



By Gary Kent, LS

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Trials and Tribulations

Recently I developed and presented several continuing education programs in which I explored the complaint process against surveyors in Indiana. We took the audience through the progression all the way from the initial filing of the complaint to the end of the process—whether that was by dismissal, Board action or through a court decision.

Having been on the Indiana State Board of Registration for Land Surveyors (Indiana has a separate surveying board) for the last seven years, I was familiar with much of what is involved, but even having served as the Board's liaison to the Attorney General's Office for the last year left me with some significant knowledge gaps. Thus, it was a good exercise and one that the persons attending the program felt was enlightening and helpful.

At the very front end, as is likely the case in many states, there is a lot of confusion and misinformation. For example, every now and then someone will say, *"I filed a complaint with the Board two years ago, and you haven't done anything!"* After immediately trying to prevent the revelation of any further information about the complaint, I explain first and foremost that in Indiana, complaints are not filed with the Board, they are filed with the Consumer Protection Division of the Indiana Attorney General's Office.

The Attorney General's Office must conduct an initial review of the complaint, assign it to a Deputy Attorney General, send a notice of the complaint to the respondent (who has twenty days to reply), assign it to a case analyst, collect evidence from the respondent, and prepare a summary. This summary is reviewed by the Board's liaison and the Deputy Director of the Licensing

Enforcement and Homeowner Protection Unit of the Consumer Protection Division and will result in either formal charges being filed, or the closing of the file.

When there is no related licensing issue, a file will be closed and the complaint dismissed. For example, it is not too unusual that a citizen simply does not like the surveyor's boundary determination, but offers no evidence of substandard work, violation of the licensure act or Board rules, or unethical conduct. Sometimes, they

has decided to surrender his or her license in lieu of appearing before the Board, although this must be approved by both the Board and the Attorney General's Office.

As can probably be ascertained from the accompanying flowchart, it does not take too much legal maneuvering for it to take several years before the Board can even legally know that a complaint exists. If the respondent and/or his attorney are inclined to delay things by manipulating

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are simply unhappy over how much the surveyor charged for his or her services.

Assuming it is determined that formal charges need to be filed, the complaint becomes a litigation file and the official administrative complaint must be prepared. The administrative complaint represents the state's formal charges against the registrant. Typically, there will eventually be an attempt to hold a settlement conference with the respondent (and his or her attorney), the Board Liaison and the Deputy Attorney General to try and find a resolution that is agreeable to both parties, short of going to the time and expense of a full-blown Board hearing. In the past, charges against some registrants have been so egregious that respondents will agree to fairly significant sanctions without much objection. In some cases, the respondent

the process with continuances and delays, it can easily take longer than that with all of the necessary statutory legal notices, allowable response times, second and third notices, if necessary, and in finding times agreeable to all parties to meet and try to agree to a settlement. In the past year the Board voted to suspend a registrant who, not once, responded to any correspondence sent by registered mail or appeared at an entire series of hearings set by the Board. Simply ignoring a complaint and all correspondence can delay action by several years.

Since July 2010, this Board liaison has addressed 16 complaints. Seven were complaints filed by consumers, seven were filed by other surveyors and two were filed by the Indiana Professional Licensing Agency.

continued on page 54

Kent, continued from page 56

Of those 16 complaints, seven were closed because there were no licensing violations involved. One complaint was voluntarily dismissed by the state after it was determined that it actually had to do with a contentious employment situation, not a violation of any licensure laws. One file was closed because there were no significant violations, but because the registrant admitted to some technical shortcomings, a warning letter was sent. One was referred to another Licensing Board and six have or will result in formal charges being filed.

Perhaps most important was a discussion about the types of violations that result in significant sanctions in Indiana. The most common substantive shortcomings involve a significant lack of understanding of proper surveying practice (mostly in the realm of boundary retracement). This is often revealed because the plat of survey does not include the mandatory Surveyor's Report in which the boundary law principles applied to the evidence and facts found in the course of the survey are to be explained. Upon questioning in a Board hearing, the registrant often reveals his or her lack of understanding in spades.

A review of current surveyor licenses in Indiana shows the following:

- 4 licenses currently on probationary status
- 1 license currently under conditional practice
- 9 licenses suspended between 2002 and 2011
- 8 licenses revoked between 1994 and 2006
- 12 licenses voluntarily surrendered in lieu of a Board hearing between 1994 and 2010
- 40 licenses currently renewed as inactive (the registrant retains his or her license, pays no fees, and does not have to meet the continuing education requirements, but cannot practice)

If you are unclear of the complaint process in your state, if you do not know why surveyors end up in trouble with your Board, if you do not know what transpires at Board meetings, I believe it behooves you to educate yourself. Attend a couple of Board meetings and ask some questions. Only then will you know what, if anything, your Board is doing on behalf of the public and the profession to help improve the practice of surveying in your state. 

Flowchart Showing the Complaint/Hearing Process in Indiana

(prepared by Gary Kent)

