



ETHICS FOR THE PROFESSIONAL SURVEYOR

by Ed T. Bristow, Esq., PLS

While a common definition of ethics is “the rules or standards governing the conduct of a person or the members of a profession,” I would give ethics a practical definition that is “those conscious guidelines that allow human beings to live in harmony as a society, resulting in prevention of personal gain at the expense of and/or intentional harm to individuals.”

There has been a lot of discussion of ethics on a worldwide basis in the last few years, most extensively in the media. It does appear that there has been a decline in ethical standards, especially with government and large corporate interests. As I recall growing up, however, each generation has its own mantra that ethics are declining among the population. When discussing individuals within our society, I do not believe this to be true. There are, of course, exceptions, but in my experience, each individual I have dealt with in my two professions has been of the highest character with great honesty and integrity. By living up to our own highest ideals, chances are very slim that we will ever be in violation of an ethical code, rule, standard, or guideline. Those codes, rules, standards, and guidelines do exist, however, and I would now like to present them for your consideration and guidance.

Is there a written mandate that we, as Colorado Licensed Professional Land Surveyors, must conduct ourselves in an ethical manner? Yes, there is. It is found in Rule 3.1.2 of the Bylaws, Rules and Policies of the State Board of Licensure for Architects, Professional Engineers and Professional Land Surveyors (hereinafter the “Board”).

Ethical Conduct. Licensees shall conduct the practice of . . . land surveying in an ethical manner and shall be familiar with appropriate, recognized codes of . . . land surveying ethics.

Even though individuals within the profession are of very high integrity and honesty, occasionally someone does violate an ethics provision, either knowingly or unknowingly. I present here a list of some possible violations.

- < Violating, attempting to violate, or aiding or abetting the violation or attempted violation of specific Statutes, Board Rules, or Orders of the Board (C.R.S. § 12-25-208(1)(e); See also Board Rule 3.1.8.); violating any law or regulation governing the practice of professional land surveying in another state or jurisdiction (C.R.S. § 12-25-208(1)(m)); or failing to meet the generally accepted standards of the practice of land surveying through act or omission (C.R.S. § 12-25-208(1)(b)).
- < Practicing without a duly authorized and issued license (C.R.S. § 12-25-208(1)(n), Board Rule 3.4.9, and Board Policy 40.9); attempting to use an expired, revoked, suspended, or nonexistent license, practicing or offering to practice when not qualified, or falsely claiming that the individual is licensed (C.R.S. § 12-25-208(1)(n)); fraud, misrepresentation, or deceit in obtaining or attempting to obtain a license (C.R.S. § 12-25-208(1)(a)), whether by direct misrepresentation, or by omission of perti-

nent facts; assisting someone else to obtain a license when they are not qualified (Board Rule 3.3.3.1); or using in any manner a certificate or certificate number that has not been issued to the individual by the board (C.R.S. § 12-25-208(1)(o)). This final prohibition would include using the seal of another who is working at your company. Consider whether you have their permission, and whether they have reviewed the document. You, as a licensed professional, have the responsibility to maintain control over your seal (Board Rules 3.1.3, 3.2.2, 3.2.3, and those under 6.1). In this electronic age, and with the common usage of electronic seals, as well as the ease of creating an electronic seal with anyone's name and LS number, this control has become much more difficult. If you exercise reasonable control over your seal, any unauthorized use may be a violation for the user, but not for you. What is "reasonable" control? At the very least, do not leave your electronic seal in electronic drawing files that leave your office. Keep your rubber stamp or crimp seal in your possession, and allow employees to use it only when you have reviewed the work product, and are ready to sign it. Finally, unless specifically required by a reviewing government agency, do not seal draft copies of work product.

- < Conviction of a felony that is related to the ability to practice land surveying as set forth in C.R.S. § 12-25-208(1)(c). Only the ability to practice land surveying? Could you argue that non-related offenses could relate to your ability to practice land surveying? Or perhaps if you are on the other side of the fence, you could argue that only felonies specifically stated to relate to land surveying would apply under this Statute.
- < Performing services beyond one's competency, training, or education (C.R.S. § 12-25-208(1)(g)(See also Board Rules 3.2.1 and 3.3.2)). Notice the "or" separator. Can you have training and education, but still be incompetent and perform services? I would say yes, it happens occasionally.
- < Failing to report to the board any other professional land surveyor known to have violated any Statute related to the practice of professional land surveying, or any Board order or rule (C.R.S. § 12-25-208(1)(h)). There are varying degrees of violations, and limited Board resources to prosecute violations. Think about those violations that endanger the safety, health, property, and welfare of the public versus those that are minor infractions. Even if you notice an infraction, I suggest contacting the surveyor first to allow an opportunity to correct the action. Another failure to report violation is the failure to report to the Board within 60 days, any malpractice claim against the professional land surveyor or his company, which was settled or in which judgment was rendered (C.R.S. § 12-25-208(1)(k)). Based on personal experience, I have been informed that since the Board does not regulate Companies, only individuals, you do not have to report your Company for

a violation by an individual who is no longer with your Company, either due to changes in employment, or death.

- < Double compensation for one project is regulated by Board Rule 3.4.5. There are a few situations where this may become an issue. In some instances, accepting compensation from two different clients on the same project is acceptable, with full disclosure and approval of all parties. One example is working for the engineer, architect, and contractor all on the same project. Make sure you only charge one client for any particular task. Also be very careful that you charge individual tasks to the right client. Keep very detailed records in order to prevent future problems. Charging two clients for the same task is not allowed. Other situation may arise which require caution and possible avoidance, such as two professionals for the same company working for two separate clients on the same project, and working for two clients on a project who become adversaries in legal proceedings.
- < Using plans created by another professional (Board Rule 3.2.2). This situation arises under several possible scenarios. Presented below are two.
 - < After Original Professional Discharged: This can occur when the plans were created by the professional on behalf of the firm and then leaves their employ. The firm is tasked with completing the plans. Another possibility is when the firm is discharged and a replacement firm takes over the project. In either situation, the subsequent professional assigned to the project must assure that the work to date is reviewed, understood, and complies with that professional's requirements. If you adopt the plans, you are adopting as your own ALL OF THE INFORMATION REFLECTED THEREON. In the replacement firm situation, however, you MUST OBTAIN THE PERMISSION OF THE ORIGINAL PROFESSIONAL, particularly if the original professional has not been paid for those services. If they have not been paid, and you cannot obtain permission, DO NOT USE THE PLANS. To do so is a direct copyright violation under Federal Law. Even the underlying data is copyrighted if the original professional has not been paid. If the services were paid for, the underlying data is not then copyrighted, but the style and presentation (the "map") is copyrighted. (See Hermansen, Knud E., Copyright Basics for Surveyors. *Hoosier Surveyor Magazine*, Vol. 32, No.1, p 17 (2005).
 - < As Part of a Complete Set for a Team: CDOT right of way plans may have seal and signature locations for the design survey LS, for the CDOT reviewing LS, and/or for the final construction LS. In Colorado, this is ok as long as you clearly state which elements of the plan set you are certifying to. (See Board Rule 3.2.3) Alternatively, you may be signing a set along with architects,

engineers, and/or landscape architects. Again, limit your certification to those parts of the plan set prepared by you or under your direct responsibility and checking.

- < Leaving employment and taking files or drawings. If you are the surveyor of record, you or your employer are required to keep a copy of all documents displaying the licensee's seal, signature, and date, for a minimum of three years from the date such documents are tendered to the client, and you must keep copies of your research records, field notes, etc., as well (Board Rules 6.1.7 and 6.6.3). Your employer does not have to let you take copies, but most do not object, even for draftspersons as examples of work completed.
- < Approaching clients of former employer. While there is no specific prohibition, watch out for the Rules under 3.5, and if you are an owner or key manager of a Company, and have signed a non-competition agreement, there may be written contractual issues.
- < Violation of non-competition agreement. This is not an issue addressed directly by the land surveying Statutes, Board Rules or Policy Statements. This topic is much too complex for a full discussion here, but generally speaking, non-competition agreements are not enforceable in Colorado, as they are held to be an undue restraint of trade. There are exceptions, however, and both the language of the agreement and the status of the individual involved have a bearing on the outcome. These are actions brought by the Company, and are EXTREMELY EXPENSIVE to litigate.
- < Issues related to allowing others to control the work product are covered by Board Rules under 3.6 and 6.2. This is not a common occurrence, with two exceptions.
- < If a client wants a specific outcome on their boundary determination, DO NOT give in to their wishes if that outcome is not fully supportable in your mind. Your decision should be totally independent and reasoned.

< Certification written by others arises commonly, and involves a certification, typically for an ALTA/ACSM Land Title Survey, presented by the lender for inclusion and signature. Review the language carefully. If there is anything included that you are unwilling or unable to certify to, negotiate a change in language, or refuse to sign. The most commonly used offending language includes items outside the purview of a land surveyor, such as planning and use conclusions.

- < There are several other Statutes and rules of interest not specifically discussed above:
 - C.R.S. § 12-25-208(1)(f) - Using false, deceptive, or misleading advertising
 - C.R.S. § 12-25-208(1)(l) - Being addicted to or dependent upon alcohol or any habit-forming drugs or controlled substances
 - C.R.S. § 12-25-208(1)(j) - Using any schedule 1 controlled substance
 - C.R.S. § 12-25-208(1)(l) - Failing to pay any fine related to the practice of professional land surveying
 - 3.1.3.1 - Control of Caps
 - 3.1.5 - Maintenance of Confidentiality
 - 3.1.7 - Cooperation with Board Investigations
 - 3.1.6 - Caliber of Association
 - 3.3.1 - Truthfulness in professional reports, statements, and testimony
 - 3.4.1 - Conduct that Discredits the Profession
 - 3.4.2 - Appearance of Impropriety
 - 3.4.3 - Undue Influence
 - 6.5.2 - Responsibility to Research Records

Finally, I would like to conclude with an issue that I feel is extremely important: Cooperation with other surveyors on boundaries. Competition in the marketplace is often at odds with cooperation to resolve a specific boundary. Communication is the key to success. When you review the work product of another surveyor, and you disagree with their boundary conclusion based on the evidence you have found, contact the other surveyor. They may have found evidence that is no longer available, or may have a reasoned conclusion that you didn't consider. On the other side of the issue, if you are the surveyor being called, cooperation will assist not only the later surveyor, but the general public as well.

Remember, communication with clients, landowners, regulatory agency personnel, and fellow professionals is the best way to avoid most of the issues set out above. Always maintain your honesty, integrity and professionalism. Others will generally respond in like kind.

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