

IN THE CHANCERY COURT OF COUNTY, MISSISSIPPI

VS.

NO.

PARTIES' JOINT STIPULATION OF FACTS

COME NOW the parties to this appeal, (" ") and the Mississippi State Board of Registration for ("State Board" or "Board"), to stipulate and agree to the following listed facts as both undisputed and material to the issue raised on appeal. The parenthetical following each fact refers to the place in the Record where the fact may be found; the citation, unless otherwise noted, is to an exhibit appended to the hearing transcript and any page number or document within the exhibit.

1. Appellant graduated from in with a degree in . This curriculum is an approved one within the meaning of Mississippi's statutes and the rules promulgated by the Board. (Ex. , Verification form received by State Board from , dated , ; Ex. , cover of file folder and handwritten note on application)

2. Additionally, holds a Masters in , granted in , from , and a from , awarded in of . (Ex.)

3. sat for and passed the examination, an hour post-graduation professional examination, in . He/She has been a licensed professional in since . He/She was registered in in . (Ex. , Original Application; Ex. , Verification forms from and professional registration boards)

4. worked continuously as a full time practicing , and then as a registered professional engineer, after his/her graduation from and until he/she began school in the of . Prior to his/her career, had become the and sole shareholder of an firm in , . (Ex. , Original Application;)

5. In , considered changing careers to the field of . He/She narrowed his choices to schools with affiliations, and College. (Ex. 8 at 12-14)

6. However, because would need to work some to support his/her family during his/her years in law school, he/she testified that he/she would only have attended College School of if he/she were registered as a professional . (Ex)

7. In the of , contacted the State Board and requested an application and information about licensure in Mississippi. The application package he/she received contained an

application, instructions for its completion, and copies of Mississippi's statutes governing licensure as a . (Ex. 8 at 16)

8. Those statutes included the basic qualifications for registration as a professional , Miss. Code Ann. § 73-13-23, and the statute governing comity registrations, Miss. Code Ann. § 73-13-35. At the time of application, those statutes read as follows: § 73-13-23. Qualifications for registration.

The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional , or for certification as an engineer-in-training, respectively.

(1) As a professional :

Engineers--graduation plus experience and examination.

(a) Graduation in an approved curriculum of four (4) years or more from a school or college approved by the board as of satisfactory standing; a specific record of four (4) years of qualifying experience indicating that the applicant is competent to practice (in counting years of experience, the board at its discretion may give credit not in excess of three (3) years for satisfactory graduate study in), and the successful passing of a written, or written and oral, examination, in engineering as prescribed by the board; or

(b) A specific record of eight (8) years or more of qualifying experience subsequent to graduation from high school, indicating that the applicant is competent to practice ; and successfully passing a written, or written and oral, examination designed to show knowledge and skill approximating that attained through graduation in an approved four-year curriculum, and to show competence in the use of such knowledge and skills in the practice of .

§ 73-13-35. Persons holding certificate from a national body or other state.

The board may, upon application therefor and the payment of a fee in accordance with section 73-13-25, issue a certificate of registration as a professional engineer to any person who holds a certificate of qualification or registration issued to him/her by proper authority of the national council of engineering examiners, or of any state or territory or possession of the United States, or of any country, provided that the applicant's qualifications meet the requirements of sections 73-13-1 through 73-13-45 and the rules established by the board, or provided that the applicant has held such certificate of registration for a period of ten (10) or more years and has continued to practice.

9. The Board's rule governing comity registrations, Rule 3.026, stated that registration as a "will" be granted if the applicant meets either of two qualifying provisions: (a) if the applicant was registered prior to , , and held a current registration from another state; or (b) if the applicant was registered after , , had passed the examination and the principles and practice examination, a total of sixteen hours, and held a current registration from another state. (Ex. 3 at 7-8)

10. In of , filed his/her application and paid the application fee. (Ex. 7, original application)

11. On , , the executive director of the Board informed by letter that the Board had issued his/her license "on the basis of graduation plus experience, examination, and registration in another state." The effective date of his/her registration was , ; his registration number was . (Ex. , copy of , , letter to)

12. In late of , began his/her law studies at College School of law. In the of , contracted to sell his firm and moved his/her family to Mississippi. (Ex.)

13. Also during the of , the Board had begun an audit of registrations apparently because staff turnover caused some or all Board members to believe there may have been mistakes made in registrations. Subsequently, on , , in a letter from the Board's executive director, it informed that because of staff turnover, the Board discovered that registration was issued by mistake: "Mississippi requires the examination and the Principles and Practice of examination. Because you have not passed this examination, your registration does not comply with the legal requirements and is, therefore, ." (Ex. 7, letter from executive director to) (emphasis in original)

14. No pre-revocation hearing was noticed or held, nor was a post-revocation hearing noticed or held until after the United States District Court for the District of Mississippi ruled, on , , that the State Board's failure to have a hearing violated Mr./Ms. constitutional right to due process of law where fundamental property rights are concerned. (Ex. 1 at 5-6; Ex. 8 at 32, 250-51)

15. testified that he/she never received the Board's , , letter. The letter was accepted by his/her year(s) old daughter/son, , at the family's address on , . (Ex. 7, , , letter from to Board; Ex. 8 at 30) Of course, at this time, was living in .

16. Subsequent to the family's removal to , received a letter dated , , from one , the Board's attorney. That letter reiterates the information in the , , letter and then states that the Board received renewal fee. The letter then threatened possible legal action for unregistered practice. (Ex. 7, , , letter from to , Ex. 7, 's , , letter to ; Ex. 8 at 42-43)

17. Following a conversation with the executive director, wrote the , , letter to the Board. The letter set out personal and professional history, related that he/she had decided on a Mississippi law school in reliance on his/her , and offered to meet with the Board to explore these matters. (Ex. 7, letter of , , from to Board)

18. Without hearing, the Board wrote to Mr./Ms. informing him/her that they had reviewed his/her letter and application. The Board, however, remained of the opinion that license had been issued by mistake and that the Board had no choice but to abide by Mississippi's statutes and the Board's rules and regulations. (Ex. 7, Letter dated , , from to)

19. The cover of [redacted] official application file has a white pre-printed strip of paper pasted to the cover of the folder. On this strip of paper are blanks to be checked relating to the various requirements for registration. The blanks indicating graduation from an accredited curriculum, experience of four years, and the FE (EIT) examination are all check-marked. The blank indicating whether an applicant has taken the PPE examination is also check-marked. The parties do not dispute that Mr./Ms. [redacted] had graduated from an accredited curriculum, continuously practiced for over nineteen years, and had taken the EIT examination. The parties also do not dispute that Mr./Ms. [redacted] has never taken the PPE examination. (Ex. 7, folder cover)

20. Subsequently, [redacted] filed suit in federal court alleging, inter alia, that the Board's issuance of a license was a property interest entitling him/her to a hearing and that this failure violated his/her civil rights pursuant to the Fourteenth Amendment and 42 U.S.C. § 1983. (Ex. 1 at 1 et seq.; Ex. 4 at 1 et seq.)

21. During the hearing before the federal district court, the parties entered into a stipulation that none of the past or present Board members testifying at the trial would have changed their votes absent evidence that [redacted] had passed the second examination. (Ex. 8 at 310)

22. All past and present Board members who testified during that hearing admitted that they did not notice or hold a hearing, that they did not consider Mr./Ms. [redacted], [redacted], [redacted], letter as a request for a hearing, and that they would not have changed their minds based on contention that he/she was qualified under the terms of the comity statute. (Ex. 8 at 261-63, 277-79, 291-95, 304-09)

23. A former Board member, [redacted], testified in the federal court proceeding that he/she had chaired a committee in [redacted] to review the Board's comity practice. He/She stated that neighboring states generally require both the EIT, now called the FE (Fundamentals of Engineering), and the PE (also referred to as the PPE) examinations for comity registrations. Mr./Ms. [redacted] stated that many years ago, a single sixteen-hour examination was given. That old examination was subsequently divided into two parts, the EIT and PE. In [redacted], according to [redacted], the Mississippi law was changed so that anyone registering in Mississippi, other than by comity, had to have both examinations. Consequently, [redacted] said, the Board changed its comity registration rule to reflect both pre- and post-[redacted] time periods to "level the playing field" for in-state and out-of-state applicants. (Ex. 8 at 275-78)

24. [redacted] also testified that the Board saw no conflict between its rule and the comity statute because the statute was permissive, using the term "may," and did not require the Board to register on the bases stated in Miss. Code Ann. § 73-13-35. (Ex. 8 at 277-78)

25. The statute governing the issuance of registrations generally stated:

§ 73-13-29. Certificate of Registration.

The board shall issue a certificate of registration upon payment of registration fee as provided for in sections 73-13-1 through 73-13-45, to any applicant who, in the opinion of the board, has satisfactorily met all the requirements of said sections.

26. testified during the federal court trial that he/she now was engaged in the full-time practice of law. However, testified that he/she still wished to be a l in Mississippi so that he/she could work as an expert witness. also opined that being a could give him/her an edge, in terms of credibility, in dealing with other experts. (Ex. 8 at 89)

27. The Board appealed from the District Courts , , decision to the United States Court of Appeals for the Fifth Circuit. On , , that Court affirmed the district court, holding that Leland was entitled to a pre-revocation hearing. The Court concluded "[t]he possibility that the defendants might not have accepted ('s) theory had they used proper procedure does not excuse them from following that procedure." (Ex. S at 2-3)

28. Following remand from the Fifth Circuit, an evidentiary hearing was held before the district court, the Honorable presiding, without a jury. The District Court filed its Memorandum Opinion and Order on , . The Court reiterated its earlier findings that acquired a property interest in his/her license and that failing to accord him/her a hearing denied 's right to due process under the Fourteen Amendment to the Constitution of the United States. (Ex. 1 at 6)

29. On , , through its executive director, the Board noticed a post-revocation hearing to be held on , , at : a.m./p.m. (The letter noticing the hearing has not been made part of the official transcript. However, the parties stipulate to the existence of the notice and the fact of the hearing, held on ,)

30. On , , through a letter from its executive director, the Board informed that it had reconsidered its previous action revoking the license issued to him/her and affirmed its earlier decision that the license had been granted in error. The Board's order, enclosed with the letter of , , was dated , . The reason for the delay in informing of the Board's action does not appear in the Record. (The Board's Order, dated , , has not been made a part of the Record before the Court. The absence of the Board's final order is the subject of a pending motion to supplement the record. The parties, however, stipulate to its content, date, and the manner in which was informed.)

SO STIPULATED AND AGREED by Mr./Mrs. and the Mississippi State Board of Registration for Professional Engineers and Land Surveyors this the day of , .

Respectfully submitted,

Attorney for