

Ethics in Practice

Ethics in practice will discuss common and accepted ethical principles for surveyors. The seminar will focus on the application of ethics in practice, resolving ethical conflicts, and the interaction of ethics and professional courtesy. The objectives of the seminar will be to gain a basic understanding of practical application of ethics; recognize ethical dilemmas and their resolution; learn value based ethical analysis; and compare generally accepted ethical principles with state mandated ethics.

Compiled
by

Knud E. Hermansen

P.L.S., P.E., Ph.D., Esq.

Ethics & Practice - Outline

Summary: Ethics and practice will discuss common and accepted ethical principles for surveyors and engineers. The discussion will focus on the application of ethics in practice, resolving ethical conflicts, and the interaction of ethics and professional courtesy.

Seminar Objectives: The objectives of the seminar are to:

1. Gain a basic understanding of practical application of ethics.
2. Exposure to ethical dilemmas and their resolution.
3. Learn value based ethical analysis.
4. Compare general ethics with state mandated ethics.

Outline:

- I. General Ethical Principles & Values
 - A. Characteristics of Ethics
 - B. Relationship of Ethics to Licensing, Business, & Law.
 - C. Foundation for a Code
 - D. Strengths & Weaknesses of Ethical Codes
- II. Practice Tips
- III. Examples & Discussion
- IV. Ethics & Professional Courtesy

Time: 3.5 hours

Audio/Visual Support:

1. Overhead Projector & Screen
2. Blackboard or Large Tablet with writing tools

Understanding Ethics

Ethics: Ethics is doing the right thing at the right time. Ethics are values that are converted into action. Values define who you are, actions get you what you want.

Conversation among co-workers: "It would take a thousand dollars for me to place the boundary where the client wanted." (Sets a value)

Conversation among co-workers: "I took a thousand dollars to put the boundary where the client wanted it." (Action statement - Unethical?)

The first is a statement of value, while the second is a statement describing action taken.

Situation: Client wanted to subdivide her lot placing the boundary through a marsh. (Situation made the inference of unethical behavior, ethical)

Characteristics of ethics:

1. value driven
2. action-oriented
3. situational

Inter-relationship of Professional Code to Licensing: In matters requiring the application of skill, experience, education, training, and knowledge beyond the ken of a layperson, legislatures have prescribed licensing. Licensing is necessary since the concept of caveat emptor (let the buyer beware) is unfair and places the public at a disadvantage when dealing in areas of sophistication and technology. The purpose then for a license is not just to attest to some minimum level of knowledge; rather, it puts the licensee subject to peer group review and a code of conduct that is meant to protect the public. Consequently, the license is not just authority to practice but a responsibility to practice in an ethical manner preventing predatory tactics on the uninformed public. Adherence to a code of professional responsibility fosters a public trust in the profession. It follows that it is vital that professional services always be supervised by professional (licensed) personnel regardless of the superior skill, experience, and knowledge of any employee.

Inter-relationship of Professional Code to Business Practice: Profitable business often requires a practitioner consider profit, product, people, and principle in that order. Ethics often require consideration in the reverse order.

Inter-relationship of a Professional Code to the Law: What is illegal is generally unethical, but what is unethical is not

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necessarily illegal.

Code of Ethics - Foundation: A realistic professional code of ethics is:

1. a series of values expressed as actions dependent on the situation;
2. a balance between
 - a. the highest professional values,
 - b. real-world commercial interests,
 - c. dependent third party rights; and
3. favorable toward economic aspects if:
 - a. members of the group perceive benefits from adherence to the rules
 - b. informal rules and customs of behavior are fairly simple and unambiguous
 - c. there exist some adequate means for enforcing the informal rules - usually group social pressure.

Code of Ethics - Strengths:

1. Practitioners can no longer claim in good conscience - "I didn't realize (or know)...." Consequently, it provides a standard for making judgment a magisterial matter.
2. Provides a common environment for the group to operate in. Without a code of ethics, persons are driven by the values of the person in a higher position.
3. A code provides an organization with a unique identity since each organization has to have values representative of the majority of its members.

Code of Ethics - Weaknesses:

1. Ethics don't necessarily point to the effective response - only to the appropriate response.
2. Ethics are value driven. Consequently, people tend to argue over the value rather than the behaviors that arise from applying a particular value in a given situation.
3. A code of ethics tend to stifle creativity (if considered before evaluating alternatives rather than after evaluation of alternatives.)

Definitions - Related Concepts:

1. Manners - good etiquette.
e.g. Avoid taking telephone calls from other clients when the client is in your office.
2. Morals - Personal values that are not necessarily ethical values that include not drinking, swearing, smoking, etc.

Ethical Theories:

1. Deontology (Emmanuel Kant 1724-1804):
 - a. Duty based theory
 - b. Individual acts as though their actions become the rules

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- for all of society
- c. An action would be ethically wrong if it could not become a universal practice without being destructive.
- 2. Cosequentialism or Utilitarianism:
 - a. An action is judged right or wrong based entirely on the consequences of that action.
 - b. The welfare impacts of an action must be judged on a case-by-case basis.
- 3. Social Justice Theories:
 - a. Egalitarianism - Everyone entitled to equal shares of all goods and benefits
 - b. Marxism - "From each according to his abilities, to each according to his needs."
 - c. Libertarianism - Preservation of the rights of individuals and the free expression of individual freedom supersedes all other considerations.

Practice Tips to Avoid Unethical Behavior

1. Don't take on too much work – If a practitioner has more work than the means to effectively handle the work, communications will be lax, matters completed untimely, work completed when tired, operational checks not made, corners cut, and so on.
2. Don't handle matters that are beyond your experience, skill, education, or training – Services that are taken beyond the practitioner's competence quickly get out of hand.
3. Communicate clearly and frequently with your employer and client – Professional services represent a major financial decision for many clients and often involve matters that place the client under great stress. The failure to communicate clearly and frequently with an employer or client often exasperate any problem.
4. Establish a clear working arrangement with the terms evidenced in writing. Pay particular attention to matters regarding fees and special arrangements or limitations on reasonable standards.
5. Always use caution in withdrawing or terminating services before the contract completion.
6. When in doubt ask.
7. Know your client and the reason for the services sought.
8. Listen to your client and what they are saying. Make the client understand you are interested in what they are saying but you can not always do what they say.
9. Write down all relevant or important information as soon as possible to avoid mistaking, misunderstanding, or forgetting the message or information.
10. Continue your education.
11. Only do business with good people.
12. Be consistently ethical, not just in church or at home.

Services for Neighbor of Former Client

1. Was there facts or information that the former client requested remain confidential and would or should be disclosed if the services were provided for the neighbor?
e.g. Neighbor has an ancient easement across the former client's property.
2. Was there facts or information that would have to be disclosed that would put the former client at a disadvantage?
e.g. the former client is using part of the neighbor's property and plans to seek title by adverse possession.
3. Are there facts that would create a conflict of interest or the appearance of a conflict of interest?
e.g. the survey for the neighbor was not made to current standards and there is a likely chance that services for the neighbor if done in good conscience would show a different location for the common boundary.
4. Would it be in the neighbor's best interest to seek the services of another practitioner?

Lilly T.B.E. Surveyor
121 Main Street
Anytown, State 00000-1111
Phone: 111-555-2232

18 May 1994

Mr. Jonathan J. Neighbor
101 Oak Street
Anytown, State 00000-1111

Dear Mr. Neighbor:

Thank you for requesting my services. I noted during our phone conversation earlier today, that you have requested my services, in part, because I performed a survey for your neighbor, five years ago. Consequently my services will be provided at less expense than other competent surveyors. However under these circumstances, I must reserve the right to withdraw my services at my discretion. If this should occur, I will give a full refund of all moneys paid.

Ordinarily, there is no problem or conflict in providing surveying services to the neighboring property since a surveyor is obligated to find the common boundary as fixed according to the description found in the records - the boundary location should not change based on the client. However, from time to time investigation reveals conflicting record information, dormant and potentially litigious rights, or potential ownership boundaries recognized by methods other than the operative records. Under these circumstances, the appearance of a conflict in interest require that I refrain from providing services to a party whose interest may be adverse to the former client. At this time, I am unaware of any information or circumstances that would prevent me from providing services on your behalf. Nevertheless, as a caution, I must apprise you of the possibility that I may discover information that was not discovered previously. If circumstances dictate that I have an ethical responsibility to withdraw, I will notify you immediately. In some cases, full disclosure to both you and my former client along with mutual permission will allow me to continue. We can consider that option in more detail should circumstances warrant further discussion.

Thank you for seeking my services. I appreciate the opportunity to survey your property. If you have any questions or comments, please feel free to call or write.

Respectfully,

Lilly T.B.E. Surveyor
Lilly T.B.E. Surveyor
Professional Land Surveyor

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Ethics in Practice

Practical Situations for Discussion

1. What ethical obligations does a practitioner have when made aware that another practitioner who has done excellent work for 40 years is getting sloppy and forgetful to the point that substantial blunders are occurring?
2. What ethical obligations are involved when a practitioner discovers that another practitioner's plans, no matter what the circumstances, always seem to show the deed measurements? There is never any evidence of field work.
3. A practitioner notes the newspaper contains the following advertisement: "Get the land your deed says you should have. Will guarantee satisfaction or your money back. The lowest survey prices anywhere. Call Greg's Surveying at" What are the practitioner's ethical obligations?
4. The practitioner seeks a retainer with the execution of the contract. Is there any ethical concerns if after the practitioner receives the retainer, it is two weeks before the practitioner is able to begin working for the client?
5. Two years ago, a practitioner performed a boundary survey for a client. The retracement survey required considerable research and field work. The practitioner was unable to charge for all the time and effort required. The previous client's neighbor now seeks the practitioner's services to monument her boundaries. At least one other practitioner has quoted her a price of \$900. Given all the previous work, the practitioner could survey the property for \$100. (Is reasonable to be judged on the value received or the effort provided?) What ethical considerations are involved?
6. The practitioner was provided a \$2,000 retainer that was to be applied toward the last bill. The practitioner deposited the funds in an interest bearing account. One year later when the final bill was paid, the retainer had earned \$120 in interest. What ethical considerations are involved?
7. A practitioner bid the cost on a project knowing that changes will allow the practitioner to recoup profit by overcharging for the extra work. Is this a violation of ethics?
8. A practitioner agrees to a lump sum price of \$1500 to subdivide a parcel of land. After obtaining municipal approval for the subdivision, the practitioner demands \$1500 for the survey and \$300 for taking it through subdivision approval. The practitioner refuses to hand over the plan unless payment is received. Is there an ethical violation?

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9. A practitioner agrees to a lump sum fee of \$3000 to design a subdivision. In the course of the process, the developer asks the practitioner to stake out a house on the lot the developer intends to keep. After the subdivision design is approved, the practitioner submits a bill for \$3,000 for the subdivision design and \$150 for the stakeout. The practitioner refuses to hand over the plan unless full payment is received. If the developer pays \$3000 does the practitioner have an ethical obligation to provide the plan?
10. A country club seeks bids for "a boundary survey" of its property. Three bids are received in the amount of \$2,600, \$2,800 and \$2,000. The country club accepts the \$2,000 offer. At the completion of the survey, the practitioner hangs flagging along the boundary, sets wooden slats at the corner points, and does not provide any documentation. When the country club inquires about having permanent monuments set, a plan prepared, and a description written, the practitioner quotes a lump sum price of \$900. Is this behavior ethical?
- Using the information from the last problem, would it matter that the surveyor sets permanent monuments and prepares a plan but failed to turn each angle twice or do the full scope of research - contrary to what other surveyors would do under similar circumstances?
11. A municipality seeks a boundary survey of a municipal landfill. Practitioner-1 is aware that another practitioner (Practitioner-2) has done extensive research and field work in the area. Also, Practitioner-2 has always been willing to share the information with other practitioners free of charge. Practitioner-1 prepares a bid for the survey that relies on receiving information without charge from Practitioner-2. Practitioner-2 also bids on the municipal survey basing her bid on the value they will be providing rather than the actual cost. Practitioner-1 underbids all other bidders including Practitioner-2 by several hundred dollars.
- a. Would the ethical analysis change if Practitioner-2 did not bid?
 - b. Would the ethical analysis change if both practitioners have always shared equal amounts of information in the past without charge?
 - c. Would the ethical analysis change if Practitioner-1 had already obtained all the information from Practitioner-2

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to perform a minor survey in the area sometime prior to the request for bids from the municipality?

12. A practitioner has agreed to perform a boundary survey for a client. One vital piece of written information is in the possession of another practitioner. When approached about providing a copy of the information, the other practitioner demands \$200 for a copy of the information.
 - a. Would it matter if the "client" was another practitioner who wants their property surveyed by an unbiased colleague?
 - b. Would it matter that the cost in time and effort for obtaining the same information would exceed \$200 or the actual cost is not known at the time but could exceed \$200?
 - c. Would it matter that the information sought is only available from the other practitioner and is required for the services (e.g. "that property shown in a plan of survey by Abraham Kindle dated 14 June 1878")?
 - d. Would it change the ethical analysis if the other practitioner simply refuses to divulge the information no matter what the price? What if they refuse to divulge the information but call the client and offer to do the survey for twice the fee you seek from the client?
13. After examining the licensing act, the practitioner discovers that if he had a four year surveying degree he wouldn't need six years of experience prior to taking the exam. In other words, he thought, six years of experience is equivalent to a college degree. The next month he prints the following on his business cards: "College Graduate & Licensed Surveyor"
 - a. Would it matter if he had stated "College Equivalency & Licensed Surveyor"
 - b. Would it matter if he had stated "College Through Training & Licensed Surveyor"
14. A practitioner fails to set the back corner monuments in a subdivision. Once the lots are sold the practitioner sends an announcement to each new lot owner stating the following: "Do you know where your corners are? Can you find the monuments? We can mark your corners for \$200. \$100 if your neighbor will share the cost."

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- a. Would your answer be any different if the practitioner had marked the corners with nails set flush with the ground?
 - b. Would your answer be any different if the practitioner had marked them with concrete monuments set three inches below the surface? If the plan said "concrete monuments set three inches under surface?"
15. At a local meeting of the society, several practitioners complain about the shoddy work and business practices of a competitor. They have evidence but no proof of the shoddy work when making the disparaging remarks. Is there an ethical violation?
16. A practitioner is aware that another practitioner routinely fails to set corner monuments in violation of the standards. In a recent survey of the John Smith tract, the other practitioner failed to set all the corners in the back where the elderly client would not be likely to investigate. In performing a survey for a client, the client's neighbor informs the practitioner that last week he had hired the other practitioner to survey his property. Should the practitioner tell the neighbor that the other practitioner does not conform to acceptable survey standards?
- Using the information from the previous problem, would your answer change if the practitioner had told the neighbor that the other practitioner had failed to set all the corners on the John Smith tract?
17. A practitioner is aware of unlicensed surveying by a forester. Can the practitioner tell the forester's client that the forester is not licensed to perform surveying?
18. Can a practitioner perform a survey for a closing with the payment contingent upon the closing actually occurring?
19. A practitioner has visited an engineer's office to obtain some information. While waiting, the practitioner observes a CAD operator talk to someone on the phone (apparently a client from the gist of the conversation), then remove an old plan from the file drawer, make a few minor changes, copy it, and place it in the mail. The plan contained the seal and signature of an engineer that no longer works in the firm. What ethical considerations are involved?
20. Can a practitioner survey the common boundary between her brother and sister?

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21. Assuming the practitioner does not have a written contract dealing with the subject, is the practitioner in violation of their ethical duty by refusing to continue work when money is owed? Would the answer change if the client is usually late but always pays?
22. The practitioner has been assured that payment is forthcoming once the lots are sold. A plan of subdivision is prepared and properly approved. The practitioner refuses to set pins until final payment is received. Lots are sold and improvements erected despite the lack of monuments. If a lot owner demands the practitioner set the monuments, can the practitioner refuse ethically?
23. Some years previously a practitioner had performed a survey and noted the client had been encroaching on the neighbor's property. The client had asked the practitioner to keep this information confidential in the hopes that title can eventually be obtained by adverse possession. The neighbor now seeks the practitioner's services to survey the neighboring property.
 - a. Would the answer change if the surveyor had not agreed to keep the information confidential?
 - b. Would the answer change if the former client had sold the property and the practitioner had no ongoing professional relationship with the new owner?
 - c. Would the answer change if the client had never paid the practitioner?
24. A practitioner is sought to perform a boundary retracement survey. In checking the property records, the practitioner discovers that the client's property adjoins her sister's property. Can the practitioner perform the services?
25. Two adjoining owners would like to have their common boundary located and plan to share the costs. One owner lives in another state. During the course of performing the survey, the practitioner discovers the resident owner's septic field is over the boundary. The resident owner asks the surveyor to keep the information confidential and points out that the practitioner was only hired to locate the boundary not show encroachments. What is the practitioner's ethical obligations.
26. A practitioner has a part-time position as a municipal engineer. During the course of a private survey, the practitioner discovers the client has erected a building

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without a building permit. What are the practitioner's ethical obligations.

27. A practitioner has a volunteer position on the municipal planning board. The practitioner is sought by a client to perform a subdivision within the municipality. May the practitioner perform the services without an ethical violation?
- Would the answer be any different if there is a reciprocal arrangement where another practitioner who is also serving on another municipal planning board agrees to take the practitioner's place in these situations if the practitioner will return the favor when the other practitioner is involved in a similar situation?
 - Would the answer be any different if there is another outside consultant on retainer to substitute for the practitioner in cases such as this?
28. A part-time practitioner holds a full time job as a registrar of deeds in the local courthouse. The practitioner examines each deed description as they come in to be recorded. Often he discovers the descriptions are defective and advises the person to have a survey.
- May the practitioner hand the person recording the deed their private business card along with the advice.
 - Would the answer be any different if the practitioner does not tell them he does surveying on the side unless they specifically ask.
29. A practitioner is asked by a Realtor to provide a survey so the buyer can obtain a mortgage. The practitioner notes on the resulting survey plan that an unrecorded footpath crosses the back corner of the property. The plan is sent to the Realtor. The Realtor calls and asks the practitioner to remove the footpath. May the practitioner remove the footpath from the plan?
- Would the answer be different if the bank called and asked the practitioner to remove the footpath?
 - Would the answer be any different if an attorney representing the seller asked the practitioner to remove the footpath?

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- c. Would the answer be any different if the buyer's attorney called and asked the practitioner to remove the footpath?
30. In order to avoid paying workman's compensation, health insurance, etc. a practitioner employs former employees as subcontractors. The practitioner bills using a 1.5 multiplier (fee charged = the cost of the crew multiplied by 1.5). Would it be ethical for the practitioner to give the party chief (subcontractor) a recommendation to the Board to sit for the licensing exam.
- a. Assume the same facts as the previous problem except the practitioner receives a letter from worker's compensation demanding payments based on a recent injury on the field crew. The Board of Licensure subsequently sends the practitioner a notice of complaint filed against the practitioner for aiding and abetting the unlicensed practice of land surveying. How can the practitioner ethically respond?
- b. Would the answer be any different from the previous question if the practitioner relies on a licensed surveyor as a subcontractor?
31. The practitioner receives a letter from a neighbor demanding the practitioner remove the monuments set since "the monuments are set in the wrong spot." If the practitioner thinks the accusations are ludicrous does that relieve the practitioner from any obligation to respond?
- a. Would it make any difference if the practitioner responded within a week after receiving the letter and explained the rationale for their decision in a reasonable manner. Thereafter they received another letter like the first demanding prompt removal of the monuments?
- b. Would the answer to the last question change if the neighbor's attorney wrote the second letter rather than the neighbor?
32. The practitioner has over the course of several years completed all the surveys around a parcel. Eventually, the owner of the parcel approaches the practitioner seeking their services to survey their property. The reasonable cost of surveying the parcel would be approximately \$2,000. The practitioner can do it for the cost of making a plan. Does the practitioner:

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- a. have an ethical duty not to survey the parcel?
 - b. have an ethical duty to charge only the cost of making a plan?
 - c. have an ethical duty to charge the reasonable fee another survey would charge (i.e. \$2,000)?
33. A prospective client calls seeking your services as a technician and not as a professional. In particular, the prospective client wants you to run a boundary with no plan, no certification, no report, etc. What are the ethical problems?
34. A series of problems have plagued a project so that the cost involved has reached the fee agreed upon with the client (lump sum). The employer calls you into his office and directs you to charge your time on this project against another project that has an open account (hourly rate)? What can you do short of quitting?
35. A prospective client gives you a deed description and seeks a proposal for designing a single family residential development. You submit a proposal with a sketch plan. You hear nothing for several weeks. One day while talking to a friend who is a member of a reputable landscape architect firm, you discover the proposal and sketch design you submitted is now approaching the final plan stage and is being used by the landscape architect firm to prepare a site plan for the prospective client. After several inquiries you learn that the proposal and sketch plan were given to another practitioner who agreed to perform the services for 2/3 the fee you sought. Is there anything that you could or can do?
36. You prepare proposals and bids for services involving a development design and lot layout. A competitor is selected based on their low bid. In the past you are aware the competitor often fails to perform adequate research and field investigation. The preliminary plan is reviewed and approved by the planning commission. The developer calls you up and admits to some concerns with the other firm and asks if you would be willing to step in and finish the development plan including staking the lots out. What would be your response and any conditions?
37. You have been asked to do a mortgage loan inspection of a lot in a new subdivision. In the course of your site visit, you discover that wetlands have been filled in order to make a new road to reach the lot. The wetlands are not shown on the subdivision plan and you are sure permits were not obtained

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from the relevant state and federal agencies to alter wetlands. You make a note on the inspection report about the wetlands and your concern. The buyer's attorney calls you and reminds you that you were retained to examine the lot and not the surrounding country. She asks you to remove the note from your inspection report. You know that if you do, the infraction will probably never be brought to light.

38. In the course of surveying for a client in the vicinity of land the surveyor herself once owned, the surveyor discovers that the land she once owned was incorrectly surveyed. Although her land was surveyed by another surveyor, now retired, she and her partners conveyed land on the basis of that incorrect survey. A house not stands on that land. The mistake amounts to 11 or 12 acres in all. Although there is some physical evidence on the ground to indicate where the true line should be, it is more probably that the mistake was made because of poor descriptions in the recorded documents. In fact, the mistake would never have been discovered if this surveyor had not found a crumbling unrecorded partition of an estate, struck away in the vault of the Registry of Deeds. This partition is the only document that gives any measurements which give meaning to the scanty remaining evidence found on the ground (wire, stone wall). Unfortunately, this document does not provide the information needed to solve her client's survey problems; but it clearly points out the mistake made on the survey of her own land.
39. A partnership is formed between two people. One is a licensed surveyor (Smith) and the other is not licensed (Jones). They have elected to name the partnership using their last names. An outdoor sign and letterhead are prepared.
- Is there any problem with "Smith and Jones, Surveying Associates?"
 - Is there any problem with "Smith and Jones, Land Surveying Professionals?"
 - Is there any problem with "Smith and Jones, Land Surveying services"
 - Would it change any answers if the sign and letterhead also said "W. Smith, P.L.S. and J. Jones, L.S.I.T.?"

A

Code of Ethics

Pertaining to

Surveying Services

Compiled
by

Knud E. Hermansen
P.L.S., P.E., Ph.D., Esq.

Edition 3

October 1994

Ethics in Practice

Preface

Applying ethics to practice is like looking at ground mist in the valley. From the top of the mountain looking down, it seems so easy to identify what is or is not covered by the mist. It is only when a person is in the valley, moving in the mist, that the person finds it difficult to maneuver and keep a steady direction. In the mist, the sense of direction becomes confusing and obscure. The mist is visible but untouchable, all around but not near, never dark enough to block the light but never light enough to say its dark.

This code of professional conduct is meant as a guide to professional practice, or perhaps more appropriately, a guide to the practice of being a professional.

"[A]nother way to look at it is to think of a [code] ... as a lighthouse. A lighthouse maintains a central and clear position of visibility. It does not call all boats into the harbor to anchor there; its function is to direct shipping safely. In other words, a lighthouse's primary function is to direct shipping away from itself and toward the intended destinations. The message is, 'as you go where you are going, keep me in view, or you risk becoming lost.'" Karp, H.B. and Bob Abramms, "Doing The Right Thing," *Training and Development*, p. 38, August 1992.

It is expected and encouraged that licensing boards composed of licensed practitioners use these codes as a basis for disciplining licensed members. However, it would be inequitable and an injustice to apply this code with the intent to hold practitioners liable in civil actions brought by clients or third parties against practitioners without clear and compelling testimony by licensed practitioners practicing under the same or similar code provisions. The reason is that a code of professional conduct is not a stone cast in concrete with epitaphs chiseled thereon. The code is more akin to the discourse between loved ones - it is really understood and meant only by those who are in the same or similar situation. In other words, the code is meant for and should only be interpreted by those that have experienced the realities of professional practice and applied it to that practice.

Society would come to grief without ethics, which is unenforceable

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Ethics in Practice

in the courts and cannot be made part of law ... Not only does law in a civilized society presuppose ethical commitment, it presupposes the existence of a broad area of human conduct controlled only by ethical norms and not subject to law at all. Unidentified opinion cited in Milton F. Lunch, Can the Professions Survive Without Ethics? *Professional Engineer* 38, 39 (October 1976) and cited in Victor, Matthew A., "The Hyatt Collapse - A Post Mortem," *The Construction Lawyer*, Vol. 10, No. 4, p. 7, November 1990.

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Common Definitions

In interpreting the code of ethics, certain words or phrases are used that have a common meaning:

Client - Client refers to a person that the practitioner is performing services for. Under this definition the client may be a property owner, employer, developer, etc.

Misconduct - Actions that would be reasonably regarded as disgraceful, illegal, improper, or dishonorable by other similarly situated practitioners of good repute and competence.

Practitioner - A person performing professional services. Ordinarily this word includes all licensed surveyors performing services. It may also include those government surveyors or land surveyors in training that have responsibility consistent with law and normal practice.

Professional Practice - Services offered by licensed members of a profession defined by law, regulation, or the normal practice of other competent, similarly situated practitioners.

Shall/Should - Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct prompting professional discipline if violated. Others, generally cast in the term "may" or "should," are permissive and define areas under the rules in which the practitioner has professional discretion. No discipline should be imposed when the practitioner chooses not to act or acts within the bounds of such discretion. Other rules define the nature of relationships between the practitioner and others. The rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a practitioner's professional role. The rules may be supplemented by comments. Comments do not add obligations to the rules but provide guidance for practicing in compliance with the rules.

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Introduction

The following ethical sections have been prepared from a compilation of ethical codes published and taken from numerous sources. It is not the intent of this compilation to suggest these are or should be the only code of ethics. Furthermore, they are not intended to be codified as rigid law or rules. They were prepared as a guide by placing thoughts with values; that is codifying values in such a manner as to represent professional surveying practice with respect.

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Ethics in Practice

§ 1 Virtuous Administration - The practitioner shall operate their business, conduct professional duties, and carry out employment responsibilities in a dignified, moral, proper, honest, straight-forward, and decent manner.

1. The practitioner shall not seek or perform services or operate a business in a manner that is derogatory to the dignity or respect of the profession or otherwise discredits the reputation of the profession. This includes the requirement to take action when silence or inaction would bring discredit to the profession
2. The practitioner should take steps to prevent unprofessional or improper conduct by others who through their continuous conduct, intentionally or negligently fail to provide effective, timely, or competent professional service. Continuous conduct is any unprofessional or improper conduct that:
 - a. has common and similar attributes for different clients;
 - b. occurs more times than good conscience would suggest is possible in subsequent service offerings;
 - c. occurs often enough to suggest to a reasonable person that there is intentional or negligent ignorance of professional standards of practice for prior services; or
 - d. is allowed to continue without correction, notice to the client, or steps to contain damage for any single service upon being informed of the misconduct.
3. The practitioner shall not operate their business in such a manner that improper or inadequate supervision does or will likely occur. Improper supervision includes:
 - a. establishing a branch office which is managed or supervised by and entirely staffed by employees or partners that are not licensed and without day-to-day contact by licensed surveyors;
 - b. scheduling vacation, leaves, or absences from the office at such times and duration that employees working on on-going operations lack adequate, actual, and personal supervision by licensed personnel during day to day operations; and
 - c. the number of personnel or crews in combination with the diversity, distance, or scope of services currently provided do not allow the reasonable, competent, and adequate review of the services by supervisory licensed personnel.
4. The practitioner shall not loan their name to, organize, operate, or remain employed in a business, firm, or venture offering services to the public where decisions: a) requiring professional licensing, b) governed by professional standards, or c) covered by professional ethics have been, could be, or are made by owners, partners, operators, principals, etc. without review and absolute veto by licensed

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personnel. Professional decisions include but are not limited to:

- a. depth and scope of record research;
- b. duration, scope, and technical standards used for field work;
- c. decision affecting the location of boundaries and property rights;
- d. the scope, depth, quality, and contents of work products; and
- e. matters that would reflect adversely on the profession or integrity of the licensed practitioner such as advertising, communications with clients, fee structuring, and scope of services, to name a few.

In determining the application of this code section to a particular operation, fee allocation to non-licensed personnel, responsibility or authority given under partnership agreements or by-laws, employment contracts, wage payroll statements, etc. should be considered. However, form shall not be allowed to substitute for substance.

5. The practitioner shall give proper credit and honors for work done and ideas developed by subordinates, employees, and others and shall not seek credit for designs and ideas not their own.

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§ 2 **Complete, Clear, Accurate, Objective, Truthful, & Timely Communication** — The practitioner should cause or encourage complete, clear, accurate, objective, truthful, and timely communications between themselves and the client, or prospective client regarding the services sought and rendered.

1. 'Cause and encourage' means to take responsibility for initiating communication reasonably expected and required for professional services and to nourish questions and responses from clients and third parties by listening and timely responding to reasonable requests or questions.
2. Complete communication means the practitioner provides sufficient information so that the client or prospective client is appraised of the costs, problems, hazards, and opinions. Complete requires sufficient information, facts, material, etc. so the client:
 - a. will not be reasonably lead to a fallacious conclusion;
 - b. can act in an informed manner; and
 - c. has knowledge of pertinent matters. Matters includes, but are not limited to facts, information, opinions, evidence, etc.:
 - 1) effecting the fee basis, time constraints, or deviation from acceptable standards in preparing the agreement or modifications to the agreement;
 - 2) suggesting a cloud or slander of the client's title or reputation;
 - 3) effecting the cost and expense of the services rendered;
 - 4) causing a delay or the prevention of the timely completion of services;
 - 5) raising potential conflicts as the practitioner should or does become aware;
 - 6) that may sway or appear to sway the practitioner's professional judgment (e.g., evidence);
 - 7) involving a risk, including the nature, extent of risks to title, marketability, environment, third party harm, and prospective use; or
 - 8) making the practitioner aware or causing the practitioner to suspect the client has, could, or may have come to believe or rely upon (even mistakenly).
3. Clear communication means the practitioner shall communicate in a manner that a reasonable client or their agent, attorney, etc. will understand and be able to comprehend significant information and aspects of the service.
4. Accurate communication requires the practitioner provide information that to the best of the practitioner's knowledge and belief is correct and may be relied upon taking into account any express caveats and concerns. Accurate also requires the practitioner cause relevant or important oral communication be reduced to writing as soon as practicable in

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- order to avoid misunderstanding or forgetting the gist of the information or mutual understanding later.
5. Objective communications means the practitioner will, when possible, provide unbiased information or information not tainted by personal (as opposed to professional) motive or opinion.
 6. Truthful communication means the practitioner will provide a realistic and honest appraisal of the situation relying on a reasonable application of the practitioner's knowledge, skill, experience, and education founded upon information and evidence normally relied upon by similarly situated practitioners.
 7. Timely requires the practitioner communicate without undue delay so that the client is not unnecessarily and unexpectedly hindered in their duties or obligations as a result of the practitioner's response. Unnecessary delay is assumed when the practitioner has failed to adequately respond or communicate by the date or time:
 - a. established by the terms in the contract or agreement or
 - b. a reasonable time period.
 8. The scope, depth, and contents of the communication should be commiserate with:
 - a. the practitioner's knowledge, skill, experience, and education or
 - b. the terms of the contract, agreement, or understanding with the client.

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- § 3 **Equitable & Just Compensation** – Practitioners shall seek and accept only compensation for services rendered for the client and the practitioner's compensation shall not exceed a reasonable amount for the services provided the client.
1. Unreasonable compensation is defined as an amount that would cause a practitioner of ordinary prudence to be left with a definite and firm conviction that the compensation is not deserved.
 2. In considering the reasonableness of the fee, the practitioner should consider:
 - a. time and labor required,
 - b. novelty of the services,
 - c. skill requisite to perform the services properly,
 - d. the likelihood (apparent to the client) that this employment will preclude other employment,
 - e. the fee customarily charged in the locality for similar services,
 - f. the responsibility assumed,
 - g. the potential liability that will result,
 - h. the scope and difficulty of the services requested,
 - i. time limitations imposed by the client or circumstances,
 - j. the nature and length of the professional relationship with the client,
 - k. the experience, reputation, and ability of the practitioner,
 - l. the fee arrangements (lump sum, hourly, percentage, etc.), and
 - m. written evidence of an agreement.
 3. Services rendered or provided means:
 - a. work completed on behalf of the client according to the terms of the contract or agreement;
 - b. work completed on behalf of the client that is ordinarily done on behalf of a client for the particular services sought and not expressly excluded by contract; or
 - c. work contemplated under agreement or contract and not performed provided money paid by the client in contemplation of the work (e.g. retainer or advance payment) is segregated from the practitioner's funds until such time as the money so retained has been earned according to the contract.

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§ 4 **Dignified and Sincere Competition** - Practitioners shall not use business practices in competing with other practitioners that denigrate the profession or are improper, mislead, or unfairly coerce favorable business.

1. Practices that do not denigrate the profession are practices that a reasonable client or another practitioner under similar circumstances would see and understand to be dignified, sincere, and accurate. In this regard the practitioner shall:
 - a. accurately state their education, experience, and licenses held;
 - b. honestly communicate their ability and limitations to carry out the services sought or needed by a client; and
 - c. not state or imply that they are able to influence improperly or upon irrelevant grounds any public body or person.
2. Practices that are improper include practices that are illegal or give the practitioner an unfair cost advantage such as:
 - a. obtaining and using insider information;
 - b. using public or employer equipment, supplies, time, etc. for personal business;
 - c. collusive pricing;
 - d. deceptive advertising/solicitation; or
 - e. underbidding to obtain work then overcharging for changes or extra work sought.
3. Practices that mislead include:
 - a. deceptive practices or information;
 - b. omitting a material fact necessary to keep statements from being misleading or intended or likely to create unreasonable expectations;
 - c. misrepresentation or exaggeration of prior assignments, degree of responsibility, education, skills, experience, licenses, professional qualifications, honors, ability, etc.;
 - d. allowing false but laudatory statements by others to go uncorrected when discovered; and
 - e. statements containing a material misrepresentation of fact intended or likely to create unreasonable expectations, such as:
 - 1) prediction of future success and
 - 2) puffery, showmanship, or self-laudatory statements.
4. "Unfairly coerce" means behavior on the part of the practitioner or their agent that compels favorable business toward the practitioner out of fear, loss of friendship, expectation of benefits, or gratitude.

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§ 5 Respectful, Patient, Civil, & Courteous Interaction -

The practitioner should be courteous and treat with respect, patience, and civility clients, other practitioners, third parties, employees, and others the practitioner encounters during the course of performing services. The practitioner:

1. shall not practice in a manner that attempts or could injure the professional reputation or business prospects of their employer or another practitioner falsely or maliciously;
2. should not take steps to falsely or maliciously supplant or interfere with an ongoing business relationship in a manner that will injure the reputation or business of another practitioner. Falsely or maliciously means to disregard the truth or fail to investigate before making factually sounding statements;
3. should keep communications open by responding to all queries from others in a timely manner, accurately, and to the best of the practitioner's ability;
4. should be punctual in keeping appointments, sending correspondence, or returning phone calls;
5. should in a prompt and expeditious manner notify affected parties when delayed or unable to keep appointments;
6. should attempt to resolve differences through expeditious negotiation rather than expensive litigation;
7. should not make promises that cannot be kept, keep those promises that are made, and state when promises are not appropriate; and
8. should not discriminate based on a person's appearance, gender, or other attributes that are present at birth or arise from military service or accident.

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§ 6 **Applicable, Sufficient, and Current Knowledge** — A practitioner should keep their knowledge current, sufficient, and applicable to normal and reasonable professional practice and stand ready and be able to apply that knowledge for the client's benefit.

1. Knowledge encompasses an understanding and ability to apply subjects required for competent services to include but not be limited to:
 - a. technical subjects;
 - b. business matters; and
 - c. communication skills.
2. Current means a level of knowledge on matters deemed necessary for practice that equal or exceed the scope and depth of knowledge similarly situated practitioners under similar circumstances have and legally provide in their practice. Current knowledge is evidenced by (but not proof of):
 - a. past and continuing practice above reproach;
 - b. continuing attendance and participation in formal continuing education activities;
 - c. participation, good standing, and membership in professional or technical societies that periodically publish educational material, promote seminars or meetings featuring speakers on topics within the scope of practice, or engage in public education and service on behalf of the profession;
 - d. self-study as evidenced by speaking before or writings to be read by practitioners; or
 - d. meeting mandated continuing education requirements for relicensure;
3. "Stand ready to apply" requires the practitioner to apply the full extent of their ability on the client's behalf unless limited by contract, law, or other obligations made known to the client.

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§ 7 **Unbiased, Impartial, & Chaste Resolution** - The practitioner shall avoid conflicting interest or the appearance of a conflicting interest and shall fully inform the client of all potential for conflicting interests.

1. A conflict of interest is a situation where the practitioner's analysis, opinion, actions, or testimony are impinged, changed, modified or swayed from what another competent practitioner with the same information would more likely than not have or do if the circumstances forming the basis for the conflict were absent.
2. The appearance of a conflict of interest is any situation where a reasonable person with knowledge of all the facts would suspect that the practitioner's analysis, opinion, actions, or testimony could reasonably be impinged, changed, modified, or swayed - regardless of the actual impact.
3. Conflict of interest may arise by one or more of the following circumstances:
 - a. Competing, differing, or dissenting interests;
 - b. Personal gain other than the fees or remuneration flowing from the client for providing the services agreed upon; or
 - c. Prior association, friendship, service, family ties, etc. with a party whose interest may be adverse to the client's interests.
4. A potential (as opposed to an actual) conflict of interest may be alleviated in whole or part by:
 - a. full disclosure to the client of the potential conflict;
 - b. disclosure of all reasonable and probable ramifications should an actual conflict arise;
 - c. permission from all parties that could suffer losses occasioned by a conflict in interest and its ramifications; and
 - d. prompt withdrawal when an actual conflict in interest arises.

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§ 8 **Trustworthy, Diligent, Faithful, & Principled Service** -
A practitioner shall be trustworthy in their deeds and act for their client diligently, faithfully, and with principles.

1. The practitioner shall only accept employment if the practitioner is willing and able to perform the work in a professional manner.
 - a. Willing means to have both the motivation and desire to accomplish the services.
 - b. Able means to have the time, knowledge, skill, and resources necessary to accomplish the services.
 - c. Professional manner means to give the matter unbiased attention, pursue the matter diligently, and use the best judgment and dedication to pursue the timely completion of the services.
2. The practitioner shall render services in a manner that the client's legitimate rights are protected and the neighbor's or public's not harmed. In this regard the practitioner will:
 - a. render a defensible professional opinion on the location of the record boundary and its relation with the ownership and possession boundaries or
 - b. provide a design prepared and communicated in a manner and form that uses good engineering and design principles, that will facilitate government approval, that will help in the profitable sale of units, and is acceptable as a permanent public record.
3. The practitioner shall take steps necessary to acquaint, acquire, or otherwise apply special skills, knowledge, and experience necessary to provide competent service to a client. Steps include:
 - a. a learning program sufficient to acquire the special skills;
 - b. seeking appropriate advice from better qualified or specialty practitioners; or
 - c. retaining or employing qualified or specialty practitioners on the client's behalf.
4. The practitioner shall not use confidences of the client to the disadvantage of the client.
 - a. Confidences shall include but are not limited to:
 - 1) information of commercial interest to others;
 - 2) inchoate possessory rights that have or could ripen to ownership in the client's favor;
 - 3) development or proposed transactions that could affect the market value of the property or nearby property;
 - 4) the advantages of ownership of nearby property; or
 - 5) the availability of obtaining, quieting, or resurrecting title at less than fair market value.
 - b. Confidences do not include:
 - 1) information found or available from the public record, archives, or depositories;

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- 2) information that the client has expressly given the practitioner permission to use and disclose provided the information is disclosed or used under the conditions stated;
 - 3) information that is available or owned by the practitioner as designated by contract or normal standards of professional practice;
 - 4) information that if not disclosed would initiate or encourage illegal activity; and
 - 5) information that if not disclosed would or could present physical harm to persons.
5. The practitioner shall take responsibility for verifying the accuracy and completeness of another practitioner's work products before relying on them or fully appraise the client of potential ramifications flowing from the failure to verify the accuracy and completeness of the information.
 6. The practitioner shall not accept outside employment offering professional services within the scope offered by their employer without notifying and in appropriate cases seeking their employer's permission.
 7. The practitioner shall not attract and hire an employee from another practitioner using false or misleading tactics or pretenses.

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§ 9 Integrity, Candor, & Honesty in Trepidation - The practitioner shall take steps to prevent improper conduct; correct mistakes they have made; or prevent likely mistakes from occurring.

1. The practitioner shall withdraw from services when:
 - a. requested by the client;
 - b. the practitioner's:
 - 1) personal morals or values conflict with the client's demands;
 - 2) other commitments require time and resources beyond those available; or
 - 3) mental or physical ability degrades to a level that further service for that client would be inconsistent with achieving minimum acceptable standards of professional practice;
 - c. further service may allow or encourage:
 - 1) illegal activity;
 - 2) activity detrimental to the public's or a person's physical health; or
 - 3) creating or serving to aid in creating an environmental hazard.
 - d. it appears that by continuing services the practitioner's integrity, candor, honesty, or opinion will conflict with the client's interests or intentions - often arising when:
 - 1) the client appears to or does seek incompatible results;
e.g. "I have always believed (been told, understood, etc.) the boundary was [location] ... I just want what is mine and not what is my neighbors...."
 - 2) the client pursues tactics that are improper for practitioner involvement;
e.g. "Set the pin in the fence, tell my neighbor that is the common boundary, and I'll give you \$200."
 - 3) the client has interests that are adverse to the practitioner's professional obligations; or
e.g. After finishing a survey for a client and finding the client's septic field is over the boundary, the client announces to the practitioner that he intends to claim the area by adverse possession in three years. In two years, the neighbor requests the surveyor's services and doesn't care if the practitioner works on it as time permits.
 - 4) continued employment will result in violation of professional ethics.
2. The practitioner shall takes steps to prevent circumstances that would encourage improper conduct. In particular, the practitioner shall not:
 - a. take on partners that may influence or otherwise cause the practitioner to provide biased or unprofessional service;

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- b. allow employees to practice without adequate supervision or sufficient checks that will insure competent professional service; or
 - c. tender as their own work, work products or portions thereof that the practitioner has not taken responsible charge of or made reasonable attempts to insure are accurate and complete.
3. The practitioner shall take the proper steps necessary to prevent or terminate the practice of others that pose a substantial risk or harm to the public. In determining if conduct poses a substantial risk or harm to the public, the practitioner shall consider:
- a. substantial violation of published or acceptable standards;
 - b. participation in illegal activity;
 - c. participation in conduct involving fraud, dishonesty, deceit, or misrepresentation;
 - d. memory loss, mental degradation, abnormal psychiatric behavior, etc., caused or influenced by drugs, alcohol, age, disease, etc.