

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN

BEFORE THE EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS,  
DESIGNERS AND LAND SURVEYORS

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IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST : FINAL DECISION  
: AND ORDER  
ROLAND F. SARKO, :  
RESPONDENT : LS9902191LSR

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The State of Wisconsin, Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors.

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs with the Department General Counsel within 15 days of this decision. The Department General Counsel shall mail a copy thereof to respondent or his or her representative.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 1st day of June, 2000.

Ricky A. Van Goethem  
Member of the Board

STATE OF WISCONSIN

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: AND ORDER  
ROLAND F. SARKO, :  
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## **PARTIES**

The parties to this action for purposes of §227.53, Wis. Stats., are:

Mr. Roland F. Sarko  
847 Highway JG  
Mount Horeb, WI 53572  
Land Surveyors' Section  
Examining Board of Architects, Professional Engineers,  
Designers and Land Surveyors

P.O. Box 8935

Madison, WI 53708-8935

Department of Regulation and Licensing

Division of Enforcement

P.O. Box 8935

Madison, WI 53708-8935

## **PROCEDURAL HISTORY**

A hearing in the above-captioned matter was begun on July 22 and 23, 1999, and concluded on September 15, 1999, before Administrative Law Judge Jacquelynn B. Rothstein. Mr. Sarko appeared in person and by his attorney George B. Strother. The Division of Enforcement appeared by attorney Charles J. Howden. Post-hearing briefs were filed on November 8, 1999.

Based on the entire record in this case, the undersigned administrative law judge recommends that the Land Surveyors' Section adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law, and Order.

## **FINDINGS OF FACT**

1. Roland F. Sarko (dob 11/14/51) resides at 847 Highway JG in Mount Horeb, Wisconsin. He is currently registered as a land surveyor in the State of Wisconsin. His license (#1377) was granted on December 17, 1976.
2. By Final Order dated July 28, 1992, Mr. Sarko was disciplined by the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors.
3. The Madison East Surveying Company Incorporated and the Dane County Surveying Company Incorporated were land surveying businesses located in Madison, Wisconsin. Mr. Sarko was the principal owner of both businesses.
4. James Wienke engaged Mr. Sarko to conduct a land survey for him in December of 1994.
5. In March of 1995, Mr. Sarko produced a preliminary certified survey map that Mr. Wienke immediately submitted to the City of Madison for its review.
6. The Wienke map is signed and stamped by Mr. Sarko and is dated March 31, 1995. It contains the following deficiencies:
  - (A) No monumentation is shown for any of the lots indicating the placement of any survey monuments.
  - (B) It does not provide required boundary information.
  - (C) It does not show required monument information.
  - (D) The exterior boundaries and lot lines do not show the required bearings.

- (E) The total width of Droster Road and South Thompson Drive is not shown.
- (F) There is no north reference.
- (G) The area of the lots is not indicated.
- (H) No curve data is indicated for any of the curves.
- (I) It does not contain tie information to a section or quarter section line, and the monumentation at the end of those lines is not identified.
- (J) It contains insufficient data to provide any closure ratios to either the lots or the exterior boundary.
- (K) It does not contain a 1.5 inch margin at the top.
- (L) It does not contain heading and location information.
- (M) It does not contain a surveyor's certificate.
- (N) It does not contain a statement that it is a correct representation of all the exterior boundaries of the surveyed land and the land division.
- (O) It does not contain a statement indicating it is in compliance with §236.34, Wis. Stats.
- (P) It does not contain the information used to determine the location of the parcel and roadway.

7. Judith A. Strand and Michael B. Matty engaged Mr. Sarko to conduct a land survey for them in July of 1995.

8. The Strand-Matty map is signed and stamped by Mr. Sarko, and is dated September 6, 1995. It contains the following deficiencies:

- (A) The angle point on the east line of Lot 2 is not monumented. Existing and set meander corners for Lots 1 and 2, along the shore of Lake Monona are only eleven to thirteen feet back from the ordinary high water mark.
- (B) It does not indicate the angle point on the east line of Lot 2 as having a monument placed there.
- (C) The exterior boundary of the western line of Lot 2 is not mapped as shown.
- (D) The area of the lots from the meander line to the shore line is not shown.
- (E) The north point is improperly related to the east line of the northeast quarter of Section 13. It is improperly tied to the east line of the northeast quarter of Section 13. The monumentation at the end of the section lines are not identified.
- (F) Lot 2 exceeds the ratio of a closure greater than 1:3000.
- (G) The heading is not in prominent letters, and the location of the land by government lot, section, township, and range is not shown.
- (H) The legal description does not follow the map by course and distance.

9. Daniel W. Jenks engaged Mr. Sarko to conduct a land survey for him during the Summer of 1995.

10. The Jenks map is signed and stamped by Mr. Sarko, and is dated September 11, 1995. It contains the following deficiencies:

- (A) The south line of the section does not agree with the Certified Corner Record.
- (B) The Yahara River is not reflected.
- (C) The location of the north quarter corner of Section 27 is not included.
- (D) Monuments were not set at the "jog" along the west line of Parcel 2 and at the ends of the southeast line of Parcel 2.
- (E) Parcel One does not exclude the portion of land that is in the Yahara River.

11. Mr. Sarko did not file a new monument record for the Jenks map with either the county surveyor or the registrar of deeds.
12. On or about August 13, 1997, Mr. Sarko completed a land survey for John Voegeli. Mr. Sarko did not file the Voegeli map in a timely manner with the Dane County Surveyor.
13. The Voegeli map failed to indicate a monument at the southwesterly corner of Lot 12. The map does not contain a note indicating that that requirement be excluded from the survey.
14. The City of Madison requires that a preliminary certified survey map be drawn and prepared by a registered land surveyor in conformance with Chapter 236, Wis. Stats.

### **CONCLUSIONS OF LAW**

- (1) The Land Surveyors Section has jurisdiction in this matter pursuant to §443.12 (1), Wis. Stats.
- (2) Roland Sarko, by having failed to include the items identified in Findings of Fact #6 A-P of the Wienke map, violated §§236.15 (1) (c); 236.20 (2) (a)-(c); 236.20 (f); 236.20(i)-(k); 236.20 (3); 236.34 (1) (a); 236.34 (1) (c)-(d); 236 (1) (d) 3-4; Wis. Stats., and §§ A-E 7.05 (4); 8.04 (2); 8.06 (1)-(2); and 8.09 (1), Wis. Admin. Code.
- (3) Roland Sarko, by having failed to include the items identified in Findings of Fact #6 A-P of the Wienke map, demonstrated incompetency in the practice of land surveying contrary to §443.12 (1), Wis. Stats.
- (4) Roland Sarko, by having failed to include the items identified in Findings of Fact #8 A-H of the Strand-Matty map, violated §§236.15 (1) (c)-(d); 236.20 (2) (b)-(c); 236.20 (2) (i)-(j); 236.20 (3) (b); 236.34 (1) (a); 236.34 (1) (c)-(d), Wis. Stats.; and §§ A-E 8.06 (1)-(2); and 8.09 (1), Wis. Admin. Code.
- (5) Roland Sarko, by having failed to include the items identified in Findings of Fact #8 A-H of the Strand-Matty map, demonstrated incompetency in the practice of land surveying contrary to §443.12 (1), Wis. Stats.
- (6) Roland Sarko, by having failed to include the items identified in Findings of Fact #10 A-E of the Jenks map, violated §§ A-E 7.05 (3)-(4); 8.06 (1)-(2), and 8.09 (1), Wis. Admin. Code.
- (7) Roland Sarko, by having failed to file a new monument record for the Jenks map with either the county surveyor or the registrar of deeds violated §§ 443.12 (1), Wis. Stats. and § A-E 7.08 (1) (b), Wis. Admin. Code
- (8) Roland Sarko, by having failed to include the items in Findings of Fact #10 A-H of the Jenks map, demonstrated incompetency in the practice of land surveying contrary to §443.12 (1), Wis. Stats.
- (9) Roland Sarko, by having failed to file the Voegeli map in a timely manner with the Dane County Surveyor violated §59.45 (1) (b), Wis. Stats.
- (10) Roland Sarko, by having failed to include the items in Finding of Fact #13 violated §§ A-E 7.01 (2) and 7.03, Wis. Admin. Code.

### **ORDER**

**NOW, THEREFORE, IT IS ORDERED** that Roland F. Sarko's license to practice land surveying in the State of Wisconsin is hereby suspended for one (1) year.

**IT IF FURTHER ORDERED** that Roland F. Sarko's license to practice land surveying in the State of Wisconsin is hereby LIMITED FOR THREE YEARS subject to the following terms and conditions:

- (1) Roland F. Sarko shall practice land surveying under the direct supervision of a Wisconsin Land Surveyor, acceptable to the Land Surveyor Section.
- (2) Any and all survey maps that are signed and sealed by Roland F. Sarko shall contain the approval signature of the supervising registered land surveyor prior to their use by or delivery to a consumer. Said approval shall indicate that Roland F. Sarko's work product has been personally reviewed by the supervisor and that all work performed by Roland F. Sarko complies with the minimum survey standards applicable to each project.

(3) The supervising land surveyor shall submit written quarterly reports to the Land Surveyor Section detailing Roland F. Sarko's professional compliance, along with any and all survey maps that Mr. Sarko works on during this period.

**IT IS FURTHER ORDERED** that upon a showing by Roland F. Sarko that he has successfully complied with the limitations and conditions set for the above and has practiced land surveying in a supervised setting for a period of not less than three (3) years, the Land Surveyor Section may grant his petition for a return to full licensure if it determines that he may safely and competently engage in the practice of land surveying.

**IT IS FURTHER ORDERED** that the assessable costs of this proceeding be imposed upon Roland F. Sarko, pursuant to sec. 440.22, Wis. Stats.

**IT IS FURTHER ORDERED** that this order is effective on the date that a designee of the Land Surveyors Section signs it.

### **OPINION**

Land surveying is defined as any service comprising the determination of the location of land boundaries and boundary corners; the preparation of maps showing the shape and area of tracts of land and their subdivisions into smaller tracts; the preparation of maps showing the layout of roads, streets and rights-of-way of same to give access to smaller tracts; and the preparation of official plats, or maps, of land in the state. §443.01 (4), Wis. Stats. The minimum standards for land surveys are set for the in Chapter A-E 7, the more restrictive standards must govern. Section A-E .01 (1), Wis. Admin. Code.

A land surveyor and a client may agree to exclude certain required standards if they enter into a signed, written agreement in which they specify which standards are being omitted. The finished map must also indicate that the parties entered into such an agreement. Section A-E 7.01 (2) (a), Wis. Admin. Code. However, a surveyor may not agree to exempt the preparation of a U.S. public land survey monument record or a map of work performed. *Id.* Each time a surveyor places his or her seal on maps, plans, or drawings, it signifies that he or she has taken professional responsibility for the preparation of that material. Indeed, a land surveyor may not sign, seal, or stamp a map that has not been prepared by him or her or under his or her personal direction and control. Section A-E 8.10 (2), Wis. Admin. Code.

Over the course of several years, Mr. Sarko signed and sealed four different surveys. Each of those surveys shall be addressed in turn.

#### **Wienke Survey**

Mr. Wienke engaged Mr. Sarko's services as a land surveyor in December of 1994, for assistance in splitting a parcel of land into smaller lots. Three months later, in March of 1995, Mr. Sarko produced a preliminary certified survey map that Mr. Wienke immediately submitted to the City of Madison for its review. Alan Martin, a Madison city planner, reviewed the map. He noted that it contained several deficiencies, including, for instance, missing bearing information, missing right-of-way information, and a missing quarter-quarter section tie end. As a result of these deficiencies, the City of Madison would not accept the submission of the map, and Mr. Wienke subsequently engaged the services of another land surveyor. Les Van Horn, a professional land surveyor and expert witness, also found numerous deficits with the Wienke map and indicated that it did not comply with several of the requirements in Chapter 236 of the Wisconsin Statutes, because it was missing monumentation and boundary information.

Mr. Sarko does not deny that there are multiple deficiencies with the Wienke map. However, he maintains that because this map was intended solely as a "planning map" that the requirements contained in Chapter 236 of the Wisconsin Statutes did not have to be met. Mr. Sarko's assertion is undermined by the fact that the map was submitted to the city with a formal application. Additionally, Mr. Sarko, who signed and sealed the map, titled it a "Preliminary Certified Survey Map". If the map was only intended to be used as a planning tool, then its title and accompanying application remain a curiosity. Moreover, neither Mr. Wienke nor Mr. Sarko ever entered into a written agreement which would have excluded the map from having the minimal statutory requirements.

#### **Strand-Matty Survey**

In July of 1995, Judith Strand and Michael Matty engaged Mr. Sarko to prepare a certified survey map to enable them to divide a single parcel of land into two separate lots. Mr. Sarko eventually produced a signed and sealed map for them on September 6, 1995. Like the Wienke map, the Strand-Matty map also contains numerous deficiencies, many of which Mr. Sarko does not dispute. For example, there is an improper meander line, a missing monument, an improper boundary line, and an incorrect legal description.

Both Les Van Horn and Jeanne Storm, another land surveyor and expert witness, reviewed the Strand-Matty map and noted these and several other failures violate the requirements set forth in Chapter 236 of the Wisconsin Statutes.

### Jenks Survey

Daniel Jenks engaged Mr. Sarko to conduct a land survey for him in the Summer of 1995. More specifically, Mr. Jenks wanted a parcel of land surveyed to ensure that it met the agricultural zoning requirements prior to his building on the land. When Mr. Sarko produced the Jenks map, it showed that monuments had been set on all corners of the map. However, when Mr. Jenks attempted to locate several of those monuments, he discovered that a number of them had not actually been set. The map also failed to include the Yahara River. Mr. Sarko acknowledged these omissions as well.

### Voegeli Survey

On or about August 13, 1997, Mr. Sarko completed a land survey for John Voegeli, but failed to timely file the map with the Dane County Surveyor. Additionally, the map failed to indicate a monument in the southwesterly corner of the surveyed lot, and it does not contain a note indicating that that requirement be excluded from the survey. Again, Mr. Sarko did not contest these findings.

\* \* \* \* \*

Although Mr. Sarko willingly acknowledged the existence of the deficiencies in these maps, he was unwilling to accept responsibility for them. He handily excuses the multiplicity of errors and omissions in these four maps with a variety of explanations. In the case of the Strand-Matty map, for instance, he argues that the problems were mere technicalities and easily correctable. With respect to the Wienke map, Mr. Sarko claims that it was only intended to be used as a preliminary map, not a final certified survey map and that therefore it did not have to comply with the usual statutory requirements. He attributes the deficiencies in the Jenks map to his survey crew, and the errors on the Voegeli map and its delayed filing on the Land Surveyors' Section. His explanations have little merit.

Land surveying, by its very nature, is a technical field. The measurements and maps that result from a land survey are intended to be precise and accurate in order to ensure the integrity of various land boundaries in perpetuity. Each certified survey map is required to be compliant with Chapter 236 of the Wisconsin Statutes as well as with the requirements found in the Wisconsin Administrative Code. When a land surveyor signs and seals a map, he is attesting to its accuracy and is responsible for its contents.

If Mr. Sarko did not intend for the Wienke and Strand-Matty maps to be final ones, then he should have indicated that. Instead, he signed and sealed them both and, after considerable prompting and cajoling by both Mr. Wienke and the Strand-Mattys, eventually produced the maps for them. However, neither map contains a written agreement of the parties exempting it from the required statutory provisions. On the contrary, each purports to be a final work product. Both Mr. Wienke and the Strand-Mattys submitted these maps to the City of Madison, and each was found to have multiple deficiencies. Consequently, they were unable to be used for their intended purpose.

The Jenks and Voegeli maps were also inadequate in meeting both the statutory and administrative code requirements. Most surprising, is the prominent omission of the Yahara River from the Jenks map. The Jenks map also fails to include monuments at various corners of the surveyed parcels. Mr. Sarko's explanation for these omissions is simply not credible. Nor are his assertions with respect to the Voegeli map, which, among other things, he failed to timely file with the local surveyor's office.

Clearly, Mr. Sarko has violated a number of statutory and administrative provisions. The question therefore remains as to what the appropriate form of discipline is for him. A two year revocation of Mr. Sarko's license has been recommended. It is well established that the objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. MacIntyre*, 41 Wis. 2d 481, 485 (1969). However, prior disciplinary action for unprofessional conduct should not be disregarded; indeed, it must be taken into consideration. *Id.* At 484.

Without question, Mr. Sarko has repeatedly failed to comply with the professional standards of land surveying. He has also failed to recognize and to accept responsibility for his actions. His behavior in this regard is wholly unacceptable. Mr. Sarko was previously disciplined by the Land Surveyors' Section and his license was suspended for forty-five (45) days. Unfortunately, his suspension appears to have had little effect in ensuring his subsequent compliance with the professional standards of his field. He has also failed to demonstrate any remorse for his actions and appears to have little regard for the effect his behavior has had on his former clients.

Indeed, Mr. Sarko signed and sealed maps that are not accurate and are not in conformity with the statutory requirements. In so doing, the public cannot adequately rely on his work as legitimate or trustworthy. He produces maps that are at considerable risk for future disputes and as such seems to have little concern for the

public and the requirements of his profession. His conduct fell below the minimum standards of competency for land surveying and as such cannot be tolerated.

Mr. Sarko's prior suspension seems to have been insufficient to impress upon him the necessity of complying with the minimum standards of land surveying. Accordingly, a one year suspension of his license with three additional years of supervised practice is appropriate. Although that recommendation is less than what the Division has proposed, it should nevertheless be a sufficient amount of time to rehabilitate Mr. Sarko, to prevent him from committing future conduct of this kind, and to ensure that other licensees are deterred from similar misconduct.

Dated at Madison, Wisconsin, this 21<sup>st</sup> day of February, 2000.

STATE OF WISCONSIN

DEPARTMENT OF REGULATION AND LICENSING

1400 East Washington Avenue

P.O. Box 8935

Madison, Wisconsin 53708

Jacquelynn B. Rothstein

Administrative Law Judge