

Department of State
Division of Publications
 312 Rosa L. Parks, 8th Floor Snodgrass/TN Tower
 Nashville, TN 37243
 Phone: 615.741.2650
 Fax: 615.741.5133
 Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 08-04-13
 Notice ID(s): 2050
 File Date: 8/6/13

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Tennessee Board of Examiners for Land Surveyors
Division:	Department of Commerce and Insurance, Division of Regulatory Boards
Contact Person:	Robert Herndon, Assistant General Counsel
Address:	500 James Robertson Parkway Nashville, Tennessee 37243-1167
Phone:	615-741-3072
Email:	Robert.Herndon@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Don Coleman
Address:	Department of Commerce and Insurance 500 James Robertson Parkway Nashville, Tennessee 37243
Phone:	615-741-0481
Email:	Don.Coleman@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Davy Crockett Tower, Conference Room 1-B		
Address 2:	500 James Robertson Parkway		
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	10/24/13		
Hearing Time:	9:00 AM	<input checked="" type="checkbox"/> CST	<input type="checkbox"/> EST

Additional Hearing Information:

--

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0820-04	Rules of Professional Conduct

Rule Number	Rule Title
0820-04-.02	Proper Conduct of Practice
0820-04-.03	Service in Areas of Competence
0820-04-.04	Public Statements
0820-04-.05	Conflicts of Interest
0820-04-.07	Misconduct
0820-04-.08	Seals
0820-04-.09	Responsible Charge of Service
0820-04-.10	Practice - Disclosure

Substance of Proposed Rules

Chapter 0820-04
Rules of Professional Conduct

Amendments

Rule 0820-04-.02 Proper conduct of practice is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0820-04-.02 shall read:

Rule 0820-04-.02 Proper Conduct of Practice

- (1) The registrant shall at all times recognize the primary obligation to protect the safety, health and welfare of the public in the performance of the registrant's professional duties.
- (2) A registrant possessing knowledge of a violation of T.C.A. §§Title 62, Chapter 18, or any rules promulgated thereunder, shall report such knowledge to the Board in writing and shall cooperate with the Board in furnishing such further information or assistance as it may require.
- (3) The registrant shall respond to all inquiries and correspondence from the Board within fifteen days from the day of receipt and shall timely claim undelivered correspondence from the U.S. Postal Service, or other delivery service, upon notice thereof.
- (4) The registrant shall not assist in any way in the application for licensure of a person known by the registrant to be unqualified in respect to education, training, or experience.

Authority: T.C.A. §§62-18-105(d) and 62-18-106(c).

Rule 0820-04-.03 Service in areas of competence is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0820-04-.03 shall read:

Rule 0820-04-.03 Service in Areas of Competence

- (1) The registrant shall undertake to perform land surveying assignments only when qualified by education or experience in the specific technical field of professional land surveying involved.
- (2) The registrant may accept an assignment requiring education or experience outside of his own field of competence, but only to the extent that his services are restricted to those phases of the project in which he is qualified. All other phases of such project shall be performed by qualified associates, consultants, or employees.
- (3) The registrant shall not affix his signature and/or seal to any plan or document dealing with subject matter in which he lacks competence acquired through education or experience, nor to any plan or document not prepared by him or under his supervision.
- (4) In providing services, the registrant shall take into account all applicable laws and regulations. The registrant shall not knowingly provide services resulting in violation of such laws and regulations.
- (5) Incompetence. The following acts or omissions, among others, may be deemed to be "incompetence" for the purposes of T.C.A. §§62-18-116(a)(1)(B), and to be cause for denial, suspension or revocation of a certificate of registration to practice land surveying.
 - (a) Malpractice. Incompetence includes, but is not limited to recklessness, or excessive errors or omissions in the registrant's record of professional practice.
 - (b) Disability. Incompetence includes but is not limited to mental or physical disability or addiction to alcohol or drugs as to endanger health, safety and interest of the public by impairing skill and care in providing professional services

Authority: T.C.A. §§62-18-105(d) and 62-18-106(c).

Rule 0820-04-.04 Public Statements is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0820-04-.04 shall read:

Rule 0820-04-.04 Public Statements

- (1) The registrant shall be completely objective and truthful in all professional reports, statements, or testimony. He shall include all relevant and pertinent information in such reports, statements, or testimony.
- (2) The registrant, when serving as an expert witness before any court, commission, or other tribunal, shall express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of experience and competence in the subject matter, and upon honest conviction of the accuracy and propriety of his testimony.
- (3) The registrant shall express a professional opinion publicly only when it is founded upon an adequate knowledge of the facts and a competent evaluation of the subject matter.

Authority: T.C.A. §§62-18-105(d) and 62-18-106(c).

Rule 0820-04-.05 Conflicts of interest is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0820-04-.05 shall read:

Rule 0820-04-.05 Conflicts of Interest

- (1) The registrant shall conscientiously strive to avoid conflict of interest with his employer or client; but, when such conflict is unavoidable, the registrant shall forthwith disclose the circumstances to his employer or client.
- (2) The registrant shall avoid all known conflicts of interest with his employer or client, and shall promptly inform his employer or client of any; business association, interests, or circumstances which could influence his judgment or the quality of his services.
- (3) The registrant shall not accept compensation (financial or otherwise) from more than one party for services on or pertaining to the same project rendered in the same time frame, unless the circumstances are fully disclosed to, and agreed to, by all interested parties.
- (4) When engaged in public service on a project as a member, advisor, or employee of a governmental body or department, the registrant and his organization shall not perform services for any other client regarding or connected to the project.
- (5) The registrant shall not reveal facts, data, or information obtained in a professional capacity without the prior consent of the client or employer except as authorized or required by law. The registrant shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties in connection with work for employers or clients.

Authority: T.C.A. §§62-18-105(d) and 62-18-106(c).

Rule 0820-04-.07 Misconduct is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0820-04-.07 shall read:

Rule 0820-04-.07 Misconduct

- (1) The registrant shall not knowingly associate with, or permit the use of his name or firm name in, a business venture by any person or firm which he knows, or has reason to believe, is engaging in business or professional practice of a fraudulent or dishonest nature.

- (2) The registrant shall not furnish limited services in such a manner as to enable unregistered persons to evade:
 - (a) Federal, state and local surveying and planning laws and regulations, or
 - (b) Registration requirements of T.C.A., Title 62, Chapter 18.
- (3) Misconduct. The following acts, among others, may be deemed to be "misconduct" for the purposes of T.C.A. §§62-18-116(a)(1)(B), and to be cause for denial, suspension or revocation of a certificate of registration to practice land surveying:
 - (a) Conviction in a court of competent jurisdiction of any offense that reflects unfavorably on the registrant's ability to practice land surveying.
 - (b) Revocation, suspension or voluntary surrender of a license or certificate of registration to practice land surveying in another jurisdiction.

Nothing in this paragraph should be construed as precluding the Board from deeming other acts and conduct to be "misconduct."

Authority: T.C.A. §§62-18-105(d) and 62-18-106(c).

Rule 0820-04-.08 Seals is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0820-04-.08 shall read:

Rule 0820-4-.08 Seals

- (1) The design of the registrant's seal required by T.C.A. §§62-18-119, shall be as follows:



- (2) The seal and signature of the registrant and the date of signing shall be placed on all land surveys, reports, plats, drawings, plans, and calculations whenever presented to a client or any public agency to certify that the work thereon was done by the registrant or under the responsible charge of the registrant. Working drawings or preliminary documents are not required to have a seal and signature if the working drawing or preliminary document contains a statement in large bold letters to the effect "PRELIMINARY, NOT FOR CONSTRUCTION, RECORDING PURPOSES, OR IMPLEMENTATION." The size of the seal shall be two inches in diameter in all cases and on all documentation requiring the registrant's seal, regardless of the size of the document.
- (3) The registrant shall superimpose his signature (not a rubber stamp) and date of signature across the face and beyond the circumference of or adjacent to the seal on documents to which his seal is affixed.
- (4) The seal and signature shall be placed on all original copies, tracings, or other reproducible documents so that the seal and signature will be reproduced when copies are made.
- (5) When the document contains more than one sheet, the first or title page shall be sealed and signed by the registrant who was in responsible charge. Two or more registrants may affix their signatures and seals provided it is designated by a note under the seal the specific subject matter for which each is responsible. In addition, each sheet shall be sealed and signed

by the registrant or registrants responsible for that sheet. When a firm performs the work, each sheet shall be sealed and signed by the registrant or registrants who were in responsible charge of that sheet as required by T.C.A. § 62-18-122(b).

- (6) The seal and signature shall be placed on work only when it was under the registrant's responsible charge. The registrant shall sign and seal only work within the registrant's area(s) of competence.
- (7) Maps, plats, surveys, or other documents will be deemed to have been prepared under the responsible charge of a registrant only when all the following conditions have been met and documented:
 - a. The client requesting preparation of such maps, plats, surveys, or other documents makes the request directly to the registrant, or a member or employee of the registrant's firm;
 - b. The registrant supervises the preparation of the maps, plats, surveys, or other documents and has input into their preparation prior to their completion;
 - c. The registrant reviews the final maps, plats, surveys, or other documents; and
 - d. The registrant has the authority to, and does, make any necessary and appropriate changes to the final maps, plats, surveys, or other documents. The registrant is responsible for meeting all of the preceding requirements whether the work is being performed remotely or locally.
- (8) Any revision to a document containing the seal and signature of a registrant shall be described and dated in a matter that conforms to current industry standards. If the revisions are not done by the original registrant, the revisions must also be signed and sealed by the registrant in responsible charge of those revisions and otherwise identified in the same manner.
- (9) In circumstances where a registrant in responsible charge of the work is unavailable to complete the work, a successor registrant may take responsible charge by performing all professional services to include developing maps, plats, surveys or other documents and any necessary and appropriate changes to the work. The non-professional services, such as drafting, need not be redone by the successor registrant but must clearly and accurately reflect the successor registrant's work. The burden is on the successor registrant to show such compliance. The successor registrant shall have control of and responsibility for the work product and the signed and sealed originals of all documents.
- (10) Computer-generated seals not signed with a digital signature may be used on final original drawings provided a handwritten signature is placed across the seal and the date is written below the seal. Maps, plats, surveys or other documents that are signed using a digital signature must have an electronic authentication process attached to or logically associated with the electronic document. The digital signature must be:
 - a. Unique to the individual using it
 - b. Capable of verification
 - c. Under the sole control of the individual using it
 - d. Linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

A digital signature that uses a process approved by the board will be presumed to meet the criteria set forth in subsections 10 a–d above. Any hard copy printed from the transmitted electronic file shall bear the facsimile of the signature and seal and be a confirmation that the electronic file was not altered after the initial digital signing of the file. Any alterations to the file shall cause the facsimile of the signature to be voided.

Authority: T.C.A. §§62-18-105(d), 62-18-106(c), and 62-18-119(d).

Rule 0820-04-.09 Responsible charge of service is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0820-04-.09 shall read:

Rule 0820-04-.09 Responsible Charge of Service

- (1) Only officers and principals who are employed full-time for a minimum of thirty (30) hours per week and who hold active Tennessee registration can be in responsible charge of a firm's practice. A registrant who renders occasional, part-time, or consulting services to or for a firm may not be designated as an officer or principal in responsible charge.
- (2) The officer or principal in responsible charge must be registered in the profession in which services are being offered.
- (3) An officer or principal may be in responsible charge of more than one firm only if the firms are at the same physical location.
- (4) Corporations, partnerships and firms maintaining any place of business in this state for the purpose of providing or offering to provide land surveyor services to the public shall have, in responsible charge of such service at any and each place of business, a resident registered land surveyor.
- (5) In the event of a change in the officer or principal in responsible charge, a firm cannot provide or offer services to the public until such time as a new officer or principal in responsible charge is identified.

Authority: T.C.A. §§62-18-105(d) and 62-18-106(c).

New Rule

New Rule 0820-04-.10 Practice - Disclosure of service is created by adding the following language, so that new rule 0820-04-.10 shall read:

Rule 0820-04-.10 Practice-Disclosure

- (a) A corporation, partnership or firm offering service to the public may engage in the practice of surveying in this state; provided that at least one (1) of the principals or officers of the corporation, partnership or firm is in responsible charge of the practice and is registered as required in this chapter for surveyors or is otherwise by this chapter authorized to practice. The same exemptions shall apply to corporations, partnerships and firms as apply to individuals under this chapter.
- (b) Corporations, partnerships or firms offering surveying service to the public shall file with the board, on a form prescribed by the board, a listing of names and addresses of all principals and officers, as well as the principals or officers duly registered to practice surveying in this state who are in responsible charge of the practice in this state. The corporations, partnerships or firms shall advise the board in writing within sixty (60) days of any change of status.

Authority: T.C.A. §§62-18-105(d) and 62-18-106(c).

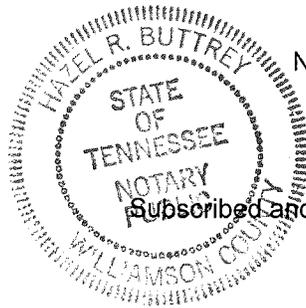
I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 8.6.2013

Signature: [Handwritten Signature]

Name of Officer: ROBERT E. HERNDON

Title of Officer: ASSISTANT GENERAL COUNSEL



Subscribed and sworn to before me on: August 6, 2013

Notary Public Signature: Hazel R. Buttrey

My commission expires on: 5-23-15

Department of State Use Only

Filed with the Department of State on: 8/10/13

[Handwritten Signature]
Tre Hargett
Secretary of State

RECEIVED
2013 AUG -6 AM 10:31
SECRETARY OF STATE