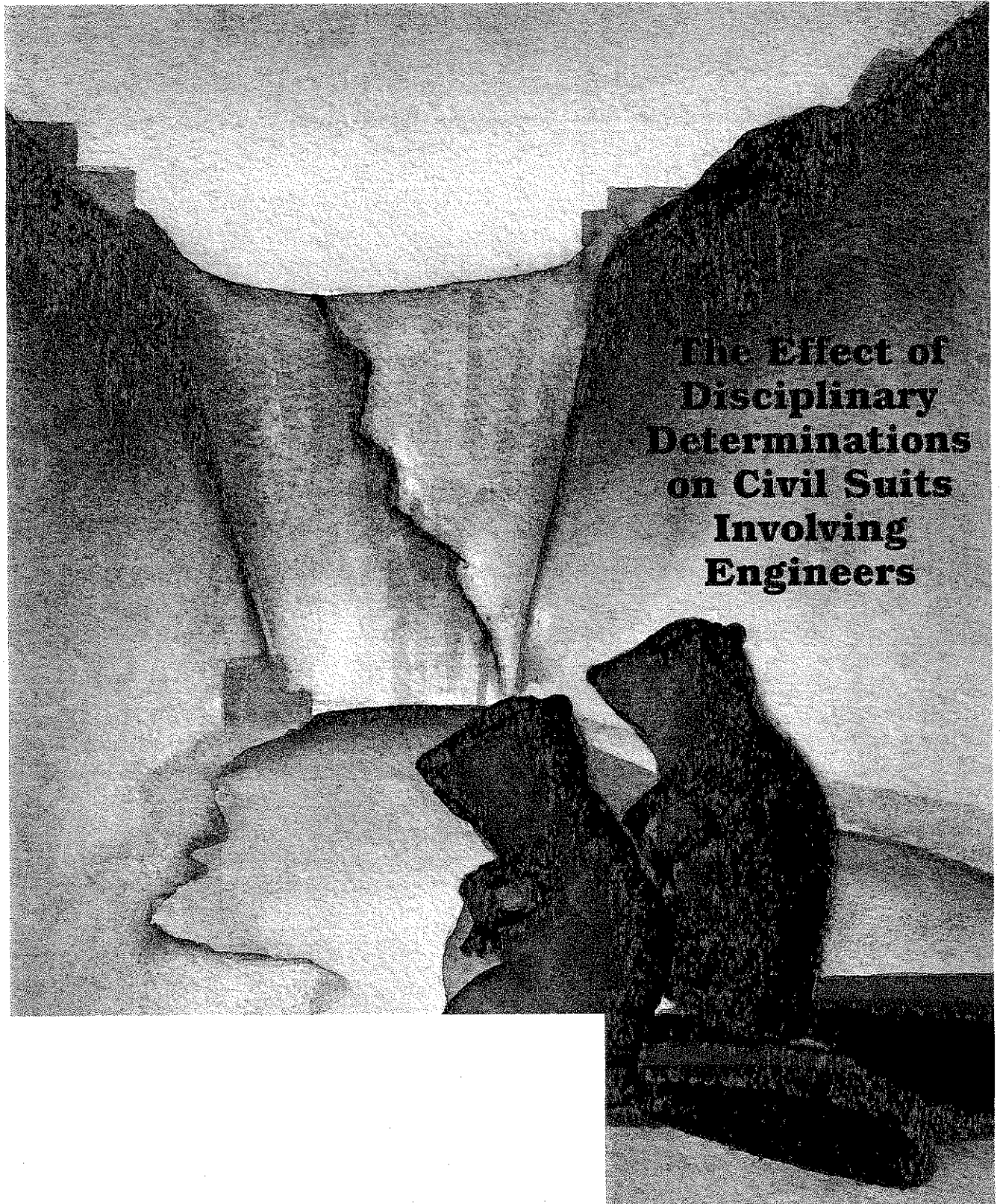


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**The Effect of
Disciplinary
Determinations
on Civil Suits
Involving
Engineers**

Proceed with Caution

The Effect of Disciplinary Determinations on Civil Suits Involving Engineers

by Jonathan Yi

In Florida, disciplinary proceedings¹ against a professional engineer routinely begin after the Florida Board of Professional Engineers receives a uniform complaint form from a citizen reporting that an engineer has violated certain licensing statutes.² After a citizen files the complaint — asserting that property damage was sustained as a result of the engineer's deficient work, for example — the citizen may open a civil suit based on the same underlying facts. The initiation of a civil suit compounds the already complex nature of disciplinary proceedings and gives rise to a host of questions concerning the range of evidentiary effect that prior administrative determinations may have on subsequent civil suits involving the engineer.

This article aims to clarify that range by examining statutes and case law that impose parameters on the effect that administrative determinations may have on civil suits. Starting with a list of governing statutory provisions and rules, the article will proceed with an overview of the disciplinary process involving an engineer. Next, the preclusive effect of administrative determinations will be considered, followed by a discussion of whether such determinations may have evidentiary, though not preclusive, effect in subsequent civil suits. This part of the discussion will culminate in the development of a partial evidentiary framework that can be used to better assess the impact that disciplinary determinations may have on civil suits. Finally, the article will examine the procedural and substantive considerations that should accompany the representation of an engineer throughout the disciplinary process.

The focus of this article is limited to concerns associated with representing professional engineers. Nevertheless, the principles discussed here may be applicable to the disciplinary process of other design professionals, and to a lesser extent, other licensed professionals in Florida.

Standards Governing the Disciplinary Process

A solid grasp of the interplay between a complex set of applicable statutes and rules is necessary to represent the engineer effectively throughout the disciplinary process. A partial list of the governing standards includes:

- 1) Administrative Procedure Act, F.S. Ch. 120, and the Model Rules of Procedures;
- 2) F.S. Ch. 455, which outlines administrative disciplinary procedures applicable to professionals in Florida under the jurisdiction of the Department of Business and Professional Regulations (department);
- 3) F.S. Ch. 471, under which engineers are regulated;
- 4) Rules³ promulgated by the Florida Board of Professional Engineers (board) to implement statutory provisions;⁴ and
- 5) Rules⁵ governing the Florida Engineers Management Corporation (FEMC), which provides administrative, investigative, and prosecutorial services on behalf of the board.

Additionally, because disciplinary proceedings — which may result in revocation or suspension of licenses — are penal in nature,⁶ certain safeguards have been extended to the professional. These include the right to remain silent pursuant to the U.S. Constitution and the Florida Con-

stitution,⁷ as well as the right to the representation and advice of counsel or other qualified persons.⁸

An Overview of the Disciplinary Process

The disciplinary process will likely unfold in the following manner. After a complaint is filed with the board, FEMC is required to investigate and determine legal sufficiency of the allegations within 30 days of receipt of the complaint.⁹ A complaint is legally sufficient if it contains ultimate facts showing that there has been "a violation of [F.S. Ch. 455], of any of the practice acts . . . regulated by the department, or of any rule adopted by the department or [the] board."¹⁰ If the complaint is legally sufficient, FEMC must furnish the engineer with a copy of the complaint that resulted in the initiation of the investigation within 15 days.¹¹ The engineer then has the opportunity to respond to the charges within 20 days after service of the complaint.¹² At this point, a basic investigative hearing may be conducted to obtain relevant information.¹³

Upon completion of the investigative process, FEMC prepares and submits to the probable cause panel an investigative report, which contains findings and recommendations as to whether probable cause exists to warrant further agency action.¹⁴ Next, the panel — composed of three board members or two board members and one former board member — examines FEMC's investigative file and decides whether probable cause exists within 30 days.¹⁵ The board may then direct the department to file an administrative complaint against the engineer in accordance with F.S. Ch. 120.¹⁶ The department may decline this instruction if it determines that probable cause finding was unwarranted.¹⁷ In such circumstances, FEMC may prosecute the administrative complaint in accordance with F.S. Ch. 120.¹⁸ Before an administrative complaint is filed, however, an engineer must have the opportunity to repudiate the charges and correct any deficiencies contained in the record. An administrative complaint filed without first satisfying this requirement is subject to immediate dismissal.¹⁹

An engineer desiring to contest the

charges may try his or her case in a formal or an informal proceeding pursuant to F.S. §120.57(1) and (2), respectively.²⁰ A formal hearing "shall be held pursuant to [C]hapter 120 if there are any disputed issues of material fact."²¹ A formal hearing is granted only upon a showing that a dispute as to material facts exists.²² Conversely, an informal hearing may be held if the engineer does not dispute the material facts in the administrative complaint, and may only be used to present information to mitigate the seriousness of the charges.²³ Under each, parties have an opportunity to "confront each other at a common time and situs and present evidence, legal authority, and argument in support of their respective positions."²⁴ Other differences exist as well.

Formal hearings, which resemble a trial,²⁵ are directed to the Division of Administrative Hearings (DOAH), where an administrative law judge may make factual findings and provide the board with the recommended disposition or penalty.²⁶ At the conclusion of a formal hearing, a recommended order is submitted to the board. The parties have 15 days to submit written exceptions to the recommended order.²⁷ The board may adopt the recommended order as the board's final order, but also has the authority to modify or reject certain conclusions of law upon a review of the entire investigative file.²⁸ The board has 90 days to render a final order after submission of the recommended order.²⁹

Informal hearings offer a less structured method of dispute resolution, and "in proper application will afford full relief faster and more conveniently."³⁰ Section 120.57(2) does not explicitly delineate procedural rights of the parties. Nevertheless, general rules applicable to proceedings that affect substantial interests still apply, and pursuant to F.S. §120.569, a recommended order will follow the conclusion of an informal proceeding. The board must adopt or reject as its final order within 90 days under F.S. §120.569(1) unless the time period is waived or extended. Regardless of whether a formal or informal hearing is employed as the method of adjudication, a party adversely affected by

agency action is entitled to judicial review.³¹

Preclusive Effect of Administrative Findings on Subsequent Civil Suits

The threshold question is whether factual or legal determinations rendered by an agency during the disciplinary process can preclude litigation of certain claims or issues in the civil suit under the doctrines of collateral estoppel or res judicata. Generally, collateral estoppel "bars relitigation of the same issues between the same parties in a different cause of action," while res judicata "bars relitigation of the same cause of action between the same parties."³² Disciplinary proceedings are penal in nature, and are conducted to police licensing requirements of professionals.³³ As such, the purpose of disciplinary proceedings is inherently different from the purpose of civil proceedings, and this distinction arguably precludes the applicability of res judicata — which requires that causes of action be identical in nature. Collateral estoppel, however, has been successfully employed in other jurisdictions as a mechanism to preclude civil litigation of those common issues, points, and questions that were presented and determined during an administrative proceeding.³⁴

In Florida, a party seeking to invoke the collateral estoppel has the burden to establish the following requirements: 1) the issue being litigated is identical to the issue previously litigated between the same parties; 2) the issue was actually and fully litigated; and 3) final decision was rendered in a court of competent jurisdiction.³⁵ The mandate that the parties between the two proceedings be identical is not an absolute bar to application of collateral estoppel, as one may be deemed a participant to the prior litigation "if the party is bound by the final judgment entered to the same extent as the named parties."³⁶ This is also known as the doctrine of mutuality.³⁷

Final Administrative Orders and Collateral Estoppel

Against this background, in *Stogniew v. McQueen*, 656 So. 2d 917 (Fla. 1995),³⁸ the Florida Supreme

Court answered a certified question whether the department's final order relating to a marriage and family therapist's misconduct toward a patient may be used as conclusive proof in a subsequent civil action arising under the same set of operative facts.

Answering in the negative, the court opened its analysis by noting that historically, collateral estoppel has only been used to preclude subsequent litigation of an identical issue previously litigated by the same parties, or those in privity with the parties. The court then rejected the plaintiff's argument that Florida had abandoned the mutuality requirement, and also dismissed her alternative contention that the mutuality requirement was satisfied because she had been "virtually represented" by the department in the underlying administrative action against the professional. The court considered this argument flawed because although the plaintiff "was clearly interested in being vindicated by the administrative proceeding, she could not have been bound by the outcome."³⁹

The trend in other jurisdictions has been to relax the mutuality requirement.⁴⁰ In stark contrast, Florida cases decided after *Stogniew* indicate that lower courts are heeding — and not departing from — the Florida Supreme Court's firm declaration that "we are unwilling to follow the lead of certain other states and of the federal courts in abandoning the requirements of mutuality in the application of collateral estoppel."⁴¹ The effect of *Stogniew* and its progeny is that final orders rendered by the department will not conclusively determine any identical issues during subsequent civil litigation.

Nonfinal Administrative Orders as Evidence

Stogniew, however, leaves open the possibility that nonfinal orders may be admitted as evidence, and, thus, affect the course of a subsequent civil suit. That possibility was extensively explored in *Dykes v. Quincy Telephone Co.*, 539 So. 2d 503 (Fla. 4th DCA 1995), where the court distinguished the admissibility of final and nonfi-

nal orders, and ruled that only final orders may be properly admitted as evidence. In so ruling, the court created a framework for assessing the admissibility of administrative determinations as evidence in civil cases.

In *Dykes*, the key question was whether the trial court had erred in granting the defendant's motions for summary judgment on the basis of DOAH's recommended orders which were attached to the pleadings. The court reversed, noting that recommended orders amounted to "inadmissible evidence which should not have been considered by the lower court."⁴² Specifically, the court found that recommended orders, as hearsay, could not be judicially noticed pursuant to F.S. §90.202(5) because they were not "final."⁴³ Consequently, the court noted that "the only conceivable basis on which they could be admitted into evidence is pursuant to [F.S.] §90.803(8),"⁴⁴ which identifies two types of hearsay exceptions: those records, reports, written statements, or compiled data of public agencies "setting forth activities of the office or agency, or matters observed pursuant to duty imposed by law as to matters which there was a duty to report."⁴⁵

The court found that DOAH's recommended orders do not fall under the public records hearsay exception because DOAH is not an agency within the meaning of F.S. §90.803(8) but rather a quasi-judicial entity that does not have the policy-making authority of an administrative agency. The court then buttressed its conclusion by noting that the nonfinal orders lack the requisite trustworthiness necessary for admission as evidence.

A Partial Evidentiary Framework for Admission of Administrative Determinations

Stogniew and *Dykes* establish that administrative determinations will not prevent relitigation of identical issues in civil proceedings, but may be introduced as evidence if certain requirements are met. As noted in *Dykes*, final orders are subject to judicial notice by courts pursuant to F.S. §90.202(5). Alternately, nonfinal orders may be admitted as evidence

only if they fall under the public records exception to the hearsay rule.

• Judicial Notice of Final Orders

Judicial notice is the method by which the court informs itself of particular facts during a case, and a matter judicially noticed is taken as true without resorting to use of formal evidentiary proof.⁴⁶ Although a trial court is entitled to take judicial notice of certain records, such records "are still subject to the same rules of evidence to which all evidence must adhere,"⁴⁷ which, for example, means that judicial notice of a deposition does not "render all that is in it admissible."⁴⁸ Accordingly, even if the civil court takes judicial notice of the final order, counsel representing the engineer should ensure that all factual findings and conclusions contained therein are admissible pursuant to the rules of evidence and in the alternative, make objections where applicable.

• Nonfinal Orders and the Public Records Hearsay Exception

As exemplified in *Dykes*, no final orders must be rendered by an agency within the meaning of F.S. §90.803(8) to have evidentiary effect in a subsequent civil proceeding. Moreover, admissibility of nonfinal orders is restricted by requirements in F.S. §90.803(8) — that the documents or writings be either 1) activities of an agency or 2) matters observed pursuant to a legal duty to be admitted under public records hearsay exception. The former exception has been construed to include only data and information that are recorded as part of routine recordkeeping of a public office or agency, such as accounting records⁴⁹ and records of occupational licenses.⁵⁰ As such, it is doubtful that nonfinal orders, which may contain factual findings and legal conclusions, will be admissible under this exception.

It is less clear, however, whether nonfinal orders may be admissible under the latter exception as matters observed pursuant to a legal duty. On one hand, courts have recognized that certain reports containing opinions and conclusions — such as the contents of an investigative file of the department⁵¹ — may be admitted as matters observed pursuant to a legal duty. On the other hand, the

Florida Supreme Court ruled in *Lee v. Department of Health and Rehabilitative Services*, 698 So. 2d 1194 (Fla. 1997), that public reports containing "evaluations or statements of opinion by a public official are inadmissible"⁵² under this hearsay exception.

- *Effect of Stogniew and Dykes*

Taken together, *Stogniew* and *Dykes* suggest that an engineer's election of an adjudicatory medium — a formal or an informal hearing to dispose of the disciplinary charges — may alter the evidentiary effect that an administrative determination may have in a subsequent civil suit. As a foreground, if a formal hearing is selected, the matter is first directed to DOAH, where an administrative judge makes findings of fact and provides the board with a recommended order. The board then issues a final order. For an engineer, a formal hearing affords greater protection in subsequent civil suits because any nonfinal order issued by DOAH may have no evidentiary effect on the civil case until a final order is issued by the board. This conclusion is grounded in *Dykes*, where the court ruled that DOAH's recommended order was not admissible as evidence because DOAH is not an agency within the meaning of F.S. §90.803(8).

In contrast, an informal hearing is conducted before a member of the board and does not involve DOAH. Upon conclusion of the hearing, the board member sends a recommended order to the board to adopt as a final order. Thus, in accordance with *Dykes*, a nonfinal order rendered after an informal proceeding passes the first hurdle toward evidentiary effect because the board is a public agency⁵³ within the meaning of F.S. §90.803(8). These orders may then be given evidentiary effect if a court determines, for example, that *Lee* is not dispositive on the issue of the admissibility of administrative orders and finds that the board's nonfinal orders do in fact fall within the public records hearsay exception as matters conducted pursuant to a legal obligation. Indeed, the disparate evidentiary results tied to formal versus informal proceedings suggest that trying a disciplinary case in one medium over another is not simply a matter of convenience,

but rather a strategy that can have far reaching consequences in a subsequent civil suit.

- *Evidentiary Effect of the Complaint*

Pursuant to F.S. §455.225(10), any complaint filed against a professional regulated by the department — including engineers — that did not result in a finding of probable cause, and any information gathered during the investigation process are protected from public disclosure granted that the engineer did not waive confidentiality rights. The intent behind this provision is to protect the professional from the "public's discovery of unfounded complaints, or complaints without probable cause that might do irreparable damage"⁵⁴ to the reputation of a professional.

- *Evidentiary Effect of Settlement Agreements*

The option to settle pending disciplinary charges usually arises after FEMC has filed an administrative complaint against the engineer. If an agreement is reached between the engineer and FEMC, the proposed settlement agreement is directed to the board for approval and incorporation into a final order. Currently, no Florida cases appear to address what evidentiary treatment a court should give to a settlement agreement reached between a professional regulating body and the professional to dispose of the pending disciplinary charges. Moreover, it is uncertain whether a court would judicially notice, pursuant to F.S. §90.202(5) and *Dykes*, a final order which incorporates the settlement agreement.

Existing cases, however, do point to a possible outcome. Florida courts have often precluded the introduction of a settlement agreement as probative evidence. For instance, in *Eastman v. Flor-Ohio, Ltd.*, 744 So. 2d 499 (Fla. 5th DCA 1999), the court affirmed a trial court's denial of a defendant's request to introduce a settlement agreement from an underlying action into evidence, finding that the trial court had not abused its discretion because the "probative value of the agreement was outweighed by its potential prejudicial effect."⁵⁵ Other courts have found that admission of a settlement agreement constitutes

prejudicial error⁵⁶ warranting a new trial.⁵⁷ Moreover, even the admission of testimony relating to compromise and settlement of a prior claim has been found to amount to reversible error.⁵⁸ While such findings relate to settlements between private parties, *Eastman* and others suggest that at the very least, courts will be receptive to the possibility that settlement agreements made with the board should also be subject to exclusionary principles.

Other considerations attach when a settlement agreement entered into with FEMC is approved by the board and is incorporated into a final order. Because a court contemplating the admissibility of this type of a final order must reconcile the tension between F.S. §90.202(5) — which allows for judicial notice of final orders — and cases such as *Eastman*, which supports an exclusionary outcome, it may be advisable to seek a declaratory judgment from the court as to the admissibility of the final order containing the settlement agreement pursuant to F.S. §86.021. Counsel representing the engineer should make objections where possible, and prepare a motion in limine to exclude the final order.

Existing case law provides only a limited framework for a full understanding of the evidentiary effect of administrative determinations on subsequent civil suits. The compartmentalization of statutes and rules pertaining to the administrative disciplinary process, coupled with evolving legal parameters surrounding the evidentiary effect of agency determinations on subsequent civil suits, mandates that careful attention be given to each step of the administrative disciplinary process to defend the engineer successfully. The following are some of the considerations that should accompany the representation of a prosecuted engineer.

Procedural and Substantive Considerations

- *Right to Remain Silent*

A respondent to an administrative disciplinary proceeding may not be compelled to testify against oneself, or comply with discovery procedures

that may be considered as testifying against one's interests.⁵⁸ Given the uncertainty accompanying the limited framework for weighing the evidentiary effect of administrative determinations, as discussed above, an engineer should be careful not to discuss the pending administrative charges with agency officials involved in the adjudication process since incriminating statements may have evidentiary effect as admission of a party in the administrative and civil suits. Also, the engineer or the engineer's counsel should not voluntarily submit any documents or records pertaining to the charges prior to determining the evidentiary consequences associated with the production of such documents.

• *Discovery*

After an administrative complaint is filed against the engineer, discovery should be conducted to determine the board's grounds for disciplinary action pursuant to F.S. Ch. 119 and the Florida Rules of Civil Procedure. Discovery, including interrogatories and requests for production, may be used to inquire into the reason and motive for the initiation of administrative disciplinary proceedings. Information gathered through the discovery process may be used as the grounds for dispositive motions for lack of probable cause, and also may be used to shape the course of the engineer's litigation strategy. Any defects should be raised immediately in a motion to dismiss the administrative complaint to avoid waiver of the defect.

• *Validity of the Administrative Complaint*

An administrative complaint need not possess the technical attributes of a civil or criminal complaint, even though license disciplinary proceedings are penal in nature.⁶⁰ Errors in the administrative complaint that do not result in injustice or unfairness do not constitute grounds for reversal,⁶¹ and a motion to dismiss based on vagueness, for example, may result only in the amendment of the administrative complaint. Nevertheless, the administrative complaint should contain specific allegations and facts so that the engineer can

be cognizant of the precise grounds for the administrative complaint and formulate appropriate defense strategies.

• *Choice of Law*

Stogniew suggests that collateral estoppel principles will not operate to bind subsequent civil suits based upon prior administrative determinations in Florida. However, other jurisdictions favor the approach of giving estoppel effect to administrative determinations, which may dramatically affect the outcome of a subsequent civil litigation. Thus, to the extent applicable, an engineer entering into an agreement for services should examine the choice of law clause contained in the agreement and weigh the evidentiary consequences of being bound by laws of a particular jurisdiction. Admittedly, this strategy will not affect a civil suit brought by a complainant who is not in contractual privity with an engineer. Still, it may work to reduce risk of liability in suits between contracting parties.

Conclusion

The difficulties posed by disciplinary proceedings are compounded when a related civil suit is also filed. This sequence of events triggers novel questions related to the evidentiary effect that a prior administrative judgment may have on the civil case. Existing authorities lend themselves to the construction of only a partial framework to assess the evidentiary effect of administrative determinations on civil proceedings. Thus, the engineer must approach the administrative disciplinary process with much care and attention in order to avoid unintended consequences in another forum.□

¹ See FLA. STAT. §471.033(1)(g) (2007) (stating that disciplinary action may be taken against an engineer for "[e]ngaging in fraud or deceit, negligence, incompetence or misconduct, in the practice of engineering"). See also FLA. ADMIN. CODE R. 61G15-19.001(6)(b) (2007) (defining what constitutes "misconduct" in the practice of

engineering).

² See, e.g., *Carter v. Department of Professional Reg., Bd. of Optometry*, 613 So. 2d 78, 79 (Fla. 1st D.C.A. 1993).

³ See FLA. ADMIN. CODE CHS. 61G15-18 through 37 (2007).

⁴ See FLA. STAT. §471.008 (2007) ("The board has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement provisions of this chapter or chapter 455 conferring duties upon it").

⁵ See FLA. STAT. §471.038 (2007) entitled "Florida Engineers Management Corporation Act"; see also FLA. ADMIN. CODE R. 61G15-37.001 (2007) (outlining additional duties of FEMC).

⁶ See *Taylor v. Department of Professional Reg.*, 534 So. 2d 782, 784 (Fla. 1st D.C.A. 1988) (physician disciplinary proceedings are penal in nature); see also *McDonald v. Department of Professional Reg., Bd. of Pilot Commissioners*, 582 So. 2d 660, 663 n. 2 (Fla. 1st D.C.A. 1991) (license revocation or suspension proceedings are penal in nature) (citing *State ex. rel. Vining v. Florida Real Estate Comm'n.*, 281 So. 2d 487, 491 (Fla. 1973)).

⁷ Compare, e.g., *Vining*, 281 So. 2d at 492 (extending the right to remain silent under the U.S. and Florida constitutions to real estate agent facing discipline); and *Scott v. Department of Professional Reg.*, 603 So. 2d 519, 520 (Fla. 1st D.C.A. 1992) (setting aside the department's license suspension of a nurse who did not appear at hearing or respond to complaint brought by the department); with *Boedy v. Department of Professional Reg.*, 463 So. 2d 215 (Fla. 1985) (privilege against self-incrimination inapplicable to proceedings to determine a physician's mental or physical fitness to practice medicine).

⁸ See FLA. STAT. §120.62(2)(2007) (providing that "[a]ny person compelled to appear, or who appears voluntarily, before any presiding officer or agency in an investigation or in any agency proceeding has the right, at his or her own expense, to be accompanied, represented, and advised by counsel or other qualified representatives."). This is not a constitutional right. See *Thompson v. Department of Professional Reg., Bd. of Medical Examiners*, 488 So. 2d 103, 105 (Fla. 1st D.C.A. 1986) (licensee is not prevented from assistance of counsel, but does not have a constitutional right to counsel) (quoting *Woodham v. Williams*, 207 So. 2d 320 (Fla. 1st D.C.A. 1968)).

⁹ See FLA. ADMIN. CODE R. 61G15-37.001(1) (2007).

¹⁰ See FLA. STAT. §455.225(1)(a) (2007).

¹¹ See FLA. ADMIN. CODE R. 61G15-37.001(2) (2007). The rule permits FEMC to furnish a copy of the engineer's counsel.

¹² See FLA. STAT. §455.225(1)(b) (2007).

¹³ See generally *Department of Professional Reg., Div. of Real Estate v. Toledo Realty, Inc.*, 549 So. 2d 715, 716-17 (Fla. 1st D.C.A. 1989).

¹⁴ See FLA. STAT. §455.225(2) (2007).

¹⁵ See FLA. STAT. §455.225(4) (2007).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See *Florida Real Estate Comm'n v. Frost*, 373 So. 2d 939 (Fla. 4th D.C.A. 1979) (approving dismissal of an administrative complaint brought against a real estate broker).

²⁰ See FLA. STAT. §455.225(5) (2007).

²¹ FLA. STAT. §455.225(5) (2007).

²² See *Brevard Community College v. Florida Public Employees Relations Comm'n.*, 376 So. 2d 16 (Fla. 5th D.C.A. 1979).

²³ See, e.g., *Maskaron v. Department of Professional Reg., Bd. of Bar Examiners*, 450 So. 2d 1242 (Fla. 2d D.C.A. 1984).

²⁴ *Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc.*, 630 So. 2d 1123, 1127 (Fla. 2d D.C.A. 1993).

²⁵ See FLA. STAT. §120.57(1) (2007).

²⁶ See FLA. STAT. §120.57(1)(a) (2007).

²⁷ See FLA. STAT. §120.57(1)(k) (2007).

²⁸ See FLA. STAT. §120.57(1)(l) (2007).

²⁹ See FLA. STAT. §120.569(1) (2007).

³⁰ *United States Service Industries-Flo. v. State Department of Health and Human Rehabilitative Services*, 383 So. 2d 728, 729 (Fla. 1st D.C.A. 1980).

³¹ See FLA. STAT. §120.68 (2007).

³² *Clean Water, Inc. v. State, Department of Environmental Reg.*, 402 So. 2d 456, 458 (Fla. 1st D.C.A. 1981) (citing *Gordon v. Gordon*, 59 So. 2d 40 (Fla. 1952)).

³³ See *Cook v. State*, 921 So. 2d 631, 639 (Fla. 2d D.C.A. 2005) (disciplinary actions undertaken to police licensing requirements).

³⁴ See, e.g., *A to Z Associates v. Cooper*, 613 N.Y.S.2d 512, 515 (1993) (collateral estoppels would preclude re litigation of issues decided in a disciplinary proceeding where there was a full and fair opportunity to litigate).

³⁵ See *Cook*, 921 So. 2d at 634.

³⁶ *Massey v. David*, 831 So. 2d 226, 232 (Fla. 1st D.C.A. 2002).

³⁷ *Trucking Employees of North Jersey Welfare Fund, Inc. v. Romano*, 450 So. 2d 843, 845 (Fla. 1984) (stating that "[a] corollary to the doctrine of collateral estoppel is the doctrine of mutuality of parties which holds that strangers to a prior litigation — those who were neither parties nor in privity with a party — are not bound by the results of that litigation." Superseded by statute on other grounds as noted in *Starr Tyme, Inc. v. Cohen*, 659 So. 2d 1064 (Fla. 1995)).

³⁸ The complete facts are well delineated in the appellate opinion, see *Stogniew v. McQueen*, 638 So. 2d 114 (Fla. 2d D.C.A. 1994).

³⁹ See *Stogniew v. McQueen*, 656 So. 2d 917, 920 (Fla. 1995).

⁴⁰ See *id.* at 919-920.

⁴¹ *Id.* at 920; see also *Jones v. Upjohn Co.*, 661 So. 2d 356, 357-58 (Fla. 2d D.C.A. 1995).

⁴² *Id.* at 504.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ FLA. STAT. §90.803(8) (2007).

⁴⁶ See *Makos v. Prince*, 64 So. 2d 670, 673 (Fla. 1953) (Noting that judicial notice of a matter "means merely that it is taken as true without the necessity of offering

evidence by the party who should ordinarily have done so . . . but the rule does not prevent an opponent's disputing the matter by evidence if he believes it disputable.").

⁴⁷ *Stoll v. State*, 762 So. 2d 870, 877 (Fla. 2000).

⁴⁸ *Allstate Ins. Co. v. Greyhound Rent-A-Car, Inc.*, 586 So. 2d 482, 483 (Fla. 4th D.C.A. 1991).

⁴⁹ See *University of North Florida v. Unemployment Appeals Comm'n.*, 445 So. 2d 1062, 1063 (Fla. 1st D.C.A. 1984).

⁵⁰ See *Florida Accountants Association v. Dandelake*, 98 So. 2d 323 (Fla. 1957).

⁵¹ See *Toledo Realty, Inc.*, 549 So. 2d at 716.

⁵² *Lee v. Department of Rehabilitative Services*, 698 So. 2d 1194, 2101 (Fla. 1997).

⁵³ See generally, *Department of Professional Reg., Board of Professional Engineers v. Florida Society of Professional Land Surveyors*, 475 So. 2d 939 (Fla. 1st D.C.A. 1985).

⁵⁴ *Carvallo v. Stuller*, 777 So. 2d 1064, 1066 (Fla. 2d D.C.A. 2001).

⁵⁵ *Eastman v. Flor-Ohio Ltd.*, 744 So. 2d 499, 504 (Fla. 5th D.C.A. 1999).

⁵⁶ See *Jordan v. City of Coral Gables*, 191 So. 2d 38 (Fla. 1966).

⁵⁷ See *Taylor Imported Motors, Inc. v. Armstrong*, 391 So. 2d 786 (Fla. 4th D.C.A. 1980).

⁵⁸ See *Dade County v. Clarson*, 240 So. 2d 828 (Fla. 3d D.C.A. 1970).

⁵⁹ See *City of Hollywood v. Washington*, 384 So. 2d 1315 (Fla. 4th D.C.A. 1980).

⁶⁰ See *Reed-Gautier Funeral Home v. State Board of Funeral Directors & Embalmers*, 295 So. 2d 366 (Fla. 3d D.C.A. 1974).

⁶¹ See *Prince v. Department of Banking & Finance*, 360 So. 2d 1100 (Fla. 1st D.C.A. 1978).

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