

**LOUISIANA PROFESSIONAL ENGINEERING
AND LAND SURVEYING BOARD
9643 Brookline Avenue, Suite 123
Baton Rouge, Louisiana 70809**

IN THE MATTER OF LESTER G. RAINEY, P.L.S.

CASE NO. 2005-24

PRESENT AT THE HEARING:

Board Members:

C.L. Jack Stelly, P.L.S., Chairman
James D. Garber, PhD., P.E.
Mark A. Jusselin, P.E.
James E. Bowie, Jr., PhD., P.E.
Roger D. Danzy, P.E.
Rhaoul A. Guillaume, P.E.
Norma Jean Mattei, PhD., P.E.
Ali M. Mustapha, P.E.
Richard L. Savoie, P.E.
Miles B. Williams, P.E.

Also Present:

Donna D. Sentell, Executive Secretary
Robert E. Eddleman, Deputy Executive Secretary/Director of Enforcement
Justin G. Owens, Board Investigator
Victoria R. Hatton, Board Investigator
D. Scott Landry, Board Counsel
Celia R. Cangelosi, Prosecuting Attorney

FINAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came on for hearing in Baton Rouge, Louisiana on November 17, 2008 at 5:30 p.m. No one appeared at the hearing on behalf of Lester G. Rainey, P.L.S., and the hearing proceeded as authorized by La. R.S. 37:698(G). After hearing the arguments of counsel and upon due consideration of the testimony and other evidence presented, the Louisiana Professional Engineering and Land Surveying Board ("LAPELS") makes the following Final Findings of Fact and Conclusions of Law.

FINAL FINDINGS OF FACT

1.

Lester G. Rainey, P.L.S. has been licensed with LAPELS as a professional land surveyor, number PLS-4674, since 1993.

2.

Mr. Rainey's professional land surveyor license has been in an expired status since October 1, 2006.

3.

On June 14, 2002 Mr. Rainey prepared, sealed and issued to Jimmy Howard a survey plat and legal description for a 4.60 acre tract situated in Section 3, Township 18 North, Range 1 East, Ouachita Parish, Louisiana (the "Original Survey Plat") which had incorrect tract positions and mislabeled corners. This mistake was caused by Mr. Rainey incorrectly indicating on the Original Survey Plat that the tract was located in the South $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 3, when in fact the tract was actually located in the South $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of Section 3. See LAPELS' Exhibit E.

4.

Specifically, the Original Survey Plat contained the following errors:

- (a) In the caption of the plat, the tract was described as being in the "South $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 3", when it should have read "South $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 3".
- (b) The easternmost monument on the south line of Section 3 was described as being the "Southeast corner of Section 3", when it should have read "Southeast corner of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 3".
- (c) The westernmost monument on the south line of Section 3 was described as being the "Southwest corner of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 3", when it should have read "Southwest corner of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 3".

5.

Upon being notified by Mr. Howard of a problem with the Original Survey Plat, on September 26, 2005 Mr. Rainey prepared and sealed a corrected Survey Plat and legal description for the 4.60 acre tract situated in Section 3, Township 18 North, Range 1 East, Ouachita Parish, Louisiana (the "Corrected Survey Plat"), however he failed to record the Corrected Survey Plat or provide the Corrected Survey Plat and legal description to Mr. Howard. See LAPELS' Exhibit E.

6.

LAPELS received a sworn Affidavit of Complaint from Jimmy Howard dated July 15, 2005, which alleged that the Original Survey Plat prepared by Mr. Rainey was for the wrong tract of land and that Mr. Rainey had failed to respond to Mr. Howard's repeated attempts to contact

him. On March 5, 2007, LAPELS staff sent the Affidavit of Complaint to Mr. Rainey by certified mail (return receipt requested), which was received by Mr. Rainey on March 9, 2007. On September 5, 2007, LAPELS staff again sent the Affidavit of Complaint to Mr. Rainey by certified mail (return receipt requested), which was also received by Mr. Rainey. See LAPELS' Exhibits A, B and C.

7.

LAPELS subsequently received a letter from Mr. Rainey dated September 11, 2007, in which he admitted that the Original Survey Plat had incorrect tract positions and mislabeled corners and that he apparently never sent the Corrected Survey Plat to Mr. Howard. See LAPELS' Exhibit D.

8.

LAPELS subsequently directed that a letter be sent to Mr. Rainey advising him that LAPELS was considering preferring charges against him involving a possible violation of La. R.S. 37:698(A)(2), which prohibits gross negligence and/or gross incompetence in the practice of land surveying. LAPELS also directed that its staff attempt to resolve this matter informally, if at all possible. On February 13, 2008, LAPELS staff sent the letter by certified mail (return receipt requested) and regular mail as directed, along with a proposed Consent Order. The letter also advised Mr. Rainey of his right to request an informal conference. The letter and proposed Consent Order were received by Mr. Rainey on February 15, 2008. See LAPELS' Exhibit G.

9.

On February 27, 2008, Mr. Rainey signed the proposed Consent Order and then returned it to LAPELS by Express Mail delivery, admitting therein that he had violated La. R.S. 37:698(2) by virtue of having failed to record the Corrected Survey Plat and provide it to Mr. Howard. See LAPELS' Exhibit H.

10.

The proposed Consent Order never became effective because it was not accepted by LAPELS, on account of Mr. Rainey's failure to submit checks in payment of the fine and costs assessed therein.

11.

Mr. Rainey never requested an informal conference.

12.

On May 19, 2008, by a unanimous vote LAPELS preferred charges against Mr. Rainey, involving an alleged violation of La. R.S. 37:698(A)(2) (which prohibits gross negligence and/or gross incompetence in the practice of land surveying). LAPELS also directed that a hearing be set to consider the charges against Mr. Rainey on September 15, 2008 at 1:30 p.m. at the LAPELS office. A copy of the Notice of Charges and Hearing was sent to Mr. Rainey by certified mail (return receipt requested) on June 5, 2008. The letter and Notice of Charges and Hearing were received by Mr. Rainey on June 7, 2008 See LAPELS' Exhibit I.

13.

As a result of Hurricane Gustav and its aftermath, on September 10, 2008 LAPELS continued the hearing and rescheduled it for November 17, 2008 at 1:30 p.m. The Order continuing and rescheduling the hearing was received by Mr. Rainey on September 13, 2008. See LAPELS' Exhibit J.

FINAL CONCLUSIONS OF LAW

1.

LAPELS has jurisdiction over this matter because Mr. Rainey is licensed by LAPELS as a professional land surveyor and he prepared, sealed and issued the Original Survey Plat and the Corrected Survey Plat for property located in Louisiana.

2.

La. R.S. 37:698(A)(2) has at all relevant times provided as follows:

§698. Disciplinary proceedings against licensees and certificate holders; procedure

A. The board shall have the power to take disciplinary action against any licensee or certificate holder found by the board to be guilty of any of the following acts or offenses:

. . . .

(2) Any fraud, deceit, gross negligence, material misrepresentation, gross incompetence, or gross misconduct in the practice of engineering or land surveying.

. . . .

3.

At all relevant times, "gross negligence" has been defined as follows:

Gross Negligence—as used in R.S. 37:698(A)(2), shall mean the practice of engineering or land surveying by a licensee characterized by the licensee's lack of reasonable care, precaution, or attention to the health, safety, or welfare of others, which could result in injury or damage to life or property or financial loss. Examples of practice which the board may consider to constitute gross negligence include, but are not limited to:

a. the preparation of an incomplete or inaccurate engineering or land surveying plan or document that is below acceptable standards, which is released for construction or other lawful purposes, and which could result in financial loss, damage or injury; or

b. failure of the licensee to exercise reasonable diligence and care in providing professional services, which could result in financial loss, damage or injury.

LAC Title 46:LXI§105(A).

4.

At all relevant times, "gross incompetence" has been defined as follows:

Gross Incompetence—as used in R.S. 37:698(A)(2), shall mean the practice of engineering or land surveying by a licensee who is either incapable of exercising ordinary care and diligence or who lacks the ability and skill necessary to properly perform the duty he/she undertakes. (The practice of engineering in an area other than that in which the licensee has been issued a license will not be considered as evidence of gross incompetence, provided the licensee is otherwise qualified by education or experience.) Examples of practice which the board may consider to constitute gross incompetence include but are not limited to:

a. the undertaking of assignments other than those for which the licensee is qualified by education or experience in the specific technical fields involved; or

b. the affixing of the licensee's signature or seal to any engineering or land surveying plan or document dealing with the subject matter in which the licensee lacks competence by virtue of education or experience.

LAC Title 46:LXI§105(A).

5.

Louisiana law gives LAPELS authority to take disciplinary action against Mr. Rainey based on the facts in this case.

6.

Pursuant to La. R.S. 37:698(A), (B) and (J), the disciplinary action which LAPELS can take against any person found by LAPELS to be guilty of any of the acts or offenses listed in La. R.S. 37:698(A) includes, but is not limited to, reprimand, probation, suspension, revocation, fine (in an amount not to exceed \$5,000 per violation) and all reasonable costs.

7.

Since Mr. Rainey failed to provide the Corrected Survey Plat to Mr. Howard and/or to record it, Mr. Rainey violated La. R.S. 37:698(A)(2).

8.

A Final Decision and Order will issue this date assessing appropriate disciplinary action against Mr. Rainey.

Baton Rouge, Louisiana, this 12th day of January, 2009.

**LOUISIANA PROFESSIONAL ENGINEERING
AND LAND SURVEYING BOARD**

By: 
C.L. JACK STELLY, P.L.S., Chairman

**LOUISIANA PROFESSIONAL ENGINEERING
AND LAND SURVEYING BOARD
9643 Brookline Avenue, Suite 123
Baton Rouge, Louisiana 70809**

IN THE MATTER OF LESTER G. RAINEY, P.L.S.

CASE NO. 2005-24

FINAL DECISION AND ORDER

The Proposed Findings of Fact and Conclusions of Law and Proposed Decision and Order were issued and forwarded to Lester G. Rainey, P.L.S. and the prosecuting attorney (Celia R. Cangelosi) on December 30, 2008. No exceptions or briefs were filed or oral argument requested by Mr. Rainey or the prosecuting attorney. After due consideration of the Proposed Findings of Fact and Conclusions of Law and Proposed Decision and Order,

IT IS ORDERED THAT:

1.

The Louisiana Professional Engineering and Land Surveying Board ("LAPELS") adopts its Proposed Findings of Fact and Conclusions of Law as final in this case, and the same is incorporated herein by reference as if set forth *in extenso*.

2.

The charges against Lester G. Rainey, P.L.S. under La. R.S. 37:698(A)(2) are hereby sustained.

3.

Mr. Rainey is hereby assessed a fine in the amount of One Thousand and No/100 (\$1,000.00) Dollars.

4.

Mr. Rainey is also hereby assessed the actual costs incurred by LAPELS in connection with this case through the hearing in the amount of Four Thousand Three Hundred Thirty-Seven and 97/100 (\$4,337.97) Dollars.

5.

Prior to renewing his expired license, Mr. Rainey shall successfully complete and submit to LAPELS its online Louisiana Laws and Rules Examination with a score of ninety (90%) percent or higher.

6.

Prior to renewing his expired license, Mr. Rainey shall successfully complete and submit to LAPELS its online Louisiana Professionalism and Ethics Examination with a score of ninety (90%) percent or higher.

7.

Prior to renewing his expired license, Mr. Rainey shall successfully complete and submit to LAPELS its online Louisiana Minimum Standards Examination with a score of ninety (90%) percent or higher.

8.


The Final Findings of Fact and Conclusions of Law and Final Decision and Order shall be published on the LAPELS website, and a summary of this case shall be published in the official journal of LAPELS and reported to the National Council of Examiners for Engineering and Surveying (NCEES), identifying Mr. Rainey by name.

9.

This vote of LAPELS was unanimous.

THUS DONE at Baton Rouge, Louisiana, this 12th day of January, 2009.

**LOUISIANA PROFESSIONAL ENGINEERING
AND LAND SURVEYING BOARD**

By: 
C.L. JACK STELLY, P.L.S., Chairman