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New Mexico Code of Conduct for Professional Land Surveyors

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Table of Contents

Chapter 1: Overview of the New Mexico Professional Land Surveying Ethics **1**

Land Surveying Ethics	1
New Mexico State Board of Licensure for Professional Engineers and Professional Surveyors	1
New Mexico Statutory Authority (NMSA)	1
New Mexico Administrative Code (NMAC)	2
New Mexico Board Disciplinary Authority	2

Chapter 2: New Mexico Engineering and Surveying Practice Act (Surveying Provisions) **3**

2.1 61-23-27.8: Surveying: Licenses; Seals (Repealed effective July 1, 2030.)	3
2.2 61-23-27.9: Surveying; Practice of Surveying; Mandatory Disclosure (Repealed effective July 1, 2030.)	3
2.3 61-23-27.11: Surveying; Violations; Disciplinary Actions; Penalties; Reissuance of Licenses	5

Chapter 3: New Mexico Professional Engineering and Surveying Rules and Code of Conduct **7**

3.1 16.39.7 NMAC, Misc: Procedures for Revocation, Suspension, Imposition of Fines, Reissuance of Certificates and Disciplinary Action	7
3.2 16.39.8 Code of Professional Conduct-Engineering and Surveying	12

Chapter 4: Review of Disciplinary Cases **17**

CASE 1: Cases No. 5-PS-09-23-2014	17
CASE 2: Cases No. 2-PS-01-25-2019	17
CASE 3: Case No. 6-PS-04-22-2019	18
CASE 4: Cases 05-04-01, 05-04-09, 05-05-07 License Revoked	18
CASE 5: Case 06-05-48	18
CASE 6: Case 04-04-15	19
CASE 7: Case 05-05-26	19
CASE 8: Case 04-04-44	19
CASE 9: Timothy Ray Oden, PS	19

Appendix A: References **20**

Chapter 1

Overview of the New Mexico Professional Land Surveying Ethics

Land Surveying Ethics

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

New Mexico State Board of Licensure for Professional Engineers and Professional Surveyors

The New Mexico Legislature created the State Board of Licensure for Professional Engineers and Professional Surveyors (Board) under the Engineering and Surveying Practice Act with the charge of safeguarding life, health, and property and promoting the public welfare. The Board has the power to adopt bylaws and rules of procedure, and to adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to either profession. The Board reviews applications, administers examinations, licenses qualified applicants, and regulates the professional practice of licensees throughout the state. The Board consists of ten members appointed by the Governor of New Mexico: five licensed professional engineers, at least one of whom must be in engineering education, three licensed professional surveyors, and two public members, each serving a staggered term such that no more than two members' terms expire in the same year.

New Mexico Statutory Authority (NMSA)

The New Mexico Statutes are a collection of state laws organized by subject area into a code made up of titles, chapters and articles. The New Mexico Statutes were last updated in June 2023 by laws that create, amend, or repeal statutory material. These statutes are presented in Chapter 2. The New Mexico Legislature found that it was necessary in the interest of public health and safety to regulate the practice of engineering in the State of New Mexico and thus created Chapter 61, Article 23, "Engineering and Surveying Practice Act". Under this law, the New Mexico State Board for Licensure of Professional Engineers and Surveyors is responsible for reviewing applications, administering examinations, licensing qualified applicants, and regulating the practice of engineering throughout the state.

New Mexico Administrative Code (NMAC)

The New Mexico Administrative Code is a compilation of the rules and regulations of the New Mexico regulatory agencies. Its counterpart in the federal system is the Code of Federal Regulations. It is organized by titles with each title number representing a department, commission, board or other agency. The set has a single comprehensive index volume. The spines of the volumes indicate which titles are included. The NMAC states the rule followed by statutory authority, implementation and a history of the rule. The set is annotated with decisions of the Federal courts, State appellate courts, State Attorney General opinions, final and recommended orders of the Division of Administrative Hearings and final agency orders. At the end of each rule in the NMAC, a history note is located starting with title number. The history note indicates when the rule has been modified, renumbered, or repealed. Similar to Chapter 61, Article 23 of the New Mexico Statutes, Title 16, Chapter 39 of the NMAC pertains exclusively to the New Mexico Board for Licensure of Professional Engineers and Surveyors and its functions with respect to the practice of engineering. These rules are presented in Chapter 3.

New Mexico Board Disciplinary Authority

The New Mexico State Board of Licensure for Professional Engineers and Professional Surveyors is charged with the duty of issuing licenses to those professional surveyors it has determined to be qualified. In accordance with the Uniform Licensing Act, the Board may suspend, refuse to renew, or revoke a license, impose a fine of up to \$7,500, place a licensee on probation, or issue a reprimand against a professional surveyor found to have practiced in violation of the Engineering and Surveying Practice Act, violated the rules of professional responsibility adopted by the Board, been disciplined in another state for equivalent conduct, or procured, aided, or abetted any violation of the Act or the Board's rules. Charges of fraud, deceit, gross negligence, incompetency, or misconduct against a professional surveyor may be brought in writing by any person, sworn to, and filed with the Board's executive director. 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 New Mexico's ethics standards for land surveyors are presented in Chapter 4 below.

Chapter 2

New Mexico Engineering and Surveying Practice Act (Surveying Provisions)

New Mexico statutory law, NMSA 1978, Chapter 61, Article 23

The following are excerpts from the Engineering and Surveying Practice Act of the New Mexico Board of Licensure for Professional Engineers and Professional Surveyors, governing the professional conduct of engineers and surveyors in New Mexico. If you wish to review the complete New Mexico Statutes Annotated 1978, Chapter 61, Article 23, please visit the website at:

<https://www.sblpes.state.nm.us/wp-content/uploads/2023/07/2023-NM-Engineering-and-Surveying-Practice-Act-Book-7.1.23.pdf>

§61-23-27.8: Surveying: Licenses; Seals (Repealed effective July 1, 2030.)

A. The board shall issue surveying licenses pursuant to the Engineering and Surveying Practice Act. The board shall provide for the proper authentication of all documents.

B. The board shall regulate the use of seals and may approve alternative authentications to physical or electronic seals.

§61-23-27.9: Surveying; Practice of Surveying; Mandatory Disclosure (Repealed effective July 1, 2030.)

A. No business entity shall be licensed pursuant to the Engineering and Surveying Practice Act. No business entity shall practice or offer to practice surveying in the state except as provided in the Engineering and Surveying Practice Act.

B. Professional surveyors may engage in the practice of surveying and perform surveying work pursuant to the Engineering and Surveying Practice Act as individuals or through a business entity. In the case of an individual, the individual shall be a professional surveyor pursuant to the Engineering and Surveying Practice Act. All plats, drawings and reports that are involved in the practice, or that are issued by or for the practice, shall bear the seal and signature of a professional surveyor in responsible charge of and directly responsible for the work issued. In the case of practice through a business entity that is a partnership, at least one of the partners shall be a professional surveyor pursuant to the Engineering and Surveying Practice Act. In the case of a single professional surveyor partner, all drawings or reports issued by or for the partnership shall bear the seal of the professional surveyor partner who shall be responsible for the work. In the case of practice through a business entity other than a partnership, services or work involving the practice of surveying may be offered through the business entity; provided the person in responsible charge of the activities of the business entity that constitute the practice of surveying is a professional surveyor who has authority to bind the business entity by contract; and further provided that all drawings or reports that are involved in such practice, or that are issued by or for the business entity, bear the seal and signature of a professional surveyor in responsible charge of and directly responsible for the work when issued.

C. In the case of practice through a business entity offering or providing services or work involving the practice of surveying, an authorized company officer and the professional surveyor who is employed by the business entity and in responsible charge shall place on file with the board a signed affidavit, as prescribed by board rule. The affidavit shall be kept current, and, if there is any change in the professional surveyor or authorized company officer, the affidavit shall be promptly revised and resubmitted to the board.

D. An individual or business entity may not use or assume a name involving the terms "surveyor", "professional surveyor" or "surveying" or any modification or derivative of those terms unless that individual or business entity is qualified to practice surveying in accordance with the requirements of the Engineering and Surveying Practice Act.

E. For all contracts and agreements for professional surveying services, the surveying services contractor shall provide a written statement indicating:

- (1) the minimum terms and conditions of professional liability insurance coverage, including limits and exceptions; or
- (2) the absence of professional liability insurance coverage.

§61-23-27.11: Surveying; Violations; Disciplinary Actions; Penalties; Reissuance of Licenses

- A. In accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978], the board may suspend, refuse to renew or revoke the license, impose a fine not to exceed seven thousand five hundred dollars (\$7,500), place on probation for a specific period of time with specific conditions or reprimand a professional surveyor who is found by the board to have:
- (1) practiced or offered to practice surveying in New Mexico in violation of the Engineering and Surveying Practice Act;
 - (2) attempted to use the license of another;
 - (3) given false or forged evidence to the board or to a board member for obtaining a license;
 - (4) falsely impersonated another licensee of like or different name;
 - (5) attempted to use an expired, suspended or revoked license;
 - (6) falsely purported to be a professional surveyor by claim, sign, advertisement or letterhead;
 - (7) violated the rules of professional responsibility for professional surveyors adopted and promulgated by the board;
 - (8) been disciplined in another state for action that would constitute a violation of either or both the Engineering and Surveying Practice Act or the rules adopted by the board pursuant to the Engineering and Surveying Practice Act;
 - (9) been convicted of a felony; or
 - (10) procured, aided or abetted any violation of the provisions of the Engineering and Surveying Practice Act or the rules adopted by the board.
- B. The board may by rule and in accordance with the Uniform Licensing Act establish the guidelines for the disposition of disciplinary cases involving specific types of violations. Guidelines may include minimum and maximum fines, periods of probation or conditions of probation or reissuance of a license.
- C. Failure to pay a fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Uniform Licensing Act is a misdemeanor and shall be grounds for further action against the licensee by the board and for judicial sanctions or relief.

- D. A person may prefer charges of fraud, deceit, gross negligence, incompetency or misconduct against a professional surveyor. Such charges shall be in writing, shall be sworn to by the person making them and shall be filed with the executive director of the board. No action that would have any of the effects specified in Subsection D, E or F of Section 61-1-3 NMSA 1978 may be initiated later than two years after the discovery by the board, but in no case shall such an action be brought more than ten years after the completion of the conduct that constitutes the basis for the action. All charges shall be referred to the professional surveying committee, acting for the board, or to the board. All charges, unless dismissed as unfounded, trivial, resolved by reprimand or settled informally, shall be heard in accordance with the provisions of the Uniform Licensing Act by the surveying committee, acting for the board, or by the board.
- E. Persons making charges shall not be subject to civil or criminal suits if the charges are made in good faith and are not frivolous or malicious.
- F. The board or a board member may initiate proceedings pursuant to the provisions of this section in accordance with the provisions of the Uniform Licensing Act. Nothing in the Engineering and Surveying Practice Act shall deny the right of appeal from the decision and order of the board in accordance with the provisions of the Uniform Licensing Act.
- G. The board, for reasons it deems sufficient, may reissue a license to a person whose license has been revoked or suspended; provided that a majority of the members of the surveying committee, acting for the board, or of the board votes in favor of reissuance. A new license bearing the original license number to replace a revoked, lost, destroyed or mutilated license may be issued subject to the rules of the board with payment of a fee determined by the board.
- H. A violation of any provision of the Engineering and Surveying Practice Act is a misdemeanor punishable upon conviction by a fine of not more than seven thousand five hundred dollars (\$7,500) or by imprisonment of no more than one year, or both.
- I. The attorney general or district attorney of the proper district or special prosecutor retained by the board shall prosecute violations of the Engineering and Surveying Practice Act by a nonlicensee.
- J. The practice of surveying in violation of the provisions of the Engineering and Surveying Practice Act shall be deemed a nuisance and may be restrained and abated by injunction without bond in an action brought in the name of the state by the district attorney or on behalf of the board by the attorney general or the special prosecutor retained by the board. Action shall be brought in the county in which the violation occurs.

Chapter 3

New Mexico Professional Engineering and Surveying Rules and Code of Conduct

New Mexico Professional Engineering and Surveying Administrative Code, NMAC, Title 16, Chapter 39

The following are excerpts from the Administrative Code of the New Mexico Board of Licensure for Professional Engineers and Professional Surveyors, governing the professional conduct of engineers and surveyors in New Mexico. If you wish to review the complete New Mexico Administrative Code, Title 16, Chapter 39, please visit the website at:

<https://www.sblpes.state.nm.us/wp-content/uploads/2022/03/16.39-complete-book.pdf>

§16.39.7 NMAC, Misc: Procedures for Revocation, Suspension, Imposition of Fines, Reissuance of Certificates and Disciplinary Action

Section 16.39.7.1: Issuing Agency

State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505) 476-4565.

Section 16.39.7.2: Scope

Provisions for Part 7 apply to persons certified as engineer interns or surveyor interns, persons licensed as, professional engineers or professional surveyors, applicants for either licensure or certification, and persons who engage in the business or act in the capacity of a professional engineer or professional surveyor without being licensed by the board.

Section 16.39.7.3: Statutory Authority

Subsection B of Section 61-23-10 NMSA 1978 prescribes that "the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying." Part 7 applies to both engineering and surveying.

Section 16.39.7.5: Effective Date

January 1, 2002, unless a later date is cited at the end of a section.

Section 16.39.7.6: Objective

The objective of Part 7 is to define procedures for revocation, suspension, imposition of fines, reissuance of certificates and disciplinary action. It is also to define actions constituting violations of the Act.

Section 16.39.7.7: Definitions

"disqualifying criminal conviction" has the same meaning as defined in Subsection E of Section 61-1-36 NMSA1978.

Section 16.39.7.8: Issuance, Revocation, Suspension, Imposition of Fines, Reissuance of Licenses and Certificates, and Disciplinary Action

A. The board may impose fines as may be determined by the nature of the violation pursuant to Section 61-23-24 and 61-23-27.11 NMSA 1978.

B. A lost, mutilated or destroyed certificate shall be replaced only upon the written request of the licensee and payment of the required fee. The reissued certificate shall show the original license number and original date, shall be signed by the current chair and secretary of the board in office at that date, and shall carry the notation "reissued (DATE)."

Section 16.39.7.9: Violations

A. For business entities using the words "engineering" or "surveying" in their titles or offering engineering or surveying services, the board's executive director shall write the business entity, enclosing an affidavit to be completed which identifies the member of the business entity who is licensed to practice in the state of New Mexico and who is an employee of and legally able to bind the business entity by contract. If no response to this request is received within 30 days, a second letter shall be sent by certified mail, return receipt requested. If the second letter does not result in a response 30 days from the receipt of a refusal, the matter may be turned over to the attorney general's office for action.

B. It shall be considered "a violation" under Paragraph (1) of Subsection A of Section 61-23-24 NMSA 1978 and Paragraph (1) of Subsection A of Section 61-23-27.11 NMSA 1978 of the Engineering and Surveying Practice Act for any engineer or surveyor to practice or offer to practice outside their field(s) of demonstrated competence or in contravention of any of the provisions of these rules. It shall also be considered "a violation" under Subsection A of Section 61-23-23.1 NMSA 1978 and Subsection A of Section 61-23-27.15 NMSA 1978 of the Engineering and Surveying Practice Act for any person to act in the capacity of a professional engineer or a professional surveyor without being licensed by the board.

C. The practice or offer to practice engineering by a licensee of the board in any state, territory or country where the licensee has been determined to be in violation of that jurisdiction's licensing requirement shall be considered to be professional misconduct which may be actionable by the board. The practice or offer to practice surveying by a licensee of the board in any state, territory, or country where the licensee has been determined to be in violation of that jurisdiction's licensing requirement shall be considered to be professional misconduct which may be actionable by the board.

D. Each applicant or licensee shall notify the board, in writing, within 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, which is a felony, whether related to practice or not; any conviction of or entry of plea of nolo contendere to any crime, which is a felony directly related to the practice of engineering or surveying as listed in Subsection F of 16.39.7.9 NMAC.

E. The board shall comply with the provisions of the Parental Responsibility Act as they relate to the denial, suspension or revocation of certificates of licensure for non-payment of child support.

F. Criminal Convictions:

(1) Felony convictions for any of the following offenses, or their equivalents in any other jurisdiction, that may disqualify an applicant from receiving licensure, or disciplinary action including but not limited to suspension or revocation:

(a) crimes involving homicide, murder, manslaughter, or resulting in death;

(b) crimes involving human trafficking, or trafficking in controlled substances;

(c) kidnapping, false imprisonment, assault, aggravated assault, battery, aggravated battery;

(d) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, prostitution, or other sexual crimes;

(e) crimes involving great bodily harm, adult abuse, child abuse, neglect, abandonment, stalking, aggravated stalking, injury to pregnant woman, custodial interference, property damage, or financial exploitation;

(f) crimes involving ransom, robbery, larceny, extortion, burglary, sabotage, fraud, forgery, embezzlement, identity theft, credit card fraud, unauthorized use of a credit card; receiving stolen property, money laundering, burglary tools, or stolen vehicles;

(g) crimes involving arson, explosives, incendiary devices, facsimile bombs, hoax explosives, deadly weapons, or firearms;

(h) crimes involving seizing or exercising control of a bus by force or violence or by threat of force or violence;

(i) violation of Partial-Birth Abortion Ban Act;

(j) crimes involving bribery, intimidating witnesses, tampering with evidence, tampering with public records, performing an official act for personal gain, demanding or receiving a bonus, gratuity or bribe, unlawful interest in a contract involving an irrigation district, or receiving profits derived from an unlawful interest in a contract involving an irrigation district, or unlawful interest in a public contract;

(k) crimes involving jury tampering;

(l) crimes involving escape from custody, jail or penitentiary;

- (m) crimes involving harboring or aiding a felon;
- (n) crimes involving tax evasion or tax fraud;
- (o) crimes involving violations of the Mortgage Foreclosure Consultant Fraud Prevention Act, or the Savings and Loan Act;
- (p) crimes involving the Credit Union Act;
- (q) crimes involving perjury, public assistance, false swearing of oath or affidavit, false voting, falsely obtaining services or accommodations, falsifying documents, filing false documents, making false statements, making an unauthorized withdrawals, issuing a worthless check, obtaining information under false pretenses, or providing the credit bureau information of a consumer to an entity who is not authorized to receive that information;
- (r) crimes involving improper disposition of certain court funds or improper sale, disposal, removal or concealing of encumbered property;
- (s) crimes involving the possession of 4 or more incomplete credit cards or machinery, plates or other contrivance;
- (t) crimes involving altering or changing engine or other number of a vehicle or motor vehicle;
- (u) crimes involving any contractor or subcontractor justly indebted to a supplier of material or labor who accepts payment for construction and knowingly and intentionally applies the proceeds to a use other than paying those persons with whom he contracted;
- (v) crimes involving knowingly authorizing or assisting in the publication, advertising, distribution or circulation of any false statement or representation concerning any subdivided land offered for sale or lease, or with knowledge that any written statement relating to the subdivided land is false or fraudulent, issuing, circulating, publishing or distributing it;
- (w) crimes involving making or permitting a false public voucher;
- (x) crimes involving a false public voucher, false reports, uttering false statements, paying or receiving public money for services not rendered;
- (y) crimes involving unlawful influencing, unlawful sale of a lottery ticket, unlawful representation of a business or individual as a credit union, conducting business as a credit union when not authorized to do so, or violations of the New Mexico Uniform Securities Act;
- (z) crimes involving extortionate extensions of credit;
- (aa) crimes involving the unlawful request, receipt, or offer to another that is exchanged for the promised performance of and official act, or illegal kickbacks;

(bb) failing to comply with the registration or verification requirements of the Sex Offender Registration and Notification Act;

(cc) crimes involving the practice of medicine, dentistry or osteopathic medicine without a license or authorization of the appropriate regulating authority;

(dd) 4th or subsequent driving under the influence of intoxicating liquor or drugs;

(ee) an attempt, solicitation, or conspiracy involving any of the felonies in this subsection.

(2) The board shall not consider the fact of a criminal conviction as part of an application for licensure, or license renewal, unless the conviction in question is one of the disqualifying criminal convictions listed in Paragraph (1) of Subsection F of 16.39.7 NMAC.

(3) The board shall not deny, suspend, or revoke a license, or impose disciplinary action on a licensee on the sole basis of a criminal conviction, unless the conviction in question is one of the disqualifying criminal convictions listed in Paragraph (1) of Subsection F of 16.39.7 NMAC.

(4) Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Engineering and Surveying Practice Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Paragraph (1) of Subsection F of 16.39.7 NMAC.

(5) In connection with an application for licensure or a license renewal, or disciplinary action, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

(a) an arrest not followed by a valid conviction;

(b) a conviction that has been sealed, dismissed, expunged or pardoned;

(c) a juvenile adjudication; or

(d) a conviction for any crime other than the disqualifying criminal convictions listed in Paragraph (1) of Subsection F of 16.39.7 NMAC.

§16.39.8 Code of Professional Conduct-Engineering and Surveying

Section 16.39.8.1: ISSUING AGENCY

State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505) 476-4565.

Section 16.39.8.2: SCOPE

Provisions for part 8 apply to persons certified as engineer interns or surveyor interns, licensed as professional engineers or professional surveyors or anyone applying for certification as an engineer intern or surveyor intern or licensed as a professional engineer or professional surveyor.

Section 16.39.8.3: STATUTORY AUTHORITY

Subsection B of Section 61-23-10 NMSA 1978 prescribes that "the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying." Part 8 applies to both engineering and surveying.

Section 16.39.8.4: DURATION

Permanent

Section 16.39.8.5: EFFECTIVE DATE

January 1, 2002, unless a later date is cited at the end of a section.

Section 16.39.8.6: OBJECTIVE

The objective of part 8 is to establish and maintain rules of professional conduct for professional engineers and professional surveyors.

Section 16.39.8.7: DEFINITIONS

In these Rules of Professional Conduct, the word "licensee" shall mean any person holding a current license or certification issued by the Board.

Section 16.39.8.8: PREAMBLE

A. In order to safeguard life, health and property, to promote the public welfare, and to establish and maintain a high standard of integrity and practice, the following Rules of Professional Conduct shall apply to every person holding a certificate of licensure to perform engineering or surveying services in the State of New Mexico.

B. The Rules of Professional Conduct as promulgated herein are an exercise of the regulatory power vested in the Board by virtue of the acts of the legislature. These rules are in addition to but are not intended to supersede, the provisions of the New Mexico Engineering and Surveying Practice Act.

C. All persons licensed under the New Mexico Engineering and Surveying Practice Act are charged with having knowledge of the existence of these Rules of Professional Conduct and shall be deemed to be familiar with the provisions of these rules and to understand them. Such knowledge shall encompass understanding these rules of Professional Conduct and failure to follow these rules may be considered misconduct by the Board.

Section 16.39.8.9: RULES OF PROFESSIONAL CONDUCT

A. The protection of the public safety, health, welfare and property in the performance of professional duties.

- (1) Perform those duties in conformance with accepted engineering and surveying practices.
- (2) Notify their employer or client and such other authority as may be appropriate of any instance in which their professional judgment is overruled under circumstances endangering the public safety, health, welfare or property.
- (3) Approve and seal only those engineering and surveying documents which conform to applicable engineering and surveying standards.
- (4) Shall not reveal privileged or confidential facts, data or information without prior consent of the client or employer except as authorized or required by law or this code.
- (5) Refuse to associate in a business venture with any person or firm whom 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.
- (6) Inform the board of any violation of this code. Cooperate with the board in furnishing information or assistance as may be requested by the board in matters concerning violations.
- (7) Shall not assist or participate in the unlawful practice of engineering and surveying by a person or firm.

B. Specialization and the performance of services only in specific areas of competence.

- (1) Licensees shall undertake assignments only when qualified by education, experience or examination in the specific technical fields of engineering or surveying involved.
- (2) Licensees shall not affix their signatures or seals to any plans or documents dealing with subject matter in which they lack competency, nor to any such plan or documents not prepared under their responsible charge.

- (3) Licensees may accept an assignment when the total work involves technical fields beyond those in which they are qualified, providing their services are limited to those phases in which they are qualified and that the phases in which they are not qualified are performed by licensees who are properly qualified. In this instance, each qualified licensee will sign and seal the documents for their phase of the assignment.

C. The issuance of public statements.

- (1) Licensees shall be objective and truthful in professional reports, statements or testimony. 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.
- (2) If a licensee issues statements on technical matters in his or her capacity as a professional engineer or professional surveyor on behalf of an interested party, the licensee must expressly preface his or her remarks by identifying said interested party and by revealing the existence and nature of any interest the licensee may have in the matter.
- (3) A licensee who is competent in the subject matter may express publicly technical opinions that are found upon knowledge of the facts.

D. Professional relationships with employer or client.

- (1) Licensees shall act in professional matters for each employer or client to avoid conflicts of interest. 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.
- (2) Licensees shall not accept compensation, financial or otherwise, from more than one party for services on the same project, unless the circumstances are fully disclosed to, and agreed to, by all interested parties.
- (3) Licensees shall not solicit or accept any gratuity, material favor, or any valuable consideration, directly or indirectly, from contractors, their agents, servants or employees or from any other party dealing with his client or employer in connection with any project for which he is performing or has contracted to perform engineering or surveying services. (The phrase "valuable consideration" is defined to mean any act, article, money or other material possession which is of such value or proportion that its acceptance creates a clandestine obligation on the part of the receiver or otherwise compromises his ability to exercise his own judgment.)
- (4) Licensees in public service as a member or employee of a governmental body, agency or department shall not participate, directly or indirectly in deliberations or actions which would constitute a conflict of interest with respect to services offered or provided by him, his associates, or the licensee's business entity to such governmental body, agency or department.

- (5) Licensees shall not solicit or accept a professional contract from a governmental body on which a principal or officer of their business entity serves as a member, except upon public disclosure of all pertinent facts and circumstances and consent of appropriate public authority.
- (6) Licensees shall not reveal privileged or confidential facts, data or information obtained in a professional capacity without prior consent of the client or employer except:
 - (a) As provided in Paragraphs (2) and (6) of Subsection A of 16.39.8.9 NMAC.
 - (b) As authorized or required by law.
 - (c) Any document that is a matter of public record by virtue of it being on file with a public agency.
 - (d) Any fact, data or information which is clearly the property of the engineer or surveyor.

E. Solicitation of professional employment.

- (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. Brochures or other representations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures or past accomplishments with the intent and purpose of enhancing their qualifications and their work.
- (2) Licensees shall not offer, give, solicit or receive, either directly or indirectly, any commission, gift, or other valuable consideration in order to secure or influence the award of work and shall not make any political contribution in an amount intended to influence the award of a contract by public authority, and which may be reasonably construed by the public as having the effect or intent to influence the award of a contract.

F. Avoiding conduct or practice that deceives the public.

- (1) Licensees shall avoid the use of a statement containing a material misrepresentation of a fact or omitting a material fact.
- (2) Consistent with the foregoing, licensees may prepare articles for the lay or technical press, but such articles shall not imply credit to the author for work performed by others.

G. Interaction with other licensees.

- (1) Licensees shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of other licensees.
- (2) Licensees in private practice shall not review the work of another licensee for the same client, except with the knowledge of such licensees, or unless the connection of such licensee with the work has been terminated.
- (3) Licensees in governmental, industrial, or educational employment are entitled to review and evaluate the work of other licensees when so required by their employment duties.

Chapter 4

Review of Disciplinary Cases

The following disciplinary cases were extracted from official Board meeting minutes and newsletters published by the New Mexico Board of Licensure for Professional Engineers and Surveyors. The selected cases involve professional land surveyors and illustrate different violations arising from the practice of land surveying in New Mexico.

CASE 1: Robert Watt, PS Cases No. 5-PS-09-23-2014

Case Review: Under a Settlement Agreement, Mr. Watt was required to prepare a corrected survey plat for a property near Taos County that had been informally divided into three tracts by 1996 quitclaim deeds. He appeared before the Committee to argue he had satisfied the Agreement, submitting a revised plat interpreting the old deeds into a lot-split configuration. Under Committee questioning, several deficiencies emerged: the plat showed a "proposed" easement without confirmed owner consent or signatures; two of the resulting tracts (A1 and B1) had no confirmed legal access to a public road, relying on access through adjoining tracts that themselves lacked continuous access; and the underlying property was the subject of ongoing District Court litigation between the owners. The Board's investigator noted the plat was technically well-prepared but that the recordation, as presented, would create six tracts of land, three without legal access and all without documented owner consent.

Board Decision: The Committee voted to hold the Settlement Agreement open until Mr. Watt produced a final plat resolving the outstanding access and owner-consent deficiencies, rather than closing the case as he had requested.

CASE 2: Respondent Not Named in Public Minutes, PS Cases No. 2-PS-01-25-2019

Case Review: The Committee reviewed the Complaint Manager's Report on Case 2-PS-01-25-2019 during the closed executive session held at the November 6, 2019 meeting, convened pursuant to NMSA 1978, Section 10-15-1(H)(1) and (3), to discuss matters about the issuance, suspension, renewal, or revocation of a license and to deliberate on pending cases. As with most complaint matters heard in executive session, the published minutes record only the Complaint Manager's Report and the Committee's resulting motion; the underlying facts of the complaint and the specific violation alleged are not detailed in the public minutes

Board Decision: The Committee voted to refer the case for a Notice of Contemplated Action (NCA), the formal step that forwards the matter to the New Mexico Office of the Attorney General, Litigation Division, to determine whether sufficient evidence exists to issue formal charges against the respondent.

CASE 3: Respondent Not Named in Public Minutes, PS
Case No. 6-PS-04-22-2019

Case Review: The Committee reviewed the Complaint Manager's Report on Case 6-PS-04-22-2019 during the same closed executive session at the November 6, 2019 meeting. As above, the published minutes record only the Complaint Manager's Report and the resulting motion, with no further detail on the underlying complaint in the public record.

Board Decision: The Committee voted to issue an educational advisory to the respondent, a lower-severity resolution that closes the complaint by directing the surveyor toward corrective education rather than pursuing formal disciplinary action.

CASE 4: George J. Marquez, Jr., PS
Cases 05-04-01, 05-04-09, 05-05-07 | License Revoked

Case Review: Mr. Marquez was ordered by the Board's Decision and Order to make restitution to clients but failed to comply. He did not appear at his scheduled Order to Show Cause hearing to explain his noncompliance. A separate matter (Case 05-05-07) proceeded after he failed to request a hearing following a Notice of Contemplated Action.

Board Decision: The Committee voted unanimously to immediately revoke Mr. Marquez's license, specifically citing his failure to make restitution to clients, and separately revoked his license in the second matter after he failed to request a hearing.

CASE 5: Thomas Leyba
Case 06-05-48

Case Review: Information received by the Board indicated Mr. Leyba may not have been in compliance with a prior Decision and Order concerning the practice of surveying without a license and a Cease and Desist Order. At a subsequent Show Cause Hearing, Mr. Leyba presented an affidavit showing that J. Robert Martinez had been appointed Surveyor of Record for his firm with authority to bind the firm on surveying contracts, addressing the Board's earlier concern about the legal relationship between the two men and how work was being solicited.

Board Decision: The Committee accepted the new documentation on the firm's business organization and Mr. Martinez's appointment as Surveyor of Record, with the understanding that clarification would be requested if further review raised additional concerns.

CASE 6: J. Robert Martinez, PS
Case 04-04-15

Case Review: Mr. Martinez was previously ordered by the Board's Decision and Order to correct and record a revised survey plat. Recording was significantly delayed because the affected property owners were behind on their property taxes and the county would not record the plat until the tax issue was resolved.

Board Decision: Once the revised plat was finally recorded in compliance with the Board's Order, the case was closed with no further action.

CASE 7: Frank Quarrell, PS
Case 05-05-26

Case Review: Mr. Quarrell was found to require revision of a survey plat as part of a Board compliance order, along with completion of required ethics training.

Board Decision: The Board confirmed the plat had been satisfactorily revised and voted to formally notify Mr. Quarrell of the limited remaining time to complete his ethics training and record the revised plat.

CASE 8: Joseph R. Maestas, PS
Case 04-04-44

Case Review: Mr. Maestas was ordered by the Board to complete a required "Survey Ethics" course and pay proceedings costs as part of a prior Decision and Order. Both deadlines passed without compliance. Mr. Maestas testified he had difficulty locating and enrolling in the course after his original university contact left her position, and the course had since moved to a different academic program, causing further delay.

Board Decision: Rather than immediately revoke his license, the Committee extended the completion deadline, requiring Mr. Maestas to submit written proof of course completion for Board review, with a warning that further noncompliance would result in additional action.

CASE 9: Timothy Ray Oden, PS

Case Review: Mr. Oden's license was under suspension until December 2007. He submitted correspondence requesting voluntary surrender of his surveying license. A separate matter against him was pending with the Office of the Attorney General, Litigation Division.

Board Decision: The Committee voted to notify Mr. Oden that the Board received his letter and was holding his license and stamp, but that it could not take action on the surrender request until his current suspension ended and the Board reviewed the status of the pending Attorney General matter and any other cases against him.

Appendix A

References

New Mexico Board of Licensure for Professional Engineers and Professional Surveyors. (2023, July 1). *Engineering and Surveying Practice Act book* (NMSA 1978, Chapter 61, Article 23). <https://www.sblpes.state.nm.us/wp-content/uploads/2023/07/2023-NM-Engineering-and-Surveying-Practice-Act-Book-7.1.23.pdf>

New Mexico Commission of Public Records, State Records Center and Archives. (2017, December 28). 16.39.7 NMAC: Misc.—Procedures for revocation, suspension, imposition of fines, reissuance of certificates and disciplinary action. <https://www.srca.nm.gov/parts/title16/16.039.0007.pdf>

New Mexico Commission of Public Records, State Records Center and Archives. (2022, December 16). 16.39.8 NMAC: Code of professional conduct—Engineering and surveying. <https://www.srca.nm.gov/parts/title16/16.039.0008.pdf>

New Mexico Board of Licensure for Professional Engineers and Professional Surveyors. (2022, March). *Administrative code book* (NMAC, Title 16, Chapter 39, Parts 1–8). <https://www.sblpes.state.nm.us/wp-content/uploads/2022/03/16.39-complete-book.pdf>

New Mexico Board of Licensure for Professional Engineers and Professional Surveyors. (2007, April 19). *Professional Surveying Committee Meeting Minutes*. https://www.sblpes.state.nm.us/wp-content/uploads/2020/09/2007April_PSCMinutes.pdf

New Mexico Board of Licensure for Professional Engineers and Professional Surveyors. (2007, June 14). *Professional Surveying Committee Meeting Minutes*. https://www.sblpes.state.nm.us/wp-content/uploads/2020/09/2007June_PSCMinutes.pdf