

# Maryland Professional Engineer

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### Maryland Society of Professional Engineers

*A state society of the National Society of Professional Engineers*

- Promoting the ethical, competent and licensed practice of engineering
- Enhancing the professional, social and economic well-being of our members

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## Only Detectives May Investigate Fire Origin or Cause, Professional Engineer Disqualified by Judge

Lawyers fear malpractice charges, avoid using professional engineers; MDSPE will seek legislation to exempt PEs from Private Detective statute

By Robert L. Mead  
Executive Director, MDSPE

An Anne Arundel Circuit court judge has ruled that only a private detective may conduct an investigation that concerns the origin or cause of or responsibility for a fire. Barring the testimony of Ray Carlson, P.E., an experienced professional engineer, Judge Eugene Lerner awarded \$47,500 in damages to the plaintiffs. He based his decision solely on the testimony of Wadd W. Caddington, Jr., retired fire department arson investigator who is licensed by the Maryland State Police to conduct a private detective business, and Michael E. Wald, an "Engineering Consultant" from Queenstown who lacks a Maryland P.E. license.

Judge Lerner's interpretation of the Maryland Private Detective statute is sending ripples through the state's legal community. While a Circuit Court judge's decision does not set a precedent binding on other judges, attorneys are strictly interpreting the statute. Fearing malpractice charges themselves, they are choosing private investigators instead of professional engineers for forensic testimony.

MDSPE's lobbyists are preparing to have legislation introduced in the 2003 session of the Maryland General Assembly to correct the matter. We have brought the issue to the attention of the Maryland State Board for Professional Engineers and hope to have their support in our effort. The Maryland Professional Engineer statutes definition of "practice of engineering" includes consultation, evaluation and inspection

The private detective issue has been a problem in a number of states, according to Arthur Schwartz, general counsel at NSPE. He recalled that both Ohio and Michigan have had problems in this area.

An official of the National Association of

Forensic Engineers has termed Judge Lerner's ruling "blatantly incorrect" and expressed that group's support.

### Private Detective Statute

The problem is not restricted to fires.

The Private Detective statute states that a person may not engage in, attempt to engage in, offer to engage in, or solicit to engage in a business for the purpose of providing private detective services in Maryland unless licensed as a private detective agency. An individual may not provide, attempt to provide, offer to provide or solicit to provide private detective services unless certified as a private detective.

The penalty: a fine not exceeding \$1,000 or imprisonment not exceeding one year – or both.

"Provide private detective services" includes "to provide, for compensation, the service of conducting an investigation that concerns the origin or cause of or responsibility

Continued on page 3

## MDSPE Board Approves Membership Plan

Key elements of a collaborative Membership Marketing Plan with NSPE have been approved by MDSPE's Board of Directors. MDSPE will invest \$6,500 in the 15-month campaign. NSPE will contribute \$3,000 in cash toward hard costs and will add an assortment of in-kind services. See page 5 for details.

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**October 16**  
State Board for Professional Engineers Meeting, 500 N. Calvert St., Baltimore

**October 25**  
Principles & Practices Examination, Timonium, Category I (Chemical, Civil, Electrical, Environmental, Mechanical & Structures 1) & Category II (Agricultural, Manufacturing, Control Systems, Metallurgical, Mining/Mineral, Fire Protection, Nuclear, Industrial and Petroleum)

**October 26**  
Fundamentals of Engineering Examination, Timonium

**November 13**  
MDSPE Executive Committee Meeting Society Headquarters

**November 20**  
State Board for Professional Engineers Meeting, 500 N. Calvert St., Baltimore

**November 25**  
Maryland Waterway Construction Guidelines Workshop—Introduction and Fundamentals The Universities at Shady Grove – Rockville, Md.

**November 26**  
Maryland Waterway Construction Guidelines Workshop—Field Exercises & Applications The Universities at Shady Grove – Rockville, Md.

**December 10 & 11**  
Stormwater Management in Maryland Workshop, Gateway Center – Howard Community College

**December (date TBA)**  
MDSPE Board of Directors Meeting College Park

**December 18**  
State Board for Professional Engineers Meeting, 500 N. Calvert St., Baltimore

## PEs Working Together for the Welfare of All

Michael L. Clar, P.E.  
President



Dear Colleagues:

The theme that will dominate this year's activities of our Society will be the membership campaign that we have just initiated. Before I get to that however, I would like to bring your attention to the article on the cover page of this issue relating to the issue of private investigators vs. professional engineers.

This issue, which was brought to our attention by Vice-President Jonathan Blasco, is important to any engineer that has served as an expert witness. As the article indicates, the

MDSPE will pursue this issue to assure that the rights of Maryland engineers to serve as expert witnesses in their area of expertise is protected.

This topic is just one of many recent issues, such as the scope of services for architects and landscape architects, that illustrates the importance of our society in protecting the rights of the professional engineer in Maryland.

Our society is the only group that provides this function for the professional engineer.

Unfortunately only 10 percent of the professional engineers registered in the state of Maryland are members of our society and contribute to its efforts. Our ability to maintain or improve our existing level of service for the Maryland engineer are directly tied to our level of membership and the support that we receive from our members.

This is the reason why our major focus this year will be on increasing our membership in the society. We need the help of our existing members to achieve this goal. The membership drive that is described in this and future issues provides a broad range of activities to attract new members.

However, one of the most effective ways to obtain new members is through the member get a member program. I would like to encourage all of our existing members to set a goal of bringing a new member into the society. Please talk to your colleagues who are registered professional engineers and encourage them to join the one organization that represents their professional interests at the state level.

If we can all attract one new member we will double our membership and greatly increase our ability to serve the interests of the Maryland professional engineer.

## Private Detective Statute (continued from page 1)

for an accident, any damage to or loss of property, or an injury to an individual."

Among the exemptions: an individual who is regularly and exclusively employed as an investigator or in any other capacity by a person who is not engaged in the business of providing private detective services, while performing any duty of the employment.

The primary qualifications for a detective agency license are experience in law enforcement or fire investigation. There are additional requirements.

To be an employee of a private detective agency, acting as a private detective, you need to be "certified as a private detective." For that, you basically need not to have been convicted of a crime of violence or a felony, not to be an habitual drunkard or a fugitive from justice, not to be an habitual user of narcotics, barbiturates, or amphetamines or not to have been confined to a mental institution for treatment.

### The case and the cast

It was the Private Detective statute that sandbagged Carlson, who was assisting Fleetwood Homes of Pennsylvania, defendant in the case of Messina et. al v. Fleetwood.

He is senior electrical engineer for Chesapeake Engineering & Design Inc., in Annapolis. He holds a bachelor's degree in electrical engineering plus master's degrees in engineering from MIT

and business administration from Southern Illinois Univ. He has qualified as an expert witness in the fields of electrical engineering and fire cause and origin in a number of courts.

He has testified in cases in Georgia, Pennsylvania, Louisiana, Florida, Tennessee, Ohio, Virginia, Delaware, North Carolina, the District of Columbia and Maryland.

But he isn't a private detective. Therefore his testimony in the case was not admitted.

Working for the plaintiffs, who included Nationwide Insurance Company, were Wadd W. Cardington, Jr., the retired fire department arson investigator, and Michael E. Wald.

Cardington is president of Firemark, Inc. and has served as a fire explosion origin and cause consultant since his retirement from the Prince George's County fire department in 1991.

In his deposition, Wald stated that he is president and principal employee of Investigative Engineering, with an office in Severna Park. He provides consulting services to insurance companies, law firms and private companies on the cause of engineering failures that result in fires, explosions and personal injuries, including other economic loss such as water damage.

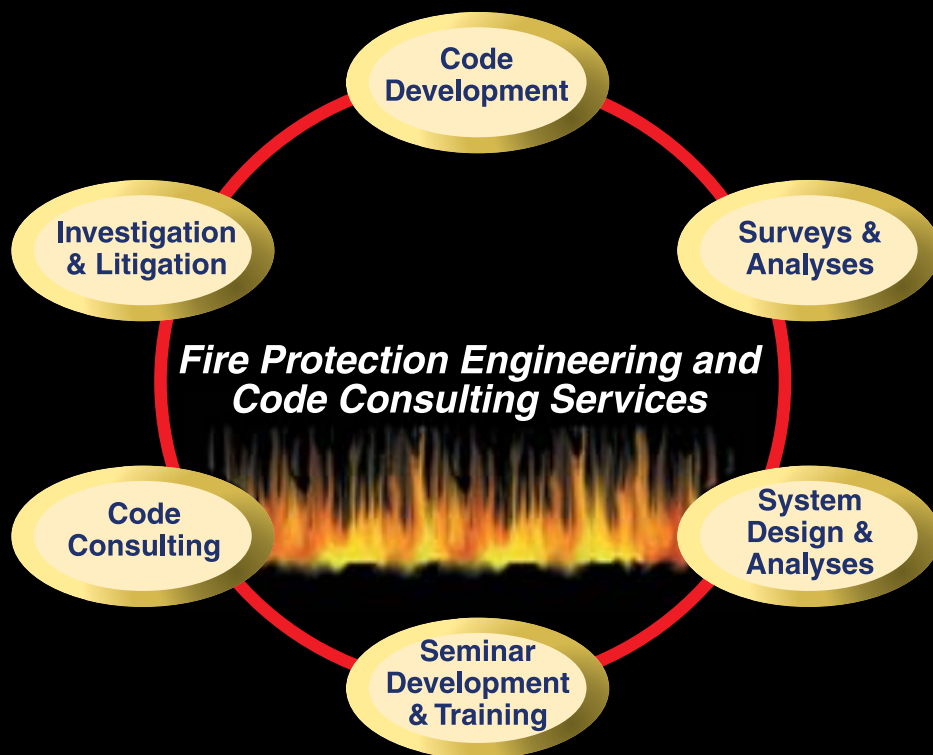
He termed his practice as forensic engineering. "It's post engineering analysis," he explained.

"The service I provide is electrical engineering, electrical and electrical mechanic equipment," he stated.



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## MDSPE Board Approves Membership Plan; Membership Growth Key to PE Influence

Key elements of a collaborative Membership Marketing Plan with NSPE have been approved by MDSPE's Board of Directors. MDSPE will invest \$6,500 in the 15-month campaign. NSPE will contribute \$3,000 in cash toward hard costs and will add an assortment of in-kind services.

The first phase of the multi-faceted campaign will include a roll-back of the initial dues paid by a new member and direct mail promotion of membership professional engineers, as well as the recently approved "Enterprise" membership program and our new "Friends of MDSPE" program.

### Colorful New MDSPE Application

NSPE will develop a new, full-color membership application specifically for use in Maryland. Initial dues for new regular members in Maryland (both licensed and non-licensed) will be rolled back from \$220 to \$186. We had allowed our new member dues to float upwards with NSPE dues to simplify the national application process.

The new application will highlight what we consider the Maryland Society's special strengths: legislative and regulatory action, student activities like Mathcounts and the Bridge Challenge, continuing education programs, publications, and PE promotion activities such as our members-only PE automobile license tags.

NSPE will also assist us in other ways. They will help us develop an enhanced website and do mailings to promote the site among PEs when it has been completed. They will also develop an MDSPE display for exhibition at Engineers Week activities, MathCounts competitions and other opportunities. They will also do mailings to newly licensed PEs twice a year, and do a telemarketing campaign to help us expand our list of e-mail addresses of members.

### PEs in Maryland Are Initial Target Audience

Our initial target audience will be approximately 5,000 licensed professional engineers living in central and southern Maryland. The campaign will make heavy use of direct mail promotion. We will develop an enhanced database, starting with the State's license list.

Using this list, we will mail the new applications to each PE several times during the campaign. We will also mail continuing education program materials and copies of the Maryland Professional Engineer to large numbers of engineers.

As a financial incentive, we will offer partial scholarships as well as a discounted tuition fee to new members who enroll in our continuing education seminars and workshops. (Some 500

engineers have participated in these activities during the past 18 months. Most are not members.)

### Member-Get-A-Member Program

The "P.E. Invitational." That is our new name for our member-get-a-member effort. This puts the focus on you. We need you to extend an invitation to at least one other engineer to become a member of MDSPE and NSPE. There is a slick new bag of tools to help you. Sample letters for established and new PEs and EIs. A template for e-mail invitations. Talking points. And soon, our new state-specific brochure on the benefits of membership.

There is even a new Power Point presentation that we will be happy to provide to you to help you prepare your presentation and to help you present your invitation.

NSPE has also provided the state society with new tools that we will be using over the next 15 months. These include news-

letter articles on sponsoring membership, sound bytes to keep members informed, web cards to follow up on mailings.

These are all part of the systematic program of recruitment and retention.

The truth is, we are going to bombard you with support in the hopes that you will share some of your pride and enthusiasm for the advancement of the engineering profession and invite others to become members of their professional society.

Call Bob Mead or Diana Khachadourian at the MDSPE office for assistance.

### "Enterprise" Membership

NSPE's new Enterprise Membership holds a lot of promise for recruiting engineers to our state society. Employers with many engineers can sign them up all at once. The new joining method is designed to accommodate both for-profit and not-for-profit entities. It allows management to recognize the professional status of its engineers and provides a professional community in which they can be recognized and nurtured.

Enterprises can now sign up all of their engineers at one time at a 10% dues savings from both NSPE and MSPE.

To demonstrate the benefits of enterprise membership to decision-makers, NSPE will prepare a customized Power Point presentation for any qualified corporation, consulting firm, government agency or educational institution considering participation. The presentation shows graphically how management and the engineers both benefit from membership in NSPE.

Every member is invited to submit a manufacturing firm,

Continued on page 7



# Court Ruling in Copyright Case Favors Design Professionals

By Spencer K. Stephens, Esq.

A recent decision by a federal appeals court is likely to become an important source of authority in copyright disputes between design professionals and their clients.

The 4th U.S. Circuit Court of Appeals (whose area includes Maryland) ruled that a \$736,000 copyright infringement award to an architectural firm for a client's unauthorized use of its design documents was appropriate because the firm's conduct and statements indicated it did not intend for its client to use the work if the firm was terminated.

The importance of the decision is due partly to the fact that the court deciding the case is viewed positively by most federal trial courts and because it is one step removed from the U.S. Supreme Court. But more importantly, the case rests on facts that are relatively common: A project owner used a design professional's work to complete a project, and did so without permission and without any contract forbidding the use.

The case involved an architectural firm that was hired to assist with initial planning and schematic design of an assisted-living facility. The firm never had a written contract with its client, the project owner, but prepared schematic drawings (which apparently included a copyright symbol on them) for use in a request for an exception to zoning requirements. The firm did submit proposed letter agreements at the beginning of each phase of work for the project. The last such proposal stated that if the terms it contained "were acceptable, we will prepare a Standard AIA Agreement." Soon after, the architectural firm sent its client a revised version of a standard agreement published by the American Institute of Architects. The AIA contract contained language which said that the architect's work "shall not be used by the Owner or others" ... for completion of this Project or others" unless the architect is found to be in default.

Subsequently, the owner halted the project because its partner in the venture backed out. After a new owner purchased the project the owner indicated it was going forward, without the architect. In response the architect sent correspondence to the new owner, indicating that it would not permit its design documents to be used on the project without compensation. Wisely, the architect promptly filed for copyright registration for its design drawings.

The new owner proceeded with the project and was sued by the architectural firm for copyright infringement. At trial, the architect won \$736,000, representing the profits the new owner made from the architect's design documents. The owner appealed, arguing, among other things, that when it produced its work for the project, the architect had granted an implied license for use of its documents.

The appeals court rejected the argument and affirmed the trial court's decision. The appeals court observed that the new owner was aware, upon purchasing the project, the architect's design drawings had been incorporated into a development plan

and that the architect withheld approval for future use of its documents. Despite this, the new owner arranged to copy the development plan and to incorporate fundamental components of the plan into a new design, the appeals court indicated. These latter acts constituted copyright infringement, the appeals court said.

The appeals court acknowledged that, despite copyright infringement, no damages will be awarded if an infringer has "an implied non-exclusive license." As the name suggests, such a license is implied from the statements or conduct of the copyright owner. The appeals court also acknowledged that no contract was formed that contained language barring use of the disputed documents. However, the court said the architect never affirmatively indicated that the owner could copy its work.

Before an implied license is created, "the creator of a protected work must intend that its copyrighted drawings be sued on the project for which they were created, independent of the creator's involvement," the court said. In this case, no such intention was present. Rather, the facts suggested otherwise, the court found. The original owner resisted signing a contract that would have kept the architect involved for the life of the project. Also, the proposed contract contained an express limitation on copying and use of the architect's work.

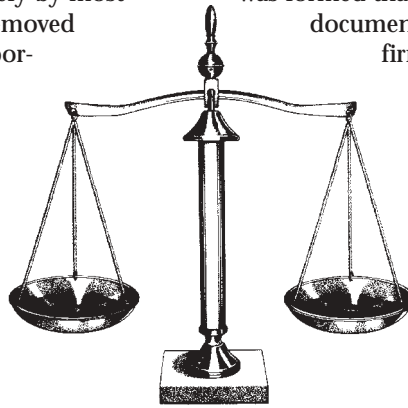
The decision contains some useful lessons for other design professionals seeking to protect the rights to their work. Among the most basic is also the most obvious – a signed contract with language expressly protecting a design professional's interest in its work is invaluable. In this case, litigation could well have been avoided if the architect had successfully pressed the owner for its signature on the AIA contract. That would have made it very difficult for the new owner to presume that it could use the schematics without risk on an infringement claim.

Less obvious is the need to include the copyright symbol on design documents and, where infringement is a significant risk, to register a copyrighted work. These are important steps toward securing certain rights.

Finally, careful evaluation of a client's experience and financial backing is essential. In this case, the original project owner acknowledged that it didn't have the necessary expertise for the project and that it had to enlist a partner as a result. When the owner's partner backed out, the project floundered, creating increased risk for all parties involved.

**Author's Note:** Copyright law is an especially complex area of the law and features numerous exceptions and conditions, including conditions on which types of material earn copyright protection.

*Spencer Stephens is a founding principal of Malone & Stephens, LLC, a Rockville, Maryland, litigation and contract law firm that serves the needs of design professionals.*



## Membership Drive (continued from page 5)

consultant, educational institution or government agency that employs a dozen or more engineers. Download an Enterprise Membership Prospect Form from the NSPE website – [www.nspe.org](http://www.nspe.org) - by clicking on the “NSPE gives you the Edge” icon in the right column. Send the form to the Maryland society at [mdspeadmin@msn.com](mailto:mdspeadmin@msn.com).

### “Friends of MDSPE”

Our new “Friends of MDSPE” is open only to organizations – not to individuals. The fee is \$500 per year. A Friend gets a year’s subscription to the Maryland Professional Engineer, a 10 percent discount on display advertising, a one-paragraph profile in the publication and a listing in every issue as a Friend of MDSPE.

A Friend also gets a hot link from our website to theirs, and exhibits at MDSPE functions such as a meeting or a workshop, 10 coupons for 10 percent discounts to be applied to MDSPE products, seminars, workshops and meetings (only one coupon per item), and one set of mailing labels of our members.

### The Next 3 Months

Here is our plan for the next three months:

- Heavy emphasis on recruitment of PEs
- Heavy emphasis on recruitment of newly licensed engineers
- Heavy emphasis on Enterprise membership program
- Moderate emphasis on Friends of MSPE
- Mail newsletters and recruitment literature to heads of firms and selected lists of engineers (including those who have participated in our seminars and workshops this year)
  - Develop enhanced website
  - Develop details of Enterprise membership promotion with Friends and newsletter advertising tie-ins
  - Develop display for E-Week
  - Produce MDSPE banners for chapters to display at MathCounts and other events
  - Saturation mailing of education program promotion materials to include membership application and partial scholarships for new members.
- Work on a database enhancing State License list with information on current and former members, members of other technical societies, etc., in order to improve target marketing

### During 2003:

- Saturation mailing in connection with E-Week including Newsletter and new application
- Saturation mailing of webcards to promote new website
- Extensive mailings in connection with annual meeting
- Extensive mailings in fall in connection with chapter activities
- Extensive mailings of Newsletter to nonmembers

## Considering Making an Active Practice Division in Maryland?

If any member of MDSPE would like to have a simple database sorted by Practice Divisions, with members names address, phone and e-mail in excel format, e-mail Wally North : [wallacen5@comcast.net](mailto:wallacen5@comcast.net) and he will prepare this tool for your use.

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