

Ethics in Surveying

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Ethics in Surveying

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 - Licensed surveyor CA (1980) & NM (1996)
 - Professor at NMSU (1994)
 - Online surveying ethics course (1999)
 - SUR 401 – Ethics and Professionalism in Surveying

Professions

- Definition of a profession
 - A vocation or occupation requiring special, usually advanced, education and skill; e.g. law or medical professions. Also refers to the whole body of such profession. (Black's Law Dictionary, 5th ed.)

Professions

- Definition of a profession
 - The labor and skill involved in a profession is predominantly mental or intellectual, rather than physical or manual. (Black's)

Professions

- Definition of a profession
 - The term originally contemplated only theology, law, and medicine, but as applications in science and learning are extended to other departments of affairs, other vocations also receive the name, which implies professed attainments in special knowledge as distinguished from mere skill. (Black's)

Professions

- The term "professional" evolves from the middle ages where members of the church kept knowledge and professed to use it to help mankind. The first profession is generally acknowledged to be the priesthood. Law and medicine are the early acknowledged professions. Other professions have evolved since this time.

Professions

- Professionals are those who perform critical tasks as agents for others. Many professions are licensed by state to protect the public by only allowing those who have demonstrated that they have the knowledge, skill and character to practice professionally

Professional Conduct

- "In order to protect public health, safety, welfare and property in the performance of their professional duties, licensees shall at all times:"

Limits on Restrictions

- Codes of conduct that inhibit or restrict consumer rights have been struck down
- Codes of conduct are designed to protect consumers, not to empower professionals

USA vs NSPE 1974

- NSPE Code of Ethics prohibited competitive bidding
- US FTC charged that prohibition of competitive bidding is a violation of the Sherman Act

NM 61-23-3. DEFINITIONS

- "responsible charge" means responsibility for the direction, control and supervision of engineering or surveying work, as the case may be, to assure that the work product has been critically examined and evaluated for compliance with appropriate professional standards by a licensee in that profession,

NM 61-23-3. DEFINITIONS

- and by sealing or signing the documents, the professional engineer or professional surveyor accepts responsibility for the engineering or surveying work, respectively, represented by the documents and that applicable engineering or surveying standards have been met

Responsible Charge

- The authorized professional is the one who ascertains that everything is done correctly, on time and in a manner that protects both the client's interests and the interests of the general public. Surveyors sign and seal documents to this effect. The presumption is that the responsible charge person is actively directing the people working under her/him.

NM Minimum Standards

- ... performed by me or under my direct supervision; that I am responsible for this survey; that this survey meets the Minimum Standards for Surveying in New Mexico; and that it is true and correct to the best of my knowledge and belief

Case 1

- A complaint was filed by former employees of a surveyor who claimed that the surveyor was away from the office for long periods of time and provided little or no supervision for the work. In addition, non-licensed employees signed and sealed the work.

Case 1

- The response from the surveyor's lawyer was that the surveyor "**has further given a limited power of attorney to key individuals in his business that are authorized to sign his name with regard to a narrow scope of business matters in the event that he is not physically present to do so**".

Case 1

- Texas Board cases 09-53 and 09-51 (2009)
- "do not allow or recognize a power of attorney"
- Reprimand and fines (6 x \$1,500)
 - No public harm resulted from the work

Case 2

- Non-licensed employees of a surveying firm performed a survey which the licensed surveyors were unaware of and had no records of the request for work or of the work being completed.

Case 2

- A client asked a surveying firm to mark the extents of a 125 ft conservation easement parallel to the street. The non-licensed person who took the order handed it to a non-licensed party chief. The party chief set the point along the lot line at 125 ft. The client built a retaining wall and filled in to the wall.

Case 2

- Because of the angle relationship of the lot line to the street, the actual distance along the lot line was 142.30 ft. to the edge of the easement. None of the 3 licensed surveyors in the firm were aware for the project. It was determined that there was no professional supervision of the project.

Case 2

- Texas Board case 09-13 (2009)
- Board determined that the surveying firm was at fault
- Reprimand and \$3,000 fine

NM 16.39.5.10 PRACTICE OF SURVEYING

- A person or any organization shall not advertise or offer to practice surveying work unless that person or a member of the organization is licensed by the board and is legally able to bind that organization by contract.

Case 3

- An Alabama engineer/surveyor had an unlicensed person contacting clients and receiving payments for engineering or land surveying services

Case 3

- Alabama Board ordered the both the licensee and the non-licensed person to cease and desist
- Fined the PE/PS \$2,500 and put his licenses on probation for 2 years
- Fined the unlicensed person \$500 plus the cost of the investigation (\$346.64)

Case 4

- An unlicensed Oregon man set up a business offering his services to assist people in locating property corners. He sent out a letter to real estate brokers stating that he could help them locate properties, find existing property corners or a close approximation, and flag approximate property boundaries.

Case 4

- The letter had a disclaimer stating that he was not a license surveyor

Case 4

- Served with a cease and desist order
- Required to send letters to all the real estate brokers advising them that he will no longer provide this service

Case 5

- An unlicensed Oregon man performed a GPS survey using a handheld GPS receiver
- Charged his client \$2,400 and the neighbor \$2,000

Case 5

- The neighbor later hired a surveyor to complete the survey of his property
- The previous survey was in error by over 11 feet

Case 5

- The unlicensed person was ordered to cease and desist and to pay a \$2,000 fine

NM 16.39.5.10

- The board will consider the use of the terms, "surveyor", "surveying" or any modification or derivative of such terms, in the title of a firm or organization to constitute the offering of surveying services

Case 6

- A Washington man wrote two letters to the City of Kenmore, Washington regarding a proposed housing development. In these letters, Knight stated that he was an "Engineer" who had "been retained by the neighbors to evaluate engineering proposal and to make suggestions that would improve the project."

Case 6

- The man was registered as an E.I.T. and had a BS degree in Mechanical Engineering
- The Washington Board decided that this constituted the unauthorized practice of engineering under Board rules

Case 6

- The man denied misrepresenting his credentials, and demanded a copy of the complaint
- He then filed suit in United States District Court (Seattle) arguing that the Board rule violated the free speech clauses

Case 6

- He argued that the chilling effect on the open debate of engineering caused by the fear of prosecution for the unlawful practice of engineering has injured his right of free speech

Case 6

- The Court held that the Board Rule did not violate either the United States or Washington Constitutional guarantees of freedom of speech because the statute only regulates the unauthorized practice of engineering and not the unauthorized discussion of engineering

Case 7

- A man in eastern Washington had an engineering degree and an EIT certificate.
- Unable to pass the PE exam
- Had a PE stamp made up

Case 7

- Practiced for about 2 years before a complaint went to the Washington board
- The Board identified dozens of projects he had completed, there was no suspicion from clients or employees that there were any problems on any of the jobs

Case 7

- The Board issued a cease and desist order and convened a hearing
- Suspect asked for leniency as no harm was found

Case 7

- Board fined the suspect \$40,000
- Board permanently denied his ability to ever get licensed in the State of Washington

NM 16.39.7.9

- It shall be considered "misconduct" ... for any engineer or surveyor to practice or offer to practice outside their field(s) of demonstrated competence

Case 8

- A Kentucky surveyor offered to provide engineering services
- A written proposal of the same was found
- No actual engineering was found to have occurred

Case 7

- The surveyor received a letter of reprimand, a \$1,000 fine, and a requirement to complete an ethics course

NM 16.39.7.9

- ... notify the board, in writing, within ninety (90) days, of the imposition of any disciplinary action by any other applicable licensing board or any conviction of or entry of plea of nolo contendere to any crime under the laws of the United States, or any state, territory or county thereof,

NM 16.39.7.9

- which is a felony, whether related to practice or not; any conviction of or entry of plea of nolo contendere to any crime, whether a felony, misdemeanor, or otherwise, an essential element of which is moral turpitude, or which is directly related to the practice of engineering or surveying.

Case 9

- A Virginia surveyor failed to notify the Board that his license had been suspended in another state
- Fined \$250 plus \$150 Board costs

NM 16.39.8.9 A.1.d.

- Refuse to associate in a business venture with any person or firm which they may have reason to believe is engaging in fraudulent or dishonest business or professional practices as an engineer or surveyor and refuse to use or permit the use of their name or firm in connection with any such business venture.

Case 10

- The Washington Board received a phone call from a member of a building department asking about a license registration of PE who had submitted a building design
- The Board had no record of the person having a PE license

Case 10

- The building department employee noted that the design plan was extremely bad
- A licensed PE was a friend of the unlicensed person and knew that his friend was submitting design plans – he believed that “nobody was being harmed”

Case 10

- The Washington Board fined the PE and suspended his license

Case 11

- A New York surveyor was charged with knowingly being associated in a professional capacity with a practice that was dishonest in that he was a partner in a limited liability partnership formed for the practice of engineering and land surveying with another individual

Case 11

- He knew that his partner had obtained his license to practice land surveying based upon false statements made on such other individual’s license application

Case 11

- The surveyor was censured and reprimanded
- He was also fined \$3,500

NM 16.39.8.9 C.1.

- A professional report or professional opinion issued by or under the responsible charge of a licensee shall not contain any intentionally false, misleading or deceitful statements or testimony. Any report, statement or testimony by a licensee shall contain all relevant and pertinent information as required by accepted engineering or surveying principles.

Case 12

- **A Maryland surveyor was charged with expressing an opinion publicly on a land surveying subject without being informed as to the facts relating to it and without being competent to form a sound opinion on it**
- Reprimanded and fined \$250

Case 13

- A North Carolina surveyor was charged with failing to be completely objective and truthful in professional statements
- Reprimand and \$2,000 fine
- Ordered to pass an ethics course

NM 16.39.8.9 D.1.

- Licensees shall act in professional matters for each employer or client as fiduciaries and shall avoid conflicts of interest.

Case 14

- A client alleged that a surveyor had intentionally misled them on several occasions regarding the status of their survey
- The Board found substantial evidence to uphold the client's allegation

Case 14

- The Board:
 - Issued the surveyor a letter of reprimand
 - Required the surveyor to write the client a letter of apology
 - Required the surveyor to take a time management course
 - Fined the surveyor \$1,000

Case 15

- A Nevada surveyor was charged with failure to act on professional matters as a faithful agent or trustee for the client. The surveyor did not keep the client informed on the status of the work.

Case 15

- The surveyor's contract was through a third party representing the sale of the property to the client
- The contract was sketchy, which led to unclear time performance issues
- Letter of reprimand

Case 16

- A client complains to the Texas Board that a Surveyor did not follow previous surveys when preparing a survey combining three tracts into one
- The previous surveys were prepared by different surveyors at different times and all on a different basis of bearings

Case 16

- The surveyor when preparing his survey rotated to one bearing source
- The client does not understand how bearings could change without moving the lines
- Dismissed

Case 17

- A Virginia surveyor contracted with a client to do a survey
- He subcontracted the work to another surveyor without informing the client
- Find \$500

Case 18

- A person complained to the Texas Board because a surveyor refused to provide copies of a previous survey at no cost
- Dismissed

NM 16.39.8.9 D.1.

- Licensees shall disclose all known or potential conflicts of interest to their employers or clients by promptly informing them of any business association, interest or other circumstances which could reasonably be expected to influence their judgment or the quality of their services.

Case 19

- An Idaho surveyor accepted compensation from more than one party for services pertaining to the same project without fully disclosing them in writing, in advance and getting an agreement from all interested parties

Case 19

- He additionally accepted professional employment outside of his regular work without the written permission from his employers

Case 19

- The surveyor was admonished by the Board and fined \$1,000

NM 16.39.8.9 E.1.

- Licensees shall not falsify or permit misrepresentation of their, or their associates' academic or professional qualifications. They shall not misrepresent or exaggerate their degree of responsibility in or for the subject matter of prior assignments.

Case 20

- A North Carolina engineer made exaggerated, misleading, deceptive or false statements of her qualifications and experience
- Falsified or permitted misrepresentation of her academic and professional qualifications

Case 20

- Board reprimand
- \$500 fine
- Must complete an engineering ethics course

Case 21

- A New York surveyor admitted to the charge of falsifying work experience on his initial application for licensure
- Allowed to surrender his license

Case 22

- A Virginia surveyor supplied the Board with inaccurate experience verification for an employee applying for licensure
- Fined \$150
- Ordered to complete 8 hours of continuing education within 6 months

Cooperating with the Investigation

- Not cooperating with the Board during an investigation is one of the surest methods of having your license to practice revoked
- Not following your agreement with the Board after an investigation is the other sure way to lose one's license

Case 23

- An allegation against an Oregon surveyor involved a right of entry violation
- The surveyor failed to provide the Board with evidence until the day of his hearing
- An email cleared the surveyor of the charge

Case 23

- The Board charged the surveyor with failure to cooperate during an investigation
- The surveyor was fined \$1,000

Case 24

- An Alabama surveyor's was revoked for failure to comply with an agreed upon Consent Order that required a one year stayed suspension of his license to practice land surveying, one year probation and a fine of \$500 to be paid to the Boar

Cheating on Licensing Exams

Case 25

- A Washington Board investigation was opened based upon a letter from NCEES identifying a pair of examinees from the October 2008 FE exam suggesting irregularities per NCEES analysis procedures.

Case 25

- The two examinees were sitting next to each other during the exam, and the respondent had previously taken the FE exam. During the course of the investigation another letter from NCEES stated that they reviewed the exam booklets and answer sheets for both examinees.

Case 25

- The Case Manager agreed with the recommendation from NCEES that the respondent's test results be invalidated.

Mayaguez PE Cheating Scandal

- Betzaida Cameron Ortiz, was dismissed from the 2006 PE exam administration after an exam proctor discovered her scanning an examination booklet (Puerto Rico)
- Cameron was concealing scanning and transmitting equipment beneath her clothing

Mayaguez PE Cheating Scandal

- Agent Victor Perez of Puerto Rico's property crimes unit discovered evidence that Cameron had also recorded contents of the 2005 FE exam
- NCEES exam regulations prohibit cell phones, pagers, cameras, and any other recording device

Mayaguez PE Cheating Scandal

- In its arguments, the prosecution said that several hundred exam items had to be removed from the NCEES exam item bank as a result of the defendant's actions. This resulted in costs exceeding \$1 million for new item creation

Mayaguez PE Cheating Scandal

- In 2009 Federal District Court in Puerto Rico awarded NCEES \$1 million in damages
- Cameron was also convicted of fraud in criminal court and is banned for life from taking any NCEES exam

Mayaguez PE Cheating Scandal



What the ????

- An engineer was found guilty at a formal hearing of receiving a felony criminal conviction in the State of Arkansas in December 2004 for impersonating a federal officer in an attempt to avoid being cited for hunting violations.

What the ???

- At the conclusion of the hearing the Board issued an Order revoking the engineer's license to practice engineering in the State of Alabama.