

## **Comments on the Complaint Process**

Knud E. Hermansen

P.L.S., P.E., Ph.D., Esq.

As an engineer member of the Maine State Board of Licensure for Professional Engineers (Board) and also a practicing attorney, I have been involved in the complaint process both as a board member and counsel representing practitioners (though not at the same time or before the engineering board).

The complaint process is initiated by a written document generally referred to as a complaint, that is sent to the Board. Complaints come from peers, former employers, clients, competitors, and members of the public. The complaint alleges a licensed engineer, directly or indirectly, of some impropriety that the individual believes warrants some professional sanction or discipline.

The complaint is not a formalized document. The complaint does not have to adhere to a required format, style, content, and length normally required in certain aspects of a civil lawsuit. The complaint against a licensed practitioner often begins with a letter (some times hand written) or e-mail sent to the Board office. In some cases the complaint is referred to the Board by the attorney general's office from information that office has received. With the exception of anonymous complaints, all written complaints are taken seriously and treated respectfully.

Regardless of the source, style, and format of the complaint, upon receipt of the complaint by the Board administrator, the complaint is referred to a member of the Board designated as a 'Complaint Officer.' The complaint officer does a preliminary assessment along with the assistant attorney general assigned to the Board to determine if:

- 1) The Board has jurisdiction over the individual named in the complaint (e.g., Is the person licensed as a professional engineer or engineer intern in the state of Maine) or
- 2) The matter involved in the complaint is within the Board's jurisdiction and is not a matter more properly handled through civil litigation (e.g., a contract dispute).

Once this preliminary review is conducted and the initial assessment made that the Board has jurisdiction over the individual and gist of the complaint, the complaint officer will send the complaint to the licensed engineer requesting a response. The response must be completed within the time stated in the request. Once the response is received, the complaint officer then evaluates both the complaint and response, almost always consulting with the assistant attorney general assigned to the Board.

Together with an assistant attorney general assigned to the Board, the complaint officer determines if:

- 1) The conduct complained involves a violation of rules or a statute that licensed engineers must adhere to, and
- 2) There is sufficient evidence to move the complaint to a hearing.

After completing the reviews, the complaint officer makes a recommendation to the Board. This recommendation is made at a meeting of the Board that is open to the public. However, no comments from the public are allowed. At this stage, one of three

recommendations are often made: 1) dismiss the complaint, 2) conduct a hearing, or 3) refer the matter to the attorney general's office for action (i.e., Board lacks jurisdiction).

The Board generally votes to adopt one of these recommendations, though it is within the power of the Board to make and adopt their own recommendations or modify a recommendation suggested by the complaint officer. The complaint officer does not vote on this issue.

If the Board votes to hold a hearing, a hearing is scheduled and notice sent to the licensed engineer of the date, time, and location of the hearing.

With a hearing pending, the licensed engineer will often seek to enter into a consent decree. A consent decree is an agreement whereby the licensed practitioner admits culpability and will accept sanctions that are made apart of the agreement. The consent decree is then brought to the Board at a meeting for a vote of acceptance.

As a licensed practitioner that has a complaint pending, there are several points to consider.

**The licensed engineer may not have done anything wrong yet still have a complaint made against them.** In legal lexicon the situation is more appropriately described as there is insufficient evidence of wrongdoing or lack of evidence of inappropriate practice to warrant a hearing. Many, if not most of the complaints are dismissed without a hearing. In most cases the complaint is not dismissed before a response is requested and received.

**Take all complaints seriously.** When a licensed engineer receives notice that a complaint has been filed against them, the engineer is requested to respond to the complaint. The engineer must respond within the time frame given (or formerly request more time). The engineer should not presume or expect that the complaint officer or Board will understand that the complaint has no merit and dismiss it.

**The engineer's response will be graded ... not really.** However, the engineer should put serious thought and effort into writing the response. Responses that are poorly written, are full of grammatical errors, or fail to address the complaint, reflect poorly on the engineer. The response should not be a diatribe against the person making the complaint. There are at least two goals the engineer should seek to achieve when preparing the response: 1) refute the charges, and 2) impress the complaint officer with the professional response. The engineer should address each and every charge made in the complaint. Any perceived 'unfairness' in the complaint process should be addressed but in a tactful manner. Always have the response reviewed by someone who is willing to be a critical reviewer. If legal counsel is retained, legal counsel can review the response.

It must be said that if the complaint is justified, much goodwill from the Board will be gained by admitting to the infraction in the response and negotiating a fair sanction using a consent decree.

**Even minor infractions may have harsh consequences.** It is generally true that the discipline imposed is commensurate with the severity of the infraction. Rarely is a license

suspended or revoked. Much more common is remedial actions required and/or fines imposed. In many cases a letter of censure or admonishment is given and placed in the engineer's file. Any discipline is a matter of public record and has the potential to hurt the reputation of the licensed practitioner. If the practitioner is licensed in other states, the licensed practitioner may have actions taken by other Boards. Often during the investigation of a complaint by the complaint officer, other infractions are discovered. In some case the original infraction is dismissed and replaced by a charge of a more serious violation that was discovered during the investigation of the complaint.

**Consult legal counsel.** No guilt is presumed if the licensed engineer retains or consults with legal counsel. In addition to providing general counsel, a competent attorney will also insure that the complaint process adheres to the administrative procedures acts (a.k.a. APA) and Constitutional protections. The licensed practitioner tends to focus on the evidence and the person making the complaint. Legal counsel, in addition to considering the evidence, will also focus on legal standards, process, admissibility, notice requirements, jurisdiction, and a host of other factors – any of which may cause the complaint to be dismissed or the licensed engineer to win at the hearing or upon appeal of the Board's decision.

**Attend the Board meeting where the complaint officer makes recommendations to the Board.** In most cases, by attending this particular Board meeting, the licensed engineer will know immediately if the complaint has been dismissed. The relief this timely news could afford to the licensed engineer is well worth the trip and time to attend the Board meeting. (Any member of the public is free to come and go during the Board meeting.) If the complaint is moved to a hearing, the licensed engineer can often glean useful information from the comments made by the complaint officer, assistant attorney general, or members of the Board. For example, during the vote to move to a hearing, one or more Board members may vote in opposition to holding a hearing and give their reason for opposing a hearing. The reason may be worth arguing before the entire Board at the hearing.

**All arguments germane to the complaint must be raised at the hearing.** In my role as an attorney, I have often been consulted by a licensed practitioner after the hearing has been concluded and a decision rendered by the licensing agency. It is frustrating to discover that my client could have raised an argument over evidence submission, notice, bias, Constitutional safeguards, procedures under the APA, or process irregularities, for examples, that could have resulted in dismissal of the complaint. Because these arguments were not raised at the hearing, the arguments can NOT be raised on appeal.