

**BEFORE THE REAL ESTATE APPRAISER BOARD  
STATE OF OKLAHOMA**

In the Matter of **DUANE A. WARDEN,**

Respondent

Disciplinary Hearing

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)

Complaint #09-104

**BOARD'S DECISION ON  
REQUEST FOR REHEARING, REOPENING OR RECONSIDERATION**

ON THE 8th day of October, 2010, the above numbered and entitled cause came on for hearing before the Oklahoma Real Estate Appraiser Board (the "Board"). The Board was represented by Assistant Attorney General, Bryan Neal. The prosecutor assigned to this matter, Stephen L. McCaleb was present, as was the respondent, Duane A. Warden, who appeared pro se. The Board, being fully advised in the matter, makes the following Order:

On September 24, 2010 an Application for Rehearing, in letter form, was filed by the respondent, Duane A. Warden. Mr. Warden's application asserts that a rehearing is necessary "as the daughter of his 'expert witness' had emergency surgery in Tennessee the day before the scheduled disciplinary hearing and was unable to attend." Mr. Warden further states that there are errors within the Findings of Fact contained within the Hearing Panel's Recommendation.

On September 28, 2010 the Board's prosecutor, Stephen L. McCaleb, filed his Answer to Warden's Motion to Reconsider and Motion to Strike Warden's Motion. Mr. McCaleb sets forth his position that the Respondent, Warden, failed to meet any of the five (5) grounds necessary to support a request for rehearing, reopening or reconsideration of a final order. Mr. McCaleb states that the Respondent has waived any objection when his non-subpoenaed witness failed to appear and a request for continuance was not made at that time. Further, Oklahoma law requires that an offer of proof be submitted into the record to preserve appellate grounds on evidentiary exclusions. The respondent, Warden, did not preserve the record, nor make an offer of proof to show the relevance and significance of the purported testimony of his expert witness.

Based on Board Rules at **600:15-1-18. Rehearing, reopening or reconsideration of Board decision** that state in pertinent part:

- (a) An Order issued by the Board shall be subject to rehearing, reopening or reconsideration by the board within then (10) days of the date of its entry. The grounds for such action shall be either:
  - (1) newly discovered or newly available evidence relevant to the issues;
  - (2) need for additional evidence adequately to develop the facts essential for a proper decision;
  - (3) probable error committed by the Panel or Board in the proceeding or in its decision that would be grounds for reversal on judicial review of the Order;
  - (4) need for further consideration of the issues and the evidence in the public interest; or
  - (5) a showing that issues not previously considered should be examined in order to properly dispose of the matter.
- (b) ... the petition of a party therefore, shall set forth the grounds which justify such action.

In that Mr. Warden's Application for Rehearing does not show proper cause for a rehearing, reopening or reconsideration, based on Board Rule 600:15-1-18, set forth above, and further, that the administrative records of the Board reveal that Respondent, Duane A. Warden, was properly represented by counsel at the time of the subject disciplinary hearing and no objections, offers of proof or requests for continuances were made at that the time of hearing as set out in the prosecutor's Answer, it is therefore the ORDER OF THE BOARD that the Respondent, Duane A. Warden's Application for Rehearing is denied.

IT IS SO ORDERED this 8th day of October, 2010



*Shannon N. Gabbert*

**SHANNON N. GABBERT**, Secretary  
Real Estate Appraiser Board

*Bryan D. Neal*

**BRYAN D. NEAL**, Assistant Attorney General  
Counsel to the Board

**CERTIFICATE OF MAILING**

This will certify that on the 15 day of October, 2010, a true and correct copy of the above and foregoing Board's Decision on Request for Rehearing, Reopening or Reconsideration was served by certified mail, return receipt requested, with postage prepaid thereon, to the following:


**DUANE A. WARDEN**  
1613 SW 85th St  
Oklahoma City, OK 73159

7009 2820 0001 5683 7840

And that copies were mailed by regular mail to the following:

**DERRYBERRY & NAIFEH, LLP**  
Attn: Stephen McCaleb  
4800 North Lincoln Blvd.  
Oklahoma City, Oklahoma 73105

**OFFICE OF THE ATTORNEY GENERAL**  
Attn: Bryan Neal  
313 N.E. 21<sup>st</sup> Street  
Oklahoma City, OK 73105



**CHRISTINE MCENTIRE**