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**Before The
State Of Wisconsin
LAND SURVEYOR SECTION OF THE EXAMINING BOARD OF ARCHITECTS,
LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS, DESIGNERS, AND LAND
SURVEYORS**

In the Matter of the Disciplinary Proceedings
Against **TRAVIS J. KRAMER**, Respondent

**FINAL DECISION AND ORDER
WITH VARIANCE
ORDER NO. 0002458**

Division of Legal Services and Compliance¹ Case No. 11 LSR 003

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

Travis J. Kramer
52838 Walker Hollow Road
Wauzeka, WI 53826

Land Surveyor Section of the Examining Board of Architects, Landscape Architects,
Professional Engineers, Designers, and Land Surveyors
P.O. Box 8935
Madison, WI 53708-8935

Department of Safety and Professional Services, Division of Legal Services and
Compliance, by

Sarah E. Norberg
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

These proceedings were initiated when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal Notice of Hearing and Complaint against Respondent Travis J. Kramer (Respondent), alleging that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § 443.12(1).

Respondent failed to file an Answer to the Complaint, failed to provide a telephone number at which he could be reached for the telephonic prehearing conference held before the Division of Hearings and Appeals (DHA) on August 17, 2012 and failed to appear at the prehearing conference. As a result, at that prehearing conference, counsel for the Division moved for default and the Administrative Law Judge (ALJ) issued a Notice of Default, which found Respondent to be in default. On September 4, 2012, the DHA filed a recommended proposed order in this matter.

On March 19, 2013, the Land Surveyor Section of the of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Land Surveyors (Section) reviewed the ALJ's Proposed Decision and Order in this matter. Neither party had submitted objections thereto. Upon considering the ALJ's proposed decision and disciplinary recommendations, the Section adopts as its own the findings of fact and conclusions of law set forth in the proposed decision, and maintains the order for payment of all recoverable costs. However, the Section modifies the proposed order with respect to the discipline to be imposed.

FINDINGS OF FACT

Findings of Fact 1-13 are taken from the Complaint filed by the Division.

1. Respondent Travis J. Kramer (DOB 12/12/1967) is licensed in the State of Wisconsin as a Land Surveyor, having license number 8-2664, first issued on August 4, 2003 and current through January 31, 2014.

2. Respondent's most recent address on file with the Department is 52838 Walker Hollow Road, Wauzeka, WI 53826.

3. Between March 28, 2011 and July 13, 2011, the Department received complaints alleging that Respondent had failed to file at least seven survey maps with Crawford County

¹ The Division of Legal Services and Compliance was formerly known as the Division of Enforcement.

between 2008 and 2011 and that he failed to respond to five notifications from the Crawford County Surveyor requesting the maps be filed.

4. On April 7, 2011, the Division sent Respondent a letter requesting a response to the complaint.

5. Respondent failed to respond to the April 7, 2011 letter.

6. On May 2, 2011, the Division sent Respondent a second request for a response to the complaint.

7. On June 10, 2011, the Division received a response from Respondent dated May 10, 2011.

8. In his May 10, 2011 response, Respondent states, "I will agree with [R.M.] that I have not been diligent in recording the surveys that I have completed within Crawford County."

9. Division of Enforcement case number 11 LSR 003 was subsequently opened for investigation.

10. On June 29, 2011, a Department investigator sent Respondent a letter advising him to file his delinquent survey maps with Crawford County.

11. Respondent failed to respond to the June 29, 2011 letter.

12. Respondent also failed to respond to Department attempts to contact him on August 1, 2011 (e-mail), August 12, 2011 (e-mail, certified letter that was signed for by [R.K.] on August 16, 2011, and a voicemail message left at Respondent's home), and August 31, 2011 (voicemail messages left at Respondent's office and cell phone).

13. As of September 20, 2011, Respondent still had not filed any of the delinquent surveys with Crawford County.

CONCLUSIONS OF LAW

1. The Land Surveyor Section of the Examining Board of Architects, Landscape Architects and Professional Engineers, Designers, and Land Surveyors Section (Section) has jurisdiction over this matter pursuant to Wis. Stat. § 443.12(1).

2. Respondent violated Wis. Stat. § 443.12(1) and Wis. Admin. Code § A-E 8.03(3) by performing acts in the course of his profession which jeopardize the interest of the public and, in particular, by violating state laws and administrative rules relating to land surveying.

3. Respondent violated Wis. Stat. § 443.12(1) and Wis. Admin. Code § A-E 8.09(1) by failing to comply with the requirements in Chapter 443 of the Wisconsin Statutes, Chapter A-E of the Wisconsin Administrative Code.

4. Respondent violated Wis. Stat. § 443.12(1) and Wis. Admin. Code § A-E 7.05(7) by failing to file his survey maps as required by Wis. Stat. § 59.45(1).

5. Respondent violated Wis. Stat. § 443.12(1) and Wis. Admin. Code § A-E 8.08(3) by failing to timely respond to requests for information by the Department.

6. As a result of the violations noted, Respondent is subject to discipline pursuant to Wis. Stat. § 443.12(1).

ALJ'S DISCUSSION

Violations of the Wisconsin Statutes and Administrative Code

Because Respondent failed to provide an Answer to the Complaint filed against him and failed to appear at the August 17, 2012 prehearing conference or provide a telephone number at which he could be reached, findings may be made and an Order entered “on the basis of the complaint and other evidence.” Wis. Admin. Code § SPS 2.14. Wisconsin Admin. Code § HA 1.07(3)(b) further provides: “(b) If a respondent fails to appear, the administrative law judge may ... take the allegations in an appeal as true as may be appropriate.”

The Complaint, described in Findings of Fact Nos. 1-13, establishes that Respondent failed to file numerous survey maps with Crawford County. The facts also establish that Respondent failed to timely respond to requests for information by the Department.

Wisconsin Stat. § 443.12(1) provides that “[t]he section may reprimand or limit, suspend or revoke the certificate of registration of any land surveyor for . . . misconduct in the practice of land surveying.” Wisconsin Admin. Code § A-E 8.03(3) defines misconduct in the practice of land surveying as “an act performed by” a “land surveyor in the course of the profession which jeopardizes the interest of the public, including the following . . . (a) Violation of federal or state laws, local ordinances or administrative rules relating to the practice of . . . land surveying.”

By failing to file his survey maps with Crawford County and failing to respond to requests for information by the Department during the course of its investigation of a complaint against Respondent, Respondent violated several administrative rules and therefore committed misconduct in violation of Wis. Stat. § 443.12(1) and Wis. Admin. Code § A-E 8.03(3). For example, Respondent violated Wis. Admin. Code § A-E 7.05(7), which requires, “A map shall be drawn for every property survey showing information developed by the survey. The map shall: . . . (7) [b]e filed as required by s. 59.45(1), Stats.” Wisconsin Stat. § 59.45(1)(b) provides, in part: “Surveys for individuals or corporations may be performed by any land surveyor who is employed by the parties requiring the services, providing that within 60 days after completing any survey the land surveyor files a true and correct copy of the survey in the office of the county surveyor.”

In addition, Respondent violated Wis. Admin. Code § A-E 8.09(1) which states that a land surveyor “[s]hall comply with the requirements in ch. 443, Stats., rules in this chapter [Chapter A-E] and all other federal, state and local codes which relate to the practice of . . . land surveying.” Respondent’s conduct also constitutes a violation of Wis. Admin. Code § A-E 8.08(3) which provides that a land surveyor “[s]hall respond in a timely manner to a request by

... the department for information in conjunction with an investigation of a complaint filed against a registrant.”

As a result of the violations and misconduct set forth above, Respondent is subject to discipline pursuant to Wis. Stat. § 443.12(1).

ALJ'S PROPOSED DISCIPLINE

The three purposes of discipline are: (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

The Division recommends an indefinite suspension of Respondent's license until such time that Respondent comes into compliance with Wis. Admin. Code § A-E 7.05(7) and provides proof acceptable to the Section that all surveys have been filed with Crawford County. This recommended discipline is consistent with the three purposes of discipline articulated in *Aldrich*. Such discipline will promote the rehabilitation of Respondent in that it will teach him the importance of following the statutes and rules governing his profession. It protects the public by removing Respondent from the practice of his profession until he comes into compliance with the statutes and rules required of his profession. Finally, it will serve to deter other licensees from engaging in similar misconduct, as it is a discipline reportable to the public. Accordingly, an indefinite suspension is imposed against Respondent in this matter, as set forth below.

COSTS

The Division requests that Respondent be ordered to pay the full costs of its investigation and prosecution of these proceedings. In *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz*, LS 0802183 CHI (Aug. 14, 2008), the Chiropractic Examining Board stated:

The ALJ's recommendation and the ... Board's decision as to whether the full costs of the proceeding should be assessed against the credential holder..., is based on the consideration of several factors, including:

1. The number of counts charged, contested, and proven;
2. The nature and seriousness of the misconduct;
3. The level of discipline sought by the parties;
4. The respondent's cooperation with the disciplinary process;
5. Prior discipline, if any;
6. The fact that the Department of [Safety and Professional Services] is a "program revenue" agency, whose operating costs are funded by the revenue received from licensees, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct; and
7. Any other relevant circumstances.

The respondent, by nature of her being in default has not presented any evidence regarding any of the above factors that would mitigate the imposition of the full costs of this proceeding. To the contrary, his conduct is of a serious nature. The factual allegations were deemed admitted and proven and there is no argument to apportion any counts that were unproven, (being none), or that certain factual findings were investigated and litigated that were unnecessary. Given the fact that the Department of [Safety and Professional Services] is a "program revenue" agency, whose operating costs are funded by the revenue received from licensees, fairness here dictates imposing the costs of disciplining the respondent upon the respondent and not fellow members of the chiropractor profession who have not engaged in such conduct.

For many of the same reasons delineated in the *Buenzli-Fritz* decision, Respondent should be assessed the full amount of recoverable costs. The conduct is of a serious nature, he did not participate in these proceedings, there is no argument that certain factual findings were investigated and litigated unnecessarily and, given the program revenue nature of the Department of Safety and Professional Services, fairness dictates imposing the costs of these disciplinary proceedings on Respondent, and not on fellow members of the land surveying profession who have not engaged in such conduct.

If the Section assesses costs against Respondent, the amount of costs will be determined pursuant to Wis. Admin. Code § SPS 2.18.

EXPLANATION OF VARIANCE

As the regulatory authority and final decision-maker in this Class 2 proceeding, the Section may modify the ALJ's proposed decision. *See* Wis. Stat. § 227.46(2). The Section must provide reasons for any such modifications. *Id.* Here, the Section adopts as its own the findings of fact and conclusions of law set forth in the proposed decision, and maintains the order for payment of all recoverable costs. However, the Section modifies the proposed order with respect to the discipline to be imposed.

The Section finds that a less severe discipline than an indefinite suspension of Respondent's license, as recommended by the ALJ, is appropriate, as the purposes of discipline will be as well or better served by reprimanding Respondent and limiting his land surveyor practice for a specified period. As stated in the ALJ's Proposed Decision and Order, the purposes of discipline are to promote Respondent's rehabilitation, to protect the public from further such misconduct by him, and to deter other licensees from engaging in similar acts. *See State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

Respondent's repeated and on-going violations of the legal requirements for filing surveys, and his frequent non-compliance with the Department's requests during these proceedings clearly warrant discipline. Permitting Respondent to practice only while directly supervised will protect the public from the possibility of him committing further violations during the pendency of this Order. Practicing under supervision will promote Respondent's rehabilitation by ensuring his adherence to established standards and motivating his continued adherence upon full reinstatement. It will also allow Respondent to maintain his livelihood while under supervision. Finally, the requirements of his supervision will deter Respondent and his fellow licensees from engaging in similar misconduct.

Thus, because the same objectives can be accomplished through the use of disciplinary measures less severe than indefinite suspension, the Section finds it appropriate to impose the

less severe measures. In addition, the discipline ordered here is consistent with that ordered by the Section for similar violations by other land surveyor registrants.

ORDER

Accordingly, IT IS ORDERED that Respondent Travis J. Kramer, registration number 8-2664, is hereby **REPRIMANDED**.

IT IS FURTHER ORDERED that Respondent's license to practice as a land surveyor in the State of Wisconsin is **LIMITED** as follows:

- (1) Respondent will practice only under the direct supervision of a credentialed land surveyor pre-approved by the Section. Respondent shall nominate a supervisor for consideration by the Section no later than 15 days from the date of this Order. The period of supervision shall commence no later than 30 days from the date of this Order.
- (2) The supervisor will review and approve, or request modifications as appropriate, all surveys prepared by the Respondent during the period of supervision along with all supporting documents prior to the filing of the surveys.
- (4) The supervisor will file quarterly reports with the Section detailing the results of his/her review.
- (5) It is the responsibility of the Respondent to ensure that the reports are filed timely, and to pay all costs associated with the supervision within 30 days of submission of the bill from the supervisor.
- (6) At the end of one year of continuous supervision, Respondent may petition the Section for reinstatement of full licensure if he is in full compliance with the terms of this Order. The Section may request a personal appearance by Respondent in support of his petition.

(7) The Section may deny any Petition filed under paragraph 6 if Respondent is not in full compliance with the terms of the Order or has deficiencies noted in the supervisory reports which Respondent has not corrected. The Section shall specify the reasons for any such denial and Respondent is entitled to a hearing on the denial.

IT IF FURTHER ORDERED that Respondent shall pay all recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § SPS 2.18.

IT IS FURTHER ORDERED that all requests for preapproval of the supervisor, filing of reports, petitions for reinstatement and payment of costs made payable to the Wisconsin Department of Safety and Professional Services shall be sent to:

**Department Monitor
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 8935
Madison, WI 53708-8935
Telephone: (608) 267-3817
Fax: (608) 266-2264**

IT IS FURTHER ORDERED that violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of the Respondent's license. In the event Respondent fails to timely submit payment of the costs pursuant to the Order Fixing Costs or fails to nominate a supervisor within the required time period or fails to ensure that the quarterly reports are received when due, Respondent's license may, in the discretion of the Board or its designee, be immediately SUSPENDED until such time as Respondent has complied with those requirements.

IT IF FURTHER ORDERED that this Final Decision and Order is effective as of the date of its signing by the Section.

Dated this 4TH day of JUNE, 2013.

By: 

Matthew J. Janiak, Section Chair
Land Surveyor Section of the Examining Board of Architects, Landscape Architects and
Professional Engineers, Designers, and Land Surveyors Section
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