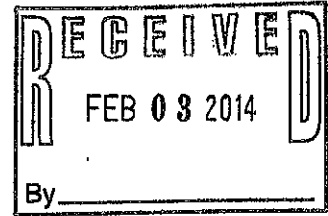


Department of Commerce  
Professional Licensing Bureau  
**FILED** 3/13/2014 (Date)  
DELS'EB  
Board / Commission



**BEFORE THE ENGINEERING AND LAND SURVEYING EXAMINING BOARD OF THE STATE OF IOWA**

---

<b>IN THE MATTER OF:</b>	)	
	)	<b>CASE NO. 12-03</b>
<b>Jayne M. Malone, PLS</b>	)	
<b>#P11807</b>	)	<b>COMBINED STATEMENT OF</b>
	)	<b>CHARGES AND CONSENT ORDER</b>
	)	<b>IN A DISCIPLINARY CASE</b>
<b>Respondent.</b>	)	
	)	

---

**A. STATEMENT OF CHARGES**

1. The Iowa Engineering and Land Surveying Examining Board ("Board") has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 542B, and 272C (2013).
2. Respondent is a licensed professional land surveyor in Iowa. The Board issued Respondent his license as a professional land surveyor by comity on June 19, 1990. Respondent's application to renew filed December 27, 2011 has not been ruled on and is in pending status in light of the out of state discipline brought to the Board's attention. Respondent will now be allowed to renew his license for the 2013-2015 biennium, and upon acceptance of this Consent Order will be in probationary status.
3. When Respondent initially filed his renewal application in December 2011, he left blank the question regarding out of state discipline. In January 2012, he provided the Board copies of three disciplinary proceedings in Oklahoma:
  - a. Case No. 2008-081 involved, among other allegations, Respondent's failure to comply with minimum land surveying standards and certification of plats of survey which were not completed under his direct control and personal supervision. Respondent and the Oklahoma Board entered into a consent order in which Respondent was reprimanded and ordered to pay a civil penalty.
  - b. Case No. 2010-014 involved, among other allegations, Respondent's certification of plats of survey which were not completed under his direct control and personal supervision. Respondent and the Oklahoma Board entered into a consent order in which Respondent was reprimanded and ordered to pay a civil penalty.

c. Case No. 2012-001 involved, among other allegations, Respondent's failure to comply with minimum land surveying standards. Rather than proceed to hearing, Respondent surrendered his Oklahoma license effective June 13, 2011.

4. The Board requested a log of surveys Respondent has completed in the state of Iowa. The Board then submitted the surveys and associated corner certificates to a peer review committee.

5. The three-member peer review committee issued a report in February 2013. The committee concluded that many of the documents Respondent labeled "Land Survey" were actually lease surveys that may not be subject to Iowa Code section 355.7. The committee did, however, find violations of minimum land surveying standards in the plats of survey that were subject to section 355.7, including Iowa Code sections 355.7 and 354.4, and 193C IAC chapter 11, including 11.5, as more fully described in the peer review report.

6. Respondent was asked to make corrections, which he submitted for additional review by the peer review committee. The committee concluded in January 2014 that most but not all of the needed corrections were made.

7. In December 2013, the Board discovered that Respondent was disciplined in Kentucky in January 2013 for failure to disclose the discipline in Oklahoma and based on the Oklahoma discipline itself. Respondent agreed to a 90-day suspension of his Kentucky land surveying license. He also agreed to an administrative fine, to pass the New Mexico State University online ethics course, and to a two year probation during which his land surveying work would be periodically reviewed.

8. The Board also discovered in December 2013 that Respondent was disciplined in Ohio in May 2013 based on the Oklahoma discipline, and his Ohio land surveyor license has been revoked.

9. The Board charges Respondent with:

a. disciplinary action by other licensing jurisdictions in violation of Iowa code section 542B.21(6); and,

b. failure to adhere to minimum land surveying standards, in violation of Iowa Code sections 542B.21(2), 542B.21(9), 355.7, and 354.4, and 193C IAC chapter 11, including 11.5, as provided in paragraph 5, and as more fully set forth in the peer review report.

10. Respondent has a right to a hearing on the charges, but waives his right to hearing and all attendant rights, including the right to seek judicial review, by freely and voluntarily entering into this Order.

11. This Consent Order constitutes discipline against the Respondent, and is the final agency order in the contested case, pursuant to Iowa Code section 17A.10 and 193 Iowa Administrative Code 7.4. Respondent acknowledges that he had an opportunity to consult with legal counsel before signing this Consent Order.

12. Respondent agrees the State's counsel may present this Order to the Board and may have ex parte communications with the Board while presenting it.

13. This Order shall be part of the permanent record of Respondent and shall be considered by the Board in determining the nature and severity of any future disciplinary action to be imposed in the event of any future violations.

14. This Combined Statement of Charges and Consent Order is a public record available for inspection and copying in accordance with the requirements of Iowa Code chapter 22 (2013).

15. Failure to comply with the provisions of this Order shall be grounds for further disciplinary action pursuant to Iowa Code section 272C.3(2)(a) (2013). However, no action may be taken against Respondent for violations of these provisions without a hearing, or waiver of hearing.

16. This Order is subject to approval of the Board: (a) If the Board fails to approve this Order, it shall be of no force or effect on either party, and it shall not be admissible for any purpose in further proceedings in this matter. (b) If the Board approves this Order, it shall fully dispose of all issues in this case.

**IT IS THEREFORE ORDERED:**

**A. Reprimand**

The Respondent is reprimanded for failure to adhere to minimum land surveying standards.

**B. Remedial Action**

(1) By April 1, 2014, Respondent shall correct the first of three plats of survey described in the Peer Review Committee's January 9, 2014 report, record the corrected plats, and submit copies of the corrected plats as recorded to the Board.

(2) By April 1, 2014, Respondent shall make the corrections noted in the third of the three plats of survey described in the Peer Review Committee's January 9, 2014 report and submit the corrections to the Board for another review by the Committee.

Once approved, the Respondent shall make any needed corrections, record the corrected plat, and submit a copy of the corrected plat as recorded to the Board.

(3) If necessary, Respondent shall provide the Peer Review Committee field notes, calculations, and such other documents as the Committee may reasonably request.

(4) The Peer Review Committee will not duplicate field work or determine the accuracy of Respondent's work product, but will review the documents for facial compliance with relevant surveying standards. Respondent shall be solely responsible for his work product and shall take such steps as are necessary to correct the plats and, if needed, finish field work, locate and set monuments, prepare corrected documents, and record the corrected plats of survey, and corner certificates.

### **C. Probation and Desk Review**

Respondent's professional land surveyor license is on probation until further order of the Board. While on probation all plats of survey and associated corner certificates are subject to pre-release desk review by an Iowa licensed professional land surveyor in good standing and pre-approved by the Board on the following terms and conditions:

(1) Respondent shall submit for pre-release desk review all surveys and corner certificates he prepares after the date this Consent Order is fully signed until expressly released by the Board.

(2) An executed copy of the agreement shall be submitted to the Board prior to implementation of the agreement. The desk review agreement may be in letter form, but shall attach a copy of this Consent Order.

(3) The reviewing professional land surveyor shall perform a desk review of each plat of survey and corner certificate before the final documents are signed, submitted to the client, and recorded. The review shall be for facial compliance with minimum land surveying standards. The reviewer will not perform field work or warrant the accuracy of Respondent's work product, but will review field notes, calculations and any other documents reasonably needed. The reviewer shall prepare written comments on each survey's compliance with the minimum land surveying standards set forth in Iowa Code chapters 354 and 355.

(4) The reviewer's recommended revisions or corrections, if any, shall be incorporated into each plat of survey and corner certificate prior to releasing the survey to the client or recording the survey with county officials. A copy of the reviewer's comments shall be submitted directly to the Board from the reviewer. The comments do not need to be received by the Board prior to the completion of the survey. Respondent

shall submit to the Board within ten days of written request copies of draft and final surveys and certificates which were issued subject to desk review.

(5) Once at least twenty plats of survey with associated corner certificates have been reviewed which qualify as division surveys under Iowa Code section 354.4, and which are not retracement surveys, and a period of at least one year of probation has expired, Respondent may petition the Board for release from this requirement. The Board shall release Respondent from desk review of surveys if the draft surveys (i.e., those prepared prior to receiving the reviewer's comments) and review comments do not reveal serious deviations from minimum surveying standards. If the draft surveys or review comments do reveal serious deviations from minimum surveying standards, the review process shall continue until further order of the Board. Respondent may petition the Board for release from the desk review process after an additional ten surveys have been reviewed.

(6) This settlement shall not preclude the Board from filing additional charges if one or more of the surveys or corner certificates subject to desk review demonstrate probable cause to take such an action. Respondent agrees Board review of desk review reports or surveys subject to desk review shall not constitute "personal investigation" or otherwise disqualify a Board member from acting as a presiding officer in any subsequent contested case.

(7) Given Respondent's need to secure an approved reviewer to stay in business once this Consent Order is accepted by the Board, the effective date of the desk review portion of the agreement shall be twenty (20) days following the date this Order is signed by the Board.

**D. Ethics Course**

Respondent shall successfully complete the Surveying Ethics online course offered by the New Mexico State University Center for Surveying Ethics Studies, c/o NMSU Surveying Engineering, PO Box 30001, MSC 3566, Las Cruces, NM 88003-8001. Respondent shall provide documentation of his passing score no later than July 1, 2014. If Respondent has successfully completed this course at anytime after January 1, 2013, he may provide verification and will not be required to retake the course.

**E. Future Compliance**

Respondent shall in the future adhere to all statutes and administrative rules in the practice of land surveying.

**Case 12-13**

**AGREED AND ACCEPTED:**

**The Respondent**

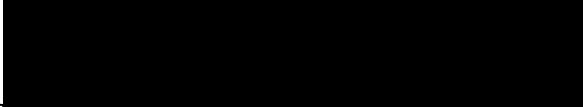


**Jayne Malone, PLS**

1-27-2014

**Date**

**The Iowa Engineering and Land  
Surveying Examining Board**



**By: Marlon Vogt, PE, Chair**

3/13/14

**Date**

**DATE OF ISSUANCE 3/13/2014**