

BEFORE THE
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation against:)
)
JAMES DALE COLE, JR.) Case No. 933-A
11056 Ramona Street)
Yucaipa, CA 92399)
)
Land Surveyor License No. L 5613,)
)
Respondents.)
_____)

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board for Professional Engineers and Land Surveyors as its Decision in the above-entitled matter.

This Decision shall become effective on December 24, 2010.

IT IS SO ORDERED November 17, 2010.

Original Signed

BOARD FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
Department of Consumer Affairs
State of California

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8
9 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11
12 In the Matter of the Accusation Against:

13 **JAMES DALE COLE, JR.**
11056 Ramona Street
14 **Yucaipa, CA 92399**

15 **Land Surveyor License No. L 5613**

16 Respondent.

Case No. 933-A

OAH No. 2010061015

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. David E. Brown (Complainant) is the Executive Officer of the Board for Professional
22 Engineers and Land Surveyors. He brought this action solely in his official capacity and is
23 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
24 by Nicole R. Cook, Deputy Attorney General.

25 2. Respondent James Dale Cole, Jr. (Respondent) is represented in this proceeding by
26 attorney George B. Newhouse, Jr., Esq., of Brown, White and Newhouse LLP, whose address is:
27 333 South Hope Street, 40th Floor, Los Angeles, California 90071.
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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Land Surveyor License No. L 5613 issued to Respondent James Dale Cole, Jr. (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. **Obey All Laws.** The Respondent shall obey all federal, state, and local laws and regulations related to the practices of professional engineering and professional land surveying.

2. **Submit Reports.** The Respondent shall submit such special reports as the Board may require.

3. **Tolling of Probation.** The period of probation shall be tolled during the time the Respondent is practicing exclusively outside the state of California. If, during the period of probation, the Respondent practices exclusively outside the state of California, the Respondent shall immediately notify the Board in writing.

4. **Violation of Probation.** If the Respondent violates the probationary conditions in any respect, the Board, after giving the Respondent notice and the opportunity to be heard, may vacate the stay and reinstate the disciplinary order which was stayed. If, during the period of probation, an accusation or petition to vacate stay is filed against the Respondent, or if the matter has been submitted to the Office of the Attorney General for the filing of such, the Board shall have continuing jurisdiction until all matters are final, and the period of probation shall be extended until all matters are final.

5. **Completion of Probation.** Upon successful completion of all of the probationary conditions and the expiration of the period of probation, the Respondent's Land Surveyor's License No. L 5613 shall be unconditionally restored.

6. **Cost Recovery.** Respondent is hereby ordered to reimburse the Board for its investigative and enforcement costs in this matter in the amount of \$1,717.50 within four and one-half (4 1/2) years of the effective date of the decision. Said reimbursement may be paid in installments.

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board for Professional Engineers and Land Surveyors of the Department of Consumer Affairs.

Dated: 10/26/10

Respectfully Submitted,
EDMUND G. BROWN JR.
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General

Original Signed
NICOLE R. COOK
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 933-A

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9 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11
12 In the Matter of the Accusation Against:

Case No. 933-A

13 JAMES DALE COLE, JR.
11056 Ramona Street
14 Yucaipa, CA 92399

ACCUSATION

15 Land Surveyor License No. L 5613

16 Respondent.

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18 Complainant alleges:

19
20 **PARTIES**

21 1. David E. Brown (Complainant) brings this Accusation solely in his official capacity
22 as the Executive Officer of the Board for Professional Engineers and Land Surveyors,
23 Department of Consumer Affairs.

24 2. On or about February 21, 1986, the Board for Professional Engineers and Land
25 Surveyors issued Land Surveyor License Number L 5613 to James Dale Cole, Jr. (Respondent).
26 The Land Surveyor License was in full force and effect at all times relevant to the charges
27 brought herein and will expire on September 30, 2010, unless renewed.
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JURISDICTION

3. This Accusation is brought before the Board for Professional Engineers and Land Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 8780 of the Code states:

The board may receive and investigate complaints against licensed land surveyors and registered civil engineers, and make findings thereon.

By a majority vote, the board may reprove, suspend for a period not to exceed two years, or revoke the license or certificate of any licensed land surveyor or registered civil engineer, respectively, licensed under this chapter or registered under the provisions of Chapter 7 (commencing with Section 6700), whom it finds to be guilty of:

(a) Any fraud, deceit, or misrepresentation in his or her practice of land surveying.

....

(e) Any conviction of a crime substantially related to the qualifications, functions, and duties of a land surveyor. The record of the conviction shall be conclusive evidence thereof.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

1 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
2 revoke a license on the ground that the licensee has been convicted of a crime substantially
3 related to the qualifications, functions, or duties of the business or profession for which the
4 license was issued.

5 8. Section 493 of the Code states:

6 Notwithstanding any other provision of law, in a proceeding conducted by a
7 board within the department pursuant to law to deny an application for a license or
8 to suspend or revoke a license or otherwise take disciplinary action against a
9 person who holds a license, upon the ground that the applicant or the licensee has
10 been convicted of a crime substantially related to the qualifications, functions, and
11 duties of the licensee in question, the record of conviction of the crime shall be
12 conclusive evidence of the fact that the conviction occurred, but only of that fact,
and the board may inquire into the circumstances surrounding the commission of
the crime in order to fix the degree of discipline or to determine if the conviction is
substantially related to the qualifications, functions, and duties of the licensee in
question.

13 As used in this section, "license" includes "certificate," "permit,"
14 "authority," and "registration."

15 9. Section 8783 of the Code states:

16 A plea or verdict of guilty or a conviction following a plea of nolo
17 contendere made to a charge substantially related to the qualifications, functions
18 and duties of a land surveyor is deemed to be a conviction within the meaning of
19 this article. The board may order the license or certificate suspended or revoked,
20 or may decline to issue a license or certificate, when the time for appeal has
21 elapsed, or the judgment of conviction has been affirmed on appeal or when an
22 order granting probation is made suspending the imposition of sentence,
irrespective of a subsequent order under the provisions of Section 1203.4 of the
Penal Code allowing such person to withdraw his plea of guilty and to enter a plea
of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
information or indictment.

23 REGULATORY PROVISIONS

24 10. Title 16, California Code of Regulations section 416 states:

25 For the purpose of denial, suspension, or revocation of the license of a
26 professional engineer or a land surveyor pursuant to Division 1.5 (commencing
27 with Section 475) of the Business and Professions Code, a crime or act shall be
28 considered substantially related to the qualifications, functions, and duties of a
professional engineer or land surveyor if, to a substantial degree, it evidences

1 present or potential unfitness of a professional engineer or land surveyor to
2 perform the functions authorized by his or her license in a manner consistent with
the public health, safety, or welfare. Such crimes or acts shall include, but not be
limited to, those involving the following:

3 (a) For professional engineers, any violations of the provisions of the
4 Professional Engineers Act or aiding and abetting any person in such a violation;

5 (b) For land surveyors, any violations of the provisions of the Professional
6 Land Surveyors' Act or aiding and abetting any person in such a violation;

7 (c) A conviction of a crime arising from or in connection with the practice of
8 professional engineering or land surveying.

9 11. Title 16, California Code of Regulations section 418 states:

10 (b) When considering the suspension or revocation of the certification of an
11 engineer-in-training or a land surveyor-in-training, or the license of a professional
12 engineer or a professional land surveyor, or the authority to use the title "structural
13 engineer," or the authority to use the title "geotechnical engineer" under Section
14 490 of the Code, the Board will consider the following criteria in evaluating the
rehabilitation of such person and his or her present eligibility to retain his or her
license:

15 (1) The nature and severity of the act(s) or crime(s) under consideration as
grounds for suspension or revocation.

16 (2) Evidence of any act(s) committed prior to or subsequent to the act(s) or
17 crime(s) under consideration as grounds for suspension or revocation which
18 could also be considered as grounds for suspension or revocation under
Section 490 of the Code.

19 (3) The time that has elapsed since commission of the act(s) or crime(s)
20 referred to in subdivision (1) or (2).

21 (4) The extent to which the licensee has complied with any terms of parole,
22 probation, restitution, or any other sanctions lawfully imposed against the
license.

23 (5) Any evidence of rehabilitation submitted by the licensee.

24 (6) Total criminal record.

25 (7) If applicable, evidence of expungement proceedings pursuant to Section
26 1203.4 of the Penal Code.

1 COST RECOVERY

2 12. Section 125.3 of the Code provides, in pertinent part, that the board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 FIRST CAUSE FOR DISCIPLINE

7 (September 6, 2006 Conviction for Theft Concerning Program Receiving Federal Funds)

8 13. Respondent is subject to disciplinary action under sections 490 and 8780(e) of the
9 Code in that he was convicted of a crime that is substantially related to the qualifications,
10 functions and duties of a land surveyor. The circumstances are as follows:

11 a. On or about September 6, 2006, in a criminal proceeding entitled *United States*
12 *of America v. James D. Cole, Jr.*, in the United States District Court, Central District of
13 California, case number EDCR 02-00061-RT, Respondent entered a plea of guilty to violation of
14 Title 18, United States Code, Sections 666 and 2(a), aiding and abetting fraud concerning
15 programs receiving federal funds. On his plea agreement, Respondent admitted that he aided and
16 abetted the crime knowingly and intentionally. The facts that led to the conviction are as follows:

17 b. Respondent was a professional land surveyor licensed in California.
18 Respondent was an employee of Brown & Mullins from 1983 through 1993, a land surveying and
19 engineering company incorporated in California. Russell John Mullins ("Mullins") was an equity
20 partner in the firm Brown & Mullins, and then later in 1993, Mullins owned and operated
21 R.J.Mullins & Associates, Inc. ("RJM&A"), also a surveying company incorporated in California.
22 Mullins encouraged Respondent to discontinue his employment and form his own surveying
23 company, J.D. Cole & Associates, Inc. ("JDC&A"). Therefore, beginning in or around 1993,
24 Respondent owned and operated JDC&A.

25 c. During the period of December 1993 through 2002, Mullins was also employed
26 by the Mohave Water Agency ("MWA"), at first as a Construction Manager, and later as its
27 Director of Engineering, Operations, and Maintenance. The Mojave Water Agency ("MWA")
28 was a public entity responsible for insuring safe and adequate water supplies for the citizens of

1 the High Desert Region of San Bernardino County. The MWA was responsible for contracting
2 and administering a number of public works projects including the Mojave River Pipeline and the
3 Morongo Basin Pipeline Projects. The United States Environmental Protection Agency ("EPA")
4 had been the principal financial supporter of the Mojave River Pipeline Project since 1995. As
5 work on the Project progressed and MWA incurred expenses, it submitted its costs to the EPA
6 and received reimbursement under the agreements. During the fiscal years ending September 30
7 of 1996, 1997, 1998, the MWA received in excess of \$10,000 in benefits each year from EPA.

8 d. Mullins devised a scheme whereby he would be able to secretly obtain
9 surveying business with the MWA despite his employment with the agency. Mullins
10 accomplished this goal by using his position at the MWA to assist Respondent and Respondent's
11 business, JDC&A, in obtaining surveying jobs with the MWA. Mullins first recommended to his
12 superiors that the work be granted to JDC&A and then later by causing MWA surveying work to
13 be provided to JDC&A. Once the work was performed, JDC&A submitted invoices to MWA for
14 payment. Mullins recommended that MWA make payments, or he personally approved
15 payments, on the invoices submitted by JDC&A. In such cases, Respondent would then tender a
16 significant amount of the money earned on those contracts over to RJM&A (in part to compensate
17 Mullins for equipment, office space and other materials), thus allowing Mullins to secretly share
18 in the proceeds of JDC&A's surveying work performed on behalf, and for the benefit of MWA.

19 e. The precise method through which Mullins received such payments from
20 JDC&A, changed over time. However, during the period of 1993 through September 1994,
21 Respondent forwarded 100% of the money he received from MWA to RJM&A. Prior to
22 receiving payments from MWA on such jobs, Respondent would submit time cards to RJM&A
23 for the work JDC&A performed, much as how Respondent had done when he was employed
24 directly by Mullins. During the period of October 1994 through May 1996, after Respondent
25 received MWA funds, he and Mullins calculated a division of the monies received from MWA,
26 according to their respective hourly rates and the administrative/oversight charges assessed by
27 Mullins' company. Mullins then issued an invoice equal to the amount of his firm's split
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1 although the invoice was characterized as the lease of equipment and office space. JDC&A paid
2 the invoices by sending checks to RJM&A through the U.S. mail.

3 f. In October 1994, Respondent was notified by MWA that Mullins had become
4 the sole individual responsible for awarding survey and other contracts on behalf of MWA.
5 Respondent suspected it was improper illegal for Mullins to be involved in influencing the award
6 of work on MWA projects in which he had a financial interest. Respondent spoke with Mullins
7 about whether it was appropriate or proper for Respondent to continue to do MWA, to which
8 Mullins falsely assured Respondent that he had obtained MWA's knowledge and consent to the
9 arrangement. Although Respondent was uncomfortable with the statement, he deliberately chose
10 not to make further inquiries with MWA, or any other government agency, and continued in his
11 relationship with RJM&A on future contracts involving MWA work.

12 g. During this time, Respondent's invoices to the MWA typically included the
13 invoices of various subcontractors and lessors of equipment JDC&A had used while performing
14 survey work. During the period of October 1994 through May 1996, while Respondent aided and
15 assisted RJM&A's participation in the project by submitting invoices to MWA, Respondent did
16 not mention the subcontract or lease arrangement with, or otherwise identify the fact that the
17 funds were being disbursed to RJM&A.

18 h. On September 6, 2006, Respondent was sentenced to two years of probations
19 and five hundred hours of community service. Respondent was also ordered to pay a \$10,000
20 fine and a \$100.00 special assessment fine to the United States.

21 SECOND CAUSE FOR DISCIPLINE

22 (Knowingly and Intentionally Aided and Abetted Fraud or Deceit)

23 14. Respondent is subject to disciplinary action under 8780(a) of the Code in that he
24 knowingly and intentionally aided and abetted fraud in his professional practices as a land
25 surveyor as described above in paragraph 13, incorporated by reference as if fully set forth herein.
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a decision:

1. Revoking or suspending Land Surveyor License Number L 5613, issued to James Dale Cole, Jr.
2. Ordering James Dale Cole, Jr. to pay the Board for Professional Engineers and Land Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 5/5/10

Original Signed

DAVID E. BROWN
Executive Officer
Board for Professional Engineers and Land Surveyors
Department of Consumer Affairs
State of California
Complainant

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