

**BEFORE THE
WEST VIRGINIA BOARD OF PROFESSIONAL SURVEYORS**

**West Virginia Board of
Professional Surveyors,**
Complainant,

vs.

COMPLAINT NO.: C15-02

William Lawrence Toney, Jr.
WV Professional Surveyor License No. 1308,
Respondent.

CONSENT DECREE

The Respondent, William Lawrence Toney, Jr., and the West Virginia Board of Professional Surveyors execute the following Consent Decree for the purpose of resolving Complaint No. C15-02, filed against the Respondent on August 28, 2014. The parties have reached an agreement, in lieu of a hearing, which the Respondent hereby agrees and stipulates to the Findings of Fact, Conclusions of Law, Consent, and Order set forth in this Consent Decree concerning the disposition of this matter.

FINDINGS OF FACT

The Board adopts the following findings in this matter:

1. The West Virginia Board of Professional Surveyors ("Board") is a state agency created by *West Virginia Code* §30-13A-4, and is authorized to regulate the conduct of Professional Surveyors in the State of West Virginia.
2. William Lawrence Toney, Jr., ("Respondent"), is a Professional Surveyor licensed by the Board, holding license No. 1308.
3. Respondent is designated as the Surveyor-in-Charge ("SIC") for Engineering & Testing 2000, Inc., located in Lewisburg, West Virginia, which has held a COA continuously since November 16, 2001. (COA No. 5149).

4. In 2014, the Respondent was contracted to perform a boundary survey of a certain tract or parcel of land for David Lee and DeAnn Bennett, a 1.97 acre +/- parcel situate in New Haven District, Fayette County, West Virginia, on the south side of WV S.L.S. Route No. 7, on the waters of Short Creek, and recorded in the Office of the County Clerk, Fayette County, West Virginia, on June 27, 2014, in Book 25 Page 495.

5. On August 12, 2014, the Board received a certified survey plat, surveyed by Toney & Associates, Inc., and signed by the Respondent on May 5, 2014.

6. On August 28, 2014, the Board filed Complaint C15-02 against the Respondent alleging Incompetence, including Minimum Standards Violations, Professional Negligence, Unethical Practices, Unlicensed Practice, and a Willful Departure from Accepted Standards of Professional Conduct.

7. On August 28, 2014, a Complaint Notification Letter was sent to the Respondent by certified mail and was signed-for by WL Toney, Jr. on August 30, 2014.

8. On October 1, 2014, the Respondent's response to Complaint C15-02 was received by the Board, which included a cover letter; a copy of the survey plat certified by the Respondent, an unsigned/unsealed Description of Survey of the Respondent's survey; four unsigned/unsealed Description of Surveys of Tracts 1,2,3,4; twelve pages of raw data files from June 3, 2003 and July 7, 2003; a copy of a Certificate of Authorization for Toney & Associates, Inc., issued by the West Virginia Board of Registration for Professional Engineers for the period July 1, 2014 through June 30, 2015; and a continuing education completion certificate for West Virginia Ethics and Minimum Standards attended by the Respondent on June 12, 2014.

9. In the Respondent's response received by the Board on October 1, 2014, the Respondent admitted that he did not have a certificate of authorization for the May 2014 survey. Moreover, Respondent admitted that he "possibly prepared the survey in haste without a review of the final plat."

10. On October 27, 2014, the Board's Complaint Review Committee ("CRC") reviewed Complaint C15-02.

11. On December 16, 2014, the Board found probable cause that the Respondent violated the *West Virginia Professional Surveyors Act*.

CONCLUSIONS OF LAW

1. Pursuant to *W. Va. Code* §30-1-8(a), the Board is authorized to enter into consent decrees for the informal disposition of complaints in lieu of a formal hearing.

2. Pursuant to *W. Va. Code* §30-1-8(a), the Board is also authorized to assess administrative costs against the licensee for reimbursement of costs of the investigation, hearings and other expenses relative to the complaint, when the Board finds grounds for disciplinary action.

3. Pursuant to *W. Va. Code* §30-13A-22(g), “[t]he Board may, after notice and opportunity for hearing, deny or refuse to renew, suspend, restrict or revoke the license or certificate of authorization of, or impose probationary conditions upon or take disciplinary action against, any licensee or certificate holder...” (2010).

4. Pursuant to *W. Va. Code* §30-13A-1(b), “It is unlawful for any firm to practice or offer to practice surveying in this state without a certificate of authorization issued under the provisions of this article, or advertise or use any title or description tending to convey the impression that it is a surveying firm, unless such firm has been issued a certificate of authorization under the provisions of this article.”

5. The Respondent certified a Plat of Survey under the company name of Toney & Associates, Inc., without being issued a Certificate of Authorization to conduct surveying services in the State of West Virginia in violation of *W. Va. Code* §30-13A-20(a) and *W. Va. Code R.* §23-5-3.1.a.

6. The Respondent failed to approve and seal only those documents that conform to accepted surveying standards by placing his signature on a Plat of Survey, knowing that Toney & Associates, Inc., was not licensed to conduct surveying services in the State of West Virginia in violation of *W. Va. Code* §30-13A-1(b) and *W. Va. Code R.* §23-5-3.1.a.

7. Pursuant to *W. Va. Code R.* §23-5-7.1, the purpose of Minimum Standards for Surveys “[i]s to establish minimum technical criteria to govern the practice of surveying when more

stringent specifications are not required. Further, the purpose is to protect the inhabitants of this state from dishonest or incompetent surveying and generally to protect the public health, safety and welfare.”

8. The Respondent signed and sealed a survey document that failed to conform to accepted surveying standards by placing his signature on a Plat of Survey, knowing that the plat contained minimum standard deficiencies in violation of *W. Va. Code R. §23-5-6.1.b*.

9. The Respondent signed and sealed a survey document that fails to comply with the minimum standards for boundary surveys in violation of *W. Va. Code R. §23-5-7.3*.

10. The Respondent prepared a description of the surveyed parcel that fails to comply with the perimeter description method in violation of *W. Va. Code R. §23-5-7.3.h.2*.

CONSENT

By signing below, the Respondent agrees to the following:

1. Respondent has had the opportunity to consult with counsel and executes this Consent Decree voluntarily, freely, without compulsion or duress and mindful that it has legal consequences. No person or entity has made any promise or given any inducement whatsoever to encourage Respondent to make this settlement other than as set forth herein.

2. Respondent acknowledges that he is aware that he may pursue this matter through appropriate administrative and/or court proceedings, and is aware of his legal rights regarding this matter, but intelligently and voluntarily waives such rights.

3. Respondent acknowledges that this document is a public Record as defined in *W. Va. Code §29B-1-2(4)*, and as such, the Board is legally bound to allow any person to review this Consent Decree. Moreover, the results of the Board’s action may be reported to other authorities and agencies.

4. Respondent consents to the entry of the following Order affecting his conduct as a professional surveyor.

ORDER

On the basis of the foregoing, the Board hereby ORDERS as follows:

1. Respondent is hereby REPRIMANDED for his actions in the instant matter as outlined above in the Findings of Fact and Conclusions of Law. The Board finds that the Respondent violated *W. Va. Code* §§30-13A-1(b), 30-13A-20(a); and *W. Va. Code R.* §§23-5-3.1.a, 23-5-6.1.b, 23-5-7.3, and 23-5-7.3.h (2008).

2. Respondent shall apply for a Certificate of Authorization for Toney & Associates, Inc. or prepare a new survey under the Engineering & Testing 2000, Inc., Certificate of Authorization [“COA No. 5149”] within thirty (30) days of the entry of this Order into the records of the Board.

3. Respondent shall revise his plat and prepare a legal description in accordance with the current minimum standards for boundary surveys. Revised plat will be recorded and submitted to the Board within ninety (90) days of the entry of this Order into the records of the Board.

4. Respondent shall pay to the West Virginia Board of Professional Surveyors a total fine in the amount of \$1,000.00, which represents a \$500.00 fine for placing his signature and seal on a boundary survey for a firm without a Certificate of Authorization which was not licensed to conduct surveying services in the State of West Virginia, and a \$500.00 fine for certifying a boundary survey plat containing minimum standards violations, (*Reference Complaint C15-02*), to be deposited in the general revenue fund of the State of West Virginia. Respondent shall pay the fine within ninety (90) days of entry of this Order into the records of the Board.

5. Respondent shall pay to the West Virginia Board of Professional Surveyors, by separate check, the administrative costs and legal fees associated with the Board’s investigation of this complaint, which totals \$425.00. (*Reference Complaint C15-02*). Respondent shall pay the administrative costs and legal fees within ninety (90) days of entry of this Order into the records of the Board.

6. Any deviation from the requirements of this Consent Decree, without the prior written consent of the Board, shall constitute a violation of this Order.

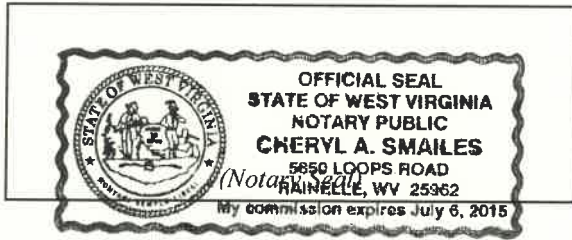
7. Respondent shall immediately advise the Board of any changes in his status and advise the Board of his current address at all times during the term of this Consent Decree.

AGREED TO BY:

William L. Toney Jr 6-1-15
WILLIAM LAWRENCE TONEY, JR., P.S. DATE

Subscribed and sworn to before me this 1st day of June, 2015.

My commission expires: July 6, 2015.

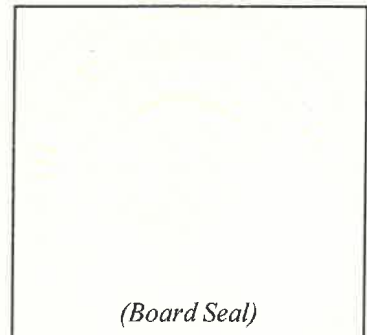


Cheryl A. Smailes
Signature of Notary Public

ENTERED into the Records of the West Virginia Board of Professional Surveyors this:

1st day of June, 2015.

Roy E. Shrewsbury, II
ROY E. SHREWSBURY, II
Chairman



(Board Seal)