

**ALABAMA BOARD OF LICENSURE
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS**

Complainant,
vs.

DAVID DEWAYNE WOODS

Respondent



Case No. 2019-09-B

HEARING ORDER

On September 9, 2019, a hearing was convened concerning allegations filed against Respondent, David DeWayne Woods, professional land surveyor by the Alabama Board of Licensure for Professional Engineers and Land Surveyors, hereafter referred to as Board. The Board was represented by Mr. Benjamin H. Albritton, Board Counsel, and Administrative Law Judge Jerry Wood presided over the hearing. Respondent appeared without Counsel.

After hearing the testimony of witnesses and considering the evidence presented Administrative Law Judge Wood proposed the following Findings of Fact, Conclusions of Law, Conclusions and Recommendations.

RECOMMENDATION OF THE HEARING OFFICER

This matter came before the Alabama Board of Licensure for Professional Engineers and Land Surveyors ("Board") on November 5, 2019 at 8:30 a.m. Notice of the charges against David DeWayne Woods ("Respondent") and the date and time of the hearing were provided to Respondent on September 18, 2019. The Board engaged the undersigned to act as a Hearing Officer for the matter. A quorum of the Board was present for the hearing.

Ben Albritton, Esq. represented the Board. Respondent appeared pro se. The Board offered Exhibits 1-10, which were admitted without objection.

Respondent offered no exhibits.

The Board called three witnesses:

1. William R. "Rick" Huett;
2. Alecia Bailey; and
3. Bruce Thornell.

The Respondent testified on his own behalf.

Respondent entered a "not guilty" plea on all charges. Tr. at 5. The Respondent indicated the charges were understood. Tr. at 5.

FINDINGS OF FACT

The allegations against Respondent as stated in the Board's Formal Notice of Hearing Charges dated September 17, 2019, are as follows:

CHARGES

The Board alleges on November 26, 2018, a complaint was received from Ms. Alecia Bailey indicating Respondent possibly violated Title 34 of the Code of Alabama by accepting payment of nine hundred dollars (\$900) to perform a survey of property located on County Road 158, DeKalb County, Alabama, without providing a survey drawing to the Complainant.

COUNT 1

The Board alleges Respondent was paid nine hundred dollars (\$900) via a check dated July 31, 2017, to perform a survey of property belonging to Alecia Bailey located on County Road 158, DeKalb County, Alabama. The Board further alleges Respondent failed to provide to the Property Owner a survey drawing of the surveying services he performed of County Road 158, DeKalb County, Alabama that meets the requirements of the Standards of Practice for Surveying in Alabama.

The Board alleges these actions are a violation of the acceptable standards of practice of surveying in the State of Alabama and are violations of the following: Title 34, Chapter I 1, Code of Alabama 1975 34-11-11(a)(2) states : Any gross negligence, incompetency, violation of the rules of professional conduct prescribed by the board, or misconduct in the practice of engineering or land surveying as a professional engineer, engineer intern, professional land surveyor or land surveyor intern.

Administrative Code Section 330-X-14-.05(g) states: The engineer or land surveyor shall endeavor to build a practice and professional reputation on the merit of his or her services as follows: The engineer or land surveyor shall perform his or her work in accordance with approved standards of practice and care and shall endeavor to adhere to all laws in effect in the jurisdiction in which he or she is practicing. Rule 1.03(3) of the Standards of Practice for Surveying in Alabama states "property surveys shall be accompanied by a map depicting the results of said survey."

Administrative Code Section 330-X-14-.06(a)(1) states: The engineer or land surveyor contribute to the maintenance, integrity, independence and competency of the engineering or land surveying profession as follows: The engineer or land surveyor shall not violate any provision of the Alabama law regulating the practice of engineering and land surveying or of the Administrative Code of the Board of Licensure for Professional Engineers and Land Surveyors.

Administrative Code Section 330-X-14-.06(a)(5) states: The engineer or land surveyor shall not engage in any conduct that discredits or tends to discredit the profession of engineering or land surveying.

The Respondent pled not guilty and contended he provided the services agreed upon by him and Ms. Bailey.

William R. "Rick" Huett ("Huett"), Executive Director of the Board, testified Respondent was a currently a licensed Alabama Professional Land Surveyor, having originally been licensed on December 15, 2000. Tr. at 11. Respondent has not previously been disciplined by the Board. Tr. at 11.

On November 26, 2018, the Board received a complaint against Respondent from Alecia Bailey ("Ms. Bailey") complaining that she had engaged the Respondent to provide a survey for property in DeKalb County. The Respondent agreed to perform the survey and charged Ms.

Bailey \$900.00, which she paid to him by her check number 1875 dated July 31, 2017. Ms. Bailey and her father both had initial communications with the Respondent because of Ms. Bailey's military deployment to the Middle East.

Ms. Bailey's complaint details her communication issues with Respondent, her efforts to get a survey, her inability to locate Respondent when she ultimately decided to sue Respondent for "theft" in Small Claims Court in DeKalb County, where service could not be perfected because the process server could not locate Respondent.

Ultimately, an investigative committee consisting of Board Member Nathan Johnson, Board Attorney Ben Albritton, and Huett determined there was probable cause to present the matter to the Board. Tr. at 16-17. The probable cause determination was the failure of Respondent to provide a survey to Ms. Bailey violated standards of practice for land surveyors in Alabama. Tr. at 17.

Ms. Bailey testified she planned to build a house on property her parents obtained when she was in elementary school. Ms. Bailey engaged Respondent to do a survey in 2017. She was deployed to Kuwait. She was not satisfied with Respondent's work since, "We did make an agreement and we settled on an amount and I paid him, and he did cash that check. But I didn't actually receive the paperwork until January 2019, and he conducted the survey in July of 2017." Tr. at 20-21.

Ms. Bailey "wanted a survey of the property. So, I thought it was going to be a very official survey. But what he sent me was a sketch drawing." The "sketch" was sent by Respondent in January 2019 after Ms. Bailey filed her complaint with the Board. Tr. at 23. Ms. Bailey expected "an official survey with an actual official stamp on it, maybe with his name . . . something like that to show that it's official." Tr. at 25.

Ms. Bailey did not, up to the date of the hearing, receive "a map that bears his seal and signature and is official" from Respondent, which is what she contracted for and what she wanted. Tr. at 27-28.

Bruce Thornell ("Mr. Thornell") testified he investigated Ms. Bailey's complaint against Respondent. She paid Respondent for a survey and never got a proper document. Tr. at 36. Mr. Thornell never got from Respondent a map signed and sealed by him for Ms. Bailey's property. Tr. at 41.

Mr. Thornell sent information to Gerald Byrd ("Mr. Byrd"), a Board Technical Advisor who is a land surveyor in Mobile, for his technical review. Tr. at 41. Mr. Byrd responded:

After review of the documents you furnished, this complaint would never have been filed if the surveyor had followed Rule Number 1.03(3) which plainly states, "property boundary surveys shall be accompanied by a map depicting the results of said survey." A surveyor does not have an option whether to prepare a plat or not prepare a plat. The surveyor has provided nothing to his client to prove he completed a survey of their property. There is no plat; therefore, there is no certification and no signature.

Tr. at 43-44. Mr. Thornell read Rule 1.03(3) into the record. Tr. at 46.

The Board rested and Respondent testified on his own behalf. Tr. at 49. Respondent explained that some of the information he ultimately sent to Ms. Bailey in January 2019 did not directly relate to her property but adjacent property. Respondent says Ms. Bailey and her father were interested in what the cost was going to be. Tr. at 51. Respondent says he dealt with Ms. Bailey's father 60-75% of the time. Respondent says the agreement was to "set the corners or find the corners." Tr. at 53. "That's what I provided them with. It was later on they called needing the paperwork." Tr. at 53. Respondent says he told them it would cost more to get what they wanted. Mr. Bailey said we paid you \$900.00 for the survey. Respondent says he told Mr. Bailey they got what they paid for. Tr. At 54.

Respondent admitted he "quit answering the phone." 6 Tr. at 54. Respondent says he had four heart attacks and he has quit surveying. Tr. at 54. Respondent says he lived up to his agreement with Ms. Bailey. Tr. at 55. Respondent said, "I still think I'm right." Tr. at 55. Respondent has still not prepared a map and plat for Ms. Bailey of her property. Tr. at 74.

CONCLUSIONS OF LAW

The Standards of Practice for Surveying in the State of Alabama reads, in pertinent part:

Rule No. 1.02 - DEFINITIONS:

As used in these rules, the following terms have the following meanings where the context permits:

1. **Survey** shall mean the orderly process of

- Conducting research
- Performing field measurements and observations
- Applying mathematical and legal principles to determine, display or indicate land boundaries, land areas, and the position and characteristics of any natural or artificial features on or near the surface of the earth.

It may be further defined according to the type of data obtained, to the methods and instruments used, and to the purpose(s) to be served. All surveys showing property boundary information must be in accordance with Rule 1.03. For purposes of this rule, types of surveys shall include, but not be limited to the following definitions:

a. **Property Boundary Survey** shall mean a survey of property, the primary purpose of which includes, but is not limited to, determining the perimeters of the property being surveyed by establishing in the first instance original property lines, or by retracing the lines and corners of previously established property lines. A property boundary survey is a professional opinion on the physical location of property lines based on appropriate boundary law principles governed by the facts and evidence gathered and evaluated during the course of the survey. A property boundary survey may further include describing and locating fixed improvements, platting or dividing property and preparing descriptions of property. A property boundary survey includes the setting or recovery of corner monumentation. Any survey showing property lines where a property boundary survey was not performed shall have the following note: "THIS IS NOT A PROPERTY BOUNDARY SURVEY."

Rule No. 1.03 - SURVEYING STANDARDS FOR FIELD AND OFFICE (MAP, PLAT, AND DRAWING) states, in pertinent part:

3. Property boundary surveys shall be accompanied by a map depicting the results of said survey. Other surveys, as defined in Rule 1.02 of these standards, shall be accompanied by a map or report, and all applicable requirements of Rule 1.03 apply.
- b. All maps shall bear the name, street, or mailing address, and telephone number of the firm issuing the drawing, along with the name and license number of the surveyor. A surveyor practicing independent of any firm shall have his or her name, street or mailing address, and telephone number on each drawing. All maps shall reflect the date(s) of the field survey and also for any revision thereto. The map and the copies of the map shall have the signature and seal of the licensed surveyor. Electronic signatures are acceptable.

The undersigned recommends, by a preponderance of the evidence, that Respondent is guilty of the charges contained in Count I of the Board's complaint. Specifically, Respondent violated Rule No. 1.03(3) of the Standards of Practice for Surveying in the State of Alabama by failing to provide Ms. Bailey with a map complying with the requirements of 1.03 (e.g., a map with his seal and signature). Respondent attempted throughout the hearing to characterize the services he agreed to perform as setting or finding the corners of the property. Tr. at 52-54.

However, he did concede that the work he performed constituted a survey. Tr. At 68. Pursuant to Rule 1.02 of the Standards of Practice for Surveying in the State of Alabama, "All surveys showing property boundary information must be in accordance with Rule 1.03." Rule 1.02 defines a property boundary survey as a survey of property, the primary purpose of which includes, but is not limited to, determining the perimeters of the property being surveyed by establishing in the first instance original property lines, or by retracing the lines and corners of previously established property lines. [Emphasis added.] The work (i.e., setting or finding the corners of the property) Respondent agreed to perform falls within the definition of a property boundary survey, but the drawing he provided to Ms. Bailey does not comply with Rule No. 1.03. Not only does it not

bear Respondent's signature and seal, it does not include his name, address, telephone number or any of the other required information. In failing to adhere to the Standards of Practice for Surveying in the State of Alabama, Respondent violated Administrative Code Section 330-X-14-.05(g) which reads, in part, "The engineer or land surveyor shall perform his or her work in accordance with approved standards of practice and care and shall endeavor to adhere to all laws in effect in the jurisdiction in which he or she is practicing."

Respondent is also admittedly guilty of failing to communicate accurately and clearly with Ms. Bailey, who paid him \$900.00 for a survey of her property. Respondent failed to communicate clearly about what he had agreed to provide for Ms. Bailey, who in her complaint to the Board complains about "theft" and a failure of Respondent to perform his surveying work pursuant to the extant standards. The Board's technical advisor said it well. Respondent would not have this complaint against him if he had complied with Rule I .03(3).

RECOMMENDATION

Based upon the documentary and testimonial evidence the Board has established by a preponderance of the evidence that Respondent is guilty of the charges. The undersigned (ALJ Jerry Wood) recommends the Board consider a maximum monetary fine and non-renewal of Respondent's certification as a Professional Land Surveyor. Respondent should be taxed with the costs of this investigation and hearing.

ORDER

The Board, after deliberation and review, agrees with and adopts as final the Findings of Fact, Conclusions of Law, and Conclusion proposed by Administrative Law Judge Jerry Wood. The Board finds the Respondent **GUILTY** of the allegation made against him, but **MODIFIES** the disciplinary recommendation of Judge Wood as follows:

1. Respondent shall submit to the Board a check in the amount of \$2,500 made payable to the PE/PLS Fund within 30 days of the date this Order.

2. Respondent shall submit to the Board a check in the amount of \$121.13 made payable to the PE/PLS Fund for cost associated with the hearing within 30 days of the date of this Order.

3. Respondent's professional land surveyor license is suspended for six months.

ENTERED this the 14th day of January 2020.

Randall D. Whorton
Randall D. Whorton

Joseph F. Breighner Jr.
Joseph F. Breighner Jr.

Donald W. Vaughn
Donald W. Vaughn

John E. Averrett
John E. Averrett

Nathan G. Johnson
Nathan G. Johnson

M. Helen Adams-Morales
M. Helen Adams-Morales

Nanette T. Baldwin
Nanette T. Baldwin

Elaine B. Walton
Elaine B. Walton

Marc S. Barter
Marc S. Barter

RECUSED