony suggested any inconsistency, conflict, or ulterior motive except as noted below.

FINDINGS OF FACT

1. Respondent Daniel A. Metheny is a professional engineer in West Virginia, P.E. License No. 016389, who was employed full-time by FOX Engineering ["FOX"] from June 2004 until May 1, 2014, which includes the timeframe for the matters that gave rise to Complaint C2014-16. Stipulation #1; Board Exhibit 1.

2. Respondent started at FOX as a project manager and was the Engineering Division Manager at the time of severance. Transcript of January 12, 2016 at 15-16. [The January 12th transcript is hereinafter referred to as TR. Vol. I at __, and the January 13th transcript is referred to as TR. Vol. II at _.]

3. FOX is solely owned by Jennifer W. Casey, a professional engineer and the original Complainant in C2014-16. TR. Vol. I at 18-19.

4. After Respondent's employment with FOX was effectively severed on May 1, 2014, Ms. Casey accessed Respondent's computer to retrieve files needed for projects she would be taking over. TR. Vol. I at 123.

5. All Respondent's email accounts were in a collective inbox on the FOX laptop used by Respondent. TR. Vol. I at 123, 129.

6. Respondent acknowledged and understood that FOX had the authority to access data stored on FOX equipment and agreed to same. Board Exhibit 1 at pg. 12; TR. Vol. I at 67, 125-126.

7. Respondent testified at hearing that he no longer had access to his former work computer after his employment was terminated May 1, 2014, and therefore could not state that any of the documents left on his former work computer, as presented as Exhibits in the hearing, were authentic or that as they were presented is how they existed on his former Fox computer when he left in May 2014, but also testified that he was not asserting that any document had been altered . TR. Vol. I at 26-27, 68-70.

8. Respondent also asserted in his testimony that regardless of whether Fox had the "right" to examine business emails on the computer he left behind, he never gave Fox permission to open any of his personal Gmail Account emails and contends that access to his personal email account was both unethical and unlawful. TR. Vol. I at 68.

9. After reviewing what she found in Respondent's email account, Ms. Casey filed C2014-16, believing as a professional engineer that Metheny's conduct did not reflect the ethics which professional engineers are required to uphold. TR. Vol. I at 122-23.

10. In his response to C2014-16, Respondent stated: "I never solicited, performed, nor was I ever compensated for providing engineering services outside of the services I provided through FOX." Board Exhibit 7 at page 1.

11. This statement was further investigated by the Board and evidence of solicitations was discovered, which resulted in Board-initiated Complaint C2015-10. Board Exhibit 15; TR. Vol. I at 192-93.

12. Complaint C2015-10 alleged that Respondent's statement that he had "never solicited engineering services outside of the services he provided through FOX" was false information which had been provided to the Board and further alleged that a misrepresentation in Respondent's

Employment History in Respondent's Biography (Board Exhibit 10 at pp. 19-21) was a misrepresentation constituting dishonorable, unethical or unprofessional conduct of a character likely to deceive the public. Board Exhibit 15.

13. The Board's further investigation also revealed additional support for the alleged violations set forth in C2014-16 which were being pursued by the Board, as set forth in the Amended Statement of Charges filed on December 7, 2015. TR. Vol. I at 192-93.

14. The issues relevant to both Complaints arose from Respondent's actions after Respondent applied for and was issued a Certification of Authorization (COA) C04696 by the Board on June 13, 2013, for PDC Services, PLLC (hereinafter "PDC Services"), which stands for "Planning, Design and Construction," for which Respondent was the engineer in responsible charge. Stipulation #1; TR. Vol. I at 20.

15. Respondent had the privilege to work from home and was able to both access FOX emails at home and send emails from his home using his FOX email address. TR. Vol. I at 26, 124-25; TR. Vo. II at 130-31.

16. Prior to obtaining a COA, Respondent acquired and used an email address for PDC, which address was "pln.des.const@gmail.com." TR. Vol. I at 20 and 26; *see also* Board Exhibits 2 through 6.

17. Respondent's plan was to start his company discretely and continue working at FOX until he could establish it financially. Board Exhibit 14.

18. Respondent formed PDC to protect his livelihood in the event FOX failed, but never informed Ms. Casey about PDC Services. TR. Vol. I at 22, 28, 40, 99.

19. Ms. Casey was unaware of the existence of PDC Services until after May 1, 2014. TR. Vol. I at 129.

20. In June 2013, unbeknownst to Ms. Casey, Respondent, as PDC Services, informed an entity that was a FOX supplier that he was starting his own firm and had a prospect for a railcar bridge, which was a type of work done by FOX. Board Exhibit 2; TR. Vol. I at 149-50.

21. Gabe Hays is a landscape architect who, at least in 2013, was a subcontractor for FOX, during the course of which Mr. Hays and Respondent developed a friendship and Respondent often requested Mr. Hays' services. TR. Vol. I at 56-58, 62, 139-40, 163-64, 203.

22. In July 2013, Respondent as PDC Services emailed Mr. Hays about his new venture, asked Mr. Hays to contact him if Respondent could assist him, informed Mr. Hays he hoped to work as a consultant rather than employment basis with FOX in the near future, acknowledged ethical issues inherent in working for FOX while trying to get projects through his new venture, and told Mr. Hays that FOX would likely lose clients because FOX couldn't deliver what was promised. Board Exhibit 8.

23. Mr. Hays had two invoices with FOX for work done for the City of Huntington which Mr. Metheny had approved in April and May of 2013, but which remained unpaid as of the beginning of August 2013. Board Exhibit 9.

24. Respondent took it upon himself to write the City of Huntington on August 2, 2013, stating that FOX was requesting that the two invoices be paid directly by the City of Huntington. Board Exhibit 9; TR. Vol. I at 59 and 77.

25. Respondent never notified FOX he was going to do this or had done it, and Ms. Casey would not have authorized the contract change. TR. Vol. I at 143-46.

26. In his post-hearing submission, Respondent notes with regard to Board Trial Exhibit 9 (which is a letter from Daniel Metheny as Fox Engineering Division Manager to City of Huntington dated August 2, 2013 re: Request for Sub-Consultant Direct Payment), it reflects that Respondent was appropriately managing the Huntington project on behalf of Fox and that given his job title he did not need prior approval of the Casey's to get a sub-consultant paid. TR. Vol. I at 77.

27. Casey confirmed that Respondent did not approach her about going directly to Huntington to get Hays paid, and further testified that Respondent did not have the authority to change payment arrangements with Hays or to enter into agreements generally. TR. Vol. I at 144, 149, 212.

28. Respondent was aware that his request that the city direct pay Mr. Hays' invoices would cause the City of Huntington to draw a notion, or infer, facts about FOX's financial situation. TR. Vol. I at 90.

29. In July 2013, and unbeknownst to Ms. Casey, Stephanie Robinson, a potential client who was interested in a bridge and driveway, did an internet search and contacted FOX, after which Respondent prepared a Construction Cost Estimate which was sent via his PDC Services email address and which quoted a fee for PDC Services even though FOX received the request and was able to do the work. Board Exhibits 3, 13 and 16, TR. Vol. I at 152, 214-15, 223-24, 229-230.

30. With regard to Board Trial Exhibit 3, Respondent testified that he responded to an inquiry about construction cost of a rail car bridge by Stephanie Robinson sometime in July 2013. TR VOL 1 at 35.

31. In her telephonic testimony, Stephanie Robinson recalled that she inquired about construction cost of a bridge on her Mason County property through a general inquiry via the Fox

website sometime in the summer of 2013, that Respondent called her and that she believed Respondent was calling on behalf of Fox, that the quote provided by Respondent was cost prohibitive for building the bridge, that although she had "heard of PDC" she could not state with any certainty as to where she recalled the name. TR Vol I at 223-231.

32. In August 2013, and unbeknownst to Ms. Casey, Respondent, as PDC Services, initiated communications to team with another rail car bridge contractor and also indicated he would be happy to assist with prospective buyers. Board Exhibit 4, TR. Vol. I at 152-53.

33. Also in August of 2013, Respondent pursued the idea to work for FOX on a contract basis, and on August 28, 2013, Ms. Casey made clear he could not serve as the head of their Engineering Division on a contract basis, at which point Respondent assured his employer he was loyal to FOX. TR. Vol. I at 29-30, 135-36.

34. On November 1, 2013, Respondent joined with Hays Landscape Architecture Studio (hereinafter "Hays") on a statement of qualifications for a recreational trail, which proposal was submitted to the City of Milton (hereinafter the "Milton Proposal"). Board Exhibit 10.

35. The Milton Proposal was a solicitation which included a full-page logo and address for PDC Services. Board Exhibit 10; TR. Vol. I at 79, 88.

36. The work described in the Milton Proposal was the type of work done by FOX, but Respondent dissuaded FOX from submitting a proposal for the project and Ms. Casey was therefore shocked to see that Mr. Metheny had teamed with Hays to submit the Milton proposal. TR. Vol. I at 166-68, 188-89, 210-11.

37. The Milton Proposal included a 3-page description of Respondent's qualifications which stated that he worked for FOX from 2004 to 2013 and from 2013 to the present he worked as the owner / consultant of PDC Services. Board Exhibit 10 at pp. 19-21, TR. Vol. I at 82.

38. The said Milton Proposal misrepresented Respondent's employment history since Respondent continued to be employed by FOX until May 1, 2014. Stipulation #1; TR. Vol. I at 82.

39. With regard to Board Trial Exhibit 10, Respondent testified that he did not enter into any "teaming" arrangement with Hays but that Hays had a copy of his resume so that Respondent could speak with Hays about potential employment opportunities wherein Respondent would be an employee of Hays, once Respondent left Fox. TR. Vol. I at 80-81.

40. Respondent stated that he was still employed with Fox at the time he provided Hays with his resume, and asserted that the failure of Respondent's resume to show that he was still employed at Fox at the time the resume was provided was oversight. TR. Vol. I at 80-81.

41. Prior to November 7, 2013, Respondent, as a FOX employee, was working on a project for MICHELS Corporation for which there was no contract. Stipulation #3.

42. Respondent informed a MICHELS representative that MICHELS' money had been seized by a taxing authority, and, without informing FOX of his intention, proceeded to divulge sensitive financial information to the representative, knowing that he would "very likely be fired for doing so ..." Board Exhibit 5; TR. Vol. I at 43.

43. As stated in the said email communication to MICHELS, Respondent was "not privy to this sort of financial information" and there were several inaccuracies. Board Exhibit 5; TR. Vol. I at 155, 158, 174.

44. The said email communication also contradicts Respondent's statement to Ms. Casey that a delay of a couple of days was not a problem. TR. Vol. I at 159.

45. During this same time, another MICHELS representative ("MICHELS #2") contacted FOX and, rather than representing his employer, Respondent chose to direct the business to another construction company without any communication to Ms. Casey about the potential work. Board Exhibit 6; TR. Vol. I at 46, 53, 160-61, 220.

46. In his response to Complaint C2014-16, Respondent admits that he re-directed the work and states that he told MICHELS #2 that FOX had "very recently breached" a contract on another MICHELS project, even though there was no contract, nor any ruling that a contract had been breached. Stipulation #3; Board Exhibit 7 at pg. 5; TR. Vol. I at 162-63.

47. Although Ms. Casey was not aware of Respondent's communications to MICHELS representatives until after May 1, 2014, the communications caused damage which Ms. Casey, with difficulty, was able to repair and MICHELS continued as a client of FOX. TR. Vol. I at 156-57.

48. Respondent continued to divulge sensitive financial information to persons outside of FOX, including financial information divulged to a former FOX employee who had not had access to FOX's financial records since August of 2010 but who was friends with Respondent. Board Exhibit 12; TR. Vol. I at 93-95, 104, 117-118, 131, 172.

49. Respondent did not customarily have the rights to access the financial information which he divulged and did not have FOX's consent to reveal this financial information. Board Exhibit 12; TR. Vol. I at 95.

50. Respondent never had any discussions with Ms. Casey about his concerns about FOX's financial difficulties and, while he had a right to tell others about certain personal things, Ms.

Casey took issue with his providing financial information, especially when it was not true or factual. TR. Vol. I at 173-74.

51. The scope of Respondent's authority is unclear from the testimony, with Respondent stating that he had the authority to sign checks and "take all avenues to get the projects completed for the client" (TR. Vol. I at 115-17), while Ms. Casey testified he was not a signatory and could not negotiate or enter into contracts or sub-contracts (TR. Vol. I at 212).

52. However, it is found that Respondent should not have renegotiated Mr. Hays' payment with the City of Huntington without his employer's permission or knowledge, and Ms. Casey was unaware Mr. Hays' had been paid directly until Mr. Hays' brought it to her attention. TR. Vol. I at 145.

53. The record establishes that an important part of Respondent's job was to seek out new projects for FOX, and, if Respondent was not pursuing particular jobs, Ms. Casey would have expected Respondent to discuss this with her. TR. Vol. I at 16, 141.

54. While Respondent professed his loyalty to FOX, saying they had a good thing going which he did not want to go away, Respondent felt it was more important to do what would protect FOX's clients or sub-contractors than consider his loyalties to FOX. TR. Vol. I at 53, 56, 60, 142.

55. The above-cited findings, from the formation of PDC through at least the end of 2013, establishes that Respondent's apparent plan was to build his company while continuing to work at FOX without disclosing this conflict of interest to his employer.

56. During this same time period, the above-cited findings indicate that Respondent revealed facts and information about his employer to others, while never disclosing to his employer

his negative opinions regarding FOX or its ability to perform certain work or fulfill certain job obligations.

57. The testimony of Nikki Fint, a witness called by Respondent, for the most part concerned matters not at issue in this proceeding. However, she did give evidence of Respondent's ability to send emails from his home using his FOX engineering address (Tr. Vol. II at 130-31) and also testified that Respondent had said nothing to her about PDC Services and that she knew nothing about it until she saw something real-estate related about PDC on FOX's copier and looked it up on the Secretary of State's website (Tr. Vol. II at 125-26, 129-130).

58. Attorney Lewis Brewer, whose testimony was accepted as an expert on matters relevant to this hearing (TR. Vol. II at 21), reviewed the exhibits and, while opining on some matters on which the undersigned made his own determinations set forth in the Conclusions of Law below, pointed out certain facts or made certain inferences which were helpful to this tribunal, which included the following.

- a. In the Rules of Professional Responsibility, there are introductory rules or admonitions and also specific bright line rules; violation of a bright line rule would violate the introductory rule by incorporation. TR. Vol. II at 48-49
- b. While it was not a violation of the Rules of Professional Responsibility for Metheny to form his own firm, he needed to be conscious of the fact that he had a duty to inform FOX of any potential conflict. TR. Vol. II at 30-31, 44-45.
- c. The exhibits, including Board Exhibits 2 through 4 and 10, evidence not only that Respondent had a potential conflict of interest which he did not disclose to his employer, but had an actual conflict since he made an active effort to obtain work for

his own firm rather than for FOX, in violation of W. Va. Code R. §7-1-12.4(e). TR. Vol. II at 31-32, 54-55, 59-60, 66.

d. Board Exhibits 5 and 6 are also examples where Respondent is soliciting work

which he has not disclosed to his employer, such as in Board Exhibit 5 where he states: “I would like to have an opportunity to do business with you through my own company in the future ...” Board Exhibits 5 and 6; TR. Vol. II at 61, 64.

e. There is no evidence Metheny ever reveals or discloses anything to FOX, and the Rules of Professional Responsibility require that. TR. Vol. II at 42.

f. Respondent’s communication in Board Exhibit 8 does not violate the bright line rule of W. Va. Code R. §7-1-12.4(c) prohibiting that facts or information obtained in his professional capacity not be revealed without the employer’s consent, but it is certainly not a loyal statement which you would normally say about your employer. TR. Vol. II at 65-66.

g. In Exhibit 8, it sounds like Respondent knows he is violating the rule (W. Va. Code R. §7-1-12.4(e)) and wishes it would go away. TR. Vol. II at 42.

h. Board Exhibits 5 and 6 are also examples where Respondent is soliciting work which he has not disclosed to his employer, such as in Board Exhibit 5 where he states: “I would like to have an opportunity to do business with you through my own company in the future ...” Board Exhibits 5 and 6; TR. Vol. II at 61, 64.

i. The exhibits contain several examples where Metheny discussed specific financial information, including profitability, cash flow, and other proprietary and

specific internal information in violation of W. Va. Code R. §7-1-12.4(c). Board Exhibits 5 and 12; TR. Vol. II at 28-29, 33-35, 40-41, 43, 60-61, 65, 72.

j. In Exhibit 5, the confidential information came from FOX, so the consent to reveal that is required by W. Va. Code R. §7-1-12.4(c) also had to come from FOX and FOX had not consented. Board Exhibit 5; TR. Vol. II at 88-92.

k. Exhibit 12 shows that Metheny revealed financial information about FOX to someone who was no longer privy to that information, which violates the disclosure rule [W. Va. Code R. §7-1-12.4(c)]. TR. Vol. II at 43.

l. If there is a moral conflict between the interests of an employer and a client, the solution is to go to your employer, say you think they are doing something wrong, and propose how to do it right, not do it under the table as Metheny did, as evidenced in Board Exhibit 5. Board Exhibit 5; 46-48.

m. There is no obligation to the client to be honest and forthcoming about what your employer is doing, and to go to the client and tell them what is going on is not the appropriate approach; you should simply not communicate with them and tell them to talk with the employer directly. TR. Vol. II at 76-78.

n. While there may be a general rule about an engineer's responsibility to the public to be objective and truthful (W. Va. Code R. §7-1-12.2(c)), there is a specific rule prohibiting you from revealing information about your employer (W. Va. Code R. §7-1-12.4(c)), and when there is a conflict between two rules the proper thing to do is just not communicate or to report the matter to the Board. TR. Vol. II at 78-80, 86-88.

o. In his response to C2014-16, Respondent states: “On the contrary to Ms. Casey’s allegations, I never solicited, performed, nor was I ever compensated for providing engineering services outside of the services I provided through FOX.” Exhibit 7, pg. 1.

p. The statement that he had never engaged in such conduct other than through his employer was not truthful based on the many exhibits that were solicitations or contained solicitations made by PDC Services while Metheny was still employed with FOX. Board Exhibits 2, 3, 4, 10; TR. Vol. II at 23, 28, 41-42, 84-85.

q. W. Va. Code R. §7-1-12.3(d) requires professional engineers’ statements or testimony to be objective and truthful; Metheny’s response is a statement contemplated by the rule, and since the statement that he never solicited any work outside of FOX is not truthful, Respondent is in violation of W. Va. Code R. §7-1-12.3(d). TR. Vol. II at 85.

r. Board Exhibit 10 also indicated Respondent had discontinued his employment with FOX in 2013, which information was inaccurate or erroneous and therefore not truthful; Board Exhibit 10 evidences violations of W. Va. Code R. §7-1-12.2(c) (represent yourself before the public only in an objective and truthful manner) and §7-1-12.2(d) (avoid conflicts of interest and faithfully serve the legitimate interests of the employer), as well as W. Va. Code R. §7-1-12.4(e). TR. Vol. II at 23-27, 66-69.

s. If the misrepresentation in Board Exhibit 10 regarding Respondent’s work history was intentional, this would be in violation of W. Va. Code R. §7-1-12.5(a)

which prohibits misrepresentations of pertinent facts concerning employers in solicitations of employment or business.

59. The weight of the evidence and fair inferences from that evidence indicate that Metheny's misrepresentation of his employment history was intentional and was not an inadvertent error.

CONCLUSIONS OF LAW

1. West Virginia Engineering Law is comprised of the enabling article, W. Va. Code §30-13-1 *et seq.*, and the rules promulgated by the Board, which include the Board's legislative rules, W. Va. Code R. §7-1-1 *et seq.*, and the Board's procedural rules (W. Va. Code R. §7-2-1 *et seq.*).

2. The Board is the state entity with the power and duty to regulate the practice of engineering in the State of West Virginia, and this matter is within the jurisdiction of the Board. W. Va. Code § 30-13-1 *et seq.*

3. Violations of the Rules of Professional Responsibility are grounds for disciplinary action. W. Va. Code § 30-13-21(a)(4).

4. The Board has the burden of proving by a preponderance of the evidence that disciplinary action is warranted. W. Va. Code R. §7-2-4.4.

5. The Board's Rules of Professional Responsibility are intended "to maintain a high standard of integrity and practice" which "are binding on every registrant." W. Va. Code R. § 7-1-12.2.

6. Each registrant is charged with the responsibility of adhering to standards of highest ethical and moral conduct in all aspects of the practice of engineering." W. Va. Code R. § 7-1-12.2(a).

7. Registrants shall represent themselves before the public only in an objective and truthful manner. W. Va. Code R. § 7-1-12.2(c).

8. Registrants shall avoid conflicts of interest, faithfully serve the legitimate interests of their employers, clients, and customers within the limits defined by the Rules of Professional Responsibility, and not compete unfairly with others. W. Va. Code R. § 7-1-12.2(d).

9. The above are general rules which were violated because of Respondent's violations of more specific rules as set forth below.

10. As part of a "Registrant's Obligation to Society," registrants are required to be objective and truthful in professional reports, statements or testimony. W. Va. Code R. § 7-1-12.3(d).

11. Respondent's misrepresentation of his employment history in the Milton proposal was not truthful and was therefore made in violation of W. Va. Code R. § 7-1-12.3(d).

12. Respondent's statement in his response to C2014-16 that he never solicited work outside of his employment with FOX, which is controverted by Board exhibits proving solicitations, was not truthful and was therefore made in violation of W. Va. Code R. § 7-1-12.3(d).

13. As part of a "Registrant's Obligation to Employer and Clients," registrants are prohibited from revealing facts, data or information obtained in a professional capacity without the prior consent of the client or employer except as authorized or required by law. W. Va. Code R. § 7-1-12.4(c).

14. As evidenced in several Board exhibits, Respondent revealed facts, data or information obtained in his professional capacity without the prior consent of FOX, in violation of W. Va. Code R. § 7-1-12.4(c).

15. The “Registrant’s Obligation to Employer and Clients” also requires registrants to make full prior disclosures to their employers or clients of potential conflicts of interest or other circumstances which could influence or appear to influence their judgment or the quality of their service. W. Va. Code R. § 7-1-12.4(e).

16. Respondent did not disclose anything to FOX about his formation of PDC, and made misrepresentations regarding same when related matters were discussed, and his formation and ownership of PDC was a conflict of interest or other circumstance which not only could influence or appear to influence his judgment or the quality of his service, but actually did influence his judgment, in violation of W. Va. Code R. § 7-1-12.4(e).

17. As part of a “Registrant’s Obligation to Other Registrants”, presentations incident to the solicitation of employment or business shall not misrepresent pertinent facts concerning employers. W. Va. Code R. § 7-1-12.5(a).

18. It is concluded that Respondent’s misrepresentation regarding his employment history in the Milton proposal violated W. Va. Code R. § 7-1-12.5(a).

19. Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public is a ground for disciplinary action. W. Va. Code § 30-13-21(a)(11).

20. It is concluded that Respondent’s misrepresentation of his employment history in the Milton proposal constitutes dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public, in violation of W. Va. Code § 30-13-21(a)(11).

21. Providing false testimony or information to the Board is a ground for disciplinary action. W. Va. Code § 30-13-21(a)(12).

22. It is concluded that Respondent's statement in his response to C2014-16 that he "never solicited ... engineering services outside of the services [he] provided through FOX" constitutes the provision of false information to the Board in violation of W. Va. Code § 30-13-21(a)(12).

23. It is concluded that the evidence adduced at the hearing of this matter and reasonable inferences drawn from that evidence prove by a preponderance of the evidence that Respondent violated the Rules of Professional Responsibility during the time between when he formed his own engineering firm in June of 2013 and his severance from FOX on May 1, 2014.

24. It is therefore concluded that the Board has therefore met its burden of proof as to the said Complaints in this matter by a preponderance of the evidence and is therefore authorized by law to reasonably sanction Respondent as may be permitted by law.

RECOMMENDED ORDER

Based on the above findings of fact and conclusions of laws, it is recommended as follows as to the subject complaints against Respondent Daniel A Metheny: to-wit, Consolidated Complaint Nos. C2014-16 and C2015-10:

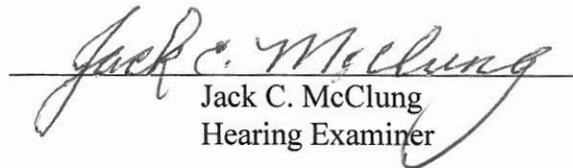
1. That the allegations and above-referenced violations of law and the Rules of Professional Responsibility as stated in the said Complaints be **SUSTAINED** and any defense or objection thereto by Respondent Metheny be **DENIED**;

2. That the West Virginia Board of Registration for Professional Engineers find that Respondent Metheny violated the laws and Rules of Professional Responsibility as alleged in the said Complaints;

3. That the Board impose upon Respondent Daniel A Metheny such sanction or sanctions under pertinent law as it may find appropriate under the circumstances for the discipline of the Respondent; and

4. That the Board in its discretion assess upon the Respondent Daniel A Metheny the payment of the administrative costs incurred in connection with the investigation and hearing of this matter.

RECOMMENDED THIS 31st DAY OF May, 2016.



Jack C. McClung
Hearing Examiner

b. failing to adhere “to standards of highest ethical and moral conduct in all aspects of the practice of engineering” in violation of W. Va. Code R. § 7-1-12.2(a);

c. failing to represent himself “before the public only in an objective and truthful manner” in violation of W. Va. Code R. § 7-1-12.2(c); and

d. failing to avoid conflicts of interest or faithfully serve the legitimate interests of his employer within the limits defined by the Rules of Professional Responsibility, in violation of W. Va. Code R. § 7-1-12.2(d).

2. The Board **ORDERS** Respondent to take and successfully complete the on-line Ethics Course provided by Murdough Center for Engineering Professionalism at Texas Tech University within six months from the date of entry of this Order.

3. The Board **ORDERS** Respondent Metheny to pay the following civil penalties for failing to comply with provisions of the following Rules of Professional Responsibility promulgated under the provisions of W. Va. Code § 30-13-1 *et seq.*, in violation of W. Va. Code § 30-13-21(a)(4):

a. a civil penalty in the amount of Five Hundred Dollars (\$500.00) for failing to be objective and truthful in professional reports, statements, or testimony in violation of W. Va. Code R. § 7-1-12.3(d);

b. a civil penalty in the amount of One Thousand Dollars (\$1,000.00) for revealing facts, data or information obtained in a professional capacity without the prior consent of the client or employer except as authorized or required by law in violation of W. Va. Code R. § 7-1-12.4(c);

c. a civil penalty in the amount One Thousand Dollars (\$1,000.00) for failing to make full prior disclosure to his employer and clients of potential conflicts of interest or other circumstances which could influence or appear to influence his judgment or the quality of his service in violation of W. Va. Code R. § 7-1-12.4(e); and

d. a civil penalty in the amount of Five Hundred Dollars (\$500.00) for misrepresenting pertinent facts concerning employers in presentations incident to the solicitation of employment or business in violation of W. Va. Code R. § 7-1-12.5(a).

4. The Board **ORDERS** Respondent Metheny to pay a civil penalty in the amount of Five Hundred Dollars (\$500.00) for engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public in violation of W. Va. Code § 30-13-21(a)(11);

5. The Board **ORDERS** Respondent Metheny to pay a civil penalty in the amount of Five Hundred Dollars (\$500.00) for providing false testimony or information to the Board in violation of W. Va. Code § 30-13-21(a)(12).

6. The Board **ORDERS** Respondent to pay administrative costs in the amount of Twenty Seven Thousand Five Hundred Dollars (\$27,500.00) in connection with Complaint Numbers C2014-16 and C2015-10.

7. The civil penalties imposed herein totaling Four Thousand Dollars (\$4,000.00) shall be paid within fifty (50) days of the date of entry set forth below, such amount 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 administrative costs imposed herein in the total amount of Twenty-Seven Thousand Five Hundred Dollars (\$27,500.00) shall be paid by separate payment within fifty (50) days from the date of entry, such amount to be made payable to the W. Va. P.E. Board.

9. The civil penalties and administrative costs totaling Thirty-One Thousand Five Hundred Dollars (\$31,500.00) may also be paid in accordance with a payment plan agreed to in writing by the Board.

10. The sum and substance of the Complaint, the Hearing Examiner's Findings of Fact, Conclusions of Law and Recommended Order, and this Final Board Order in part or in their entirety

shall be set forth in Board publications and on the Board's 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).

11. Non-compliance with this Board Order shall be immediate cause for further action by the Board.

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 11th day of August, 2016.

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

By:



**EDWARD L. ROBINSON, P.E.
BOARD PRESIDENT**