

Guidelines for Ethics Committees of the Genesee Valley Land Surveyors Association

Final Draft Version

Submitted by the Ethics Committee Guidelines ad hoc Committee

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Purpose of Guidelines

These guidelines were prepared by an ad hoc Committee of the Genesee Valley Land Surveyors Association [GVLSA] to supplement the mandate set forth in the *Constitution of the Genesee Valley Land Surveyors Association, Inc.*, dated November 17, 1994 and adopted by the members in good standing at the December 4, 1994 Annual Meeting of the Association.

The constitution of the Association provides for an Ethics Committee in Article V, Section VI, to “[i]nvestigate and discourage unethical and illegal practices and submit a report to the [New York State Association of Professional Land Surveyors, Inc.] Ethical Practices Committee,” to “[c]ooperate with authorities concerned with the administration and enforcement of laws that govern the practice of surveying,” and to “[c]onsider and recommend to the Board of Directors action to be taken for cause shown.”

These guidelines are intended to help the Ethics Committee fulfill the mandate of the constitution of GVLSA and to develop a set of policies and guidelines to help insure consistent and fair reviews of complaints against parties practicing the profession of Land Surveying.

Review of Alleged Unethical or Illegal Practices

The Ethics Committee may review the following complaints against a party or parties practicing Land Surveying. Among the resources available to the Ethics Committee for a given review are standards for various types of surveys, statute law, and administrative rules. Several types of complaints that the Committee may investigate and possible reference materials are:

Complaints Involving Alleged Illegal Practice or Unprofessional Conduct

The Ethics Committee should consult the following areas of New York State Law:

Title VIII, Article 145 of New York State Education Law, along with §68.9 of Part 68 of the Regulations of the Commissioner of Education, which sets forth certain definitions and requirements regarding the practice of Land Surveying in the State of New York.

Title VIII, Article 130, Subarticle 4, §6512 (unauthorized practice of a profession) and §6513 (unauthorized use of a professional title).

Title VIII, Article 130, Subarticle 3, §6509, and the Rules of the Board of Regents for Unprofessional Conduct, section 29.1 (general provisions for all professions) and 29.3 (general provisions for design professions) contain laws defining unprofessional conduct.

Complaints involving Alleged Performance of Substandard Surveys

The Ethics Committee has several written standards for some types of surveys. The committee must consider each complaint individually to determine which standard or standards should be used to evaluate the survey. The Committee must also take into account the date of the survey in order to examine the standard in effect at the time of the survey. The most likely relevant standards to consult (as of the date of this document) are:

Minimum Standards for Residential Surveys, adopted by the Monroe County Bar Associations and the Genesee Valley Land Surveyors Association; effective date of latest revision: March 15, 1994.

Code of Practice for Land Surveys, adopted by the New York State Association of Professional Land Surveyors; seventh revision dated July 18, 1997.

Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, adopted by the American Land Title Association, the American Congress on Surveying and Mapping, and the National Society of Professional Surveyors (latest revision, 1997).

Complaints Involving Allegations of Unethical Practices

In addition to illegal practices and substandard surveys, the Ethics Committee may wish to consult with several Canons of Ethics authored by various bodies.

Canons of Ethics adopted by the New York State Association of Professional Land Surveyors on September 24, 1966.

Code of Ethics adopted by the National Society of Professional Surveyors on September 15, 1988.

Other Types of Complaints

It will be left to the discretion of the Ethics Committee as to whether it will review a complaint which does not fall within one of the above described types of complaints, but governed by the restrictions set forth in the next section.

Reviews Generally Not to be Undertaken

The Ethics Committee should not accept complaints for investigation when the only issue at stake is the magnitude of the fee for the services provided.

The Ethics Committee will not investigate allegations of illegal behavior which are not related to the practice of Land Surveying.

The Ethics Committee is not authorized to arbitrate disputes between Land Surveyors and landowners involving real property boundaries, and will avoid investigating such disputes.

The Ethics Committee should avoid contractual disputes which do not involve issues of surveying practice.

The Ethics Committee will not review complaints related to actions or events which take place outside of the geographic area normally practiced by members of the Genesee Valley Land Surveyors Association.

The Ethics Committee will not review a complaint if the Committee is reasonably certain that a court of law with jurisdiction over a case involving the issues raised would reject the complainant's case due to the expiration of a time limit set out in applicable statutes (*i.e.*, the principle of "statute of limitations"). The Ethics committee should avoid investigation of events which took place over one year prior to the submission of the complaint unless there is an accompanying history of the complainant attempting to resolve the problem more or less continuously since the event, the last such efforts at reconciliation having taken place within the past year.

General Procedure for the Evaluation of Cases

The complainant(s) must submit in writing the allegation or allegations to be reviewed by the Ethics Committee, containing the party or parties against whom the complaint is made, the date(s) of the actions which are the focus of the complaint, along with all relevant documentation related to the complaint. The party or parties against whom the complaint is registered will be given the opportunity to submit any relevant material to the Ethics Committee.

The Ethics Committee is responsible for the safekeeping of all submitted materials, and they will be kept strictly confidential with three possible exceptions:

- 1) The materials submitted by the complainant will be made available to the party or parties against whom the complaint is made.
- 2) If the Ethics Committee finds cause for action, all materials may be forwarded to the appropriate organization or agency to support further investigation by that organization or agency.
- 3) The Committee may, if desired, consult with Counsel regarding legal matters, and may consult with other disinterested surveying professionals of high character and having expertise relevant to the issues being investigated. Such consultations may involve materials submitted by the parties of the dispute. The parties being consulted must agree to keep all discussions and the submitted materials confidential.

The Ethics Committee should start its review within 30 days of receiving all required materials from the complainant. The Committee may, at its discretion, contact the parties involved to ask for more details or clarification as necessary.

As part of its review of a case, the Ethics Committee must give due consideration to what constitutes a reasonable standard of proof for the case at hand in order to find a cause for action. To support a finding adverse to the party or parties against whom the complaint is made, the allegations must be clearly substantiated by the evidence presented. Findings by the Ethics Committees must have a basis in fact.

The Ethics Committee shall complete its review and issue its finding in a timely manner.

Actions

The Ethics Committee may issue one of the following as its finding for a complaint being reviewed:

Recommendation for No Action: This is the finding for cases where the facts as presented do not support a cause for action by GVLSA nor justify further investigation by other agencies or organizations.

Recommendation for Action: The Ethics Committee may recommend one of the following actions to the GVLSA Board of Directors:

- Censure, if the party against whom the complaint is submitted is a member of the Genesee Valley Land Surveyors Association.
- Submit the complaint and the results of the Committee's review to the Ethical Practices Committee of the New York State Association of Professional Land Surveyors.
- Submit the complaint and the results of the Committee's review to Counsel.
- Submit the complaint and the results of the Committee's review to the Office of Professional Discipline, the appropriate District Attorney or the New York State Attorney General.

Note that while recommendations to submit the complaint to governmental entities (*e.g.*, O.P.D., District Attorney, Attorney General) appear above, the Ethics Committee should ordinarily allow the Ethical Practices Committee of the New York State Association of Professional Land Surveyors (NYSAPLS) or the Counsel to NYSAPLS to be the agent for such a submission. Therefore a recommendation to forward the complaint to the Office of Professional Discipline, a District Attorney's office, or to the Attorney General should be the finding only for very unusual circumstances.

Closing the Review

Letters shall be written to the parties filing the complaint and the parties against whom the complaint is filed detailing the findings of the Ethics Committee. Further action regarding the case will be carried out in accordance with the findings, as set forth above.

Copies of all records of the review, including the complaint, supporting documentation, correspondence, phone logs, etc., shall be maintained by each member of the Ethics Committee reviewing the complaint.

The Ethics Committee will report their findings and recommendations, if any, to the Board of Directors of GVLSA in an open session. It is suggested that the Committee's report not reveal the name(s) of those being reviewed unless the Committee found cause for action.