

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

FILED

2006 JUN -1 A 9 19

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: WV Board of Professional Surveyors TITLE NUMBER: 23

RULE TYPE: Legislative CITE AUTHORITY: 30-13A-5; 30-1-7a

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Licensing of Professional Surveyors in West Virginia (formerly
Rules and Minimum Standards for the Practice of Land Surveying in
West Virginia)

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

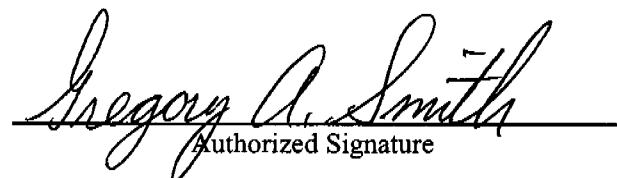
IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH
ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS
COMMENT PERIOD WILL END ON July 5, 2006 AT 5 p.m. ONLY WRITTEN
COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

WV Board of Professional Surveyors

P. O. Box 390

Flatwoods, WV 26621-0390

THE ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

#7.40

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 23 CSR 1 - Licensing of Professional Surveyors in West Virginia

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: WV Board of Professional Surveyors

Address: P. O. Box 390

Flatwoods, WV 26621-0390

Phone Number: 304-765-0315 Email: wvbps@mail.state.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure
will have on costs and revenues of state government.

Not applicable.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of
Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			
2. Estimated Total Revenues			

Rule Title:

23 CSR 1 - Licensing of Professional Surveyors in West Virginia

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

Not applicable.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Not applicable.

Date:

5-31-06

Signature of Agency Head or Authorized Representative

Gregory A. Smith

TITLE 23
LEGISLATIVE RULE
BOARD OF PROFESSIONAL SURVEYORS

FILED

2006 JUN -1 A 9 20

SERIES 1
~~RULES AND MINIMUM STANDARDS FOR PRACTICE~~
~~OF LAND SURVEYING IN WEST VIRGINIA~~
LICENSING OF PROFESSIONAL
SURVEYORS IN WEST VIRGINIA

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§23-1-1. General Information and Purpose

1.1. Scope. -- This rule is promulgated by the Board of Professional Surveyors to govern licensing of ~~Land~~ Professional Surveyors in West Virginia.

1.2. Authority. -- W. Va. Code §§30-1-7a and 30-13A-5.

1.3. Filing Date. --

1.4. Effective Date. --

§23-1-2. General Purpose.

~~2.1. 1.5.~~ This Rule with the Minimum Standards for the practice of land surveying licensing Professional Surveyors is promulgated for the purpose of administration and enforcement of W. Va. Code §§30-1-1 et seq. and 30-13A-1 et seq. and shall be binding upon persons or firms involved in the practice of surveying under §30-13A-1 et seq.

1.6. In addition to the provisions and requirements of this rule, the Model Rules of the National Council of Examiners for Engineering and Surveying (NCEES) may be considered as guidance in matters of licensing and practice of surveying. The Board will also consider the NCEES Model Rules as an evidence of "generally accepted standards for the practice of surveying" as that phrase is used in this rule.

§23-1-32 Definitions

~~3.1. Terms Defined~~ -- As used in this rule, The following terms have the following meanings unless the context or subject matter clearly requires a different interpretation:

2.1. "Certificate of Licensure" means a certificate issued to the applicant who has met the licensing requirements of §30-13A-1 et seq. and approved by the Board. The certificate will be signed as required by the Board and will show the license number and seal of the Board and shall be displayed conspicuously at the principal place of practice.

~~3.1.1. 2.2.~~ "Felony" means a felony related to the fitness of a land surveyor to engage in the practice of land surveying, including those crimes that have dishonesty as a fundamental and necessary element. Felonies that, upon conviction, constitute grounds for disciplinary action by the Board include, but are not limited to:

~~3.1.1.a.~~ a. False swearing or perjury in a court proceeding related to the applicant's practice of land surveying;

~~3.1.1.b.~~ b. Felonies involving theft, bribery, embezzlement, forgery, falsification or destruction of records, fraud, or misrepresentation; and

~~3.1.1.c.~~ c. Any other felony offense demonstrating a lack of business integrity or business honesty.

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2.3. "Incompetence" means the failure to meet minimum standards and generally accepted practices of surveying or practicing in fields of expertise when the surveyor is unqualified and lacks the necessary experience and education.

2.4. "License" means a surveying license issued under the provisions of §30-13A-1 et seq. authorizing a licensee to practice for a designated period of time approved by the Board and shall be displayed conspicuously at the principal place of practice. A wallet card shall be issued simultaneously to be kept on the licensee's person.

~~3.1.2.~~ 2.5. "Owner," when used in the context of ownership requirements for firms seeking a certificate of authorization to engage in the practice of land surveying, means a person who owns at least a majority interest of a firm or business entity.

~~3.1.3.~~ 2.6. "Professional negligence" means negligence demonstrating a wanton indifference to the interests of the public that caused, or that had a substantial likelihood of causing, serious harm to the public. A civil judgment for malpractice in the practice of land surveying is not conclusive proof that a surveyor is guilty of professional negligence sufficient to support the imposition of professional discipline.

2.7. "Responsible charge" means direct control of surveying work under the direct supervision of a licensee or person authorized in another state or country to engage in the practice of surveying in order to gather, prepare or analyze data, evidence or information that will aid and assist the licensed professional in resolving boundaries or managing data or information regarding other work related to the practice of surveying.

2.8. "Technician" means a person who performs technical work related to surveying under the direction of a designated field or office supervisor or licensed professional. Examples of a technician may be, but is not limited to, an instrumentperson, rodperson, drafter or computer operator.

~~3.1.4.~~ 2.9. "Willful departure from accepted standards of professional conduct" means:

~~3.1.4.a.~~ a. Default on obligations owed to the state in connection with the practice of land surveying, including but not limited to obligations under the West Virginia workers' compensation act, the West Virginia unemployment compensation act, and West Virginia state tax and revenue laws;

~~3.1.4.b.~~ b. Willful failure to substantially perform in accordance with the terms of a contract or subcontract, or failure to perform after accepting compensation for professional services;

~~3.1.4.c.~~ c. Performance in violation of standards established by law or generally accepted standards for the practice of land surveying amounting to intentionally deficient or grossly negligent performance on a contract; or

d. Making false or misleading statements during an investigation, inquiry or hearing of the Board.

~~3.1.4.d.~~ e. Any other cause of a serious and compelling nature amounting to knowing and willful misconduct in the practice of land surveying.

~~§23-14. Qualifications Of Licensees; Applicants For Licenses; Exceptions; Fees; Examinations.~~

§23-1.3. Qualifications, Application and Examination for Licensure

~~4.1.~~ 3.1. To be eligible for a license to engage in the practice of land surveying, the applicant shall meet the requirements set forth in W. Va. Code §§30-13A-8 through -12.

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~~4.2. Any applicant for a license shall submit an application on forms provided by the board. The application shall be verified and shall contain a statement of the applicant's education and experience, the names of five (5) persons for reference (at least three (3) of whom shall be licensees, or persons eligible for a license, or persons authorized in another state or country to engage in the practice of land surveying, who have knowledge of the applicant's work). In support of an applicant's statement of experience, the Board may require designated records and documentation of a land survey made by the applicant. An applicant shall pay to the board with his or her application an examination fee determined by the board that does not exceed the exact cost of the examination or three hundred dollars (\$300.00).~~

~~4.3. Examinations shall be held at least once each year at a time and place as determined by the board.~~

~~4.4. The scope of the examination and methods of procedure shall be determined by the board. An applicant who fails to pass any parts of the examination for six consecutive times is precluded from taking any section of the examination for two full years, and may be required to obtain additional educational requirements as determined by the board. After the passage of the mandatory two year period and the completion of any additional educational requirements, the applicant shall file a new application to take the examination as provided in subsection 4.2 of this section. An applicant who fails to pass any parts of the examination fewer than six times may reapply at any time to take the failed parts and shall furnish additional information as requested by the board. Each application shall be accompanied by an examination fee determined by the board, not to exceed the exact cost of the examination or three hundred dollars (\$300).~~

~~4.5. An applicant shall first pass the Fundamentals (SIT) portion of the National Council of Examiners for Engineering and Surveying (NCEES) Examination in order to be eligible to take the West Virginia Professional Surveyor's Examination. The Board shall issue a Surveyor in Training Certificate to an eligible applicant who passes the Fundamentals (SIT) portion of the NCEES Examination.~~

~~4.6. In accordance with the policy of the NCEES, no applicant may be granted access to or review of an NCEES examination or the state specific West Virginia State Professional Surveyor's Examination.~~

3.2. Application for Licensure

a. Any applicant for a license shall submit an application on forms provided by the Board. In support of an applicant's statement of experience, the Board may require designated records and documentation of land surveys made by the applicant.

b. Each application shall be accompanied by an examination fee determined by the Board by rule.

c. An applicant shall first apply for and pass the Fundamentals portion of the NCEES Examination in order to apply for the professional portion of the NCEES exam and the West Virginia Professional Surveyor's Examination. The Board shall issue a Surveyor Intern Certificate to an eligible applicant who passes the Fundamentals portion of the NCEES Examination.

d. The Board deems that statements provided as references for an applicant are personal in nature and public disclosure of those statements would constitute an unreasonable invasion of privacy and, therefore, should be exempt from disclosure under WV Code 29B-1-4(a)(2).

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e. An applicant may request reconsideration of an application which has been denied when the request is based upon additional information or evidence which could affect the original decision. A request for reconsideration or hearing must be made within fifteen (15) days after the applicant receives notice of the denial of application for licensure.

f. Any applicant is required to notify the Board within thirty (30) days of any change in name, address, employment, or other relevant information.

3.3. Examination for Licensure

a. The Board will conduct at least one (1) examination per year at a time and place as determined by the Board.

b. The scope of the examination and methods of procedure shall be determined by the Board.

c. An applicant who fails to attend an examination for which he/she has been scheduled will forfeit the fee paid for the examination, except, with a request to and approval by the Board, the fee may be applied to the next test administration in the case of illness, death in the family, or other unavoidable causes for absence.

d. Failure of an applicant to attend an examination for which he/she has been scheduled to attend does not count as a failure of the examination.

e. An applicant who fails to pass any parts of the examination fewer than six (6) times may reapply at any time to take the failed parts and shall furnish additional information as requested by the Board.

f. An applicant who fails to pass any parts of the examination for six (6) consecutive attempts is precluded from taking any section of the examination for two (2) full years, and may be required to obtain additional educational requirements as determined by the Board. After the passage of the mandatory two-year period and the completion of any additional educational requirements, the applicant shall file a new application to take the examination as provided in §30-13A-1 et seq.

g. Applicants are not permitted access to, or review of, an NCEES examination, in accordance with the policy of the NCEES, or the state-specific West Virginia State Professional Surveyor's Examination.

3.4. Application and Examination for Nonresident Surveyors

a. The Board shall honor the acts of licensing, certification or registration of surveyors by licensing agencies in other states and countries, and shall accordingly license those surveyors upon proper application and payment of fees and upon verification(s) from all jurisdiction(s) in which the applicant has been licensed; Provided that the requirements to obtain a license or certificate or to become registered in the other state or country are found by the Board to be at least as great as those prescribed by W. Va. Code §30-13A-1 et seq. and by rule of the Board.

b. Notwithstanding the provisions of subsection 3.9.a. of this rule, an individual licensed as a professional surveyor in any other state must take and pass the state-specific West Virginia State Professional Surveyor's Examination as a condition precedent to obtaining a license to engage in the practice of surveying in this state.

3.5. Accreditation

- a. The Board shall approve survey curricula.
- b. The Board recognizes the Accreditation Board for Engineering and Technology, Inc. (ABET), as a national accrediting body.

§23-1-5. Issuance Of License; Notice Of Expiration; Renewal; Renewal Fee; Display; Certificate of Authorization; Professional Limited Liability Company (PLLC). §23-1-4. Survey License and Certificate.

5.1. 4.1. Whenever the Board finds that an applicant meets all of the requirements for a license to engage in the practice of ~~land~~ surveying, it shall immediately issue the license; otherwise the Board shall deny the license. All licenses, whether original or renewal, expire on the thirtieth day of June following the date of issuance or renewal.

a. The secretary-treasurer of the Board shall mail to every licensee, at least thirty (30) days prior to the expiration of a license, notice of the expiration date and the amount of the renewal fee. A licensee may renew a license without examination upon application for a renewal on a form prescribed by the Board and payment to the Board of an annual renewal fee of ~~one hundred dollars (\$100.00)~~ as prescribed by the Board by rule.

b. If a license is not renewed when due, the fee shall increase by twenty percent (20%) ~~dollars (\$20)~~ for each month or fraction of a month that the renewal fee is not paid, up to a maximum of thirty-six (36) months. No license may be renewed after the failure to renew continues for a period of thirty-six (36) months, but the fact that a license cannot be renewed because of the expiration of a period of thirty-six (36) months shall not prevent a person from making application for a new license under the license requirements in effect at the time of application.

c. The Board may deny any application for renewal for any reason ~~which~~ that would justify the denial of an original application for a license.

d. ~~The Board shall prescribe the form of licenses for display by the licensee. A licensee must display the certificate of licensure and the annual license, issued by the Board, at his or her principal place of practice. The Board may issue a duplicate license upon payment of a fee of ten dollars (\$10.00). When a certificate of license is lost, stolen, destroyed or mutilated, the Board may issue a duplicate certificate or license upon written request by a licensee in good standing and a payment of a fee as established by the Board by rule.~~

5.2. ~~A firm or business entity, including a professional limited liability company, may not engage in, offer to engage in, or hold itself out to the public as being engaged in, the practice of land surveying as defined in W. Va. Code §30-13A-2 without first obtaining a certificate of authorization issued by the Board. No firm shall be issued a certificate without having as its owner or in its employ a licensed professional surveyor. An initial application fee of one hundred dollars (\$100.00), and an annual renewal fee of one hundred dollars (\$100.00) is due on or before December 30 of each year. The Board shall develop the application form and the renewal form for the certificate.~~

5.3. ~~A licensee may apply to the Board for a "retired" or "inactive" professional surveyors' status.~~

~~5.3.2.~~ 4.2. Licensees may apply or reapply for "inactive" status and must pay the annual renewal fee for licensure and any requisite late fees accrued for the license period.

a. Inactive licensees are not permitted to provide surveying services or receive any compensation for any type of surveying activities conducted in West Virginia.

b. With supporting documentation, inactive licensees may request exemption from the license renewal fee in the following instances: serving on active duty in the Armed Forces of the United States for a period exceeding 120 consecutive days during that license year; experiencing physical disability; illness; or other extenuating circumstances.

c. Licensees in inactive status are not required to maintain professional development hours (PDHs); however, an inactive licensee who elects to return to the active practice of surveying shall acquire PDHs for each year exempted up to a maximum of 16 PDHs. Licensees in inactive status for four (4) years or more must meet the quadrennial requirements for mandatory continuing education for minimum standards and ethics within the first year of returning to active status.

d. The Board shall issue an annual license card noting "Inactive Status" to qualifying applicants.

~~4.3.~~ Licensees who ~~apply for "retired" status must be in active or inactive license status and must certify that they are no longer practicing surveying or supervising~~ voluntarily retire their license are not permitted to practice surveying or supervise any employees who perform surveying activities in West Virginia; ~~they are not permitted to~~ or affix their P.S. seal to any surveying documents. ~~Annual license renewal fees are not required while in retired status.~~

a. The Board will issue a certificate noting the honorific title of "Professional Surveyor, Retired."

b. ~~Retired~~ licensees who elect to return to the active practice of surveying shall make application for a new license under current license requirements. ~~acquire delinquent Professional Development Hours (PDHs) for each year retired, up to a maximum of 16 PDHs, and shall pay the current license renewal fee.~~

~~5.4.~~ 4.4. Professional surveyors who desire to render services as a professional limited liability company shall comply with the provisions of W.Va. Code §30-13A-1 et seq., ~~and this rule and~~ W. Va. Code §31B-13-1 et seq. and the rules of the Board. No person may be a member of a professional limited liability company who is not licensed and legally authorized to render such services by this Board; copies of the professional surveyor's current license to practice and the company's valid certificate of authorization shall accompany the application with the Secretary of State.

4.5. Any licensee is required to notify the Board within thirty (30) days of any change in name, address, employment, or other relevant information.

§23-1-5. Certificate of Authorization.

5.1. A firm or business entity, including a professional limited liability company, may not engage in, offer to engage in, or hold itself out to the public as being engaged in, the practice of surveying as

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defined in W. Va. Code §30-13A-3 without first obtaining a certificate of authorization issued by the Board for each business location or branch office offering such services.

5.2. No firm shall be issued a certificate without having as its owner or in its employ a licensed professional surveyor for each business location or branch office. An initial application fee and an annual renewal fee as established by the Board by rule is due on or before December 30 of each year and shall accompany the application or renewal application forms developed by the Board.

5.3. Any firm is required to notify the Board within thirty (30) days of any change in ownership, name, address, surveyor in charge, surveyor authorized to certify documents, or other relevant information included on the application.

~~§23-1-6. Accredited Surveying Curricula.~~

~~6.1. The Board shall approve survey curricula.~~

~~6.2. The Board recognizes the Accreditation Board for Engineering and Technology, Inc. (ABET), as a national accrediting body.~~

~~§23-1-7. Unethical Practices.~~

~~7.1. In addition to the reasons for suspension or revocation of a license set forth in W. Va. Code §§30-1-8(a) or 30-13A-8(b), any licensee who has committed any of the following unethical practices may be subject to suspension or revocation of a license:~~

~~7.2. Signing or affixing a seal to any document prepared by persons who are not employees under supervision of the licensee;~~

~~7.3. Accepting, paying, or offering to pay, either directly or indirectly, any gift, bribe, or other consideration to make an improper survey;~~

~~7.4. Associating with any survey project known by the licensee to be fraudulent or dishonest in character;~~

~~7.5. Failing or refusing to comply with any provision of W. Va. Code §30-13A-1 et seq. or any rule promulgated by the Board or any order or final decision of the Board. For the purposes of this subsection; (1) if any licensee orders, counsels, encourages, incites, supports, helps, or assists another person to fail or refuse to comply with any statutory provision, rule, order or final decision; or, (2) after the failure or refusal, if a licensee helps or assists the other person to avoid detection of the failure or refusal, then the licensee is considered to have also failed or refused to comply;~~

~~7.6. Knowingly or maliciously disseminating false statements which are intended to result in injury to the reputation of a licensee, to diminish the esteem, respect, goodwill or confidence in which the licensee is held, or to deter third persons from associating or dealing with the licensee;~~

~~7.7. Reviewing the work of another land surveyor for the same client, except with the knowledge of the surveyor, or unless the connection of the surveyor with the work has been terminated;~~

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~~7.8. Failing to respond within thirty (30) days to written communications from the board and to make available any records relevant to an inquiry or complaint about the licensee's professional conduct. The thirty (30) day period begins on the date when the communication was sent by the board by certified mail with return receipt requested to the last known address of the surveyor;~~

~~7.9. Using advertising that is false, fraudulent, deceptive, misleading or unlawful; or~~

~~7.10. Accepting and undertaking to perform land survey services which the surveyor is not competent to perform without obtaining qualified associates, consultants or employees, or failing to directly supervise the work of subordinates in performing these services.~~

§23-1-8. Suspension, Revocation or Discipline Relevant to License; Hearings On Denial Of Application; Judicial Review §23-1-6. Disciplinary Actions by the Board

~~8-1. 6.1.~~ The Board may at any time upon its own motion and shall upon the verified written complaint of any person conduct an investigation to determine whether there are any grounds for a disciplinary action relevant to a license issued under the provisions of W. Va. Code §§ 30-1-8 or 30-13A and the rules issued by the Board.

~~6.2.~~ The Board may suspend, place on probation or revoke any license, may impose a fine not to exceed one thousand dollars (\$1,000.00) per infraction, and may issue letters of reprimand, or may impose any combination of these disciplinary actions, when it finds a licensee has:

~~a. (a)~~ Been convicted of a felony or a crime involving moral turpitude;

~~b. (b)~~ Obtained a license by means of fraud or deceit;

~~c. (c)~~ Been incompetent or guilty of fraud, deceit, professional negligence, willful departure from accepted standards of professional conduct or other misconduct in the practice of ~~land~~ surveying; or

~~d. (d)~~ Failed or refused to comply with the provisions of W. Va. Code §30-13A-1 et seq. or any reasonable rule promulgated by the Board or any order or final decision of the Board.

~~6.3.~~ The Board may issue a reprimand in the form of letters of caution, warning or censure.

~~6.4.~~ Upon a final decision of the Board finding grounds for any disciplinary action, the Board may assess costs against the licensee for reimbursement of the costs of investigation, hearings and other expenses relative to the complaint.

~~6.5.~~ The Board shall also suspend or revoke any license if it finds the existence of any ground which would justify the denial of an application for the license if application were then being made for it.

~~a.~~ Any suspension of a license continues for the period specified in the order of suspension.

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b. Revocation of a license shall not preclude application for a new license. The Board shall process the application in the same manner, approve or deny the application and issue or refuse the license on the same grounds as any other application for a license is processed, considered and determined, except that any previous suspension and the revocation may be given weight in deciding whether to approve or deny the application and issue or refuse to issue the license as is meet and proper under all the circumstances.

~~8.2.~~ 6.6. Whenever the Board denies an application for any original or renewal license or suspends or revokes any license, it shall make and enter an order to that effect and serve a copy on the applicant or licensee, as the case may be, by certified mail, return receipt requested.

a. The order shall state the grounds for the action taken and shall require that any license suspended or revoked by the order shall be returned to the Board by the licensee within twenty (20) days after receipt of the order.

b. Any person adversely affected by any order is entitled to a hearing (as to all issues not excluded from the definition of a "contested case" as set forth in W. Va. Code §29A-1-1 et seq.) if, within twenty (20) days after receipt of a copy, the applicant files with the Board a written demand for a hearing. A demand for hearing operates automatically to stay or suspend the execution of any order suspending or revoking a license or denying an application for a renewal license.

c. The Board may require the person demanding the hearing to give reasonable security for costs and if the person does not substantially prevail at the hearing. Costs shall be assessed against the person and may be collected by an action at law or other proper remedy.

§23-1-7. Judicial Review

8.3. 7.1. Any person adversely affected by a decision of the Board rendered after a hearing held in accordance with this rule and the Board's Rule, Disciplinary and Complaint Procedures for ~~Land~~ Professional Surveyors, 23 CSR 3, is entitled to judicial review of the decision. All of the pertinent provisions of W. Va. Code §29A-5-4 apply to and govern judicial review.

7.2. The judgment of the circuit court is final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of W. Va. Code §29A-6-1.

7.3. Legal counsel and services for the Board in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his or her assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.

~~§23-1-9. Competency In Field And Office Techniques.~~

~~9.1. A surveyor shall undertake to perform surveying assignments only when qualified by education or experience in the specific technical field of surveying involved.~~

~~9.2. A surveyor may accept an assignment requiring education or experience outside of his or her own field of competence, but only to the extent that his or her services are restricted to those phases of the project in which he or she is qualified. All other phases of the project shall be performed by qualified~~

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associates, consultants or employees.

9.3. A surveyor shall not affix his or her signature and/or seal to any surveying plan or document dealing with subject matter to which he or she lacks competence by virtue of education or experience, nor to any plan or document not prepared under his or her direct supervisory control.

9.4. In the event a question arises as to the competence of a surveyor to perform a surveying assignment in a specific technical field of surveying which cannot be otherwise resolved to the Board's satisfaction, the Board, either upon request of the surveyor or by its own volition, may require the surveyor to submit to an appropriate examination as determined by the Board.

~~§23-1-10. Underground Surveys And Maps; specific technical fields.~~

~~10.1. Underground surveys and maps shall comply with the requirements in W. Va. Code §22A-2-1.~~

~~10.2. For applicants seeking a certificate to engage in underground surveying, the Board may require designated records and documentation of underground surveys to support an applicant's claim of experience. The Board may further require an applicant or a surveyor to submit designated records and documentation of surveys to support a claim to experience in a specific technical field of surveying and mapping. The Board may also require an examination on procedures and knowledge on specific technical fields of surveying and mapping~~

~~10.3. The Board may require an application and examination fee to cover cost incurred for review, verification and examination of a licensee's qualifications and experience to practice in a specific technical field.~~

~~§23-1-11. Licensing of Nonresident Surveyors.~~

~~11.1. The Board shall honor the acts of licensing, certification or registration of surveyors by licensing agencies in other states and countries, and shall accordingly license those surveyors upon proper application and payment of fees if the applicant has taken and passed in another jurisdiction all sections of the Professional Surveyor's Examination of the National Council of Examiners for Engineering and Surveying (NCEES), and the requirements to obtain a license or certificate or to become registered in the other state or country are found by the Board to be at least as great as those prescribed by W. Va. Code §30-13A-1 et seq. and by rule of the Board.~~

~~11.2. Notwithstanding the provisions of subsection 11.1 of this section, an individual licensed as a professional surveyor in any other state shall take and pass the state specific West Virginia State Professional Surveyor's Examination as a condition precedent to obtaining a license to engage in the practice of land surveying in this state.~~

CHAIRMAN
Gregory A. Smith

SECRETARY
Leon K. Spencer

Mark H. Hornish

Roy E. Shrewsbury, II

Anthony J. Sparacino, Jr.

**STATE OF WEST VIRGINIA
BOARD OF PROFESSIONAL SURVEYORS**

Mailing address: P. O. Box 390, Flatwoods, West Virginia 26621-0390

Courier address: 2298 Sutton Lane, Flatwoods, West Virginia 26621

Telephone (304) 765-0315

Fax (304) 765-0316

wvbps@mail.state.wv.us



The West Virginia Board of Professional Surveyors (WVBPS or Board) is requesting changes to the Series 1 legislative rules, *Rules and Minimum Standards of Practice of Land Surveying in West Virginia*, and the creation of Series 4 and Series 5. The rules have been revised and reorganized to clarify current practice and make the legislative process more efficient.

The Board is requesting that all rules pertaining to fees be included in a new Series 4 entitled *Fees*. Upon the advice of Doren Burrell, the Attorney General's office counsel, the Board is further requesting that all rules pertaining to standards of practice, currently in Series 1, be moved to Series 5. The licensing rules will remain in Series 1 with a proposed title change of *Licensing of Professional Surveyors in West Virginia*. The proposed title for the new Series 5 is *Standards for the Practice of Surveying in West Virginia*.

The justification for the Series 1 rule change involves several issues. Foremost is consolidating the licensing rules and organizing them into a logical, easy-to-find structure. The WVBPS is a member of the National Council of Examiners for Engineering and Surveying (NCEES), a national non-profit organization composed of engineering and surveying licensing boards representing all U.S. states and territories. Many of the proposed revisions, including the Rules of Professional Conduct, were adopted from the NCEES Model Rules, August 2005. Definitions were added and revised to bring better clarity to the rules. The strikethroughs reflect the text moved to Series 4 and out of date rules. The text in Series 1 moved to Series 5 is also shown with strikethroughs. A copy of the submittal to the licensees is enclosed to show the original text, deletions and additions and the original reference from Series 1.

Attached is the cover letter and original submittal to all licensees of Series 1, 4 and 5 with underlining and strikethroughs.

CHAIRMAN
Gregory A. Smith

SECRETARY
Leon K. Spencer

Mark H. Hornish

Roy E. Shrewsbury, II

Anthony J. Sparacino, Jr.

STATE OF WEST VIRGINIA
BOARD OF PROFESSIONAL SURVEYORS

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May 30, 2006

Notice to all Licensees:

The Board is proposing changes to the Series 1 legislative rules, *Rules and Minimum Standards of Practice of Land Surveying in West Virginia*, and the creation of Series 4, *Fees*. The specific fees have been removed from Series 1 so they can be consolidated into an easy to use fee schedule.

The major change for Series 1 is the separation of the rules regarding licensing issues verses standards. Series 1 will become *Licensing of Professional Surveyors in West Virginia*. The standards will be moved to Series 5, *Standards for the Practice of Surveying in West Virginia*.

The rules have been revised and reorganized to clarify current practice and make the legislative process more efficient. As you may know, all state surveying and engineering boards, including the WV Board of Professional Surveyors, are members of the National Council of Examiners for Engineering and Surveying (NCEES). Many of the proposed revisions, including the Rules of Professional Conduct, were adopted from the NCEES Model Rules, August 2005.

All three Series are enclosed for your review and comment. Written comments may be submitted to the Board office until July 5, 2006, at 5 p.m., the close of the public comment period. Your comments, along with the Board's justification for the changes will be submitted to the Secretary of State to begin the review process. If approved, the rules will take effect sometime next year.

This is your opportunity to have input in this process. Please make the most of it. We look forward to receiving all constructive comments whether pro or con.

Enclosures

**TITLE 23
LEGISLATIVE RULE
BOARD OF PROFESSIONAL SURVEYORS**

**SERIES 1
LICENSING OF PROFESSIONAL
SURVEYORS IN WEST VIRGINIA**

§23-1-1. General Information and Purpose

1.1. Scope. -- This rule is promulgated by the Board of Professional Surveyors to govern licensing of Land Professional Surveyors in West Virginia.

1.2. Authority. -- W. Va. Code §§30-1-7a and 30-13A-5.

1.3. Filing Date. --

1.4. Effective Date. --

~~§23-1-2. General Purpose.~~

~~2.1.~~ 1.5. This Rule ~~with the Minimum Standards for the practice of land surveying~~ licensing Professional Surveyors is promulgated for the purpose of administration and enforcement of W. Va. Code §§30-1-1 et seq. and 30-13A-1 et seq. and shall be binding upon persons or firms involved in the practice of surveying under §30-13A-1 et seq.

1.6. In addition to the provisions and requirements of this rule, the Model Rules of the National Council of Examiners for Engineering and Surveying (NCEES) may be considered as guidance in matters of licensing and practice of surveying. The Board will also consider the NCEES Model Rules as an evidence of "generally accepted standards for the practice of surveying" as that phrase is used in this rule.

§23-1-~~32~~ Definitions

~~3.1.~~ Terms Defined -- As used in this rule, The following terms have the following meanings unless the context or subject matter clearly requires a different interpretation:

~~2.1.~~ "Certificate of Licensure" means a certificate issued to the applicant who has met the licensing requirements of §30-13A-1 et seq. and approved by the Board. The certificate will be signed as required by the Board and will show the license number and seal of the Board and shall be displayed conspicuously at the principal place of practice.

~~3.1.1.~~ ~~2.2.~~ "Felony" means a felony related to the fitness of a ~~land~~ surveyor to engage in the practice of ~~land~~ surveying, including those crimes that have dishonesty as a fundamental and necessary element. Felonies that, upon conviction, constitute grounds for disciplinary action by the Board include, but are not limited to:

~~3.1.1.a.~~ ~~2.2.a.~~ False swearing or perjury in a court proceeding related to the applicant's practice of ~~land~~ surveying;

~~3.1.2.b.~~ ~~2.2.b.~~ Felonies involving theft, bribery, embezzlement, forgery, falsification or destruction of records, fraud, or misrepresentation; and

~~3.1.1.e.~~ ~~2.2.c.~~ Any other felony offense demonstrating a lack of business integrity or business honesty.

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2.3. "Incompetence" means the failure to meet minimum standards and generally accepted practices of surveying or practicing in fields of expertise when the surveyor is unqualified and lacks the necessary experience and education.

2.4. "License" means a surveying license issued under the provisions of §30-13A-1 et seq. authorizing a licensee to practice for a designated period of time approved by the Board and shall be displayed conspicuously at the principal place of practice. A wallet card shall be issued simultaneously to be kept on the licensee's person.

3.1.2. 2.5. "Owner," when used in the context of ownership requirements for firms seeking a certificate of authorization to engage in the practice of land surveying, means a person who owns at least a majority interest of a firm or business entity.

3.1.3. 2.6. "Professional negligence" means negligence demonstrating a wanton indifference to the interests of the public that caused, or that had a substantial likelihood of causing, serious harm to the public. A civil judgment for malpractice in the practice of land surveying is not conclusive proof that a surveyor is guilty of professional negligence sufficient to support the imposition of professional discipline.

2.7. "Responsible charge" means direct control of surveying work under the direct supervision of a licensee or person authorized in another state or country to engage in the practice of surveying in order to gather, prepare or analyze data, evidence or information that will aid and assist the licensed professional in resolving boundaries or managing data or information regarding other work related to the practice of surveying.

2.8. "Technician" means a person who performs technical work related to surveying under the direction of a designated field or office supervisor or licensed professional. Examples of a technician may be, but is not limited to, an instrumentperson, rodperson, drafter or computer operator.

3.1.4. 2.9. "Willful departure from accepted standards of professional conduct" means:

3.1.4.a. 2.9.a. Default on obligations owed to the state in connection with the practice of land surveying, including but not limited to obligations under the West Virginia workers' compensation act, the West Virginia unemployment compensation act, and West Virginia state tax and revenue laws;

3.1.4.b. 2.9.b. Willful failure to substantially perform in accordance with the terms of a contract or subcontract, or failure to perform after accepting compensation for professional services;

3.1.4.c. 2.9.c. Performance in violation of standards established by law or generally accepted standards for the practice of land surveying amounting to intentionally deficient or grossly negligent performance on a contract; or

2.9.d. Making false or misleading statements during an investigation, inquiry or hearing of the Board.

3.1.4.d. 2.9.e. Any other cause of a serious and compelling nature amounting to knowing and willful misconduct in the practice of land surveying.

§23-1-4. Qualifications Of Licensees; Applicants For Licenses; Exceptions; Fees; Examinations.

§23-1.3. Qualifications, Application and Examination for Licensure

4.1. 3.1. To be eligible for a license to engage in the practice of land surveying, the applicant shall meet the requirements set forth in W. Va. Code §§30-13A-8 through -12.

3.2. Application for Licensure

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~~4.2. 3.2.a.~~ Any applicant for a license shall submit an application on forms provided by the Board. ~~The application shall be verified and shall contain a statement of the applicant's education and experience, the names of five (5) persons for reference (at least three (3) of whom shall be licensees, or persons eligible for a license, or persons authorized in another state or country to engage in the practice of land surveying, who have knowledge of the applicant's work).~~ In support of an applicant's statement of experience, the Board may require designated records and documentation of a land surveys made by the applicant. ~~An applicant shall pay to the Board with his or her application an examination fee determined by the Board that does not exceed the exact cost of the examination or three hundred dollars (\$300.00).~~

~~3.2.b.~~ Each application shall be accompanied by an examination fee determined by the Board by rule, ~~not to exceed the exact cost of the examination or three hundred dollars (\$300).~~

~~4.5. 3.2.c.~~ An applicant shall first apply for and pass the Fundamentals (SIT) portion of the National Council of Examiners for Engineering and Surveying (NCEES) NCEES Examination in order to be eligible to take apply for the professional portion of the NCEES exam and the West Virginia Professional Surveyor's Examination. The Board shall issue a Surveyor-in-Training Intern Certificate to an eligible applicant who passes the Fundamentals (SIT) portion of the NCEES Examination.

3.2.d. The Board deems that statements provided as references for an applicant are personal in nature and public disclosure of those statements would constitute an unreasonable invasion of privacy and, therefore, should be exempt from disclosure under WV Code 29B-1-4(a)(2).

3.2.e. An applicant may request reconsideration of an application which has been denied when the request is based upon additional information or evidence which could affect the original decision. A request for reconsideration or hearing must be made within fifteen (15) days after the applicant receives notice of the denial of application for licensure.

3.2.f. Any applicant is required to notify the Board within thirty (30) days of any change in name, address, employment, or other relevant information.

3.3. Examination for Licensure

~~4.3. 3.3.a. Examinations shall be held~~ The Board will conduct at least once each one (1) examination per year at a time and place as determined by the Board.

~~4.4. 3.3.b.~~ The scope of the examination and methods of procedure shall be determined by the Board.

3.3.c. An applicant who fails to attend an examination for which he/she has been scheduled will forfeit the fee paid for the examination, except, with a request to and approval by the Board, the fee may be applied to the next test administration in the case of illness, death in the family, or other unavoidable causes for absence.

3.3.d. Failure of an applicant to attend an examination for which he/she has been scheduled to attend does not count as a failure of the examination.

3.3.e. An applicant who fails to pass any parts of the examination fewer than six (6) times may reapply at any time to take the failed parts and shall furnish additional information as requested by the Board.

3.3.f. An applicant who fails to pass any parts of the examination for six (6) consecutive times attempts is precluded from taking any section of the examination for two (2) full years, and may be required to obtain additional educational requirements as determined by the Board. After the passage of the mandatory two-year period and the completion of any additional educational requirements, the applicant shall file a new application to take the examination as provided in §30-13A-1 et seq.

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~~4.6. 3.3.g. In accordance with the policy of the NCEES, no applicant may be granted~~ Applicants are not permitted access to or review of an NCEES examination, in accordance with the policy of the NCEES, or the state-specific West Virginia State Professional Surveyor's Examination.

§23-1-11. Licensing of Nonresident Surveyors.

3.4. Application and Examination for Nonresident Surveyors

~~11.1. 3.4.a. The Board shall honor the acts of licensing, certification or registration of surveyors by licensing agencies in other states and countries, and shall accordingly license those surveyors upon proper application and payment of fees and upon verification(s) from all jurisdiction(s) in which the applicant has been licensed if the applicant has taken and passed in another jurisdiction all sections of the Professional Surveyor's Examination of the National Council of Examiners for Engineering and Surveying (NCEES), and ; Provided that the requirements to obtain a license or certificate or to become registered in the other state or country are found by the Board to be at least as great as those prescribed by W. Va. Code §30-13A-1 et seq. and by rule of the Board.~~

~~11.2. 3.4.b. Notwithstanding the provisions of subsection 11.1 3.9.a. of this section rule, an individual licensed as a professional surveyor in any other state shall must take and pass the state-specific West Virginia State Professional Surveyor's Examination as a condition precedent to obtaining a license to engage in the practice of land surveying in this state.~~

§23-1-6. Accredited Surveying Curricula.

3.5. Accreditation

~~6.1. 3.5.a. The Board shall approve survey curricula.~~

~~6.2. 3.5.b. The Board recognizes the Accreditation Board for Engineering and Technology, Inc. (ABET), as a national accrediting body.~~

§23-1-5. Issuance Of License; Notice Of Expiration; Renewal; Renewal Fee; Display; Certificate of Authorization; Professional Limited Liability Company (PLLC). §23-1-4. Survey License and Certificate.

~~5.1. 4.1. Whenever the Board finds that an applicant meets all of the requirements for a license to engage in the practice of land surveying, it shall immediately issue the license; otherwise the Board shall deny the license. All licenses, whether original or renewal, expire on the thirtieth day of June following the date of issuance or renewal.~~

~~4.1.a. The secretary-treasurer of the Board shall mail to every licensee, at least thirty (30) days prior to the expiration of a license, notice of the expiration date and the amount of the renewal fee. A licensee may renew a license without examination upon application for a renewal on a form prescribed by the Board and payment to the Board of an annual renewal fee of one hundred dollars (\$100.00) as prescribed by the Board by rule.~~

~~4.1.b. If a license is not renewed when due, the fee shall increase by twenty percent (20%) dollars (\$20) for each month or fraction of a month that the renewal fee is not paid, up to a maximum of thirty-six (36) months. No license may be renewed after the failure to renew continues for a period of thirty-six (36) months, but the fact that a license cannot be renewed because of the expiration of a period of thirty-six (36) months shall not prevent a person from making application for a new license under the license requirements in effect at the time of application.~~

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4.1.c. The Board may deny any application for renewal for any reason which would justify the denial of an original application for a license.

4.1.d. ~~The Board shall prescribe the form of licenses for display by the licensee~~ A licensee must display the certificate of licensure and the annual license, issued by the Board, at his or her principal place of practice. When a certificate of license is lost, stolen, destroyed or mutilated, the Board may issue a duplicate certificate or license upon written request by a licensee in good standing and a payment of a fee of ten dollars (\$10.00) as established by the Board by rule.

~~5.3. A licensee may apply to the Board for a "retired" or "inactive" professional surveyors' status. 5.3.2. 4.2. Licensees may apply or reapply for "inactive" status and must pay the annual renewal fee for licensure and any requisite late fees accrued for the license period.~~

4.2.a. Inactive licensees are not permitted to provide surveying services or receive any compensation for any type of surveying activities conducted in West Virginia.

4.2.b. With supporting documentation, inactive licensees may request exemption from the license renewal fee in the following instances: serving on active duty in the Armed Forces of the United States for a period exceeding 120 consecutive days during that license year; experiencing physical disability; illness; or other extenuating circumstances.

4.2.c. Licensees in inactive status are not required to maintain professional development hours (PDHs); however, an inactive licensee who elects to return to the active practice of surveying shall acquire PDHs for each year exempted up to a maximum of 16 PDHs. Licensees in inactive status for four (4) years or more must meet the quadrennial requirements for mandatory continuing education for minimum standards and ethics within the first year of returning to active status.

4.2.d. The Board shall issue an annual license card noting "Inactive Status" to qualifying applicants.

~~5.3.1. 4.3. Licensees who apply for "retired" status must be in active or inactive license status and must certify that they are no longer practicing surveying or supervising voluntarily retire their license are not permitted to practice surveying or supervise any employees who perform surveying activities in West Virginia; they are not permitted to or affix their P.S. seal to any surveying documents. Annual license renewal fees are not required while in retired status.~~

4.3.a. The Board will issue a certificate noting the honorific title of "Professional Surveyor, Retired."

4.3.b. Retired licensees who elect to return to the active practice of surveying shall make application for a new license under current license requirements. ~~acquire delinquent Professional Development Hours (PDHs) for each year retired, up to a maximum of 16 PDHs, and shall pay the current license renewal fee.~~

~~5.4. 4.4. Professional surveyors who desire to render services as a professional limited liability company shall comply with the provisions of W.Va. Code §30-13A-1 et seq., and this rule and W. Va. Code §31B-13-1 et seq. and the rules of the Board. No person may be a member of a professional limited liability company who is not licensed and legally authorized to render such services by this Board; copies of the professional surveyor's current license to practice and the company's valid certificate of authorization shall accompany the application with the Secretary of State.~~

4.5. Any licensee is required to notify the Board within thirty (30) days of any change in name, address, employment, or other relevant information.

§23-1-5. Certificate of Authorization.

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~~5.2.~~ 5.1. A firm or business entity, including a professional limited liability company, may not engage in, offer to engage in, or hold itself out to the public as being engaged in, the practice of surveying as defined in W. Va. Code §30-13A-23 without first obtaining a certificate of authorization issued by the Board for each business location or branch office offering such services.

5.2. No firm shall be issued a certificate without having as its owner or in its employ a licensed professional surveyor for each business location or branch office. An initial application fee ~~of one hundred dollars (\$100.00)~~, and an annual renewal fee ~~of one hundred dollars (\$100.00)~~ as established by the Board by rule is due on or before December 30 of each year and shall accompany the application or renewal application forms developed by the Board. ~~The Board shall develop the application form and the renewal form for the certificate.~~

5.3. Any firm is required to notify the Board within thirty (30) days of any change in ownership, name, address, surveyor in charge, surveyor authorized to certify documents, or other relevant information included on the application.

~~§23-1-8. Suspension, Revocation or Discipline Relevant to License; Hearings On Denial Of Application; Judicial Review~~ §23-1-6. Disciplinary Actions by the Board

~~8.1.~~ 6.1. The Board may at any time upon its own motion and shall upon the verified written complaint of any person conduct an investigation to determine whether there are any grounds for a disciplinary action relevant to a license issued under the provisions of W. Va. Code §§ 30-1-8 or 30-13A and the rules issued by the Board.

6.2. The Board may suspend, place on probation or revoke any license, may impose a fine not to exceed one thousand dollars (\$1,000.00) per infraction, and may issue letters of reprimand, or may impose any combination of these disciplinary actions, when it finds a licensee has:

6.2.a. ~~(a)~~ Been convicted of a felony or a crime involving moral turpitude;

6.2.b. ~~(b)~~ Obtained a license by means of fraud or deceit;

6.2.c. ~~(c)~~ Been incompetent or guilty of fraud, deceit, professional negligence, willful departure from accepted standards of professional conduct or other misconduct in the practice of ~~land~~ surveying; or

6.2.d. ~~(d)~~ Failed or refused to comply with the provisions of W. Va. Code §30-13A-1 et seq. or any reasonable rule promulgated by the Board or any order or final decision of the Board.

6.3. The Board may issue a reprimand in the form of letters of caution, warning or censure.

6.4. Upon a final decision of the Board finding grounds for any disciplinary action, the Board may assess costs against the licensee for reimbursement of the costs of investigation, hearings and other expenses relative to the complaint.

6.5. The Board shall also suspend or revoke any license if it finds the existence of any ground which would justify the denial of an application for the license if application were then being made for it.

6.5.a. Any suspension of a license continues for the period specified in the order of suspension.

6.5.b. Revocation of a license shall not preclude application for a new license. The Board shall process the application in the same manner, approve or deny the application and issue or refuse the license on the same grounds as any other application for a license is processed, considered and determined, except that any previous suspension and the revocation may be given weight in deciding whether to approve or deny the application and issue or refuse to issue the license as is meet and proper under all the circumstances.

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~~8.2.~~ 6.6. Whenever the Board denies an application for any original or renewal license or suspends or revokes any license, it shall make and enter an order to that effect and serve a copy on the applicant or licensee, as the case may be, by certified mail, return receipt requested.

6.6.a. The order shall state the grounds for the action taken and shall require that any license suspended or revoked by the order shall be returned to the Board by the licensee within twenty (20) days after receipt of the order.

6.6.b. Any person adversely affected by any order is entitled to a hearing (as to all issues not excluded from the definition of a "contested case" as set forth in W. Va. Code §29A-1-1 et seq.) if, within twenty (20) days after receipt of a copy, the applicant files with the Board a written demand for a hearing. A demand for hearing operates automatically to stay or suspend the execution of any order suspending or revoking a license or denying an application for a renewal license.

6.6.c. The Board may require the person demanding the hearing to give reasonable security for costs and if the person does not substantially prevail at the hearing. Costs shall be assessed against the person and may be collected by an action at law or other proper remedy.

§23-1-7. Judicial Review

~~8.3.~~ 7.1. Any person adversely affected by a decision of the Board rendered after a hearing held in accordance with this rule and the Board's Rule, Disciplinary and Complaint Procedures for ~~Land~~ Professional Surveyors, 23 CSR 3, is entitled to judicial review of the decision. All of the pertinent provisions of W. Va. Code §29A-5-4 apply to and govern judicial review.

7.2. The judgment of the circuit court is final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of W. Va. Code §29A-6-1.

7.3. Legal counsel and services for the Board in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his or her assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.

**TITLE 23
LEGISLATIVE RULE
BOARD OF PROFESSIONAL SURVEYORS**

**SERIES 4
FEES**

§23-4-1. General.

1.1 Scope. This rule is promulgated by the Board of Professional Services to establish fees payable to the Board for various services.

1.2. Authority. W.Va. Code §30-13A-5(13)

1.3. Filing Date.

1.4. Effective Date.

§23-4-2. Application of Rule.

2.1. This rule applies to all applicants for licensure, all professional surveyors and all firms holding a certificate of authorization pursuant to §30-13A-1 et seq.

§23-4-3. Definitions

3.1. "Application fee" means a nonrefundable fee that is due at the time the initial application is submitted. Applications received without requisite fees are returned by the Board as incomplete.

3.2. "Initial licensing fee" means a fee that is due when a new license is issued following the fall licensing examinations, with approximately 6 months of the license cycle remaining.

3.3. "Returned check fee" means an administrative fee for a payment made by a check that is returned due to insufficient funds, account closure or other failure to negotiate payment.

§23-4-4. Payment of Fees

4.1. All fees are payable to the West Virginia Board of Professional Surveyors. Fees shall be paid by check or money order, or credit card, if available.

4.2. All fees paid to the board are nonrefundable.

§23-4-5. Fee Schedule

The Board of Professional Surveyors hereby establishes the following schedule of fees for services rendered by the Board:

Application/Examination Fees:

Surveyor Intern (NCEES Fundamentals exam)	
Application/Examination fee	\$150.00
Reapplication/Reexamination fee	\$150.00
Professional Surveyor (NCEES Principals and Practice exam)	
Application/Examination fee	\$300.00
Reapplication/Reexamination fee	\$300.00
Professional Surveyor (WV State-specific exam)	
Application/Examination fee	\$200.00
Reapplication/Reexamination fee	\$200.00
Underground Endorsement	
Application/Examination fee	\$200.00

License Fees:

Initial licensing Fee for new licenses issued following fall examination	\$ 50.00
Professional Surveyor annual renewal fee	\$100.00
Late fee (20% of annual license fee) if postmarked after June 30 for each month or partial month that license remains unpaid (up to 36 months)	\$ 20.00
Reprocessing fee (for illegible or incomplete applications)	\$ 20.00
Licensure verifications requested by other states' boards	\$ 25.00

Certificate of Authorization Fees:

Application fee	\$100.00
Annual renewal fee	\$100.00
Late fee (20% of COA renewal fee) if postmarked after December 31 for each month or partial month that COA remains unpaid	\$ 20.00

Miscellaneous:

Roster for vendor marketing purposes	\$100.00
Returned Check fee	\$ 30.00
Copy records:	
Letter, legal and 11"x17" paper	\$ 0.50/page
Survey plats (blueprint)	\$ 10.00 minimum/\$2 sq. ft.
Archival research	\$ 25.00/hour
Continuing education video tapes (6 or 8 professional development hours)	\$100.00
Administrative fee for subsequent demand or inquiry following a licensee's failure to respond to, or comply with, a request, inquiry, or order from the Board	\$500.00

§23-4-6. Assessment of Costs in Disciplinary Actions

6.1. Pursuant to W. Va. Code §30-1-8, the West Virginia Board of Professional Surveyors may assess, and require payment from, a licensee for reimbursement of the administrative expenses incurred by the Board in the course of disciplinary proceedings against the licensee. These expenses may include, but are not limited to, the costs of investigation, legal notices, and other correspondence, legal fees, witness fees, and administrative time expended by the Board's members, staff, consultants or contractors.

**TITLE 23
LEGISLATIVE RULE
BOARD OF PROFESSIONAL SURVEYORS**

**SERIES 5
STANDARDS FOR THE PRACTICE
OF SURVEYING IN WEST VIRGINIA**

§23-1-5-1. General Information and Purpose

- 1.1. Scope. -- This rule is promulgated by the Board of Professional Surveyors to govern ~~licensing of Land Surveyors~~ the practice of surveying in West Virginia.
- 1.2. Authority. -- W. Va. Code §§30-1-7a and 30-13A-5.
- 1.3. Filing Date. --
- 1.4. Effective Date. --

§23-1-2. General Purpose.

~~2-1. 1.5.~~ This Rule ~~with the Minimum Standards~~ for the practice of ~~land~~-surveying is promulgated for the purpose of administration and enforcement of W. Va. Code §§30-1-1 et seq. and 30-13A-1 et seq. and shall be binding upon persons or firms involved in the practice of surveying under §30-13A-1 et seq.

1.6. In addition to the provisions and requirements of this rule, the Model Rules of the National Council of Examiners for Engineering and Surveying (NCEES) may be considered as guidance in matters of licensing and practice of surveying. The Board will also consider the NCEES Model Rules as an evidence of "generally accepted standards for the practice of surveying" as that phrase is used in this rule.

§23-1-3 -5-2. Definitions

~~3-1.~~ Terms Defined -- As used in this rule, the following terms have the following meanings unless the context or subject matter clearly requires a different interpretation:

2.1. "Boundary survey" means a survey in which the record lines, ownership lines or possession lines property lines and corners of a parcel of land, claim area, possession area or encroachment area have been established by a survey and a description of survey has been written and a plat has been prepared for the property. All boundary surveys require proper monumentation and the preparation of a written description and plat of survey. A report of survey is required when the description and plat do not adequately address the facts and evidence used to control the boundaries.

2.2. "Ownership line" means a line or series of lines that defines the limits of ownership claimed by a landowner and can only be established as a boundary by an order of the court.

2.3. "Possession line" means a line or series of lines that defines the limits of possession or use by a landowner and can only be established as a boundary by an order of the court.

2.4. "Professional charge" refers to a licensee having the responsibility to certify documents that meet certain professional standards or the responsibility to supervise, direct and control the execution of a professional project involving technical or responsible charge personnel or one or more professional disciplines.

2.5. "Record line" means the line between the position of the original monuments cited in the original operative conveyance that a surveyor is required to retrace or establish as the boundary of a parcel of land.

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2.6. "Responsible charge" means direct control of surveying work under the direct supervision of a licensee or person authorized in another state or country to engage in the practice of surveying in order to gather, prepare or analyze data, evidence or information that will aid and assist the licensed professional in resolving boundaries or managing data or information regarding other work related to the practice of surveying.

2.7. "SU" means "surface and underground" and is the designation following the license number of a licensee who has met the requirements to be endorsed by the Board as an underground surveyor pursuant to §30-13A-11.

2.8. "Technician" means a person who performs technical work related to surveying under the direction of a designated field or office supervisor or licensed professional. Examples of a technician may be, but is not limited to, an instrumentperson, rodperson, drafter or computer operator.

2.9. "Unlicensed practice" means a person who holds him/herself out to the public as being a surveyor or land surveyor and has failed to maintain an active surveying license under the provisions of §30-13A-1 et seq. or has not obtained the qualifications and requirements for licensure under the provisions of §30-13A-1 et seq.

2.10. "Unlicensed practitioner" means a person engaged in the unlicensed practice of surveying.

§23-4-5.3. Seals and Document Certification.

3.1. The seal of the Board shall be affixed to each certificate of licensure or license issued by the Board.

3.2. Seal of Licensee

3.2.a. When an applicant is granted licensure, he/she must obtain a professional seal from a company approved by the Board within thirty (30) days.

3.2.b. The seal must be either a rubber stamp or embossing seal, or both, and must contain the following information (see example):

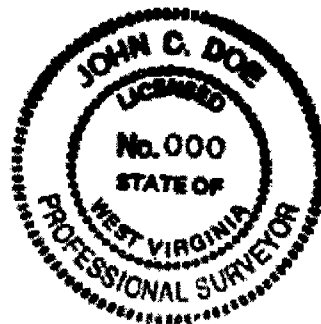
3.2.b.1. The first and last name and middle initial of the licensee shall be on the top between the two concentric circles.

3.2.b.2. "Professional Surveyor" shall be on the bottom between the two concentric circles.

3.2.b.3. "Licensed" shall be at the inside top of the smaller circle.

3.2.b.4. "West Virginia" shall be at the inside bottom of the smaller circle.

3.2.b.5. The license number and "State of" shall be in the center of the seal. A space and "SU" shall append the license number if so endorsed.



3.3. Seal on Documents

3.3.a. The seal and signature of the licensee and date of signing shall be placed on all surveys, reports, plats, drawings, plans, and calculations whenever presented to a client or any public agency to certify that the work thereon was done by or under the professional charge of the licensee. Working drawings or unfinished documents are not required to have a seal and signature if the working drawing or

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preliminary document contains a statement to the effect "Preliminary, not for construction, recording purposes, or implementation."

3.3.b. The seal and signature shall be placed on all originals, tracings, or other reproducible documents so that the seal and signature will be reproduced when copies are made.

3.3.c. When the document contains more than one sheet, the first or title page shall be sealed and signed by the licensee who was in professional charge. Two or more licensees may affix their signatures and seals provided it is designated by a note under the seal the specific subject matter for which each is responsible. In addition, each drawing shall be sealed and signed by the licensee or licensees responsible for each sheet. When a firm, partnership or corporation performs the work, each drawing shall be sealed by the licensee or licensees who were in professional charge of the work.

3.3.d. The seal and signature shall be placed on work only when it was under the licensee's complete direction and professional charge.

3.3.e. The licensee shall sign and seal only work within the licensee's area(s) of competence.

3.3.f. Plats, descriptions, reports, drawings, or other documents will be deemed to have been prepared under the professional charge of a licensee only when all the following conditions have been met and documented:

3.3.f.1. The client requesting preparation of such plats, descriptions, reports, drawings, or other documents makes the request directly to the licensee, or a member or employee of the licensee's firm.

3.3.f.2. The licensee supervises the preparation of the plats, descriptions, reports, drawings, or other documents and has input into their preparation prior to their completion;

3.3.f.3. The licensee reviews the final plats, descriptions, reports, drawings, or other documents.

3.3.f.4. The licensee has the authority to, and does, make any necessary and appropriate changes to the final plats, descriptions, reports, drawings, or other documents.

3.3.f.5. The licensee is responsible for meeting all of the preceding requirements whether the work is being performed remotely or locally.

3.3.f.6.. Any revision to a document containing the seal and signature of a licensee shall be described and dated. If the revisions are not done by the original licensee, the revisions must also be signed and sealed by the licensee in professional charge.

3.3.f.7. In circumstances where a licensee in professional charge of the work is unavailable to complete the work, a successor licensee may take professional charge by performing all professional services to include calculations, research, and any necessary and appropriate changes to the work. The non-professional (technical) services, such as drafting, need not be redone by the successor licensee but must clearly and accurately reflect the successor licensee's work. The burden is on the successor licensee to show such compliance. The successor licensee shall have control of and responsibility for the work product and the signed and sealed originals of all documents.

3.3.g. Digital Seals and Signatures

3.3.g.1. Computer-generated seals not signed with a digital signature may be used on final original drawings provided a handwritten signature is placed adjacent to or across the seal and the date is written below the seal. Documents which do not require certification may be transmitted

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electronically but shall have the generated seal, if any, removed before transmitting and shall have the following inserted in lieu of the signature and date: "This document originally issued and sealed by (name of licensee, P.S.#--- on (date of sealing). This document should not be considered a certified document."

3.3.g.2. Drawings, reports, or documents that are signed using a digital signature must have an electronic authentication process attached to or logically associated with the electronic document. The digital signature must be: unique to the person using it; capable of verification, under the sole control of the person using it; and linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

3.3.g.3. A digital signature that uses a process approved by the Board will be presumed to meet the criteria set forth in the preceding paragraph. Any hard copy printed from the transmitted electronic file shall bear the facsimile of the signature and seal and be a confirmation that the electronic file was not altered after the initial digital signing of the file. Any alterations to the file shall cause the facsimile of the signature to be voided.

§23-1-9 -5-4. General Survey Policies Competency In Field And Office Techniques.

~~9.1.~~ 4.1. A surveyor shall undertake to perform surveying assignments only when qualified by education or experience in the specific technical field of surveying involved.

~~9.2.~~ 4.2. A surveyor may accept an assignment requiring education or experience outside of his or her own field of competence, but only to the extent that his or her services are restricted to those phases of the project in which he or she is qualified. All other phases of the project shall be performed by qualified associates, consultants or employees.

~~9.3.~~ 4.3. A surveyor shall not affix his or her signature and/or seal to any surveying plan or document dealing with subject matter to which he or she lacks competence by virtue of education or experience, nor to any plan or document not prepared under his or her direct supervisory control.

~~9.4.~~ 4.4. In the event a question arises as to the competence of a surveyor to perform a surveying assignment in a specific technical field of surveying which cannot be otherwise resolved to the Board's satisfaction, the Board, either upon request of the surveyor or by its own volition, may require the surveyor to submit to an appropriate examination as determined by the Board.

§23-1-10 -5-5. Specialized Survey Policies Underground Surveys And Maps; specific technical fields.

5.1. Experience and Documentation Requirements

5.1.a. The Board may ~~further~~ require an applicant or ~~a surveyor licensee~~ to submit designated records and documentation of surveys to support a claim to experience in a specific ~~technical~~ field of surveying and mapping.

5.1.b. The Board may also require an examination on procedures and knowledge on specific ~~technical~~ fields of surveying and mapping.

~~10.3.~~ 5.1.c. The Board may require an application and examination fee to cover cost incurred for review, verification and examination of a licensee's qualifications and experience to practice in a specific ~~technical~~ field.

5.2. Underground Surveying

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5.2.a. All licensees must receive the "SU" endorsement before affixing their signature and seal on any documents associated with underground surveying.

10.1. 5.2.a. Underground surveys and maps shall comply with the requirements in W. Va. Code §22A-2-1.

10.2. 5.2.b. For applicants licensees seeking a certificate an endorsement to engage in underground surveying, the Board may require designated records and documentation of underground surveys to support an applicant's a claim of experience expertise.

§23-1-5-6. Minimum standards for boundary surveys.

6.1. The purpose of these standards is to establish minimum technical criteria to govern the performance of surveyors when more stringent specifications are not required. Further, the purpose is to protect the inhabitants of this state from dishonest or incompetent surveying and generally to protect the public welfare.

6.2. General standards for all surveys:

6.2.a. The licensee in professional charge, or a designated representative, shall discuss with the client the purpose of the survey, scope of services to be provided, time frames, fees and all pertinent details of the contract prior to performing the work.

6.2.b. A licensee, endorsee, an exempt person under §30-13A-1 et seq. or persons under the direct supervision of a licensee, endorsee or exempt person shall physically go to the site and perform a field survey.

6.2.c. The surveyor shall use methods and equipment suitable for the purpose of the survey.

6.2.d. Field notes shall be recorded for all surveys and shall include the raw data, boundary evidence and other relevant information collected in the field.

6.2.d.1. Notes may be handwritten or by electronic data collection or a combination thereof. When electronic data collection is used in conjunction with handwritten notes, the electronic files and the written notes constitute the entirety of the field notes.

6.2.d.2. The surveyor must retain all field notes as a permanent record indefinitely.

6.2.e. All measuring devices shall be checked periodically for accuracy and condition. The observations shall be measured to a precision that will produce the desired level of accuracy.

6.3. Boundary Surveys

6.3.a. In addition to the general standards in subsection 6.2., the discussion prior to the survey shall also cover disputes with adjoining, claim or possession areas, encroachments and other relevant information that will affect the final location of the boundary.

6.3.b. A search of the public records shall include the courthouse and other sources of information to identify and resolve potential conflicts in descriptions of the subject property and the adjoining, easements, and other information that may affect the outcome of the survey. The record search shall include:

6.3.b.1. A reasonable search to determine the current ownership, addresses, tax map and parcel number and assessed area of the subject property and all the adjoining.

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6.3.b.2. A thorough search to determine the record descriptions of the conveyance to the current owner and the original operative conveyance for each section of the boundary that comprises the subject property. The search may include prior deeds, conveyance from common grantor, or if necessary, the original survey or grant.

6.3.b.3. A reasonable search of the record descriptions for all adjoining properties to resolve possible conflicts with the subject property.

6.3.b.4. All records gathered during the course of the survey and information sources used shall be retained as a permanent record indefinitely.

6.3.c. Notification to the public

6.3.c.1. A reasonable attempt shall be made to notify the adjoining owners of the pending survey through the mail or personal contact.

6.3.c.2. A reasonable attempt shall be made to contact and discuss the field evidence with others having a practical firsthand knowledge of the property boundaries. The surveyor must use his or her discretion when deciding which individuals have knowledge that will help to establish the record line.

6.3.d. The field survey shall consist of the following:

6.3.d.1. A field search for controlling evidence.

6.3.d.2. The location of evidence by appropriate methods and procedures.

6.3.d.3. In addition to the general standards in subsection 6.2., the field notes shall include, but is not limited to, the date, field crew members and responsibilities, weather conditions, horizontal and vertical circle readings, distances (whether slope or horizontal), traverse stations, sideshots, offsets and other such stations and their descriptions.

6.3.d.4. Distance shall be reported in feet or meters, or parts thereof, and angles or directions shall be reported in degrees or parts thereof.

6.3.d.5. The area of the tract being surveyed shall be measured and reported to a precision consistent with the purpose of the survey.

6.3.e. Corner monuments shall be positioned as close as possible to the position of the original monument cited in the original operative conveyance after a thorough review of all the available record search and the evidence recovered in the field. Evidence of subsequent surveyors may be used if it is determined their work is as close as possible to the corner's original position.

6.3.e.1. Permanent monumentation is required for all new or reestablished corner and reference monuments. Set monuments shall be made of durable material and set firmly in the ground. Pipes shall have a minimum inside diameter of one (1) inch, while rebars shall have a minimum outside diameter of five-eighths (5/8) inch and both shall have a minimum length of thirty (30) inches. Other markers shall have a minimum cross-sectional area of one-half square inch and shall be made of durable material, identifiable and unique. Natural objects chosen for corners shall be durable, unique and easily identifiable. Monumentation is encouraged but not required at intervisible points along the boundary between corners.

6.3.e.2. All rebars, pipes and other markers, except natural objects, shall have caps bearing the surveyor's license number or company name.

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6.3.f. A plat shall be prepared for all retracement or partition boundary surveys and subdivisions, unless a certified plat of a boundary survey or subdivision has been recorded within the last ten (10) years that accurately depicts the location of the monument or monuments being reset. A monument replacement record, in lieu of a plat, shall be filed in the county clerk's office on a form prescribed by the Board.

6.3.g. The plat shall show the results of the field survey and be provided to the client. Plats shall be to a scale large enough to show significant details and the following information shall be shown, when applicable:

6.3.g.1. A north arrow and the meridian used as the basis of directions (bearings);

6.3.g.2. The date or sequence of dates of the field survey;

6.3.g.3. The measured length and direction of each boundary line by distance, bearing and quadrant: Provided, That in the case of a strip survey the station and offset method may be utilized to describe the strip. When the station and offset method is used, the alignment geometry and the control point monumentation shall also be shown on the plat.

6.3.g.4. General location information including the municipality, district, county, state, watershed and other information that will aid in locating the subject property. Subdivisions will include the name, lot, block and plat reference;

6.3.g.5. Ties by direction and distance to significant monuments and objects;

6.3.g.6. The evidence of possession and claim areas and encroachments as they compare to the location of the record boundary line including any overlaps or gaps, as needed;

6.3.g.7. The description of all corners or reference monuments, including whether the monuments were found (fd) or set;

6.3.g.8. The outlined area of the property and all significant parts, including streets, alleys and nonlotted areas of a subdivision;

6.3.g.9. The area, acreage or square footage, of the property;

6.3.g.10. The tax map and parcel number, if available, of all the tracts or parcels shown on the plat;

6.3.g.11. The name of the current or past owners of the subject property, or both, and the adjoining landowners;

6.3.g.12. The current conveyance reference for the subject property and the adjoining landowners;

6.3.g.13. The name and location of any creeks, rivers or roads within the scope of the survey;

6.3.g.14. The title of the plat for reference when recording;

6.3.g.15. The name, address, license number, signature and seal of the surveyor in professional charge.

6.3.h. A description of survey shall be prepared for all, partition and retracement boundary surveys, except mortgage inspection surveys, and be provided to the client.

6.3.i. The following shall be included in a description of survey, when applicable:

6.3.i.1. A metes and bounds description, or strip description, if applicable, of the property;

6.3.i.2. The point of beginning;

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6.3.i.3. The description of monumentation at each corner and objects encountered along the line, including the adjoining landowners;

6.3.i.4. The length and direction of each line;

6.3.i.5. The radius, chord bearing and distance of a curved boundary line;

6.3.i.6. The lot and block numbers for newly platted partitions or subdivisions;

6.3.i.7. The area, acreage or square footage, of the property;

6.3.i.8. The watershed or topographic location where the property is located;

6.3.i.9. A reference to the conveyance by which the current owner claims title, including the grantor, grantee, date and recording reference;

6.3.i.10. A reference to the accompanying plat attaching it to and making it a part of the description;

6.3.i.11. The district or municipality, county and state where the property is located;

6.3.i.12. The name of the individual preparing the description and the name, address, license number, signature and seal of the surveyor in professional charge.

6.3.j. The report of survey shall be used when the plat and the description of survey do not adequately address all matters considered by the surveyor in performing the survey and shall be attached to and made a part of the plat and description of survey and provided to the client. The report of survey shall include:

6.3.j.1. Documentation of the research and the weight given to the significant documents;

6.3.j.2. The names of persons contacted and the information they supplied.

6.3.j.3. All unusual circumstances surrounding the survey, with weight being given to conflicting evidence and encroachments, overlaps or gaps and how they were resolved

6.3.j.4. The name of the individual preparing the report and the name, address, license number, signature and seal of the surveyor in professional charge.

6.4. Mortgage or Loan Inspection

6.4.a. A mortgage or loan inspection is not a boundary survey as set forth in §30-13A-1 et seq. or the rules set forth by the Board.

6.4.b. The plat must be stamped "a mortgage inspection survey only, not a boundary survey".

6.4.c. The surveyor must supply written notice to the landowner or other person commissioning his/her services that an inspection was performed and not a boundary survey.

6.3.c. The name of the individual preparing the report and the name, address, license number, signature and seal of the surveyor in professional charge.

§23-1 -5-7. Standards of Professional Conduct

7.1 Licensee's Obligation to the Public

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

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7.1.b. Licensees shall approve and seal only those documents and surveys that conform to accepted surveying standards and safeguard the life, health, property, and welfare of the public.

7.1.c. Licensees shall notify their employer or client and such other authority as may be appropriate when their professional judgment is overruled under circumstances where the life, health, property, or welfare of the public is endangered.

7.1.d. Licensees shall be objective and truthful in professional reports, statements, or testimony. They shall include all relevant and pertinent information in such reports, statements, or testimony.

7.1.e. Licensees shall express a professional opinion publicly only when it is founded upon an adequate knowledge of the facts and a competent evaluation of the subject matter.

7.1.f. Licensees shall issue no statements, criticisms, or arguments on technical matters which are inspired or paid for by interested parties, unless they explicitly identify the interested parties on whose behalf they are speaking and reveal any interest they have in the matters.

7.1.g. Licensees shall not permit the use of their name or firm name by, nor associate in the business ventures with, any person or firm which is engaging in fraudulent or dishonest business or professional practices.

7.1.h. Licensees having knowledge of possible violations of any of these standards of professional conduct shall provide the Board with the information and assistance necessary to make the final determination of such violation.

7.2. Licensee's Obligation to Profession, Clients and Employer

7.2.a. Licensees shall undertake assignment only when qualified by education or experience in the specific technical fields of surveying involved.

7.2.b. Licensees shall not affix their signatures or seals to any plans or documents dealing with subject matter in which they lack competence, nor to any such plan or document not prepared under their direct control and personal supervision.

7.2.c. Licensees may accept assignments for coordination of an entire project, provided that each segment is signed and sealed by the licensee responsible for preparation of that segment.

7.2.d. Licensees shall not reveal facts, data, or information obtained in a professional capacity without the prior consent of the client or employer except as authorized or required by law. Licensees shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties in connection with work for employers or clients.

7.2.e. Licensees shall make full prior disclosures to their employers or clients of potential conflicts of interest or other circumstances which could influence or appear to influence their judgment or the quality of their service.

7.2.f. Licensees shall not accept compensation, financial or otherwise, from more than one party for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.

7.2.g. Licensees shall not solicit or accept a professional contract from a governmental body on which a principal or officer of their organization serves as a member. Conversely, licensees serving as members, advisors, or employees of a government body or department, who are the principals or employees of a private concern, shall not participate in decisions with respect to professional services offered or provided by said concern to the governmental body which they serve.

7.3. Licensee's Obligation to Other Licensees

7.3.a. Licensees shall not falsify or permit misrepresentation of their, or their associates', academic or professional qualifications. They shall not misrepresent or exaggerate their degree of responsibility in prior assignments nor the complexity of said assignments. Presentations incident to the solicitation of employment or business shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or past accomplishments.

7.3.b. Licensees shall not offer, give, solicit, or receive, either directly or indirectly, any commission, or gift, or other valuable consideration in order to secure work, and shall not make any political contribution with the intent to influence the aware of a contract by public authority.

7.3.c. Licensees shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other licensees, nor indiscriminately criticize other licensees' work.

§23-1.7 -5-8. Unethical Practices.

7-1 8.1. In addition to the reasons for suspension or revocation of a license set forth in W. Va. Code §§30-1-8(a) or 30-13A-8(b)29 , any licensee who has committed any of the following unethical practices may be subject to ~~suspension or revocation of a license~~ disciplinary action by the Board:

7-2. 8.2. Signing or affixing a seal to any document prepared by persons who are not employees under supervision of the licensee;

7-3. 8.3. Accepting, paying, or offering to pay, either directly or indirectly, any gift, bribe, or other consideration to make an improper survey;

7-4. 8.4. Associating with any survey project known by the licensee to be fraudulent or dishonest in character;

7-5. 8.5. Failing or refusing to comply with any provision of W. Va. Code §30-13A-1 et seq. or any rule promulgated by the Board or any request, order or final decision of the Board. For the purposes of this subsection: (1) if any licensee orders, counsels, encourages, incites, supports, helps, or assists another person to fail or refuse to comply with any statutory provision, rule, request, order or final decision; or, (2) after the failure or refusal, if a licensee helps or assists the other person to avoid detection of the failure or refusal, then the licensee is considered to have also failed or refused to comply;

7-6. 8.6. Knowingly or maliciously disseminating false statements which are intended to result in injury to the reputation of a licensee, to diminish the esteem, respect, goodwill or confidence in which the licensee is held, or to deter third persons from associating or dealing with the licensee;

7-7. 8.7. Reviewing the work of another ~~land~~ surveyor for the same client, except with the knowledge of the surveyor, or unless the connection of the surveyor with the work has been terminated;

7-8. 8.8. Failing to respond within thirty (30) days to written communications from the Board and to make available any records relevant to an inquiry or complaint about the licensee's professional conduct. The thirty (30) day period begins on the date when the communication was sent by the Board by certified mail with return receipt requested to the last known address of the surveyor;

8.9. Making statements to the public that result in, or have the potential of resulting in, insult or injury.

7-9. 8.10. Using advertising that is false, fraudulent, deceptive, misleading or unlawful; or

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~~7.10.~~ 8.11. Accepting and undertaking to perform ~~land~~ survey services which the surveyor is not competent to perform without obtaining qualified associates, consultants or employees, or failing to directly supervise the work of subordinates in performing these services.

8.12. The surveyor disseminating to the public, including other surveyors, any work product created under contract with a client without first being granted permission by that client. The right to preclude dissemination is non-transferable unless the client has done so in writing to another party.

8.13. Violate the Standards of Professional Conduct in 23 CSR 5-7 of this rule.