

## **Land Surveying Case Study (V-6)**

### **Robert Smith, PLS**

**Instructions:** Review the case study and determine if the surveyor violated the Board Rules or G. S. 89C.

Identify the specific Rules or statutory provisions violated by the surveyor and recommend a disciplinary action if appropriate. After reading the case study modify the original charges cited below if appropriate.

**Original Charges:** Robert Smith, PLS allegedly failed to perform services in an ethical manner [.0701(g)]; and supplanted or attempted to supplant another land surveyor in a particular employment after becoming aware they had been selected [.0701(e)(7)].

In recommending disciplinary action consider the nature, gravity and persistence of the violations and any aggravating or mitigating circumstances. The disciplinary action can include any of the following (sanctions can be combined):

- Reprimand
- Civil penalty up to \$2000
- Ethics education (or other courses)
- Restriction of practice
- Reexamination
- Suspension of license (normally not more than 2 years)
- Revocation of license

**Final Charges and Recommended Action:**

## INVESTIGATIVE REPORT EXCERPTS

Reference: Case No. V-6  
Robert Smith, PLS

### SYNOPSIS

This matter is the result of sworn to and notarized charges filed with the Board by Tim Moore, PE, PLS. Mr. Moore wrote that Robert Smith supplanted work from TM & Associates, PC, while serving as an employee of same. Based upon the complaint it was alleged that Mr. Smith failed to perform services in an ethical manner [.0701(g)] and supplanted or attempted to supplant another land surveyor in a particular employment after becoming aware they had been selected [.0701(e)(7)].

Mr. Smith was notified of the charges through Board correspondence and he responded in writing. He wrote that he never supplanted or attempted to supplant TM & Associates, PC's business.

There are no previous violations listed on the Board's database for Mr. Smith and he is not listed on the NCEES Enforcement Exchange web site.

The following individuals were interviewed during the investigation:

- Tim Moore, PE, PLS – complainant
- Joe Wilson – Mr. Smith's client
- Frank Owen – Mr. Smith's client
- Cindy Brown – Mr. Smith's client
- William Jones – Mr. Smith's client
- Steve Bonds – Mr. Smith's client
- Lisa Timms – Mr. Smith's client
- Robert Smith, PLS – respondent

This matter is pending consideration by the Land Surveying Review Committee of the North Carolina Board of Examiners for Engineers and Surveyors.

## DETAILS OF INVESTIGATION

### Report of Interview with Tim Moore, PE, PLS

TM & Associates, PC

Complainant

Mr. Moore currently works for TM & Associates, PC and is the company's Chief Operating Officer. TM & Associates, PC offers typical consulting and surveying services to both public and private clients.

Mr. Moore explained that Robert Smith started working for one of the principals of the firm right out of high school in the mid-1980s. Around 2003 Mr. Smith was laid off because he was not licensed. Mr. Smith subsequently obtained his license and was rehired by the company in 2006 or 2007. Mr. Smith served as the resident Professional Land Surveyor until earlier this year when this matter came to light.

Mr. Moore first became aware of Mr. Smith's side jobs when Mr. Smith asked him to install new software on his computer. One day when Mr. Smith and a group from the office went out to lunch, he (Moore) stayed behind to install the new software on Mr. Smith's computer. He was in the process of shutting some things down when he saw a map Mr. Smith had left up on his computer screen. Mr. Smith's information was in the title block. Mr. Moore looked in the hard drive where the map was saved and found several other DWG files that did not match what TM & Associates, PC had in its records. He went ahead and installed the software and left Mr. Smith's computer displaying the log on screen. Mr. Moore then went into the server and saved the files that contained Mr. Smith's information rather than that of TM & Associates, PC.

Mr. Moore made several calls to other members of management, the Board of Directors, and an employment attorney and informed them of the information he found. He indicated that during the time between his locating the files and setting up a meeting with Mr. Smith that the files had been deleted from Mr. Smith's computer.

Mr. Moore stated they met with Mr. Smith, Mr. Smith's wife, who was also an employee and shareholder in the company, and employee Ken Penland to discuss what had been found. They asked Mr. Smith for a list of all the moonlighting projects to which he initially agreed to provide, but later declined. Mr. Moore stated all three were terminated that day. Mr. Penland admitted that he helped Mr. Smith do outside jobs and knew it was wrong. Mr. Penland indicated he fully expected to be having the conversation and that Mr. Penland admitted he was bringing work from family and friends to TM & Associates, PC that Mr. Smith would recommend doing on the side.

Mr. Moore stated because of Mr. Smith's long-standing history with TM & Associates, PC, he was a "face" of the company. He indicated TM & Associates, PC's clients knew to call Mr. Smith, or if not, Mr. Smith is who they were initially referred to for surveying projects. Mr. Smith was responsible for securing all the surveying jobs and setting the prices.

Mr. Moore stated Mr. Smith's wife knew what was going on. He asked Mr. Smith if she knew and he responded yes and that she liked the extra money. Mr. Moore indicated that Ms. Smith denied the extent of what was found on his computer but did admit to having done one or two jobs for friends and family.

Report of Interview with Joe Wilson

Witness

Mr. Wilson indicated Ken Penland is a former employee of TM & Associates, PC. He said Mr. Penland's family are good customers in his (Wilson) store and that he remembered Mr. Penland mentioning one time that he wanted to be a surveyor. Mr. Wilson explained that his mother-in-law, Mandy Banks, needed a survey so he mentioned it to Mr. Penland. Mr. Penland said he and his boss, Robert Smith, could do it. Mr. Wilson added that Ms. Banks had already gotten a quote from a local surveyor that seemed high. Mr. Penland told him he and Mr. Smith could do the job at a much better price. They never attempted to call TM & Associates, PC and had he (Wilson) not known Mr. Penland they would have likely hired someone else in the county rather than going to the next county over for a surveyor, which is where Mr. Smith was located. Mr. Wilson stated it was his understanding from Mr. Penland that TM & Associates, PC does mostly state projects and environmental work.

Report of Interview with Frank Owen

Witness

Mr. Owen was previously employed by TM & Associates, PC for nine years until he left about seven years ago.

Mr. Owen worked with Robert Smith for a number of years and knew he did survey work on the side. Mr. Smith was recently surveying for an adjacent property owner so he asked him for a quote to survey a section of his (Owen) land while he was on-site. Mr. Owen knew Mr. Smith was working for TM & Associates, PC at the time, but his understanding was that Mr. Smith would be doing the work on the side. He does not remember what title block Mr. Smith used and who Mr. Smith was working for never came up. Mr. Smith was in his personal truck when he came to do the survey work. He indicated it surprises him that Mr. Smith would run a side business through TM & Associates, PC using their equipment.

Report of Interview with Cindy Brown

Witness

Ms. Brown acknowledged hiring Robert Smith to survey her family's land for refinance purposes. She indicated a previous survey by TM & Associates, PC in 1998 was for a home equity line of credit that included all of their land. Ms. Brown went on to say when they refinanced last year they did not want to attach all of their land to the deed of trust so they hired Mr. Smith to cut out only the portion that includes the house.

Ms. Brown explained that her sister has a friend who knows Mr. Smith and recommended they call him directly for the survey. They called TM & Associates, PC and one other company for prices, but since her sister's friend knew Mr. Smith personally they decided to hire him. Ms. Brown clarified that she may have called TM & Associates, PC just to get Mr. Smith's phone number, but they never intended to hire TM & Associates, PC since her sister's friend knew Mr. Smith.

Report of Interview with William Jones

Witness

Mr. Jones has known Robert Smith for years and knew that he was employed by TM & Associates, PC. He believes he called Mr. Smith at his residence to inquire about survey work. The work Mr. Smith did for him did not interfere with his work at TM & Associates, PC because Mr. Smith came on a Saturday to do the work. Mr. Jones knew that TM & Associates, PC had been doing work in other states so he was not sure they would have even be able to do what he needed.

Report of Interview with Steve Bonds

Witness

Mr. Bonds hired Robert Smith because Mr. Smith knows his (Bonds) brother. He acknowledged knowing that Mr. Smith worked for TM & Associates, PC, but added that he also knew Mr. Smith did side jobs. Mr. Bonds acknowledged that Mr. Smith had done survey work for him in the past as an employee of TM & Associates, PC. His brother told him to call Mr. Smith and ask if it would be cheaper if he did it as a side job. Mr. Bonds had also gotten a quote from a local surveyor, but it was higher than Mr. Smith's price.

Report of Interview with Lisa Timms

Witness

Ms. Timms stated Robert Smith's mother is a high school friend of hers. She just happened to need a survey when Mr. Smith's mother called to chat. She mentioned that her son had started doing survey work on his own. Ms. Timms knew that Mr. Smith had worked for TM & Associates, PC, but she was under the impression based on her conversation with Mr. Smith's mother that he was no longer working there and was trying to make it on his own. Ms. Timms called Mr. Smith directly using the number Mr. Smith's mother had given her.

Report of Interview with Robert Smith, PLS

Respondent

Mr. Smith was interviewed at his attorney's office. Mr. Smith has been licensed as a Professional Land Surveyor in North Carolina for eight years. He is not licensed in any other states and does not have any other professional licenses. Mr. Smith has taken some survey course work at a community college but did not obtain a degree. He is currently employed by a design-build firm as their Surveying Manager. Mr. Smith still

does about 10 surveys a year under his signature name. He does most of his side work by himself using a Trimble robotic unit with a data collector.

Mr. Smith previously worked for TM & Associates, PC. Prior to TM & Associates, PC he worked for one of the firm's principals for 18 years. He then worked for another surveying firm for a couple years before returning to TM & Associates, PC six years ago as the surveyor in responsible charge of the office. He left the firm nine months ago. There were two other Professional Land Surveyors in the office, however, he fielded the calls and secured the surveying projects.

Mr. Smith stated that during the time he worked for TM & Associates, PC he also conducted side jobs under his signature name. Those jobs were obtained through friends who had given out his phone number. Mr. Smith started doing side jobs before he ever went back to work with TM & Associates, PC. He indicated word of mouth goes a long way when you are working for yourself. Mr. Smith added that if you are doing a good job, your clients will spread the word and more people will call you for work. Mr. Smith received calls for side jobs on his company issued cell phone and at his house. He was allowed to use his company cell phone for personal calls.

Mr. Smith stated the only job he recalls a client calling directly to TM & Associates, PC was the Steve Bonds job. Mr. Bonds called him on his company cell phone and believed he was calling him as a representative of TM & Associates, PC. Mr. Smith indicated a few of his clients inquired if he was still working for TM & Associates, PC. He would always tell them that he did still work for the company. When Mr. Bonds called he gave him a price, but then told Mr. Bonds he could do it cheaper on the side. Mr. Smith does not recall if he originally suggested the lower price or if Mr. Bonds asked.

In one other instance, Michael Kent called the office, which got forwarded to him. He told Mr. Kent what TM & Associates, PC would charge and that Mr. Kent called back and asked if he would do it cheaper on the side. Mr. Smith acknowledged also doing survey work for Frank Owen, who was a former employee of TM & Associates, PC. As far as he knows Mr. Owen believed he was doing the work on the side and not as an employee of TM & Associates, PC.

Mr. Smith stated he had been doing side work since 2004 while he was working for another surveying company. He indicated that shortly after going back to work for TM & Associates, PC he started doing side work again. Mr. Smith did not inform company management about the side work because it was against company policy and he would have been terminated. He was fully aware of the policy, but does not have a copy of it. Mr. Smith acknowledged that this statement regarding the company policy is different than what was in his written response to the Board. He went on to say he must have been mistaken in his written response when he said he didn't recall any policies prohibiting him from performing survey work on the side for family and friends who were not clients of TM & Associates, PC or who did not come to TM & Associates, PC for the work.

Mr. Smith stated he used his father-in-law's equipment for some of his side jobs and TM & Associates, PC's equipment on others. He acknowledged trying to delete the work from his computer to hide what he had been doing. Mr. Smith indicated that Ken Penland, a former employee of TM & Associates, PC, occasionally assisted him on his side jobs. He added that other times he would do the work by himself using a robotic unit.

Mr. Smith said that some of the clients came to him by word-of-mouth and others he knew personally. Mr. Smith stated former clients of TM & Associates, PC specifically asked for his independent services and they knew of his independent work through word-of-mouth. He believes they would ask for his independent services because his price would be cheaper. He does not know how it came up that he would work independently for a better price. Mr. Smith stated the two jobs he recalls supplanting were the Brown and Bonds jobs. The best he can recall is that he informed them of TM & Associates, PC's price, but that he could do it on the side for a better price.

The attorney stated Mr. Smith and his wife were fired by TM & Associates, PC at the same time and that Mr. Smith had been sued for money he may have taken from the company as a result of taking surveying jobs but they have since settled.

Mr. Smith indicated the two previously mentioned jobs are the only ones he supplanted and that he did it because the clients did not like TM & Associates, PC's price. If he could do it all over again he would have quit working for TM & Associates, PC and started his own business.

In closing, Mr. Smith stated he has known the owners of TM & Associates, PC since he was a kid and they taught him how to survey. He has a lot of respect for them. Mr. Smith stated even though he was once laid off by TM & Associates, PC he went back to work for them because his (Smith) wife worked there and they offered him more money.