

## SUPPORT

### HB 848 Courts – Documentary Evidence – Protective Order Courts and Judicial Proceedings, Section 3-2C-02

The Maryland Society of Professional Engineers, Inc. (MdSPE) recognizes that service to the public, the state and the profession is a fundamental obligation of the professional engineer. The members of MDSPE are dedicated to the promotion and protection of the health, safety and welfare of everyone in the community.

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- "(a) (1) Except as provided in subsections (b) and (c) of this section, a claim shall be dismissed, without prejudice, if the claimant fails to file a certificate of a qualified expert with the court.*
- (2) A certificate of a qualified expert shall:*
- (i) Contain a statement from a qualified expert attesting that the licensed professional failed to meet an applicable standard of professional care;*
  - (ii) Subject to the provisions of subsections (b) and (c) of this section, be filed within 90 days after the claim is filed; and*
  - (iii) Be served on all other parties to the claim or the parties' attorneys of record in accordance with the Maryland Rules.*
- (b) (1) [Upon] **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, ON** written request made by the claimant within 30 days of the date the claim is served, the defendant shall produce documentary evidence that would be otherwise discoverable, if the documentary evidence is reasonably necessary in order to obtain a certificate of a qualified expert.*
- (2) (I) **THE DEFENDANT MAY MOVE FOR A PROTECTIVE ORDER TO LIMIT THE DISCLOSURE OF DOCUMENTARY EVIDENCE REQUESTED UNDER THIS SUBSECTION TO PROTECT THE DEFENDANT FROM ANNOYANCE, EMBARRASSMENT, OPPRESSION, OR UNDUE BURDEN OR EXPENSE.***
- (II) **ON MOTION BY THE DEFENDANT UNDER THIS PARAGRAPH, THE COURT:***
- 1. **SHALL REVIEW THE CLAIMANT'S REQUEST FOR DOCUMENTARY EVIDENCE; AND***
  - 2. **FOR GOOD CAUSE SHOWN, MAY ISSUE A PROTECTIVE ORDER SPECIFYING THE DOCUMENTARY EVIDENCE THAT THE DEFENDANT IS REQUIRED TO PRODUCE."***

When a claim for damages is filed against an professional architect, engineer or surveyor (professional) the claimant must obtain a "Certificate of Merit" (certificate), to be prepared by a "qualified expert" (expert) who can certify that the professional contributed to their loss or injury by failing to meet an "applicable standard of professional care."

If the claimant fails to obtain such a certificate, the claim is dismissed.

In seeking this certificate, a claimant is entitled to "documentary evidence" (discovery), which requires the professional to provide documents and other evidence that would be otherwise discoverable, **if** that evidence is "reasonably necessary in order to obtain a certificate of a qualified expert."

While the evidence in question is intended to be examined by the "expert," the request for evidence will very often come from the claimant's attorney, often before the "expert" has been identified. An attorney, who may not know what information the expert will require, will often request information that exceeds that which is "reasonably necessary to obtain a certificate of merit from the "qualified expert." In some situations, a professional with minimal or no connection to the claim may be overwhelmed by costly and burdensome demands for unwarranted documentation.

HB 848 inserts language into the law's section on discovery that notifies both parties of an *existing protection* that allows the professional to petition the court to review a dispute involving discovery. The court will consider the professional's objection to specific documentation that the professional contends is not "reasonably necessary in order to obtain a certificate of a qualified expert." If the court agrees, it will exclude any documentation that would cause the professional "annoyance, embarrassment, oppression, or undue burden or expense."

MdSPE is grateful for the opportunity to present this petition and requests a favorable vote.

**DOCUMENTS TO BE PRODUCED**

1. Any and all documents pertaining to the repair, maintenance and/or inspection of commercial kitchen equipment located at [REDACTED] within the last five (5) years.

2. Any and all documents pertaining to the repair, maintenance and/or inspection of commercial kitchen steamers located at [REDACTED] within the last five (5) years.

3. Any and all documents pertaining to the repair, maintenance and/or inspection of [REDACTED]

4. Any and all documents pertaining to service contracts between the [REDACTED]

5. Any and all documents pertaining to service contracts between the [REDACTED]

6. Any and all documents pertaining to requests for repair/maintenance/inspection of commercial kitchen equipment between the [REDACTED] and [REDACTED] or their agents/employees/representatives within the last five (5) years.

7. Any and all documents pertaining to conversation between the [REDACTED] and [REDACTED], Senior Facilities Manager for [REDACTED] within the last five (5) years.

8. Any and all documents pertaining to requests for service/maintenance/inspection of the facilities at [REDACTED] by [REDACTED] Senior Facilities Manager for [REDACTED] within the last five (5) years.

9. Any and all documents pertaining to service contracts between the [REDACTED]

[REDACTED] and [REDACTED]

10. Any and all documents pertaining to requests for service/maintenance/inspection of commercial kitchen equipment at [REDACTED] by [REDACTED] or their agents/employees/representatives within the last five (5) years.

[REDACTED]

*Attorneys for Plaintiffs*

11. If any request under this Subpoena cannot be answered in full, it should be responded to the fullest extent possible with an explanation as to why the remainder cannot be answered, disclosing whatever information, knowledge or belief you have concerning the unanswered portion, including the name(s) and address(es) of the person(s) or organization(s) having further information.

12. This subpoena is continuing in nature and any documents, materials or other items responsive to this subpoena that are not discovered or found until after your production shall be produced to the issuing party.

## **II. REQUESTS FOR PRODUCTION**

### **REQUEST NO. 1:**

All contracts, subcontracts, notes, emails, memoranda, worksheets, take-offs and all other documents concerning or relating to contract negotiations, contract performance, change orders, change directives, change order or directive negotiations, contract modifications, contract or subcontract performance, discussions or similar documentation between you [REDACTED] and any other party performing work on the Project.

### **REQUEST NO. 2:**

All documents concerning the Project, including, but not limited to, all correspondence, notes, meeting minutes, negotiations, memoranda, daily diaries, daily reports, payrolls, internal memoranda, telephone memoranda or logs, cost reports, job cost records, emails, accounting reports, bids, take-offs, worksheets, offers, letters of intent, counter-proposals, and any other documents of any kind whatsoever relating to your and/or [REDACTED] performance of work on the Project.

**REQUEST NO. 3:**

All of your files, emails or other documents concerning the Project including, but not limited to, all correspondence, notes, meeting minutes, negotiations, memoranda, daily diaries, emails or other correspondence relating to any work on the Project including internal memoranda, telephone memoranda or logs, cost reports, job cost records, accounting records, damage accountings or calculations, delay analyses, and any other documents of any kind whatsoever relating to the Project.

**REQUEST NO. 4:**

All documents (including but not limited to internal memoranda and correspondence) prepared by or for you, [REDACTED] or anyone working for [REDACTED] for use in administering, monitoring, and/or building the Project including the providing of labor, supplies and equipment on the Project.

**REQUEST NO. 5:**

All photographs, meeting minutes, daily reports, cost reports and/or inspection reports for the Project.

**REQUEST NO. 6:**

All documents created, received or distributed by, between or among, without limitation, you, [REDACTED] and/or any other person or entity concerning the Project.

**REQUEST NO. 7:**

All documents relating to any analyses of your or [REDACTED] work on the Project, whether by you, [REDACTED] or any other party(ies).

**REQUEST NO. 8:**

All documents referred to or used in preparing [REDACTED] requests for payment on the Project including any invoicing and documentation accompanying the invoicing as well as any documentation used or referred to in preparing [REDACTED] billings on the Project.

**REQUEST NO. 9:**

All of [REDACTED] job cost records and other documents concerning [REDACTED] performance of work on the Project.

**REQUEST NO. 10:**

All documents (including, but not limited to, correspondence, notes, memoranda, and journal entries) which relate to, describe, summarize, or memorialize any communication between you, [REDACTED] and any other party performing work on the Project.

**REQUEST NO. 11:**

All payment applications submitted by any payee to [REDACTED] for work performed on the Project including any documentation to support such request for Payment on the Project.

**REQUEST NO. 12:**

Evidence of any and all payments received by [REDACTED] for work performed on the Project.

**REQUEST NO. 13:**

Any settlement agreement, resolution agreement, or other documentation regarding any of the purported claims and balances or settlements or agreements between [REDACTED] and [REDACTED]

**REQUEST NO. 14:**

Any and all pleadings prepared by or for you and/or [REDACTED] relating to any litigation or threatened litigation pertaining to the Project.

**REQUEST NO. 15:**

All communications you, [REDACTED] personnel/agents and any other party involving or relating to the Project.

**REQUEST NO. 16:**

All documents and materials relating to [REDACTED] bid on the Project.

**REQUEST NO. 17:**

All communications between you, [REDACTED]

**REQUEST NO. 18:**

All payments made by [REDACTED] to any party on or relating to the Project, including subcontractors, consultants, third parties, suppliers, employees or others.

**REQUEST NO. 19:**

All documents relating to any assessment of liquidated damages, delays, schedule impacts, change orders, or other extras, whether caused by [REDACTED] or others.

**REQUEST NO. 20:**

All documents relating to any analysis [REDACTED] performed of percentages of completion of the Project construction including, without limitation at the time [REDACTED] was terminated, [REDACTED] was hired, [REDACTED] as terminated and [REDACTED] was hired.

**REQUEST NO. 21:**

Any cost analyses performed by or for [REDACTED] relating to the Project's cost of construction or budget.

**REQUEST NO. 22:**

Any and all analyses performed by or for [REDACTED] relating to the quality, workmanship, defects in or other aspects of the work performed by [REDACTED] or any of their respective subcontractors, suppliers, or consultants.

