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Ethics for Alabama Professional Land Surveyors

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Chapter 1

Overview of the Nova Scotia Engineering Ethics, Laws and Rules

Engineering and Land Surveying Ethics

Engineering and land surveying ethics is (1) the study of moral issues and decisions confronting individuals and organizations involved in engineering and land surveying and (2) the study of related questions about moral conduct, character, ideals and relationships of peoples and organizations involved in technological and professional practice (Martin and Schinzinger, Ethics in Engineering).

Alabama Board of Licensure for Professional Engineers and Land Surveyors

The Alabama Legislature created the Alabama Board of Licensure for Professional Engineers and Land Surveyors (Board) in 1935 with the charge of protecting life, health, and property and to promote the public welfare. The Board has the power to adopt rules, set standards for licensure, adopt mandatory standards of professional conduct and ethics, and investigate and discipline unauthorized, negligent, unethical or incompetent practice. The Board reviews applications, administers examinations, licenses qualified applicants, and regulates the professional practice of licensees throughout the state. The Board consists of nine members appointed by the Governor of Alabama for a term of five years: five professional engineers, two professional land surveyors, and two members appointed from the public at large.

Alabama Statutory Laws

The Alabama statutory laws are a collection of state laws organized by subject area into a code made up of titles and chapters. The Code of Alabama 1975, Title 34, Chapter 11 was enacted by the Alabama Legislature in the interest of public health and safety to regulate the practice of engineering and land surveying in the State of Alabama. Under Section 34-11-35 of this chapter, the Board is granted the authority to promulgate rules of professional conduct binding on every licensee, certified intern, and certificate of authorization holder in the state. It is continuously updated by laws that create, amend, or repeal statutory material. The Alabama statutory laws state the law followed by the history of the law which indicates when it was originally filed and subsequent effective dates of enactment. The statutory basis for the Alabama Code of Ethics for engineers and land surveyors is presented in Chapter 2 below.

Alabama Board Rules

The Alabama Administrative Code is a compilation of the rules and regulations of Alabama's regulatory agencies. It is organized by titles and chapters, with each chapter number representing a department, commission, board, or other agency. The Rules of Professional Conduct (Code of Ethics) for the Alabama Board of Licensure for Professional Engineers and Land Surveyors are set out in Chapter 330-X-14 of the Alabama Administrative Code, made under the authority of Section 34-11-35 of the Code of Alabama, and state the ethical obligations binding on every professional engineer, professional land surveyor, certified intern, and certificate of authorization holder in the state. They are continuously updated by the Board. The Board Rules record the rule followed by the history of the rule, which indicates when the rule was originally filed and its effective date, as well as the date on which any amendment or repeal was filed and its effective date. The Alabama Code of Ethics governing the conduct of professional engineers and land surveyors in Alabama is presented in Chapter 2 below.

Alabama Board Disciplinary Authority

The Alabama Board of Licensure for Professional Engineers and Land Surveyors is charged with the duty of issuing certificates of licensure to those professional engineers and land surveyors it has determined to be qualified. It has the authority and responsibility to revoke these certificates when charges such as gross incompetence, or a violation of the Rules of Professional Conduct, are proven in a hearing against a licensee, under Section 34-11-11 of the Code of Alabama. It has the authority to initiate action against unlicensed persons who practice or offer to practice engineering or land surveying in the state. The Board is not authorized to settle boundary line disputes, establish costs for services, correct miscalculations or errors in a survey of real property, or settle contractual disputes. These types of problems are civil matters and are usually settled between the parties involved either in or out of the courts. If wrongdoing by a licensee is proven in court, the Board would like to have certified copies of any orders issued to prevent the wrongdoing from happening again and to take other action as considered appropriate. Likewise, the Board has no powers of restitution, as these are reserved for the courts. Selected disciplinary case studies illustrating violations of the Alabama Code of Ethics are presented in Chapter 3 below.

Chapter 2

Alabama Code of Ethics for Land Surveying

Chapter 330-X-14 - PROFESSIONAL CONDUCT (CODE OF ETHICS)

The following are excerpts from the Alabama Administrative Code Agency 330, Code of Ethics, Chapter 330-X-14, governing the practice of professional land surveying in Alabama. If you wish to review the complete Alabama Code of Ethics of Practice for Surveying, please visit the websites at:

<https://admincode.legislature.state.al.us/administrative-code/330?utm>

§ 330-X-14-.01 - Preamble

(1) In order to meet the intent of the Code of Ala. 1975, Title 34, Chapter 11, to safeguard the health, life, safety, welfare and property of the public and to establish and maintain a high standard of integrity, skills, and practice in the professions of engineering and land surveying, the following Rules of Professional Conduct (Code of Ethics) are promulgated in accordance with Section 34-11-35, Code of Ala. 1975 and shall be binding upon (a) every person holding a license as a professional engineer or professional land surveyor, (b) every certified engineer intern and land surveyor intern and (c) holders of certificates of authorization.

(2) All persons licensed or certified under the provisions of Chapter 11, Title 34, Code of Ala. 1975 and prior Code, are charged with having knowledge of the existence of the Rules of Professional Conduct (Code of Ethics), Rules 330-X-14-.02 through 330-X-14-.07, and shall be deemed to be familiar with their several provisions and to understand them. Such knowledge shall encompass the understanding that the practice of engineering or land surveying is a privilege, as opposed to a right, and the licensee or intern shall be forthright and candid in his or her statements or written response to the Board or its representatives on matters pertaining to professional conduct.

(3) Where applicable, the singular use of the words "engineer or land surveyor" used in the five Rules of Professional Conduct (Canons) shall also include holders of certificates of authorization.

(4) Licensees, in the performance of their services for clients, employers, and customers, shall be cognizant that their first and foremost responsibility is to the public health, safety and welfare.

§ 330-X-14-.02: Conflict of Interest (Canon I)

The engineer or land surveyor shall exercise independent judgments, decisions and practices on behalf of clients and employers as follows:

(a) The engineer or land surveyor shall attempt to avoid all conflicts of interest with his client or employer, but when a conflict of interest is unavoidable, the engineer or land surveyor shall immediately inform his or her employer or client of any business association, interest, or circumstances which might tend to influence the licensee's professional judgments, decisions or practices or the quality of services.

(b) The engineer or land surveyor shall not solicit or accept any gratuity, material favor or benefits of any substantial nature from any party, agent, servant or employee dealing with his or her client or employer in connection with any project on which he or she is performing or has contracted to perform engineering or land surveying services. This solicitation or acceptance includes, but is not limited to any act, article, money or other material possessions which is of such value or proportion that its acceptance creates a clandestine obligation on the part of the receiver or otherwise compromises his or her ability to exercise his or her own independent judgment.

(c) The engineer or land surveyor shall not solicit or accept, directly or indirectly, any engineering or land surveying contract, selection, or employment from a governmental body in which a principal or officer of the licensee's organization serves as a member or employee.

(d) When in public service as a member or employee of a governmental body, the engineer or land surveyor shall not participate, directly or indirectly, in considerations or actions with respect to retaining services offered or provided by the licensee, his or her associates or his or her organization to such governmental body.

§ 330-X-14-.03: Qualified By Education Examination or Experience (Canon II)

The engineer or land surveyor shall act competently and use proper care in performing engineering or land surveying services for clients or employers and shall act only in fields in which qualified by education, examination or experience as follows:

(a) The engineer or land surveyor shall not accept any engineering or land surveying employment, or undertake any engineering and/or land surveying assignment, for which he or she is not qualified by education, examination or experience to perform or to carry out adequately and competently; providing and excepting, however, that an engineer or land surveyor may accept an assignment requiring education, examination and experience outside his or her field of competence only to the extent that personal engineering or land surveying services are restricted solely to those phases of the service or project in which he or she is qualified and competent, and that all other phases of such service or project shall be performed by qualified consultants, associates or employees.

(b) The engineer or land surveyor shall not affix his or her signature or seal to any engineering or land surveying plan or document dealing with subject matter on which he or she is not qualified by education, examination or experience to form a dependable judgment.

(c) The engineer or land surveyor, when serving as an expert or technical witness before any court, commission or other tribunal, shall express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of his or her testimony.

(d) The engineer, land surveyor, engineer intern, or land surveyor intern shall not engage in any other professional matter for which a specific license is required without first being licensed in that profession.

§ 330-X-14-.04: Confidences Of Clients and Employers (Canon III)

- (a) The engineer or land surveyor shall safeguard and preserve the confidences and private information of clients and employers as follows:
Except as permitted by Rule 330-X-14-.04(b), the engineer or land surveyor shall not knowingly:
1. Reveal a confidence or private information regarding or in the possession of the licensee's client or employer, current or former;
 2. Use a confidence or private information regarding or in the possession of his client or employer, current or former, to the disadvantage of the client or employer;
 3. Use a confidence or private information regarding or in the possession of the client or employer for the advantage of a third person, unless the client or employer, current or former, consents after full disclosure except (b) below.
- (b) The engineer or land surveyor may reveal confidences or private information under the following circumstances:
1. When he or she has obtained the consent of the client or clients, employer or employers, current or former, affected, but only after full disclosure to them;
 2. When required by law or court order;
 3. When necessary to establish legal proof of his or her relationship with a client or employer, current or former, in a court action to recover salaries, fees or other compensation due him or her as a result of his employment or association with the client or employer, current or former;
 4. When necessary to defend himself or herself or his employees or associates in a legal action alleging wrongful conduct;
 5. When there is potential danger to the public's safety and well being.
- (c) The engineer or land surveyor shall exercise reasonable care to prevent unauthorized disclosure or use by his or her employees and associates of private information or confidences regarding or in the possession of a client or employer, current or former.
- (d) Nothing in this rule shall relieve an engineer or land surveyor from complying with Rule 330-X-14-.05(j).
- (e) Licensees shall not accept compensation, financial or otherwise, from more than one party for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.

§ 330-X-14-.05: Practice (Canon IV)

The engineer or land surveyor shall endeavor to build a practice and professional reputation on the merit of his services as follows:

- (a) The engineer or land surveyor shall not offer, or promise to pay or deliver, directly or indirectly, any commission, political contribution, gift, favor, gratuity, benefit or reward as an inducement to secure any specific professional engineering or professional land surveying work or assignment; providing and excepting, however, that an engineer or land surveyor may pay a duly licensed employment agency its fee or commission for securing engineering or land surveying employment in a salaried position.
- (b) The engineer or land surveyor shall not solicit professional employment by self-laudatory advertising, or in any manner contrary to high professional standards.
- (c) 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 prior assignments nor the complexity of said assignments. Presentations incident to the solicitation of employment or business shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or past accomplishments.
- (d) The engineer or land surveyor shall not supplant, nor attempt to supplant, directly or indirectly, another engineer or land surveyor in an ongoing engineering or land surveying project, after contracts have been awarded to such other engineer or land surveyor.
- (e) The engineer or land surveyor shall not attempt to compete with another engineer or land surveyor for employment by reducing his or her usual charges or by the use of unethical practices.
- (f) The engineer or land surveyor, shall not participate in or implement procurement practices based solely on fees except as allowed by State Law.
 - (1) Procurement practices shall first determine the qualifications of the engineer or land surveyor prior to entering into fee negotiations for services being sought. An engineer or land surveyor having submitted a statement of qualification and performance data, and having first been judged as the qualified individual or firm to provide the services required for the proposed project, may proceed to negotiate a contract with a client and establish compensation or fees for the required services.
 - (2) Should the engineer or land surveyor be unable to negotiate a satisfactory contract with the client for any reason, the engineer or land surveyor shall withdraw from further consideration for the engineering or land surveying services. Another engineer or land surveyor may then be selected for negotiations of a contract for the services on the stated project.
 - (3) Examples include but are not limited to, simultaneous negotiations or solicitation of fee proposals by the client from two or more engineers or land surveyors constitutes "bidding" and participation by a licensee is prohibited.

- (g) The engineer or land surveyor shall perform his or her work in accordance with approval standards of practice and care and shall endeavor to adhere to all laws in effect in the jurisdiction in which he or she is practicing.
- (h) Should the engineer or land surveyor be presented with a Certification to be signed, sealed and dated as summarized in Rule 330-X-11-.04 and defined in Rule 330-X-2-.01(7), he or she should carefully evaluate that Certification to determine if any of the circumstances set forth below would apply. The engineer or land surveyor who signs, seals and dates Certifications which:
 - (a) relate to matters which are beyond the engineer's or land surveyor's technical competence, or
 - (b) involve matters which are beyond the engineer's or land surveyor's scope of services actually provided, or
 - (c) relate to matters which were not prepared under the engineer's or land surveyor's responsible supervision, direction or control are subject to disciplinary action pursuant to Rule 330-X-16. If any of these circumstances would apply, the engineer or land surveyor shall either:
 - (a) modify the Certification to limit its scope to those matters which the engineer or land surveyor can properly sign, seal and date, or
 - (b) decline to sign the Certification.
- (i) The engineer or land surveyor shall be completely objective, truthful, and shall include all relevant and pertinent information in all professional reports, statements or testimony.
- (j) The engineer or land surveyor shall issue no statements, or criticisms or arguments on matters connected with public policy which are inspired or paid for by an interested party, or parties, unless he or she has prefaced his or her comments by explicitly identifying himself or herself, by disclosing the identities of the party, or parties, on whose behalf he or she is speaking, and by revealing the existence of any pecuniary interest he or she may have in the instant matter.
- (k) Licensees shall notify their employer or client and such other authority as may be appropriate when their professional judgment or covenants of this Code of Ethics are overruled under circumstances where life, health, property, or welfare of the public is endangered.

§ 330-X-14-.06: Ethics (Canon V)

The engineer or land surveyor shall contribute to the maintenance, integrity, independence and competency of the engineering or land surveying profession as follows:

- (a) The engineer or land surveyor shall not:
 - 1. Violate any provision of the Alabama law regulating the practice of engineering and land surveying or of the Administrative Code of the Board of Licensure for Professional Engineers and Land Surveyors;
 - 2. Participate, directly or indirectly, in any plan, scheme or arrangement attempting or having as its purpose the evasion of any provision of the Alabama law regulating the practice of engineering and land surveying;

3. Fail to exercise reasonable care or diligence to prevent his or her partners, associates, and employees from engaging in conduct which if done by him or her, would violate any provision of the Alabama Law regulating the practice of engineering and land surveying;
4. Engage in any illegal conduct, whether a felony or misdemeanor, the essential element of which is dishonesty;
5. Engage in any conduct that discredits or tends to discredit the profession of engineering or land surveying;
6. Permit or allow, his or her professional identification, seal, firm, or business name, or his or her services to be used or made use of, directly or indirectly, or in any manner whatsoever, so as to make possible or create the opportunity for the unauthorized practice of engineering or land surveying by any person, firm or corporation in this state;
7. Perform any acts, allow omissions or make any assertions or representations which are fraudulent, deceitful, or misleading, or which in any manner whatsoever tend to create a misleading impression;
8. Knowingly associate with or permit or allow the use of his or her name, firm name or professional identification or seal in any business venture, project or enterprise which he or she knows or has reason to believe is engaged in professional practices which violate any provision of the Alabama Law regulating the practice of engineering and land surveying;
9. Knowingly associate with or permit the use of his or her name, professional identification, seal, firm or business name in connection with any venture or enterprise which he or she knows, or has reason to believe, is engaging in trade, business or professional practice of a fraudulent, deceitful or dishonest nature;
10. Injure or attempt to injure or damage the professional reputation of another by any means whatsoever; provided and except, however, that this shall not relieve an engineer or land surveyor of the obligation to expose unethical or illegal conduct to the proper authorities or preclude a frank but private appraisal of engineers or land surveyors or other persons or firms considered for employment;
11. Aid or abet, directly or indirectly, any unlicensed person in connection with the unauthorized practice of engineering or land surveying; or any firm or corporation in the practice of engineering or land surveying unless carried on in accordance with the provisions of Chapter 11, Title 34 of the Alabama Law regulating the practice of engineering and land surveying;
12. Place his or her seal, signature, date and license number on a document constituting a certification that the document was prepared by the licensee unless the document was prepared by the licensee or under his or her direct control and personal supervision or unless the licensee has reviewed the document in sufficient depth to fully coordinate and assume responsibility for plans prepared by another licensed professional engineer or licensed professional land surveyor.

13. Review the work of another engineer or land surveyor, for the same employer, except with the knowledge or consent of the engineer or land surveyor, unless the connection of the engineer or land surveyor with the work has been terminated.
 14. Participate in procurement procedures for engineering or land surveying services either by providing the bids or in requesting bids from other professional engineers or land surveyors where bidding is the primary consideration except as allowed by state law.
 15. Fail to respond to the Board within 60 days of receipt of Board inquiries.
- (b) The engineer or land surveyor shall be personally and professionally responsible and accountable for the care, custody, control and use of his or her engineer's or land surveyor's seal, professional signature, and identification. The engineer or land surveyor whose seal has been lost, misplaced or stolen shall, upon discovery of its loss, report the loss immediately to the Board, which may invalidate the license number of the seal, if it deems this necessary, and issue another license number to the engineer or land surveyor.
- (c) When in public service as a member or employee of any governmental body, agency or department, the engineer or land surveyor shall not participate, directly or indirectly, use or make use of any property, facility or service of such governmental body, agency or department for the benefit of any private business or activity in which such engineer or land surveyor also may be engaged, unless prior, proper authority is obtained in writing.
- (d) The engineer or land surveyor shall not, directly or indirectly, use or make use of any property, facility or service of his or her client or employer for the benefit of the engineer or land surveyor, unless prior, proper authority is obtained in writing.
- (e) The engineer or land surveyor shall not practice or offer to practice engineering or land surveying in any governmental jurisdiction in which to do so would be in violation of the laws regulating the practice of professional engineering or professional land surveying in that jurisdiction.
- (f) Licensees having knowledge of possible/probable violations of any of these Rules of Professional Conduct shall provide the Board with the information and cooperate as necessary to make the final determination of such violation.
- (g) It shall be the duty and sole responsibility of each licensee and intern to provide written notification to the Board of any changes to their mailing address and business affiliation within 30 days after the change.
- (h) The engineer or land surveyor must provide written notification to the Board within 30 days of a disciplinary action taken against them by other licensing boards.
- (i) The engineer or land surveyor must provide written notification to the Board within 30 days of a conviction, a plea of guilty, or nolo contendere to any felony crime, or misdemeanor directly related to the practice of engineering or land surveying.

§ 330-X-14-.07: Responsibility For Conduct

A corporation, partnership, or firm shall be held responsible for the conduct or acts of its agents, managing agents, employees, officers, partners, or owners, licensed or non-licensed.

§ 330-X-14-.08: Convictions

The revocation, suspension, or denial of a license to practice engineering or land surveying in another jurisdiction, for reasons or causes which the Board finds would constitute a violation of the Alabama Law regulating the practice of engineering and land surveying or any rule, regulation, or code promulgated by the Board, shall be sufficient cause for the denial, suspension, or revocation of a license to practice engineering or land surveying in the State of Alabama.

Chapter 3

Review of Disciplinary Cases

The following disciplinary cases were extracted from the official disciplinary decisions published in The Standard, the quarterly enforcement newsletter of the Alabama Board of Licensure for Professional Engineers and Land Surveyors. In selecting these cases, different scenarios of violations of the Alabama Code of Ethics (Alabama Administrative Code, Rule 330-X-14) are depicted along with their corresponding disciplinary decisions issued by the Board.

CASE 1: Matthew A. Kountz, PLS **Complaint #2023-07, #2023-25, #2023-29, #2024-14**

Investigators determined that Mr. Kountz accepted payments to provide land surveying services that he did not provide, and he also failed to respond to Board inquiries about the complaints. After a formal hearing on January 23, 2024, the Board found him guilty of the charges.

Board Decision: On March 19, 2024, a Hearing Order was issued revoking Mr. Kountz's professional land surveyor license.

CASE 2: John Maxwell, PLS 17262 **Complaint #2023-20, #2023-32, #2023-33**

Investigators determined Mr. Maxwell's PE/PLS-relevant Ohio license had previously been revoked for practicing land surveying without a license in that state. He was also paid a retainer to provide engineering and land surveying services but failed to meet project deadlines and was terminated from the project. He additionally provided a document under his firm's name, "USA Surveying & Engineering, LLC," listing multiple Alabama cities without those locations being identified on his firm's certificate of authorization.

Board Decision: Mr. Maxwell agreed to pay a \$5,000 fine, to have both his PE and PLS licenses suspended for three years with the suspension stayed, and to submit quarterly project lists to the Board for three years.

**CASE 3: Felton Berger, PLS
Complaint #2025-11 and #2025-12**

In June 2024, Mr. Berger was hired to perform a land survey and began fieldwork in a timely manner; however, by December 20, 2024, he had not completed it as promised, with delays attributed to workload and health issues. In a related complaint concerning the same project, Mr. Berger requested and received final payment even though the survey remained incomplete, and subsequently stopped responding to the client's inquiries about the project's status.

Board Decision: Mr. Berger agreed to Consent Orders requiring him to pay a \$500 fine for each complaint and to submit quarterly lists of his surveying projects to the Board.

**CASE 4: Frank R. Garrett, PLS 9500
Complaint #2024-38**

Mr. Garrett, also owner of J M Garrett & Sons, LLC, submitted a PLS reinstatement application falsely indicating he had not practiced surveying while his license was lapsed. He later admitted, on his firm's separate certificate of authorization application, that he had in fact provided surveying services in 2023–2024 while both his personal license and his firm's certificate of authorization were expired.

Board Decision: Mr. Garrett and his firm agreed to a consent order requiring him to pay a \$2,500 fine to the Board (his firm to pay \$2,500 to the state fund) and \$200 toward investigation costs; the orders were made public.

**CASE 5: Thomas Mitchell, PLS
Complaint #2022-29**

Mr. Mitchell was hired in 2021 to survey and separate a thirty-acre portion of a property, receiving a \$6,000 retainer. He never completed the work, citing overgrown vegetation and access problems. When the client backed out of the purchase, he never refunded the retainer, stating he had lost her contact information.

Board Decision: Mr. Mitchell agreed to pay a \$4,000 fine to the Board and accepted a 2-year stayed suspension of his license; the Consent Order and Final Order were made public.

Appendix A

References

Alabama Legislative Services Agency. Alabama Administrative Code, Agency 330: Alabama State Board of Registration for Professional Engineers and Land Surveyors.

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