ETHICS FOR LAND SURVEYORS

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_I Am Not Your Attorney._

This seminar is not intended to provide you with legal advice. Seek legal advice from an attorney who is familiar with your particular situation and the facts in your particular case. The example contract clauses contained herein (if any) are intended as examples only and should be reviewed and modified by competent legal counsel to reflect variations in applicable state and local law specific to your circumstances.

SOURCES OF ETHICAL BEHAVIOR

* What are the sources of ethical behavior?

ETHICAL BEHAVIOR

MAXIMS OF EQUITY

"The Surveyor in the field has no opportunity to consult authorities, to counsel with others, or hold under advisement for subsequent adjudication. He must think and act for himself, and that quickly and firmly. In the discharge of his duties he combines the three-fold character of attorney, jury and judge. Of attorney, in bringing out and collecting the evidence; of jury, in determining the facts from the evidence; and of judge, in applying the law to the facts so ascertained."


MAXIMS OF EQUITY

"In an old settled country, the principal work of the surveyor is to retrace old boundary lines, find old corners, and relocate them when lost. In performing this duty, he exercises, to a certain extent, judicial functions. He usually takes the place of both judge and jury, and acting as arbiter between adjoining proprietors, decides both the law and the facts in regard to their boundary lines. He does this not because of any right or authority he may possess, but because the interested parties voluntarily submit their differences to him as an expert in such matters, preferring to abide by his decisions rather than go to law about it."


MAXIMS OF EQUITY

"When a surveyor is employed to establish the position of a point or line in which two or more persons are interested he should act as an honorable, unprejudiced party and seek to find the true position, regardless of consequences. ... It is therefore of the utmost importance that the surveyor should act in the same manner as does a judge on the bench rather than as a partisan employee of one of the persons concerned. By performing his duties in this way, the surveyor makes friends and also gains the reputation of being just."

Clark, Frank Emerson, Fundamentals of Law for Surveyors, 1939, International Textbook
Company, Scranton, Penn. at 1.

7 MAXIMS OF EQUITY
What is Equity?
“Black’s defines equity as: ‘Justice administered according to fairness as contrasted with the strictly formulated rules of common law.’"


8 MAXIMS OF EQUITY
Maxims of Equity:
- One Who Seeks Equity Must Do Equity.
- One Who Comes Into Equity Must Come with Clean Hands.
- Equity Aids the Vigilant, Not Those Who Slumber on Their Rights.
- Equity Delights to Do Justice and Not by Halves.
- Equity Regards as Done That which Ought to Be Done.

9 MAXIMS OF EQUITY
Maxims of Equity:
- Equity Regards Substance Rather than Form.
- Between Equal Equities the Law Will Prevail.
- Between Equal Equities the First in Order of Time Shall Prevail.
- Equity Abhors a Forfeiture.
- Equity will not Aid a Volunteer.

10 NSPS CREED AND CANONS
As a Professional Surveyor, I dedicate my professional knowledge and skills to the advancement and betterment of human welfare. [Emphasis added.]

Preamble to the Surveyor’s Creed and Canons

11 PROFESSIONALS OR TECHNICIANS?
- Are we professionals or technicians?
- What’s the difference?

12 PROFESSIONALS OR TECHNICIANS?
“Professional stature is not gained by self proclamation. Professional stature must be earned and can only be measured by what others think of us. If you want to find out whether you are a professional man, ask what others think, don’t ask yourself. If you want to be a professional man, earn that right.”

13 PROFESSIONALS OR TECHNICIANS?
"To be a successful professional surveyor, one must have more than a narrow technical education. Technical education has to do with things. Employees at a lower professional scale deal with things; *professionals deal with people, situations, and ideas*.”


14 □ TECHNICIAN V. PROFESSIONAL
Technicians Deal with:
- Things
- Monuments
- Measurements
- Equipment
- Facts
- Etc.

15 □ TECHNICIAN V. PROFESSIONAL
Professionals Deal with:
- Things such as Facts
- People
- Situations
- Ideas
ADD:
- A special relationship with client. A Trust.

16 □ HARRIS V. ROBERTSON
Supreme Court of Arkansas
813 S.W.2d 252
July 8, 1991

17 □ HUMAN WELFARE
- How can a land surveyor’s professional knowledge and skills be applied to the advancement and betterment of “human welfare”?

18 □ HUMAN WELFARE
“The surveyor does have *moral obligations to the public* and among them is the duty to never subtract from the rights of adjoiners. Every boundary survey for a client establishes the boundary of an adjoiner.”


19 □ HUMAN WELFARE
“One of the reasons for giving surveyors the exclusive privilege of marking boundaries is to prevent the unskilled from monumenting lines that encroach on the *bona fide*
rights of others.”

20 HUMAN WELFARE
“...We the people of the United States, in order to form a more perfect Union, establish justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”
Preamble to the United States Constitution.

21 HUMAN WELFARE
× What are the “Blessing of Liberty” that we, as land surveyors, might be involved in promoting and securing?

22 NONE BUT HONEST ENTERPRISE
× Trespass – Criminal and Civil
× Fraud – Criminal and Civil
× Conspiracy – Criminal and Civil
× Negligence – Criminal and Civil
× Slander of Title
× Truth in Advertising
× Consumer Fraud

23 TRUTH IN ADVERTISING
§ 663.5. Representations
The highest degree of integrity, truthfulness, and accuracy should be paramount in all dealings with, and representations to, others by not misleading in any way the other’s understandings of personal qualifications or information regarding a project. ....
Title 22, Part 29, Chapter 663, Texas Admin. Code.

24 TRUTH IN ADVERTISING
§ 663.3. Offer to Perform Services
The registrant: ...
(2) Shall not indulge in publicity that is false, misleading, or deceptive ....
Title 22, Part 29, Chapter 663, Texas Admin. Code.

25 TRUTH IN ADVERTISING
Deed Staker
or
Boundary Surveyor

26 DECEPTIVE TRADE PRACTICES
“The elements of a claim under the DTPA are (1) the plaintiff is a consumer, (2) the
defendant engaged in false, misleading, or deceptive acts, and (3) these acts constituted a producing cause of the consumer’s damages. Reliance is a necessary element of a DTPA claim based on false, misleading, or deceptive acts. A DTPA claim may also arise from breach of express or implied warranties or from any unconscionable action or course of action.”


27 HIGHEST STANDARDS
“The purpose of the surveys in this boundary dispute is to locate accurately the boundary between the plaintiff’s and defendants’ property.”


28 HIGHEST STANDARDS
“On cross-examination, Burns stated that he had been retained by Dowdell to conduct a survey of the property because Dowdell wanted to know the location of his property line.”


29 HIGHEST STANDARDS
“The surveyor, having made an evaluation of the evidence, forms an opinion as to where he believes the lines would be located if fully adjudicated in a court of law. The typical modern day surveyor sees himself as an expert evaluator of evidence. He strives to arrive at the same opinion of boundary location regardless of whether he was hired by his client or his client’s next door neighbor.”


30 HIGHEST STANDARDS
“Sec. 3. D. Boundary Resolution - The boundary lines and corners of any property being surveyed as part of an ALTA/ACSM Land Title Survey shall be established and/or retraced in accordance with appropriate boundary law principles governed by the set of facts and evidence found in the course of performing the research and survey.”


31 CUPP V. HEATH
TENNESSE COURT OF APPEALS
AT KNOXVILLE
§ 663.10. Disciplinary Rules
The land surveyor shall not: ...
(5) Engage in any conduct that discredits or attempts to discredit the profession of surveying ...
Perform any acts, allow any omission, or make any assertions or representation which may be fraudulent, deceitful, or misleading, or which in any manner whatsoever, tend to create a misleading impression ....
Title 22, Part 29, Chapter 663, Texas Admin. Code.

What are the “laws of humankind”?

Do the laws of humankind have anything to do with property?

§ 663.1. Ethical Standards
Inasmuch as the practice of the land surveying profession is essential to the orderly use of our physical environment, and inasmuch as the technical work resultant thereof has important effects on the welfare, property, economy, and security of the public, the practice shall be conducted with the highest degree of moral and ethical standards.
Title 22, Part 29, Chapter 663, Texas Admin. Code.

§ 663.3. Offer to Perform Services
The client, employer, or the public is entitled to a careful and competent performance of services. Competence in performance of services requires the exercise of proficiency, reasonable care, and diligence. Therefore, every effort should be made to remain proficient in a field of endeavor, and employment for services to be rendered should not be accepted unless such services can be competently performed.
Title 22, Part 29, Chapter 663, Texas Admin. Code.
(2) Shall not offer to perform, nor perform, services for which he/she is not qualified by education or experience in any of the technical fields involved, without retaining the services of another who is so qualified ....
Title 22, Part 29, Chapter 663, Texas Admin. Code.

STANDARD OF CARE

What is the standard of care when providing professional services?

NSPS CREED AND CANONS

I pledge:

- To place service before profit, honor and standing of the profession before personal advantage, and the public welfare above all other considerations;
- In humility and with need for Divine Guidance, I make this pledge.

ADAMSON v. INNOVATIVE
MISSOURI COURT OF APPEALS
284 S.W.3d 721
March 27, 2009

SERVICES BEFORE PROFIT
THE PROFESSION BEFORE ADVANTAGE
PUBLIC WELFARE ABOVE ALL

What is this really saying?
- Love thy neighbor as thy self?

DIVINE GUIDANCE

Where does this come from?

A SACRED TRUST?

Every profession has a sacred trust. Do land surveyors have a sacred trust?

NSPS CREED AND CANONS

Canon 1.
A Professional Surveyor should refrain from conduct that is detrimental to the public.

WHAT’S DETRIMENTAL TO THE PUBLIC?

How About:
- Not Notifying the Board of your Change of Address?
- Committing a crime?
- Committing a tort?
- Not providing competent professional services?

WHAT’S DETRIMENTAL TO THE PUBLIC?

How About:
- Advocating for your client’s position? Are or should land surveyors be advocates?
National Society of Professional Surveyors
Surveyor's Creed and Canons

As a Professional Surveyor, I dedicate my professional knowledge and skills to the advancement and betterment of human welfare.

I pledge:
To give the utmost of performance;
To participate in none but honest enterprise;
To live and work according to the laws of humankind and the highest standards of professional conduct;
To place service before profit, honor and standing of the profession before personal advantage, and the public welfare above all other considerations;
In humility and with need for Divine Guidance, I make this pledge.

Canon 1.
A Professional Surveyor should refrain from conduct that is detrimental to the public.

Canon 2.
A Professional Surveyor should abide by the rules and regulations pertaining to the practice of surveying within the licensing jurisdiction.

Canon 3.
A Professional Surveyor should accept assignments only in one's area of professional competence and expertise.

Canon 4.
A Professional Surveyor should develop and communicate a professional analysis and opinion without bias or personal interest.

Canon 5.
A Professional Surveyor should maintain the confidential nature of the surveyor-client relationship.

Canon 6.
A Professional Surveyor should use care to avoid advertising or solicitation that is misleading or otherwise contrary to the public interest.

Canon 7.
A Professional Surveyor should maintain professional integrity when dealing with members of other professions.
Canon 2.
A Professional Surveyor should abide by the rules and regulations pertaining to the practice of surveying within the licensing jurisdiction.

What are the rules and regulations pertaining to the practice of land surveying?

Statutory Law:
- Statutes and Code Sections
- Legislatively Enacted
- Interpreted by the Courts
- Can’t Violate Constitutional Provisions
- Can’t Violate Treaties of the United States

Common Law (Case Law):
- Interpretation of the Constitution and Treaties
- Interpretation of Statutory and Administrative Law
- Court Made Law
- 230 Years of Precedence in this Country
- Another 1,000 Years of English Common Law

Administrative Law:
- Executive Branch of Government
- Enforcement Law
- Regulated Professions
- Boards of Regulation:
  - Board Rules
  - Technical Standards
  - Rules of Ethics or Codes of Conduct
54  **BULL V. PINKHAM ENGINEERING**  
Vermont Supreme Court  
752 A.2d 26  
April 21, 2000

55  **BULL V. PINKHAM**  
“There is a substantial body of case law which holds that where the wrongful act of 
one person has involved another in litigation with a third person or has made it 
necessary for that other person to incur expenses to protect his interests, litigation 
expenses, including attorney’s fees, are recoverable.”  

56  **CAITO V. BOARD OF ENGINEERS**  
Superior Court of Rhode Island  
1998 R.I.Super. LEXIS 11  
July 21, 1998

57  **NSPS CREED AND CANONS**  
*Canon 3.*  
*A Professional Surveyor should accept assignments only in one's area of professional 
competence and expertise.*

58  **JONES V. GRESHAM**  
Mississippi Court of Appeals  
963 So.2d 581  
August 21, 2007

59  **NSPS SURVEYOR’S CREED AND CANONS**  
*Canon 4.*  
*A Professional Surveyor should develop and communicate a professional analysis and 
opinion without bias or personal interest.*

60  **LOVETERE v. COLE**  
Superior Court of Connecticut, Judicial District  
2008 Conn.Super. LEXIS 2097  
August 15, 2008

61  **NSPS CREED AND CANONS**  
*Canon 5.*  
*A Professional Surveyor should maintain the confidential nature of the surveyor-client 
relationship.*

62  **CLIENT-SURVEYOR RELATIONSHIP**
EXAMPLE: Big Oil Company hired you to survey 1,000 acres around Ma Kettle's farm. They told you that they want to “screw Ma Kettle out of the oil under her property.” You’re called to testify in the case. As you’re walking into the courthouse, Big Oil Co. attorney tells you, “You can’t testify as to what we told you about screwing Ma Kettle. You’ve got to maintain your client-surveyor confidential relationship.”

63 CLIENT-SURVEYOR RELATIONSHIP
QUESTION:
☒ What’s your ethical obligation?
☒ What’s your legal obligation?
☒ What’s your moral obligation?
☒ Are there any differences in the above?

64 NSPS CREED AND CANONS
Canon 6.
A Professional Surveyor should use care to avoid advertising or solicitation that is misleading or otherwise contrary to the public interest.

65 ADVERTISING
EXAMPLE: Surveyor Sam is new in business and wants to drum up business. He comes up with a slogan:

“You don’t want pretty surveys, you want them cheap. Come to Surveyor Sam for the cheapest surveys in town.”

66 ADVERTISING
QUESTION:
☒ Anything unethical about that advertisement campaign?
☒ Anything illegal?

67 ADVERTISING
“The moment services area based upon the lowest price, a profession has reduced itself to a [technical trade] business.”


68 NSPS CREED AND CANONS
Canon 7.
A Professional Surveyor should maintain professional integrity when dealing with members of other professions.

69 PROFESSIONAL INTEGRITY
Example: Surveyor Wright sends Surveyor Sam an e-mail after he sees Sam’s advertisement, calling Sam, “a lowballing, scum sucking, dirt-bag, son-of-a-rubber-
scaling-architect, who doesn’t deserve to have a bullet wasted on him.”

70 ☑ PROFESSIONAL INTEGRITY

QUESTION:
☒ Anything unethical with Surveyor Wright’s actions?
☒ Anything Illegal?
☒ Anything Equitable?