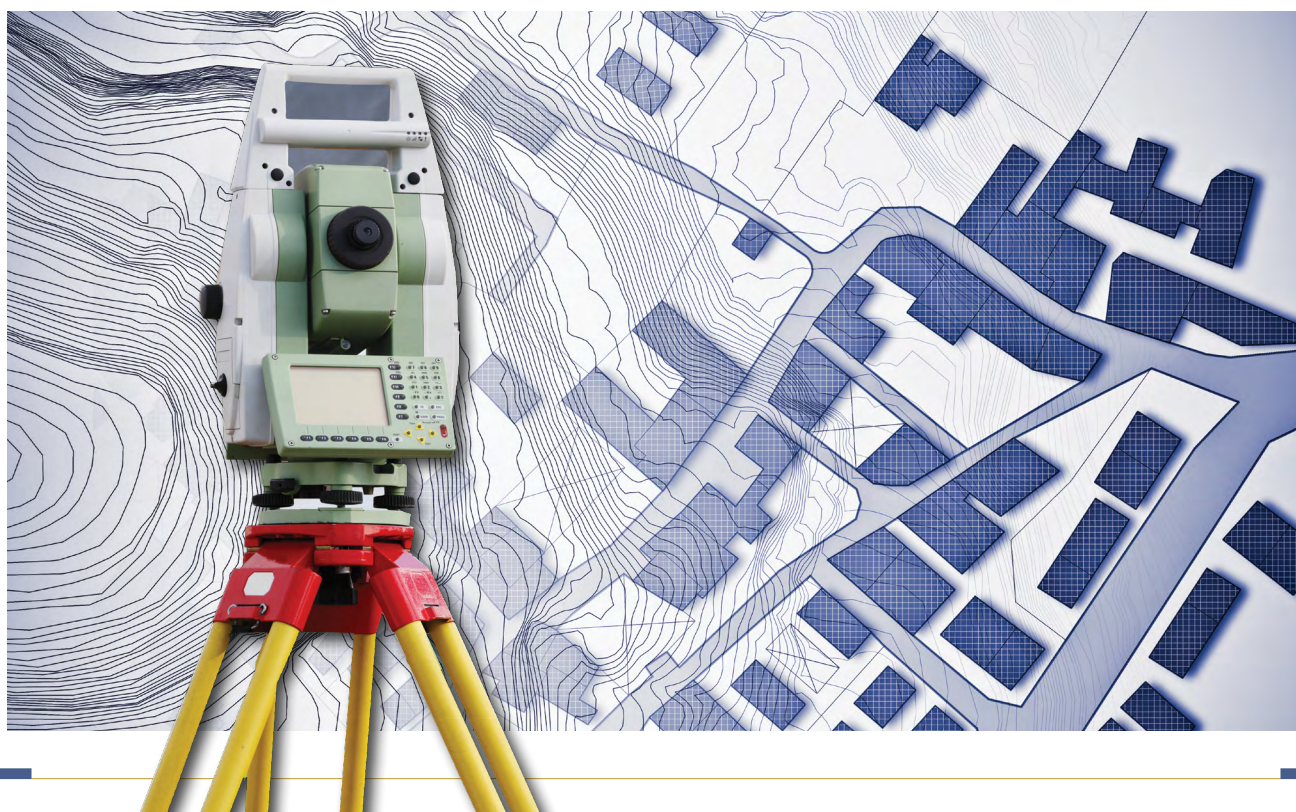




# *The* North Carolina Bulletin

The Newsletter of the North Carolina Board of Examiners for Engineers and Surveyors

*November 2021 Fall Issue*



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# VIEW FROM THE CHAIR

*By John M. Logsdon, PLS*



I have had the privilege of serving as the Board Chair this year, and what a year it has been. Certainly, the Board has not been immune from the impact of COVID-19 on how we conduct business, but through the efforts, dedication and ingenuity of our staff, the Board has been able to continue providing the services to the public that is the mission of the Board.

The principle upon which the Board was created and continues to exist is stated in the enabling statute, Chapter 89C:

In order to safeguard life, health and property, and to promote the public welfare, the practice of engineering and the practice of land surveying in this State are hereby declared to be subject to regulation in the public interest.<sup>1</sup>

To carry out this purpose, in addition to the statutory provisions of Chapter 89C, the Legislature has authorized and directed the Board to adopt regulations governing the practice of engineering and surveying (the “Board Rules”).<sup>2</sup>

The Board does not operate in a vacuum. As with all licensing boards, the Board is part of the executive branch of government, and our members are appointed (and may be removed) by the Governor. The Legislature always retains the ability to amend, repeal and adopt statutes, and upon doing so, the Board must adapt its regulations, policies and procedures to remain faithful to the enactments of the Legislature. In addition, the judicial branch provides checks and balances, to assure that the Board Rules comply with applicable statutes and that both the Board Rules and statutes are in accord with the State and Federal Constitutions.

The regulation of any profession necessarily creates tensions. As an initial matter, does the public need to be protected by statutes and regulations, or can the marketplace provide sufficient protections? If the Legislature determines the public interest requires regulation, as it has for the engineering and surveying professions, such regulation establishes two categories of people:

licensees who may practice the profession, and non-licensees who are prohibited or limited in providing such services. Is the regulation, as adopted, for the purpose of truly protecting the public, or is it merely created to protect the economic interests of the licensees? On what basis does a person become qualified to practice? Does the regulation of a profession adversely impact a person’s constitutionally protected rights, such as freedom of speech?

These questions are not static, the answers to which are decided once and for all, and never revised. During this year, the regulation of our professions is being revisited by the Legislature and challenged in court. Both processes are natural and necessary to the functioning of a healthy democracy.

## **Legislative Action**

In North Carolina, the “right to engage in the practice of engineering or land surveying is a personal right, based on the qualifications of the person as evidenced by the person’s certificate of licensure.”<sup>3</sup> The qualifications necessary to practice either profession are based on evaluations of the applicant’s education, experience and examinations. All states rely on uniform, national examinations prepared and administered by the National Council of Examiners for Engineering and Surveying (NCEES), which promotes mobility of professionals between the states and territories. There is some variation among states as to education and experience requirements for licensure, especially for surveying. To obtain a surveying license, some states require a bachelor of science degree in surveying or equivalent curricula, some require at least an associate’s degree, and some, including North Carolina, provide a pathway to licensure upon graduation from high school or equivalency certificate. Typically, there is an inverse relationship between experience requirements and educational requirements: with more education, less experience is needed for licensure.

For many years prior to 2005, in addition to successfully passing the national examinations, the North Carolina requirements for education and experience for a surveying license were: (a) bachelor of science degree in surveying or equivalent curricula plus two years of progressive practical experience, or (b) associate’s

*continued on next page*

degree in surveying technology plus four years of experience, or (c) graduation from high school plus seven years of experience. In 2005, after considerable study and input from both the profession and educational institutions, the Legislature revised the surveying licensure requirements: bachelor's degree plus two years' experience, or associate's degree plus four years' experience, or high school plus sixteen years' experience. That legislation provided eight years for the implementation of these changes, to allow anyone on a licensure track to complete the process under the existing requirements.

The 2005 revisions shifted the balance of qualifications to practice surveying towards education and away from experience. The change was in line with the reality of the third requirement for licensure: the national examinations prepared by NCEES. These examinations had evolved over time to reflect the more complex and varied work being expected of and performed by surveyors nationwide. In particular, the Fundamentals of Surveying exam moved towards greater emphasis on mathematical principles taught primarily at the college level. Information available in 2005 on the actual results of examinations taken by surveying applicants in North Carolina showed that, without either a bachelor's or associate's degree, applicants were unlikely to be able to pass the national examinations. On average, a person with only a high school education had about 16 years' work experience before passing the examinations.

In January, at the request of members of the North Carolina General Assembly, the Board provided recent information on the education and experience of surveying applicants. Although the sample pool is relatively small, for the past five years the numbers are consistent with those in 2005. For the Fundamentals of Surveying exam, the pass rate for high school graduates was 24%; for those with an associate's degree, 30% and for those with a bachelor's degree, 54%. For the Principles and Practice of Surveying examination, the pass rates were: high school, 55%; associate's degree, 69%, bachelor's degree, 63%. On average, those with a high school education had over 18 years' work experience prior to passing the Principles and Practice of Surveying examination; those with an associate's degree had 11 years' experience.

The qualifications to become a professional surveyor in North Carolina are established by the Legislature. In March of this year, Senator McInnis introduced Senate Bill 219 to amend the experience requirements to be qualified to practice surveying in North Carolina. The legislation has been referred to the appropriate

committees in the House and Senate. As of the writing of this article, the current edition of the bill provides the education and experience requirements be amended as follows: (a) bachelor's degree plus two years' experience, (b) associate degree's plus four years' experience; (c) high school diploma plus seven years' experience. Of course, upon any amendment to the statute, the Board will revise its Rules to align with the statutory changes.

## **Judicial Review**

Also this year, the Board was named as a defendant in two lawsuits filed in Federal court, one involving surveying and the other engineering. Both lawsuits allege that the North Carolina statutes and the Board Rules regulating engineering and surveying violate the right to free speech guaranteed by the First Amendment to the United States Constitution.

The first case involves the operation of a business providing aerial imagery through the use of unmanned aerial vehicles ("UAVs" or "drones").<sup>4</sup> In late 2018, the Board received information concerning a business operated by the plaintiff, Michael Jones, and specifically inquiring whether the services being offered constituted the practice of surveying. In June 2019, the Board issued a letter to Mr. Jones stating that, based on its investigation, the Board determined that there was sufficient evidence to support a charge that the business was practicing or offering to practice surveying without being licensed, including: mapping, surveying and photogrammetry; providing location and dimension data and stating accuracy; producing orthomosaic maps; calculating volumetric quantities; and providing topographic information. The letter further informed Mr. Jones that the Board did not have authority to order discontinuance of his business, but it could apply to a court for an injunction or pursue criminal prosecution for the unlicensed practice of surveying, as allowed by statute. In March of this year, Mr. Jones filed a complaint alleging that creating, processing and disseminating aerial images (including approximate property boundaries), 3D digital models, and data about land and structures (including distances, coordinates, elevations and volumes) are "fully protected speech under the First Amendment." The complaint further stated that the State of North Carolina and the Board have no state interest in preventing Mr. Jones and his company from conducting such activities. The lawsuit seeks a judgment declaring that 89C-2 (declaration of purpose), 89C-3(7) (definition of land surveying), 89C-23 (unlawful practice of engineering and land surveying) and 89C-24 (licensure of business firms), together with various Board rules, violate the First Amendment's right to free speech under the United States Constitution and cannot be enforced.



The second lawsuit involves the unlicensed practice of engineering.<sup>5</sup> The Board received a complaint concerning a report prepared by Wayne Nutt as an expert witness, entitled “Stormwater Flow Characteristics of a 36” Reinforced Concrete Pipe, Tidalholm Village Diverter Line.” Mr. Nutt has a bachelor’s degree in chemical engineering. He is not a licensed professional engineer in any state, but worked for over 40 years as a chemical engineer under what is often referred to as the “industrial exception” to the licensing statute.<sup>6</sup> The Board sent a letter to Mr. Nutt informing him that an investigation had been initiated into charges that he was practicing or offering to practice engineering without a license, and requesting that he provide a written response to the charges. Mr. Nutt responded by filing a lawsuit, stating that he was not “practicing engineering” but was only expressing opinions based on his engineering knowledge and experience concerning the design and/or performance of an as-built storm water system in a residential subdivision, and that he was not signing and sealing engineering plans. The lawsuit alleges that the State of North Carolina has no legitimate or substantial interest in preventing Mr. Nutt from sharing his engineering opinions, including testifying as an expert witness at depositions and at trial, simply because he is unlicensed. The lawsuit seeks a judgment declaring that 89C-3(6) (definition of engineering) and 89C-23 (unlawful practice of engineering and the use of the word “engineer”) violate the First Amendment’s right to free speech under United States Constitution and cannot be enforced.

The Board takes both these lawsuits very seriously, because they go to the heart of North Carolina’s ability to regulate the engineering and surveying professions. If engineering and surveying services are purely speech - expressions of opinions only - then such speech is protected by the First Amendment and cannot be regulated. If, however, engineering and surveying involve the conduct of persons engaged in those fields - gathering information, analyzing facts, applying scientific principles, solving problems, designing solutions - then the conduct can be regulated as necessary to protect the public interest. We anticipate that resolutions of these court cases will take many months. These are important questions concerning an individual’s right to freely express opinions and society’s need to adopt regulations necessary to safeguard life, health and property and to promote public welfare.

It has been an interesting year. I am most grateful to the other members of the Board and to the exceptional staff for their wisdom, guidance and support this past year. In January, I pass the gavel to Jonathan Care, public member, to guide the Board forward, knowing that the professions are in good hands.

<sup>1</sup> N.C. Gen. Stat. § 89C-2.

<sup>2</sup> Title 21, Chapter 56 of the North Carolina Administrative Code

<sup>3</sup> N.C. Gen. Stat. § 89C-2.

<sup>4</sup> 360 Virtual Drone Services, LLC, and Michael Jones v. Andrew L. Ritter, et al, Case No. 21 - cv - 0137, U.S. Dist. Ct., Eastern District of N.C., Western Division, filed March 22, 2021.

<sup>5</sup> Wayne Nutt v. Andrew L. Ritter, et al, Case No. 21 - cv - 00106, U.S. Dist. Ct. for the Eastern District of N.C., Southern Division, filed June 9, 2021.

<sup>6</sup> N.C. Gen. Stat. § 89C-25(7a), which provides an exception to the requirements of Chapter 89C for engineering or surveying activities of a person who is engaged in manufacturing, processing, producing, or transmitting and delivering a product or public utility service, and which activities are reasonably necessary and connected with the primary services performed in the ordinary course of that business; provided that the engineering or surveying activity is not a holding out or an offer to the public of engineering or surveying services.

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## *Brenda L. Moore named new NCBELS Board member*

Brenda L. Moore, PE, was appointed by Governor Roy Cooper on January 28, 2021 to fill the vacancy created by the expiration of the term of Bobbie Shields, PE on December 31, 2020. Ms. Moore’s term will expire on December 31, 2025.

Brenda holds a BS in Civil Engineering from NC State University and a MBA from Meredith College. She has been a licensed engineer in North Carolina since February 2, 1994. She recently retired from the North Carolina Department of Transportation as the State Roadway Design Engineer.

Ms. Moore currently resides in Cary.



*Brenda L. Moore, P.E.*

## Renewals for 2022

License renewals for 2022 begins on December 1. Licensees are encouraged to renew online as it is considerably faster than renewing by mail. Simply log in to the **Licensee Portal** section on the Board's website and enter your license number and password. If you have not set a new password since March 2020, your temporary password is your PIN. You will be prompted to set a new password. If your e-mail is not current with the Board contact [Stephanie Bryant \(sbryant@ncbels.org\)](mailto:sbryant@ncbels.org).

Also, the PDHs you reported the previous year can be viewed in the **Licensee Portal** section. If you are a Professional Engineer and Professional Land Surveyor, you will only receive one renewal form for both licenses. All PE and PLS licenses expire on December 31 each year. Reinstatement fee after January 31 is \$100 (total \$175/ dual licensees \$350).

## Paper Renewal Opt-Out

To streamline the PE/PLS license renewal process and to be environmentally friendly, the Board offers a paper renewal opt-out feature. To opt out of receiving paper renewal forms, log in to the **Licensee Portal** section on the Board's website using your license number and password and follow the opt out instructions. The Board will continue to send e-mail notices when it's time to renew so keep your e-mail address up to date.

## NCEES moves computer-based testing transition of PE Civil exam to 2022

The Principles and Practice of Engineering (PE) Civil exam is moving to computer-based testing (CBT), with appointments available year-round at Pearson VUE test centers beginning April 1, 2022. The exam was offered for the last time in pencil-and-paper format in October 2021. Registration for the April 2022 CBT exam opened November 1, 2021.

NCEES originally planned to complete the PE Civil exam's transition to CBT format in 2023 but fast-tracked the change as part of its response to COVID-19. After the April 2020 pencil-and-paper exam administration was canceled because of the coronavirus pandemic, NCEES added an extra day to the October 2020 administration and began exploring the possibility of moving the PE Civil exam to CBT earlier than planned.

"Under the current COVID-19 guidelines, fewer examinees can be in the exam room at the same time, so we began discussions with Pearson VUE about transitioning the PE Civil exam from 2023 to an earlier date," explained NCEES Chief Officer of Examinations Tim Miller, P.E. "This new format will give examinees more flexibility about when and where they take the exam."

For more information on the PE Civil exam and the transition of NCEES licensing exams to CBT format, visit [ncees.org/cbt](https://ncees.org/cbt).



## The North Carolina Bulletin

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*Executive Director*

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The Signature Agency	<i>Graphic Design</i>

# COPYRIGHT NOTICES ON SURVEY PLATS

By John M. Logsdon, PLS

Twenty years ago, an opinion article appeared in a journal of a professional society suggesting that land surveyors in North Carolina should include copyright notices on their plats. The author stated that the use of a copyright notice on plats would assure the surveyor was paid for the work performed in deed research, field work and plat preparation, and would protect the surveyor's economic interest by providing the surveyor an opportunity to charge for copies of the map and assuring additional compensation for subsequent use of the map. The article further noted that a surveyor's liability remains if the plat is copied and used by someone other than the original client. In the years since the publication of the article, the use of copyright notices on plats has become increasingly common.

The use of copyright notices also implicates the statutes and regulations governing surveying in North Carolina, and in particular the surveyor's certification on plats. In response to these concerns, the Board recently engaged the services of a law firm specializing in intellectual property law to gain a better understanding of the scope and extent of the copyright laws. The Board's primary obligation is the protection of the health, safety and welfare of the public, but this must be balanced with the right of surveyors to the protection of creative works provided by the Copyright Act.

## A. Copyright Law

The purpose of this article is not to provide legal advice to surveyors with regard to the Copyright Act; each surveyor must rely on his or her own understanding of that law as applied to specific facts, hopefully guided by competent legal advice. However, some general comments on copyright law may be of assistance in allowing the reader to understand the Board's position with respect to copyright notices on survey plats.

Article I, Section 8 of the United States Constitution gives Congress the power "to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." Thus, the purpose of a copyright is to promote knowledge and, to encourage that purpose, the author is granted a monopoly for a limited time. The Copyright Act provides that copyright protection includes "original works of authorship, fixed in any tangible medium of expression." However, "the copyright in a compilation or derivative work

extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work." Interpreting the Constitutional requirements for copyright protections, the Supreme Court stated:

*The originality requirement is constitutionally mandated for all works. . . . No one may claim originality as to facts. This is because facts do not owe their origin to an act of authorship. The distinction is one between creation and discovery: the first person to find and report a particular fact has not created the fact; he or she has merely discovered its existence. . . . [Facts] may not be copyrighted and are part of the public domain available to every person.*

The Supreme Court went on to expressly reject the "sweat of the brow" doctrine that some lower courts had used to justify extending copyright protection to factual compilations: "The primary objective of copyright is not to reward the labor of authors, but 'to promote the Progress of Science and Useful Arts.'"

In a recent case, a Federal appellate court applied these principles to a plat of survey that included both existing conditions and a proposed site plan. The court held that the existing physical conditions, including shape and dimensions, contours, and location of existing elements were facts not protected by copyright. However, a plat may be subject to copyright in two respects: (1) where the surveyor exercises originality in setting forth the details of presentation of unprotected information, and (2) where the plat depicts proposed improvements in a sufficiently specific manner, such as a site plat showing the location and footprint of a new building, the location and contours of parking lots, curbs, driveways, utilities, landscape design, and the provision of sediment and erosion controls.

As to those elements on a survey plat that are original and protected, the Copyright Act grants the copyright owner the following rights: (a) to reproduce the copyrighted work, (b) to prepare derivative works based on the copyrighted work, (c) to distribute the copyrighted work to the public for sale or other transfer of ownership, and (d) to display the work publicly. However, to the extent a plat includes elements not protected (e.g., existing physical conditions, or measurements between objects),



these exclusive rights do not apply. The remedies available to a copyright holder for infringement of protected rights include injunctive relief, impoundment of infringing copies, and recovery of monetary damages and lost profits.

Copyright rights arise as a matter of law upon the creation of an original work that falls within the provisions of the Copyright Act and that work is fixed in a tangible form. There is no longer a requirement that a notice of copyright be placed on the plat for the copyright protections to attach. However, if a copyright notice is placed on the plat, it should include a proper indication of copyright (©, Copyright, or Copr.), the date the plat was created or first published, and the identity of the copyright owner. This notice may assist the copyright owner in enforcing his or her rights. Furthermore, the recording of a plat with a Register of Deeds does not diminish the surveyor's copyright rights or ability to assert those rights.

A surveyor's professional liability arising out of the performance of a survey, based on the accuracy of the survey or other legal standards, is wholly separate from the surveyor's rights under copyright law. The surveyor's copyright rights cannot be used as a shield against professional liability arising out of a survey or plat. It is not a defense to liability that the person suffering damage relied on a copy of a plat obtained in violation of copyright law. The issue of the extent of a surveyor's professional liability to others than the surveyor's direct client was recently addressed by the North Carolina Court of Appeals and are beyond the scope of this article.

## B. Clients' Rights to Use a Survey Plat

Generally, the ownership of a copyright is vested in the author of the work: the surveyor who prepared the plat or the employer of the surveyor if in the course and scope of that employment. It is unclear from established law if plats are a category of copyrightable works that can qualify as contractual "works for hire" vesting the copyright rights in the plat in the client through a written agreement between the surveyor and client. If the surveyor and client intend for the client to own those rights, any written contract to that effect should also include an agreement that if not deemed a "work for hire," the copyright rights will be and are assigned to the client once the plat is fixed in tangible form.

In a case where there is no written agreement between the surveyor and the client regarding ownership of the copyright or limiting the

use of a survey plat, a client is considered to have a nonexclusive implied license to use the plat for the purposes intended. The implied license arises when (1) the client requests the survey, (2) the surveyor performs the work requested and delivers the plat to the client, and (3) the surveyor intends that the plat be distributed to fulfill the purposes for which the client requested the survey. This intent to distribute can be inferred from the parties' conduct, prior course of dealing between the client and surveyor, and industry custom.

Clients typically expect to be able to use the plat: they paid for a survey in order to accomplish a particular purpose. This may include: the purchase or sale of property; the development of a tract of land; or the resolution of a dispute with a neighbor. Likewise, the surveyor is typically aware of the purpose for which the survey is obtained. In a purchase or sale, the surveyor knows that the plat likely will be provided to the other party to the transaction, real estate agents, the client's attorney, a title insurance company and a lender. In the development of a tract, the surveyor can expect the map to be provided to engineers, contractors, lenders, attorneys and title companies. In a land dispute, the surveyor reasonably should anticipate that the plat will be provided to the adjoining owners and attorneys and may be used to erect a fence or as an exhibit in court. All are examples of intended uses of the plat, and the client likely has an implied license to use and make copies of the plat for those purposes.

## C. The Intersection of a Copyright Notice with the Board Rules

The following is representative of copyright notices that the Survey Committee of the Board has seen in recent years:

***Copyright ©, ABC Surveying, LLC. All rights reserved. Reproduction or use of the contents of this document, in whole or in part, without written consent of the land surveyor, is prohibited. Only copies from the original of this document, marked with an original signature and embossed seal of the surveyor, shall be considered valid, true copies.***

Surveyors have a constitutional right to protect their original works of authorship through the Federal Copyright Act. Those rights are unquestioned. In addition, though, the North Carolina legislature adopted Chapter 89C with the specific intent to "safeguard life, health and property, and to promote the public welfare," and to that end, the Board has adopted

*continued on next page*



rules that govern the practice of engineering and surveying. These rights and limitations must be viewed in conjunction with copyright law when applied to any particular situation.

The Board Rules appear in Title 21, Chapter 56 of the North Carolina Administrative Code, and include the following:

- A licensee must be objective and truthful and include all relevant and pertinent information in all professional reports, statements or testimony. 21 NCAC 56.701(d)(1).
- All drawings, maps, specifications, reports and other documents representing the final work of a licensee must be certified by the licensee, by signing and sealing in accordance with 21 NCAC 56.1103.
- The results of a survey must be reported to the user of the survey, whether in written or graphic form, in a clear and factual manner. 21 NCAC 56.1602(f).

The Board believes the sample copyright notice conflicts with these Board Rules. In particular:

1. The notice purports to restrict the “use” of the survey plat. As noted above, the client has a reasonable expectation to be able to use the results of the survey – that is why the client obtained and paid for the survey. In the absence of a written agreement, the client has an implied license to use the plat for its intended purposes. Certainly, the surveyor can limit those uses through the use of a written agreement negotiated with the client and signed by both parties. The surveyor cannot circumvent the obligations to be objective and truthful and to include all relevant and pertinent information by unilaterally inserting a restrictive copyright notice. In the absence of a written agreement with the client to limit the uses to which the plat may be put, the sample notice may violate Rule 56.701(d)(1).
2. The notice purports to restrict the use of the “contents” of the survey plat. The Copyright Act makes it clear that the factual information appearing on a plat is not subject to copyright protection. Therefore, the depiction of existing conditions (including the boundary lines, bearings and distances, description of the monuments, and distances of improvements from the boundary) are not subject to copyright protection. The factual information on the plat “may not be copyrighted and are part of the public domain available to every person” in the words of the Supreme Court. Consequently, the purported

restriction on the “contents” of the plat is not truthful and/or does not include all pertinent information. Without making clear that the only “contents” that are protected consist of original works of authorship, this statement violates Rule 56.701(d)(1). In addition, including the words “in whole or in part” implies that no portion of the contents can be used, which is clearly at odds with copyright law that expressly does not protect factual information. The use of “contents” in the sample notice is not clear and factual and its inclusion on the plat may violate Rule 56.1602(f).

3. The notice purports to prohibit “reproduction” of the plat. The right to reproduce works of original authorship is a right protected by copyright. Again, however, absent a written agreement to the contrary, the client has an implied license to use the plat for its intended purpose. Depending on the situation, this could include emailing a copy of the map to the client’s attorney or copying the map for a prospective purchaser or lender.
4. The last sentence of the sample notice appears to confuse copyright protections with a licensee’s certification obligations. Rule 56.1103 requires the plat or final written report of survey to be certified by the signature and seal of the surveyor at the time the plat or report is issued. Once that is done, the plat or report is certified. Making copies of the signed and sealed map does not invalidate the certification. The inclusion of the statement that “only copies from the original of this document, marked with an original signature and embossed seal of the surveyor, shall be considered valid, true copies” makes it appear that another copy of the plat is not certified. Regardless of whether a particular copy includes the original signature or embossed seal, the plat was certified when it was originally issued, and all obligations of the surveyor with regard to the work attached at that time. The inclusion of this statement is confusing, may be inaccurate, and may violate Rule 56.701, Rule 56.1602 and Rule 56.1103.

The Survey Committee of the Board has received comments from licensees expressing concerns over the alteration of plats after the surveyor issued the plat. Modern technology has made alterations to plats nearly undetectable to the untrained eye. To protect against that possibility, these surveyors have included statements on plats similar to the last sentence of the sample copyright notice. The Board recognizes and appreciates this concern, but the surveyor must avoid confusion between certifying the final plat or report and providing assurance that a copy of the certified plat or report has not been altered. To be clear: the Board will not



hold a licensee responsible for unauthorized alterations made to a plat or report after it leaves the control of the licensee. To protect the public from unauthorized alterations, a surveyor may include a statement that copies of the original plat or report that have been made and distributed by the surveyor will include an original signature and/or an embossed (or colored) seal.

#### D. Summary

Surveyors have a constitutional and statutory right to assert copyright protections for their original works of authorship, but such rights do not extend to the factual information contained on a plat. Absent a written agreement to the contrary, a client has an implied license to use the results of a survey, including the plat, for its intended purposes. To avoid any confusion between a surveyor and client, if the surveyor wishes to better define or restrict the client's right to use the survey plat, the surveyor should negotiate a written agreement specifying the uses to which the plat may be put. As noted above, an expansive copyright notice may violate Board Rules. To reduce the possibility that a plat has been altered after leaving the surveyor's control, a surveyor may include a statement on a plat to clarify that copies of the plat that have been distributed by the surveyor will include an original signature and/or embossed or colored seal.

While other forms may also be satisfactory, the following is an example of a notice in compliance with the Board Rules:

**© 2021, ABC Surveying, LLC. All rights reserved. Copies of the original of this document distributed by the surveyor bear the original signature and embossed seal of the surveyor.**

*The author acknowledges the invaluable assistance of Arlene Hanks, J.D., and Moore & Van Allen, PLLC, in his preparation of this article.*

<sup>1</sup> Title 17, United States Code

<sup>2</sup> 17 U.S.C. § 102(a).

<sup>3</sup> 17 U.S.C. § 103(b).

<sup>4</sup> Feist Publications, Inc. v. Rural Telephone Service Company, Inc., 499 U.S. 340, 347-48 (1991).

<sup>5</sup> Id. at 349, quoting U.S. Const. Art. I, § 8.

<sup>6</sup> Sparaco v. Lawler, Hatusky, Skelly, Engineers, LLP, 303 F3d 460 (2<sup>nd</sup> Cir., 2002).

<sup>7</sup> 17 U.S.C. § 106.

<sup>8</sup> 17 U.S.C. §§ 502-504.

<sup>9</sup> A notice is no longer required for works created after 1989. See 17 U.S.C. § 401.

<sup>10</sup> See Lamb v. Styles 824 S.E.2d 170 (N.C. App., 2019).

## CPC Update

Given the ongoing COVID-19 pandemic, and the lack of current in-person educational opportunities, we realize many licensees who may not have previously used online educational offerings may now be looking to take advantage of these online offerings to fulfill their continuing professional competency (CPC) requirements. Many professional associations and societies, private continuing education providers, universities and community colleges have long provided educational content online, which has been acceptable for CPC credit subject to the Board Rules. Below are some of the relevant Board Rules related to online educational content.

Board Rule [21 NCAC 56.1705\(d\)](#) allows Credit for correspondence, televised, Internet, videotaped, audiotaped, and other courses or tutorials, provided an exam is required for completion, shall be based upon one PDH unit for each hour assigned to the course, provided such hours are a reasonably estimated time for an average professional to complete the course.

Further, Board Rule [21 NCAC 56.1706\(2\)](#), requires the licensee to have attendance verification records in the form of completion certificates, or other documents supporting evidence of attendance, which can include a combination of registration confirmation, invoice, image capture of screen, or notes to show that the licensee "attended" the "presentation." Ultimately, the licensee attests to the Board on the renewal form and the maintained CPC log that the reported hours were obtained.

Per Board Rule [21 NCAC 56.1703\(3\)](#) **No exam is required for attendance at a webinar presentation if attendance is documented** as addressed above.

Additionally, your Board's CPC Committee recently met and agreed that webinars previously recorded did not require an exam in order to earn credit for PDHs, so long as attendance is documented as addressed above.

Our web site has a [Continuing Education page](#), which addresses many CPC related [frequently asked questions](#). If you can't find the answer on the web site or still have questions about obtaining your Professional Development Hours online, please contact Martha Michalowski ([mmichalowski@ncbels.org](mailto:mmichalowski@ncbels.org)).

# BOARD ACTIONS

The following summaries represent actions taken by the Board. Penalties vary depending upon the specific circumstances of each case. Space limitations preclude full reporting of all circumstances. The range of disciplinary actions includes: issuing a reprimand; suspend, refuse to renew, refuse to reinstate, or revoke the certificate of licensure; require additional education; or, as appropriate, require reexamination; or levy a civil penalty not in excess of \$5,000 for any engineer or \$2,000 for any land surveyor. Questions or requests for information concerning specific cases should be directed to David S. Tuttle, Board Counsel, at (919) 791-2000, extension 111 or via email at [dstuttle@ncbels.org](mailto:dstuttle@ncbels.org).

## **CASE NO. V2017-032**

William J. Payer [PE 021949 – Revoked]  
Braselton, GA

VIOLATION: Failed to properly certify documents [.1103(a)(3), (b)(1)(3)(5)]; failed to conduct practice in order to protect the public health, safety and welfare [.0701(b)]; failed to be objective and truthful and failed to include all relevant and pertinent information in a professional report [.0701(d)(1)]; failed to fully cooperate in an investigation [G.S. 89C-20]; and produced a deficient, substandard, or inaccurate report(s), failing to protect the public [.0701(b)].

BOARD ACTION: Revoked Engineering Certificate of Licensure.

## **CASE NO. V2017-091**

Douglas B. Cooper, PE [032648]  
Raleigh, NC

VIOLATION: Failed to conduct practice in order to protect the public health, safety and welfare [.0701(b)] and affixed seal to inadequate design documents, failing to protect the public [.0701(b)].

BOARD ACTION: Reprimand.

## **CASE NO. V2018-089**

Richard O. Forkey, PE [031119]  
Leicester, NC

VIOLATION: Affixed seal to inadequate design documents, failing to protect the public [.0701(b)] and failed to properly certify documents [.1103] by not signing, sealing and adequacy reflecting revisions with existing conditions.

BOARD ACTION: Reprimand and \$2,500 civil penalty.

## **CASE NO. V2019-030**

Paul J. Toti, PLS [L-3953]  
Hobbsville, NC

VIOLATION: Performed a substandard survey, failing to protect the public [.0701(b)]; failed to make adequate investigation [.1602(a)]; failed to accurately locate all apparent rights-of-way and/or improvements on a boundary [.1604(d)(8)]; and failed to report the results of a survey in a clear and factual manner [.1602(f)].

BOARD ACTION: Reprimand.

## **CASE NO. V2019-042**

Kevin R. Adams, [PE 017224 – Revoked]  
Kernersville, NC

VIOLATION: Affixed seal to inadequate design documents, failing to protect the public [.0701(b)]; failed to properly certify plans by using a facsimile signature [.1103(a)(3)]; and failed to conduct practice in order to protect the public health, safety and welfare [.0701(b)] by inadequate knowledge of project owner criteria and use and accepting project data and criteria without verifying it, to include verification in the field.

BOARD ACTION: Revoked Engineering Certificate of Licensure.

## **CASE NO. V2019-070**

Zeyn B. Uzman [PE 023826 – Suspended]  
Malvern, PA

VIOLATION: Surrendered license in another jurisdiction [G.S. 89C, .0701(h)] and failed to notify the Board of license discipline within 30 days [.0505(a)].

BOARD ACTION: Suspended Engineering Certificate of Licensure until the Board receives proof that the Kentucky PE license has been renewed or reinstated by the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors.

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**CASE NO. V2019-089**

Shawn T. Rumberger, PLS [L-4909]  
Coats, NC

**VIOLATION:**

Map 1: Failed to make adequate investigation and created an overlap on the adjacent property [.1602(a)]; failed to show calls on property line [.1604(d)(2)]; failed to monument offset corner at the edge of a right-of-way [.1602(d)]; failed to show combined grid factor [.1604(d)(3)]; failed to provide adequate tie [.1602(g), .1604(d)(9)]; and failed to report the results of a survey in a clear and factual manner [.1602(f)] to include not indicating distances as ground or grid, and failing to include the area between the centerline and edge of right-of-way along highway when calculating the total area.

Map 2: Failed to show combined grid factor [.1604(d)(3)]; failed to provide adequate tie [.1602(g), .1604(d)(9)]; and failed to report the results of a survey in a clear and factual manner [.1602(f)] to include labeling bearings incorrectly, showing total distance on line that does not match three distances shown for the line, failing to indicate distances as ground or grid, and failing to include the area between the centerline and edge of right-of-way along highway when calculating the total area.

BOARD ACTION: Reprimand and \$2,000 civil penalty.

**CASE NO. V2020-008**

Parks Waterproofing, LLC [Non-licensed]  
Roaring River, NC

VIOLATION: Practiced, or offered to practice, engineering without a license as required by G.S. 89C-24, 57D and 55B.

BOARD ACTION: Issued letter to place the company on notice that practicing, or offering to practice, engineering in North Carolina without being licensed with the Board, is a violation of G.S. 89C-24, 57D and 55B.

**CASE NO V2020-018**

Justin T. Standley, PLS [L-5031]  
Morganton, NC

VIOLATION: Failed to report the results of a survey in a clear and factual manner [.1602(f)] regarding an easement and driveway; failed to be completely objective and not including all relevant and pertinent information in a professional statement [.0701(d)(1)]; and failed to monument a corner [.1602(d)].

BOARD ACTION: Reprimand.

**CASE NO V2020-020**

Larry Hicks [Non-licensed]  
Harker's Island, NC

VIOLATION: Practiced, or offered to practice, land surveying without a license as required by G.S. 89C-23.

BOARD ACTION: Issued letter to place individual on notice that practicing, or offering to practice, land surveying in North Carolina without being licensed with the Board, is a violation of G.S. 89C-23.

**CASE NO. V2020-022**

Jonathan T. Gilbert, PLS [L-3971]  
Jupiter, FL

VIOLATION: Performed an inaccurate or substandard survey, failing to protect the public [.0701(b)]; failed to monument corners [.1602(d)]; failed to report the results of a survey in a clear and factual manner [.1602(f)]; failed to accurately locate all apparent rights-of-way and improvements on the boundary [.1604(d)(8)]; and affixed seal to work not done under direct supervisory control or responsible charge [.0701(c)(3)].

BOARD ACTION: Reprimand, \$1,000 civil penalty and ethics course.

**CASE NO. V2020-023**

Sylvia E. Higdon, PLS [L-4369]  
Bryson City, NC

VIOLATION: Failed to perform services in an ethical manner [.0701(g)] and performed a substandard survey, failing to protect the public, by not showing lappages with previous surveys [.0701(b)].

BOARD ACTION: Reprimand, \$2,000 civil penalty and ethics course.



**CASE NO. V2020-027**

Cenero, LLC [Non-licensed]  
Malvern, PA

VIOLATION: Practiced, or offered to practice, engineering without a license as required by G.S. 89C-24 and 55B.

BOARD ACTION: Issued letter to place the company on notice that practicing, or offering to practice, engineering in North Carolina without being licensed with the Board, is a violation of G.S. 89C-24 and 55B.

**CASE NO. V2020-029**

Sean Reymann [Non-licensed]  
Matthews, NC

VIOLATION Practiced, or offered to practice, engineering without a license as required by G.S. 89C-23.

BOARD ACTION: Issued letter to place individual on notice that practicing, or offering to practice, engineering in North Carolina without being licensed with the Board is a violation of G.S. 89C-23.

**CASE NO V2020-030**

Restaurant Design & Development, LLC [Non-licensed]  
Matthews, NC

VIOLATION: Practiced, or offered to practice, engineering without a license as required by G.S. 89C-23, 24, 55B and 57D.

BOARD ACTION: Issued letter to place company on notice that practicing, or offering to practice, engineering in North Carolina, without being licensed with the Board, is a violation of G.S. 89C-23, 24, 55B and 57D.

**CASE NO. V2020-032**

Olta Kapinova [Non-licensed]  
Durham, NC

VIOLATION: Practiced, or offered to practice, engineering without a license as required by G.S. 89C-23.

BOARD ACTIONS: Issued letter to place individual on notice that practicing, or offering to practice, engineering in North Carolina without being licensed with the Board is a violation of G.S. 89C-23.

**CASE NO. V2020-036**

CBRE, Inc. [Non-licensed]  
White Plains, NY

VIOLATION: Practiced, or offered to practice, engineering without a license as required by G.S. 89C-24 and 55B.

BOARD ACTION: Issued letter to place company on notice that practicing, or offering to practice, engineering in North Carolina without being licensed with the Board is a violation of G.S. 89C-24 and 55B.

**CASE NO. V2020-041**

Jordan Consultants, ASLA, PA [ Non-licensed]  
Winston-Salem, NC

VIOLATION: Practiced, or offered to practice, engineering without a license as required by G.S. 89C-23, 24 and 55B and using the words "engineer" or "engineering" in violation of licensing required by G.S. 89C-23.

BOARD ACTION: Issued letter to place the company on notice that practicing, or offering to practice, engineering in North Carolina without being licensed with the Board, is a violation of G.S. 89C-23, 24 and 55B, and using the words "engineer" or "engineering" without being licensed with the Board, is a violation of G.S. 89C-23.

**CASE NO. V2020-046**

Frameworks Engineering, LLC [Non-licensed]  
Marietta, GA

VIOLATION: Practiced, or offered to practice, engineering without a license as required by G.S 89C-24, 57D and 55B.

BOARD ACTION: Issued letter to place the company on notice that practicing, or offering to practice, engineering in North Carolina without being licensed with the Board, is a violation of G.S. 89C-24, 57D and 55B.

**CASE NO. V2020-050**

Dean J. Slate, PLS [L-2818]  
King, NC

VIOLATION: Performed an inaccurate or substandard survey, failing to protect the public [.0701(b)]; failed to make adequate investigation [.1602(a)]; failed to report the results of a survey in a clear and factual manner [.1602(f)]; failed to monument all corners [.1602(d)]; failed to properly reference the north arrow [.1604(d)]

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(1)); failed to adequately describe revisions [.1103(a)(7)]; and failed to provide proper certificate language [.1607(b)] as to GPS survey.

BOARD ACTION: Reprimand and \$2,000 civil penalty.

**CASE NO. V2020-060**

Daniel J. Hinkle, Sr. [Non-licensed]  
Dana, NC

VIOLATION: Practiced, or offered to practice, engineering without a license as required by G.S. 89C-23.

BOARD ACTION: Issued letter to place individual on notice that practicing, or offering to practice, engineering in North Carolina without being licensed with the Board is a violation of G.S. 89C-23.

**CASE NO. V2020-061**

Blue Ridge Building Components, Inc. [Non-licensed]  
Dana, NC

VIOLATION: Practiced, or offered to practice, engineering without a license as required by G.S. 89C-23, 24 and 55B.

BOARD ACTION: Issued letter to place company on notice that practicing, or offering to practice, engineering in North Carolina without being licensed, is a violation of G.S. 89C-23, 24 and 55B.

**CASE NO. V2020-065**

Kelly Still [Non-licensed]  
Huntersville, NC

VIOLATION: Practiced, or offered to practice, engineering without a license as required by G.S. 89C-23.

BOARD ACTION: Issued letter to place individual on notice that practicing, or offering to practice, engineering in North Carolina without being licensed with the Board, is a violation of G.S. 89C-23.

**CASE NO. V2020-068**

J & B Hartigan, Inc.  
Carrollton, VA

VIOLATION: Practiced, or offered to practice, engineering without a license as required by G.S. 89C-23, 24 and 55B.

BOARD ACTION: Issued letter to place company on notice that

practicing, or offering to practice, engineering in North Carolina without being licensed with the Board is a violation of G.S. 89C-23, 24 and 55B.

**CASE NO. V2020-071**

Richard Paul Stacy [Non-licensed]  
Durham, NC

VIOLATION: Practiced, or offered to practice, engineering without a license as required by G. S. 89C-23 and presented or attempted to use the certificate of licensure or seal of another in violation of G.S. 89C-23.

BOARD ACTION: Issued letter to place individual on notice that practicing, or offering to practice, engineering in North Carolina without being licensed with the Board and presenting or attempting use the certificate of licensure or seal of another, is a violation of G.S. 89C-23.

**CASE NO. V2020-072**

RTP Decks [Non-licensed]  
Durham, NC

VIOLATION: Practiced, or offered to practice, engineering without a license as required by G. S. 89C-24 and presented or attempted to use the certificate of licensure or seal of another in violation of G.S. 89C-23.

BOARD ACTION: Issued letter to place company on notice that practicing, or offering to practice, engineering in North Carolina without being licensed with the Board and presenting or attempting to use the certificate of licensure or seal of another, is a violation of G.S. 89C-23, 24.

**CASE NO. V2020-074**

Michael J. Stansbury, PE [046699]  
Leesburg, VA

VIOLATION: Submitted false information on an application form when obtaining certificate of licensure [G.S. 89C-23, .0701(d)(1)] by not reporting a prior disciplinary action.

BOARD ACTION: Reprimand and \$500 civil penalty.

**CASE NO. V2020-075**

William E. Hayes, PLS [L-3421]  
Latta, SC

VIOLATION: Practiced, or offered to practice land surveying, on an expired certificate of licensure [G.S. 89-16, 23] and failed to report the result of a survey as a map or report of survey [.1602(f)].

BOARD ACTION: Reprimand and \$1,000 civil penalty.

**CASE NO. V2020-076**

American Surveying and Mapping, Inc. [Non-licensed]  
Orlando, FL

VIOLATION: Practiced, or offered to practice, land surveying and engineering in North Carolina without a license as required by G.S. 89C-23, 24 and 55B.

BOARD ACTION: Issued letter to place company on notice that using the words “survey”, “surveyor” or “surveying” is a violation of licensing required by G.S. 89C and practicing, or offering to practice, land surveying and engineering without being licensed with the Board, is a violation of G.S. 89C-23, 24 and 55B.

**CASE NO. V2020-080**

Gerald M. Haskins, PE – Restricted [005548]  
Hendersonville, NC

VIOLATION: Performed services outside area of competence [.0701(c)(3)]; produced a deficient work product, failing to protect the public [.0701(b)]; and failed to conduct practice in order to protect the public health, safety and welfare [.0701(b)].

BOARD ACTION: Reprimand, \$1,000 civil penalty and restriction from geotechnical engineering in addition to existing structural engineering restriction until proof of passing applicable NCEES exams.

**CASE NO. V2020-086**

Denzel Makin [Non-licensed]  
Greenville, SC

VIOLATION: Practiced, or offered to practice, engineering without a license as required by G.S. 89C-23.

BOARD ACTION: Issued letter to place individual on notice that practicing, or offering to practice, engineering in North Carolina without being licensed with the Board, is a violation of G.S. 89C-23.

**CASE NO. V2020-087**

Diamond Hill Plywood Company [Non-licensed]  
Darlington, SC

VIOLATION: Practiced, or offered to practice, engineering without a license as required by G.S. 89C-23, 24, and 55B.

BOARD ACTION: Issued letter to place company on notice that practicing, or offering to practice, engineering in North Carolina without being licensed with the Board, is a violation of G.S. 89C-23, 24 and 55B.

**CASE NO. V2020-088**

Jorge Eduardo Fierro [Non-licensed; PLS No. L-4128 – Revoked]  
High Point, NC

VIOLATION: This individual and his firm practiced, or offered to practice, engineering and land surveying without a license as required by G.S. 89C-23, 24.

BOARD ACTION: Issued letter to place individual and company on notice that practicing, or offering to practice, land surveying and engineering without being licensed with the Board, is a violation of G.S. 89C-23, 24.

**CASE NO V2020-103**

Little Creek Electronics, Inc. [Non-licensed]  
Greensboro, NC

VIOLATION: Practiced, or offered to practice, engineering and used the words “engineer” or “engineering” in violation of licensing required by G.S. 89C-23, 24 and 55B.

BOARD ACTION: Issued letter to place the company on notice that practicing, or offering to practice, engineering in North Carolina and using the words “engineer” or “engineering” without being licensed with the Board, is a violation of G.S. 89C-23, 24 and 55B.

**CASE NO. V2020-105**

Sohn, Inc. [Non-licensed]  
Clayton, NC

VIOLATION: Practiced, or offered to practice, engineering without a license as required and presented or attempted to present, the certificate of licensure or seal of another, in violation of G.S. 89C-23, 24 and 55B.



**BOARD ACTION:** Issued letter to place company on notice that practicing, or offering to practice, engineering in North Carolina without being licensed with the Board and presenting, or attempting to present, the certificate of licensure or seal of another, is a violation of G.S. 89C-23, 24 and 55B.

**CASE NO. V2021-001**

Andrew R. Quirk [Non-licensed]  
Martinsville, VA

**VIOLATION:** Practiced, or offered to practice, engineering without a license as required by G.S. 89C-23.

**BOARD ACTION:** Issued letter to place individual on notice that practicing, or offering to practice, engineering in North Carolina without being licensed with the Board, is a violation of G.S. 89C-23.

**CASE NO. V2021-006**

Brandon J. Mosteller, PE [039164]  
Lincolnton, NC

**VIOLATION:** Convicted of a felony and/or crimes involving moral turpitude [G.S. 89C-21(a)(3)] and failed to notify the Board of a criminal conviction within 30 days as required [.0505(a)].

**BOARD ACTION:** Reprimand and require reporting to the Board of any change of status of the ordered sentencing terms.

**CASE NO. V2021-022**

Michael A. Copeland, PE – Restricted [031504]  
Wilmington, NC

**VIOLATION:** Affixed seal to inadequate design documents, failing to protect the public [.0701(b)] and practiced outside area of competence [.0701(c)(3)].

**BOARD ACTION:** Reprimand, \$1,000 civil penalty, ethics course and restrict practice from commercial projects until satisfies the Board by education including commercial building code that he is competent to do so.

**CASE NO V2021-031**

H. Andrew Holtom, PE [036559]  
Columbia, OH

**VIOLATION:** Submitted false information on license renewal [G.S. 89C-23, .0701(d)]; disciplined in another jurisdiction [G.S. 89C, .0701(h)]; and failed to notify the Board of license discipline within 30 days as required [.0505(a)].

**BOARD ACTION:** Reprimand.

**CASE NO. V2021-055**

Wayne L. Nutt [Non-licensed]  
Wilmington, NC

**VIOLATION:** Practiced, or offered to practice, engineering without a license as required by G.S. 89C-23.

**BOARD ACTION:** Issued letter to place individual on notice that practicing, or offering to practice, engineering in North Carolina without being licensed with the Board, is a violation of G.S. 89C-23.

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## MEMBER NOTES

### *Address Changes*

Per Board Rule [21 NCAC 56.0505(a), .0606(a)], you are required to provide the physical places of business and residential addresses. You can still provide a PO Box for your mailing address. You can log in to the [Licensee Portal](#) section on the Board's website at anytime to update your addresses and e-mail. Also, you are required to give notice to the Board of a change of business or residential address within 30 days of the change.

**Access the Licensee Portal section of the Board's website here:**  
<https://www.membersbase.com/ncbelsindividual/login.aspx>

### *Board Meetings*

**Meetings of the NC Board of Examiners for Engineers and Surveyors are open to the public.** Meetings are conducted at the Board office at 4601 Six Forks Road, Suite 310, Raleigh, NC 27609 (unless otherwise noted).

### *Business Firm Questions?*

**For any business firm questions, contact:** Mark Mazanek, Director of Firm Licensure, via email to [firms@ncbels.org](mailto:firms@ncbels.org) or by phone at (919) 791-2000 x102.



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