

ETHICAL ISSUES IN THE OIL PATCH

**RICHARD L. MERRILL
FABIO & MERRILL
TWELVE GREENWAY PLAZA, SUITE 101
HOUSTON, TEXAS 77046-1208
713-961-0408
713-961-2934 (FAX)
rmerrill@fabiomerrill.com
www.fabioandmerrill.com
www.fabiomerrill.com**

I. SCOPE

This paper is not designed to cover every aspect of the oil and gas industry or all ethical issues and situations which may come into play. Although much of the discussion may very well apply to marketing, refining and other elements of the downstream side of the industry, the focus is on issues generally impacting the exploration and production arena. In that regard, I have included discussions on various issues which are applicable to attorneys, landmen, petroleum engineers, and petroleum geologists, links to the applicable ethics codes for each of such disciplines, and copies of the ethics codes for all of the disciplines except those applicable to the legal profession (which I have omitted due to their size).

Every state has its own set of ethical rules for attorneys, with the American Bar Association model rules generally forming the framework for the rules adopted by the various states. Texas and other of the states, however, have modified the ABA's model rules in such manner as the Bar Associations of such states have determined advisable. I have not attempted in this paper to distinguish how each of the different jurisdictions might or might not handle an ethical issue arising in such jurisdiction on the same set of facts; instead, I have applied a Texas slant to the discussion in this paper as I am a Texas attorney who devotes most of his practice to matters in Texas.

II. TITLE OPINIONS/TITLE WORK

a. General Information about Title Opinions

Although title opinions are most often associated with the title to a proposed drillsite tract and tracts included or to be included in a producing unit, they are also sought in the context of financing transactions, acquisitions of either an entire entity of specific properties owned by a selling entity, and any other transactions in which title to mineral and/or leasehold estates is an important factor. Depending upon the transaction and what information is required, the title opinion can be broad in scope or very limited. For example, in acquisitions or financing transactions involving a lessee's interest in producing and non-producing properties, the scope of the opinion is generally limited to just a verification of the borrower's or seller's title to the oil and gas leasehold estate without any determination made as to the validity of the mineral ownership upon which the leasehold estate was based. This paper, will, however, focus on title opinions associated with title to drill sites and unit tracts. I also note that much of the discussion applies not only to other types of opinions but also to other situations.

In the oil and gas exploration and production industry, attorney title opinions are the accepted manner for drilling and production companies to determine/verify title to property upon which a well is to be drilled and/or which is to be included in a producing unit. Title companies, at least in Texas, do not issue title policies covering interests in oil, gas and mineral estates but instead exclude coverage as to mineral rights and titles; instead, title companies take the position that exploration and production companies need to rely upon landmen and oil and gas attorneys to determine title to the mineral estates in which they are interested.

The general standards in Texas which relate to the examination of title are set forth in the Texas Title Examination Standards, which are found in Title 2 - Appendix of the Texas Property Code. See <http://west.thomson.com/pdf/texas/PropT2App.pdf>, which contains a copy of the current Standards. Although these standards apply to all land title opinions, this paper will limit discussions on title opinions just to those applicable to the oil and gas industry.

As noted in the Standards' "Disclaimer and Introduction", they constitute "statements that declare an answer to a question or a solution for a problem that is commonly encountered in the process of a title examination" and their purpose is "to alleviate disagreements among members of the bar regarding real estate transactions and to set forth propositions (standards) with which title lawyers can generally agree concerning title documents to promote uniformity in the preparation, use, and meaning of such documents." They serve as a "reference that can be consulted in the preparation and examination of title documents" but do not "by themselves, impose compulsory legal requirements". Instead, they "establish guidelines upon which a reasonable and practical examination can be based." As the law regarding titles and conveyancing documents change, the standards are designed to be fluid and subject to amendment to keep up with such changes.

The purposes for title opinions are stated in Standard 1.01:

The purpose of an examination of title and comments, objections, and requirements is to advise an examiner's client of the status of title and of the methods by which the client may secure marketable title to real property. Based upon the materials examined, the title opinion should advise an examiner's client of all irregularities, defects, and encumbrances that may reasonably be expected to affect materially the value or use of the property or that may expose the owner to litigation or adverse claims even if the litigation or adverse claims can reasonably be expected to be successfully defended. The examiner does not ordinarily determine the validity or priority of irregularities, defects and encumbrances.

The typical form of most title opinions of which I am aware or have reviewed is that of a letter addressed to the client requesting the opinion. The areas generally covered by and/or included within title opinions are: (1) a description of the property being examined, (2) a listing of the documents and other materials reviewed by the examining attorney; (3) a listing of owners and their respective interests in and to the surface, minerals, royalties, non-participating royalties, working interests, overriding royalty interests, and production payments and other non-possessory interests, (4) an analysis of the oil and gas leases, and (5) a comments and requirement section which discusses all pertinent aspects of the title, problems with the title, potential claimants of title interests in the lands examined. A sample form of an opinion is attached to this paper in Attachment "A".

Most of the time, the documents examined by title examination attorneys are provided by the client. Such documents are most often provided in the form of: (i) an abstract of title (which purportedly contains a copy of all documents in the chain of title for the period stated on the abstract) prepared by a title company and obtained directly from the title company or the client's lessor; (ii) a

“homemade” abstract prepared by a landman at the client’s request which contains, at a minimum, a runsheet (which is essentially an descriptive index of the document copies provided) and copies of all documents identified by the landman as pertinent to the chain of title; or (iii) a title runsheet and request that the attorney perform a “stand-up” examination at the courthouse of the documents listed in the runsheet. There are also times when an attorney is only furnished a lease or other document containing a property description, together with a plat showing the acreage, and asked to prepare his or her own runsheet and perform a “stand-up” examination at the courthouse.

Depending upon the county, online access to some of the real property, probate, court, and other records may be available. There are also several online services, such as TexasFile, <http://www.texasfile.com/>, which have built online databases of real property records from various counties. The problem with most online records, whether available through any particular county clerk’s online database or a service such as TexasFile, is that they currently only go back for a limited period of time and not to the inception of records in any particular county. Since most attorney title opinions are from sovereignty of the soil, the ability to rely solely upon online records is not possible; in most cases, online records must be substantially supplemented by obtaining copies of records from the applicable county. An examination of title which only goes back a little over 25 years (in order to take advantage of the 25 year limitations statute) and which might be acceptable for the surface, particularly as to constantly occupied property, is clearly insufficient when it comes to mineral titles. Title to the mineral estate has frequently been severed from title to the surface estate, and, considering that production of oil commenced in 1859 in Pennsylvania and in 1901 in Texas with the discovery at Spindletop, a title examiner can start encountering mineral/surface severances in instruments going back into the 1800's and early 1900's.

b. Ethical Considerations

1. *Competency of Examining Attorney*

Before an attorney even takes on the drafting of a title opinion, he or she needs to be knowledgeable as to the law relating to land titles in the jurisdiction in which the land is located. TEX. DISCIPLINARY R. PROF'L CONDUCT 1.01 provides that

A lawyer shall not accept or continue employment in a legal matter which the lawyer knows or should know is beyond the lawyer's competence , unless:

- (1) another lawyer who is competent to handle the matter is, with the prior informed consent of the client, associated in the matter; or
- (2) the advice or assistance of the lawyer is reasonably required in an emergency and the lawyer limits the advice and assistance to that which is reasonably necessary in the circumstances.

There are a number of legal issues that arise in the examination of title and which can trap an unwary or unknowledgeable attorney. The doctrine of after-acquired title and issues ruled upon in *Duhig*

v. Peavy-Moore Lumber Co., Inc., 144 S.W.2d 878 (Tex. 1940) and the numerous cases following or distinguishing *Duhig* readily come to mind.

2. *Scope of Representation and of Opinion*

As provided in TEX. DISCIPLINARY R. PROF'L CONDUCT 1.02 (a), "a lawyer shall abide by a client's decisions . . . concerning the objectives and general methods of representation." TEX. DISCIPLINARY R. PROF'L CONDUCT 1.02 (b) provides that "[a] lawyer may limit the scope, objectives and general methods of the representation if the client consents after consultation." It is therefore fairly clear that when a client requests issuance of a drilling or division order title opinion and does not specify any limitations¹, the client is primarily interested in receiving as full and complete a statement of ownership of the tract as possible with the customary discussion of problems and issues related to the title, which may require that the attorney perform legal research. In those situations where the client has furnished the copies of the documents which the attorney is to review, the issue then becomes whether the client has, in effect, established or limited the scope of the title review to just those documents or whether the attorney has some latitude, without first consulting the client, to look in other quarters for additional documents in those situations where the attorney believes that the furnished documents are incomplete and/or additional information which will assist in the preparation of the title opinion is or may be available from other sources. With the amount of information available through the internet, attorneys now have more access to information than ever before. For example, the Texas General Land Office's archives on land patents are available online and it is an easy matter to download the GLO's file and copies of original documents relating to land grants from the sovereign, whether it be Spain, Mexico, the Republic of Texas, or State of Texas. As previously noted, a number of counties have a portion of their real property records online and available for viewing. If a person's death or family history is important to determine, then an internet search may turn up an obituary notice, a listing of persons buried in certain cemeteries, or a genealogical history of both the ancestors and descendants of any particular person.

The Comment for TEX. DISCIPLINARY R. PROF'L CONDUCT 1.02 states, in pertinent part, as follows:

Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the objectives to be served by legal representation, within the limits imposed by law, the lawyer's professional obligations, and the agreed scope of representation. Within those limits, a client also has a right to consult with the lawyer about the general methods to be

¹ An example of a limitation sometimes requested of an examiner is that surface estate ownership be excluded from the opinion. This limitation is usually requested when the client knows, based upon preliminary title work done by its landmen, that there has been a complete severance of the surface estate from the mineral estate and that the surface estate ownership has been fragmented into a number of small tracts. In such situations, the client has made the determination that the cost of determining surface estate ownership, which is not critical to the issue of whether there is leasehold coverage of all of the mineral estate, far outweighs any small benefit of having an attorney opine as to the surface title.

used in pursuing those objectives. The lawyer should assume responsibility for the means by which the client's objectives are best achieved. Thus, a lawyer has very broad discretion to determine technical and legal tactics, subject to the client's wishes regarding such matters as the expense to be incurred

It therefore appears, that so long as the search outside the materials furnished is reasonably related to the objectives of the representation and that the expense to be incurred by the client will not be negatively impacted, then the attorney can and should conduct such a search as he or she bears the “responsibility for the means by which the client's objectives are best achieved.” If, however, such a search may result in substantial additional expense to the client or an expenditure of additional time which may or would prevent the attorney from completing the project timely, then the attorney should consult with the client. *See* TEX. DISCIPLINARY R. PROF'L CONDUCT 1.03 which requires that an attorney “keep a client reasonably informed about the status of a matter” and “explain a matter to a client to the extent reasonably necessary to make informed decisions regarding the representation.” If there is any doubt as to the benefits and costs of such a search, then the better practice would be to consult the client, advise them of the type of search proposed, likely additional costs to be incurred for conducting the search, and obtain the client's approval.

Typically, title opinions also contain comments which limit the scope of the opinion to the materials examined and list, as exclusions, various matters that might exist which could adversely impact the title but which did not appear in any of the materials examined. For example, an examiner could base his or her opinion of ownership upon a forged instrument because the forged instrument appeared valid on its face and no affidavit or other legal challenge had been made to the validity of the instrument as of the closing date for the materials examined; in such a situation, there would be no reasonable way the attorney could or would have known that the instrument was not a valid instrument. These comments are similar to the exclusion contained in title policies and serve a two-fold purpose in that they not only advise the client of potential areas where title problems could arise which are outside the scope of the materials examined and not apparent to the examiner based upon his or her examination but also try to limit the examiner's liability exposure in the event that any of such matters actually come to pass or in the event the opinion or information contained in the opinion is disseminated to third parties. At least one attorney has expressed caution with the inclusion of such comments in opinions based upon the language of TEX. DISCIPLINARY R. PROF'L CONDUCT 1.08(g) which states that a “lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement” *See* J. Lanier Yates, “Ethical Considerations in an Oil and Gas Practice”, 1998 AAPL OCS Worskshop, <http://64.118.75.138/720DE/assets/files/lawarticles/LANIER2.pdf>. However, one year following Mr. Yates' paper, the Texas Supreme Court rendered its opinion in *McCamish, Martin, Brown & Loeffler v. F. E. App.*, 991 S.W.2d 787, 794 (Tex. 1999) and stated:

A lawyer may also avoid or minimize the risk of liability to a nonclient by setting forth (1) limitations as to whom the representation is directed and who should rely

on it, or (2) disclaimers as to the scope and accuracy of the factual investigation or assumptions forming the basis of the representation or the representation itself.

3. *Considerations Regarding Third Parties*

Often, the cost of a title opinion, although requested only by the attorney's client, will be paid in part, through billings to the joint account, by third parties, which may or may not be known to the attorney. The client may also include an opinion as part of a package which it provides to potential participants who will share in the cost of drilling a well and paying the lease acquisition costs, either on a cost basis or some form of promote. An oil and gas lease may also require that the lessee furnish to the lessor a copy of all title opinions rendered on the acreage covered by such lease. The issue which arises in such situations is whether the attorney has any liability to such third parties.

McCamish agreed that a privity requirement generally prevents a third party from maintaining an action against an attorney for malpractice:

At common law, the rule of privity limits attorney liability to third parties. *See generally* 1 Ronald E. Mallen and Jeffrey M. Smith, *Legal Malpractice*, § 7.1 (4th ed. 1996); David J. Meiselman, *Attorney Malpractice: Law and Procedure*, § 6.2 (1980). The general rule is that persons who are not in privity with the attorney cannot sue the attorney for legal malpractice. *See* Mallen and Smith, § 7.1; Meiselman, § 6.2; see also 2 Barry A. Lindahl, *Modern Tort Law Liability & Litigation*, § 26.14 (1989). In practical terms, this privity requirement means that an attorney is not liable for malpractice to anyone other than her client. *See Savings Bank v. Ward*, 100 U.S. 195, 200 (1879); *Barcelo v. Elliot*, 923 S.W.2d 575, 577 (Tex. 1996) (citing *Savings Bank*).

Id. at 792.

McCamish, however, extended the tort of negligent misrepresentation as described by the Restatement (Second) of Torts § 552 to attorneys which would allow a third party non-client maintain a cause of action against the attorney. In 2010, the Texas Supreme Court reaffirmed that *McCamish* properly represents the law in Texas with regard to Section 522 claims. *Grant Thornton, LLP V. Prospect High Income Fund*, 314 S.W.3d 913 (Tex. 2010). Section 552 reads, in pertinent part, as follows:

One who, in the course of his business, profession or employment, or in any transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information. . . . [T]he liability stated . . . is limited to the loss suffered

(a) by the person or one of a limited group of persons for whose benefit and guidance he intends to supply the information or knows that the recipient intends to supply it; and (b) through reliance upon it in a transaction that he intends the information to influence or knows that the recipient so intends or in a substantially similar transaction.

In explaining its reasoning in applying Section 552 to the legal profession, the Texas Supreme Court stated in *McCamish* as follows:

We perceive no reason why section 552 should not apply to attorneys. First, nothing in the language of section 552 or in the reasoning of *Sloane* warrants such an exception. More importantly, allowing a nonclient to bring a negligent misrepresentation cause of action against an attorney does not undermine the general rule that persons who are not in privity with an attorney cannot sue the attorney for legal malpractice. Nor does applying section 552 to attorneys implicate the policy concerns behind our strict adherence to the privity rule in legal malpractice cases. Finally, the Restatement (Third) of the Law Governing Lawyers § 73 (Tentative Draft No. 8, 1997) (Footnote omitted), which sets forth certain circumstances in which an attorney may owe a duty of care to a nonclient, validates the application of section 552 to an attorney when the attorney invites a nonclient's reliance.

....

As the court of appeals noted, a negligent misrepresentation claim is not equivalent to a legal malpractice claim. 953 S.W.2d at 408. Under the tort of negligent misrepresentation, liability is not based on the breach of duty a professional owes his or her clients or others in privity, but on an independent duty to the nonclient based on the professional's manifest awareness of the nonclient's reliance on the misrepresentation and the professional's intention that the nonclient so rely. *See Horizon Fin., F.A. v. Hansen*, 791 F. Supp. 1561, 1574 (N.D. Ga. 1992) (citing *Eisenberg v. Gagnon*, 766 F.2d 770 (3d Cir. 1985), and *Robert & Co. Assocs. v. Rhodes-Haverty Partnership*, 300 S.E.2d 503 (Ga. 1983)). Therefore, an attorney can be subject to a negligent misrepresentation claim in a case in which she is not subject to a legal malpractice claim. *See Mehaffy, Rider, Windholz & Wilson v. Central Bank Denver, N.A.*, 892 P.2d 230, 236 (Colo. 1995); *Kirkland Constr. Co. v. James*, 658 N.E.2d 699, 700-02 (Mass. App. Ct. 1995).

....

Several jurisdictions have held that an attorney can be liable to a nonclient for negligent misrepresentation, as defined in section 552, based on the issuance of opinion letters. *See, e.g., Greycas, Inc.*, 826 F.2d at 1564-65; *Eisenberg*, 766 F.2d at 780; *Kline v. First Western Gov't Sec.*, 794 F. Supp. 542, 555 (E.D. Pa. 1992);

Horizon, 791 F. Supp. at 1574; *Mehaffy*, 892 P.2d at 237; *Petrillo*, 655 A.2d at 1360-61; *Kirkland*, 658 N.E.2d at 701; *Mark Twain Kansas City Bank v. Jackson, Brouillette, Pohl & Kirley*, 912 S.W.2d 536, 539-40 (Mo. Ct. App. 1995). Other jurisdictions have indicated a willingness to subject lawyers to a section 552 claim by a nonclient in connection with the preparation of different types of evaluations, given the proper circumstances. *See, e.g., Menuskin*, 145 F.3d at 762-63 (warranty deeds); *One Nat'l Bank*, 80 F.3d at 612 (title certificate); *Abell*, 858 F.2d at 1132-33 (offering statement); *Buford*, 740 F. Supp. at 1562 (offering memorandum); *Hines*, 787 P.2d at 21 (placement memorandum); *Collins*, 750 S.W.2d at 738 (warranty deeds); *Stinson*, 738 S.W.2d at 190 (deed of trust); *Haberman*, 744 P.2d at 1067 (annual reports). Thus, section 552 has been cited favorably in a variety of lawyer liability contexts.

(Emphasis added.)

Id. at 791-793

McCamish also recognizes that “the nature of the relationship between the attorney, client, and nonclient.” is a critical factor to be considered and that a third party nonclient’s ability to bring a Section 552 claim is limited to only those “situations in which the attorney who provides the information is aware of the nonclient and intends that the nonclient rely on the information” with the further requirement that “a claimant justifiably rely on a lawyer's representation of material fact.” *Id.* at 794.

Although I did not find any Texas cases applying Section 552 to landmen, engineers or geologists, there is no reason to believe that, in the appropriate type of case, a claim could not be lodged against any of such professionals by a third party. Therefore and in order to try to avoid potential liability to a third party under the reasoning of *McCamish* based upon negligent misrepresentation claim, petroleum landmen, engineers and geologists should exercise care in preparing reports which their client or employer will then use in its dealing with third parties and include third party disclaimer language in any reports they do prepare.

4. *Attorney-Client Privilege*

In order to preserve the attorney client privilege, attorneys are also prevented from disseminating client confidences to third parties. TEX. DISCIPLINARY R. PROF'L CONDUCT 1.05 reads as follows:

(a) "Confidential information" includes both "privileged information" and "unprivileged client information." "Privileged information" refers to the information of a client protected by the lawyer-client privilege of Rule 503 of the Texas Rules of Evidence or of Rule 503 of the Texas Rules of Criminal Evidence or by the principles of attorney-client privilege governed by Rule 501 of the Federal Rules of Evidence for United States Courts and Magistrates. "Unprivileged client information" means all information relating to a client or furnished by the client, other than

privileged information, acquired by the lawyer during the course of or by reason of the representation of the client.

(b) Except as permitted by paragraphs © and (d), or as required by paragraphs (e), and (f), a lawyer shall not knowingly:

- (1) Reveal confidential information of a client or a former client to:
 - (i) a person that the client has instructed is not to receive the information; or
 - (ii) anyone else, other than the client, the client's representatives, or the members, associates, or employees of the lawyer's law firm.
- (2) Use confidential information of a client to the disadvantage of the client unless the client consents after consultation.
- (3) Use confidential information of a former client to the disadvantage of the former client after the representation is concluded unless the former client consents after consultation or the confidential information has become generally known.
- (4) Use privileged information of a client for the advantage of the lawyer or of a third person, unless the client consents after consultation.

© A lawyer may reveal confidential information:

- (1) When the lawyer has been expressly authorized to do so in order to carry out the representation.
- (2) When the client consents after consultation.
- (3) To the client, the client's representatives, or the members, associates, and employees of the lawyer's firm, except when otherwise instructed by the client.
- (4) When the lawyer has reason to believe it is necessary to do so in order to comply with a court order, a Texas Disciplinary Rule of Professional Conduct, or other law.
- (5) To the extent reasonably necessary to enforce a claim or establish a defense on behalf of the lawyer in a controversy between the lawyer and the client.
- (6) To establish a defense to a criminal charge, civil claim or disciplinary complaint against the lawyer or the lawyer's associates based upon conduct involving the client or the representation of the client.
- (7) When the lawyer has reason to believe it is necessary to do so in order to prevent the client from committing a criminal or fraudulent act.
- (8) To the extent revelation reasonably appears necessary to rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services had been used.

(d) A lawyer also may reveal unprivileged client information.

- (1) When impliedly authorized to do so in order to carry out the representation.
- (2) When the lawyer has reason to believe it is necessary to do so in order to:

- (i) carry out the representation effectively;
 - (ii) defend the lawyer or the lawyer's employees or associates against a claim of wrongful conduct;
 - (iii) respond to allegations in any proceeding concerning the lawyer's representation of the client; or
 - (iv) prove the services rendered to a client, or the reasonable value thereof, or both, in an action against another person or organization responsible for the payment of the fee for services rendered to the client.
- (e) When a lawyer has confidential information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in death or substantial bodily harm to a person, the lawyer shall reveal confidential information to the extent revelation reasonably appears necessary to prevent the client from committing the criminal or fraudulent act.
- (f) A lawyer shall reveal confidential information when required to do so by Rule 3.03(a)(2), 3.03(b), or by Rule 4.01(b)².

The ability to claim the attorney-client privilege resides with the client, but the attorney who was the client's attorney at the time of the communication is presumed to have the authority to claim the privilege on behalf of the client. *See* TEX.R.EVID. 503©. The privilege is subject to waiver and the burden for proving the continued existence of the privilege and lack of waiver is upon the person or entity claiming the privilege. As noted by *In re ExxonMobil Corp.*, 97 S.W.3d 353, 363 (Tex. App.-Houston [14th Dist.] 2003, orig. proceeding):

Rule of Evidence 511 states that a person upon whom the rules confer a privilege, such as the attorney-client privilege, waives the privilege if: "the person or a predecessor of the person while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter unless such disclosure itself is privileged. . . ." Tex.R.Evid. 511(1). . . .

It was relator's burden to prove its claim of privilege with respect to this document and to prove that the privilege had not been waived by disclosure. *Jordan v. Court of Appeals*, 701 S.W.2d 644, 648-49 (Tex. 1985).

When there is conflicting factual evidence regarding whether the privilege was waived, a trial court's determination on the matter, absent abuse of discretion, is binding upon the appellate court in mandamus proceedings, which are the usual type of appellate actions filed to seek review of a trial court's order either compelling or denying the discovery of documents and other information as to

² The exceptions referenced in Rule 3.03 relate to proceedings before courts and other tribunals and are limited to preventing the assisting of a criminal or fraudulent act and correcting evidence introduced by an attorney which the attorney subsequently learns was false. The exception referenced in Rule 4.01 allows disclosure to a third party to prevent a lawyer from becoming a party to a criminal act or knowingly assisting a client in perpetrating a fraudulent act.

which a privilege has been asserted. *See In re Venus Ford of Cudahy, Inc.*, Case No. 14-11-00904-CV (Tex.App.-Houston [14th Dist.] 11-15-2011, Mem. Op., no pet.); *See also Boring & Tunneling Co. of Am., Inc. v. Salazar*, 782 S.W.2d 284, 288 (Tex. App.-Houston [1st Dist.] 1989, orig. proceeding, no pet.)

To try to preserve the attorney-client privilege with regard to title opinions, oil and gas companies should implement various procedures designed to protect the confidentiality of title opinions just as is done with other attorney-client communications. With such documents now often being maintained in digital format, the chances of dissemination to a third party or entity are greater than ever before. Confidentiality agreements should also be obtained from third parties, including contract personnel, who will be afforded access to the title opinions and other privileged documents associated with the opinions.

5. *Use of Title Opinion and Information Furnished by a Client for a Subsequent Client*

Sometimes an attorney is asked by a client to perform a title examination and render a title opinion on the same acreage as to which the attorney previously rendered a title opinion on behalf of a prior client.

In disqualification cases, the courts have applied the test of whether the matters embraced with a pending suit are substantially related to the factual matters involved in the previous matter handled by the attorney. *See Metropolitan Life Ins. Co. v. Syntek Finance Corp.*, 881 S.W.2d 319 (Tex. 1994); *NCNB Tex. Nat'l Bank v. Coker*, 765 S.W.2d 398, 399 (Tex. 1989). As stated in *Metropolitan Life*:

Rule 1.09 of the Texas Disciplinary Rules of Professional Conduct provides that a lawyer shall not take a representation that is adverse to a former client if the new matter "is the same or a substantially related matter." TEX. DISCIPLINARY R. PROF. CONDUCT 1.09(a)(3) (1989), *reprinted in* TEX.GOV'T CODE ANN., tit. 2, subtit. G. app. (Vernon Supp. 1993) (STATE BAR RULES art. X, Sec. 9). In *NCNB Tex. Nat'l Bank v. Coker*, 765 S.W.2d 398, 400 (Tex. 1989), we stated that to satisfy the substantial relationship test as a basis for disqualification a movant must prove that the facts of the previous representation are so related to the facts in the pending litigation that a genuine threat exists that confidences revealed to former counsel will be divulged to a present adversary.

Id. at 320-321.

The threshold question is whether the rendition of an opinion on behalf of a new client would be adverse to the prior client. If the prior client still had an interest in the acreage, then the prior client would probably take the position that representation by an attorney of a new client would be adverse to the interests of the prior client; in such an event, consent of the prior client before taking on representation of the new client would be required.

If the prior client no longer owned an interest in the property at issue, then the new representation would likely not be adverse to the prior client, but out of an abundance of caution, an attorney should check with his or her prior client to verify that the new representation would not be adverse to any of the client's current interests. Assuming that the attorney receives acknowledgment that the representation would not be adverse to the prior client, the question then becomes to what extent the attorney can either divulge the title opinion to the new client or use the information furnished by the prior client in his or her preparation of a title opinion for the new client. TEX. DISCIPLINARY R. PROF'L CONDUCT 1.05 includes with the definition of "confidential information" all "unprivileged client information" which is defined as "all information relating to a client or furnished by the client, other than privileged information, acquired by the lawyer during the course of or by reason of the representation of the client." Therefore, everything furnished by the prior client, including runsheets and copies of the title documents filed of record, would still be classified as confidential information. Rule 105 requires client consent before an attorney can reveal a client's confidential information, so any divulging of the prior title opinion and/or of any of the documents and other information received by the client or acquired by the attorney during his prior representation to a new client would require consent, after consultation, from the prior client. A literal reading of Rule 105 would indicate that the use of a client's confidential information is subject to a different standard, *i.e.*, use is prohibited only when it would operate to the client's or former client's disadvantage, in which event client consent, after consultation, is still required except in those situations where the confidential information has become generally known. However, the decision in *In re Murphy*, Case No. 14-08-01017-CV (Tex.App.--Houston [14th Dist.] 2009) (Mem. Op.) stated that "... the client's privilege in confidential information disclosed to her attorney is not nullified by the fact that the circumstances to be disclosed are part of a public record, or that there are other available sources for such information."

As to public documents furnished by a prior client, the issue is whether those should be treated as "generally known" so an attorney could use them in preparing a title opinion on behalf of a new client or whether the position in *In re Murphy* should be strictly enforced even in a non-litigation scenario. It is clear, however, that documents furnished by the prior client which have not become generally known can only be used if consent is obtained, following consultation, from the prior client, since it would, as a practical matter, be almost impossible for an attorney to know categorically whether his or her use of any such non-public documents previously furnished by a prior client might or might not cause detriment to the prior client.

III. ETHICAL RULES AND PROCEDURES

Following are links to various ethical rules and procedures applicable to attorneys, landmen, engineers and/or geologists:

American Bar Association's Model Rules of Professional Conduct

http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html

American Bar Association Links to Other Legal Ethics and Professional Responsibility Pages

http://www.americanbar.org/groups/professional_responsibility/resources/links_of_interest.html

Texas Rules of Professional Conduct

http://www.texasbar.com/AM/Template.cfm?Section=Ethics_Resources&Template=/CM/ContentDisplay.cfm&ContentID=14125

Texas Rules of Disciplinary Procedure

http://www.texasbar.com/AM/Template.cfm?Section=Ethics_Resources&Template=/CM/ContentDisplay.cfm&ContentID=11069

Texas Lawyers Creed

<http://www.texasbar.com/Content/NavigationMenu/ForLawyers/ResourceGuides/EthicsResources/Lawyers-Creed.pdf>

American Association of Petroleum Landmen Code of Ethics

http://www.landman.org/wcm/AAPL/ABOUT_AAPL/Code_of_Ethics/AAPL/About_AAPL/Code_of_Ethics.aspx

(Copy attached to this paper in Attachment “B-1”)

National Society of Professional Engineers Code of Ethics

<http://www.nspe.org/Ethics/CodeofEthics/index.html>

(Copy attached to this paper in Attachment “B-2”)

Society of Petroleum Engineers Guide for Professional Conduct

<http://www.spe.org/about/docs/professionalconduct.pdf>

(Copy attached to this paper in Attachment “B-3”)

The American Association of Petroleum Geologists Constitution and Bylaws and Code of Ethics

http://www.aapg.org/business/constitution_bylaws/constitution_bylaws.pdf

(Copy of the relevant sections attached to this paper in Attachment “B-4”)

In addition to the foregoing, many oil and gas companies have also implemented their own set of ethical codes and rules. Various copies of corporate ethics/conduct codes can be found at:

<http://www.panhandleoilandgas.com/code-of-ethics>

<http://legendoilandgas.com/index.php/about/code-of-ethics/>

<http://xtoginc.com/management/code-of-ethics>

http://www-static.shell.com/static/public/downloads/corporate_pkg/code_of_conduct_english.pdf

IV. RISK MANAGEMENT CONCERNS

In addition to avoiding litigation and preserving privileges, the adoption of and adherence to ethical/conduct codes helps promote a good public image not only for any particular company but also for the industry as a whole and may assist in preventing additional laws and regulations which the industry might find unappealing and/or oppressive. When unethical conduct is present or perceived to be present, then bad press usually follows fairly quickly.

Following the BP spill in the Gulf, BP and the industry as a whole received a lot of negative press, including scrutiny of the ethical culture of the industry. The testimony of Department of Interior Inspector General Mary Kendall before the House Committee on Natural Resource's Subcommittee on Energy and Mineral Resources was critical of not only the Minerals Management Service (MMS) but also of the industry, stating that "...the greatest challenge in reorganizing and reforming MMS lies with the culture – both within MMS and within industry" and that there were "troubling accounts of inappropriate behavior on the part of certain MMS employees" which she attributed, in large part, to the industry culture. David Dugas & Gerard Wimberly, "*Oil and Gas Company Ethics Requirements When Doing Business with Government*", Corporate Compliance Insights, March 25, 2011, <http://www.corporatecomplianceinsights.com/oil-and-gas-company-ethics-requirements-when-doing-business-with-government/>.

Another example of bad press is an article regarding alleged abuses by landmen during the Barnett Shale play in north Texas and whether landmen should be licensed in Texas. The article noted that an attempt was made by Rep. Marc Veasey to obtain passage of a landman licensing bill during the 2007 Texas legislative session due to "alleged unethical behavior by some in the industry" and "a lot of these landmen that weren't being forthright." Loretta Fulton, "*Landman Licensing: Is it Needed?*", Basin Oil & Gas, Issue No, 15, March 2009, <http://www.fwbog.com/index.php?page=article&article=86>.

Once companies adopt ethics/conduct codes, they then need to encourage their officers, employees, agents, and contractors to follow and abide by the ethics/conduct code. Although the following was recommended with regard to ethical issues encountered by the oil and gas industry when dealing in foreign countries, it holds equally true for the domestic industry:

Too often, employees at the local level — under pressure to meet sales and production goals and surrounded by an array of competitors who may not hew to the same compliance standards — are willing to take the risk of engaging in corrupt activity to boost the short-term bottom line, often operating under the sense that “everyone is doing it” and that failure to “play the game” will result in lost business. While no amount of compliance training and controls can completely protect against the actions of a truly rogue employee, building a compliant atmosphere must consist of more than power-point presentations and on-line modules.

Starting with the “tone at the top” and migrating to the local level, all employees, regardless of their position within the company, must understand that good business and compliance go hand-in-hand, and that a corrupt bargain is ultimately a worthless one. Companies should take the opportunity to proactively recognize and reward employees who consistently demonstrate a commitment to compliance, as well as empower the lowest level employee to raise compliance concerns to the appropriate function without fear of retaliation. Oftentimes such measures can be easily folded into existing QHSE programs. Similarly, many companies now include a “commitment to compliance” or similar metric in employee evaluations, such that compliance issues now are a factor in the promotion and salaries of employees. Such employment practices help demonstrate a company’s commitment to compliance.

Matthew Reinhard, “*Drilling for Trouble: 5 Ethical Considerations for Oil & Gas Companies Doing Business with Foreign Governments*”, Corporate Compliance Insights, May 2, 2011, <http://www.corporatecomplianceinsights.com/5-ethical-considerations-for-oil-and-gas-companies-dealing-with-foreign-governments/>.

V. CASE STUDIES

I have chosen an assortment of case studies to present and have deliberately elected not to provide how I might answer same or how someone else answered them, in those situations where answers were provided. Some of them are from my own personal experiences and others were found through a search of ethical issues presented to various industry groups. See <http://www.nspe.org/resources/pdfs/Ethics/EthicsResources/EthicsCaseSearch/2004/BER%2004-7-Approved-May2005.pdf>, and http://www.landman.org/WCM/Documents/3_2011%20Ethics%20Panel%20Questions.pdf. Many of them also illustrate that it is not always easy to determine which is the most ethical path to choose.

1. *The Engineer and Ski Trip Raffle*

Facts:

Engineer A is an engineer executive employee of an industrial corporation and occasionally receives invitations from vendors to attend multi-day seminars at resort

locations. Engineer A receives an invitation from Vendor X regarding a seminar at a ski resort location but is unable to attend the most recent event to which he has been invited due to a scheduling conflict. After conferring with his Company's Director of Human Resources, Engineer A agrees to establish a "raffle", sell tickets to all company employees, and conduct a "drawing" for the seminar with the money from the sale of the tickets contributed to a local charity.

Questions:

Was it ethical for Engineer A to agree to have his firm establish a "raffle", sell tickets, and conduct a "drawing" for the seminar with the money from the sale of the tickets contributed to a local charity?

If Engineer A had been able to go, would it have been ethical for him to attend the seminar?

2. *A Landman's Quandary*

Facts:

MinCo-A requests Landman Joe to review BLM records to determine the current status of active unpatented mining claims for an area in Nye County that is wholly comprised of locatable USA minerals. MinCo-A does not request Joe to research County records. Joe reports the findings of his review to MinCo-A. MinCo subsequently acquires a property position within the area, through location of new claims, and by lease of existing claims from a third party.

A couple of years later another of Joe's clients, MinCo-B requests Joe to conduct a land status review for an area that partially overlaps the area Joe previously reviewed for MinCo-A. MinCo-B requests a more thorough review process including research of County records. In his review of County records Joe sees that the Certificates of Location for some of the third party claims that are still held under lease by MinCo-A were late filed, and potentially void. Joe reports his findings to MinCo-B. MinCo-B decides not to pursue a property position in the area.

MinCo-A is good client and Joe would like to make MinCo-A aware of the potentially fatal filing defect later discovered in the course of his work for MinCo-B.

Questions:

Can Joe make MinCo-A aware of the filing defect without MinCo-B's permission?

What duties, if any does Joe have to MinCo-A?

Was it acceptable conduct for Joe to do work for MinCo-B in the area of overlap?

Was Joe under any duty to advise MinCo-B of his prior work in the area for MinCo-A?

Can Joe, for his own account, locate claims to cover the area of the potentially defective claims?

3. *The Attorney and (Possibly Sneaky?) Client*

Facts:

Attorney A is asked by Big Oil to render a title opinion. Big Oil's interest in the leases covering the acreage is subject to a mortgage granted by Big Oil to Wall Street. In its request for the opinion, Big Oil instructs Attorney A not to include any discussion or mention of its mortgage because it is already very much aware of the mortgage and does not want Attorney A to spend any time on the issue for which it would be billed.

During preparation of the title opinion, Attorney A becomes aware that Big Oil has assigned interests in the applicable leases to several other entities but Attorney A does not know whether such other entities are aware of the mortgage.

Questions:

Is Attorney A required to follow Big Oil's instructions regarding the mortgage?

Would the answer be any different if Attorney A were not aware of any assignment of interests in the mortgaged lease?

If Attorney A does follow Big Oil's instructions, then could Attorney A be potentially liable to the other entities if they suffer any actual damages as a result of the existence of the mortgage?

4. *Principal's Identity Concealment Request to a Landman*

Facts:

Landman Bob is asked by a mining client to acquire 10 patented mining claims in the Little Interest Mining District, NV. The client requests Landman Bob to acquire the claims in his name as not to expose the client's interest in the area which is spurred by a new super duper Top Secret geologic concept they have developed. Bob figures right "another wacky geo theory". The client wants to test the new concept on the claims and if proved out, wants to acquire a more substantial land position in the Little Interest Mining District before the competition gets wind. Bob understands the competitive nature of the mineral exploration business and the need for confidentiality, but isn't quite sure if he is comfortable acquiring the claims in his name without disclosing the real nature of the interest to the owner in the negotiation.

Questions:

Should Bob accept the assignment and do as requested?

If the owner doesn't ask anything as to Bob's interest in acquiring the claims and is just thrilled that he can finally unload these tax sucking claims that he had inherited from his Prospector Grandpa years ago, then is it alright for Bob not to have disclosed that he was working for a third party?

If the owner does ask Bob as to his interest in acquiring the claims, what can Bob say without breaching the confidentiality requested by the client?

5. *Two Opinions, Two Attorneys, Same Subject*

Attorney A who works in a regional office of Big Oil is asked to render an opinion on the viability of certain business practices in light of existing laws and regulations. Attorney A does so and is of the opinion that the business practices, if followed, would result in Big Oil not being in compliance with the law and, if discovered, would likely subject Big Oil to substantial fines. The applicable laws also provide for possible jail time for officers of a company who violate the law. The home office of Big Oil does not like Attorney A's opinion as conducting the business practices would be quite profitable for Big Oil and so asks Attorney B, who works in the home office, to write an opinion contrary to Attorney A's opinion. As Attorney B is leaving the meeting, he is also advised that his continued employment with Big Oil rides on the outcome of his opinion.

Questions:

What should Attorney B do?

If Attorney B, after doing the research, determines that he concurs with Attorney A's opinion, should he still write an opinion contrary to that of Attorney A?

6. *The Landman, the Landowner, and a Case of Beer*

Facts:

Big Oil drilled a barnburner of a well on a tract of land after receiving a title opinion from outside counsel disclosing that 100% of the mineral interest was owned by Bill Whiteacre, from whom it had acquired an oil and gas lease. After completing the well, Big Oil received a letter from a landman advising that he has determined that there was a title deficiency under Big Oil's Whiteacre drillsite tract and that he had the authority to represent the landowner, Joe Blackacre, in trying to negotiate a settlement of Joe Blackacre's claim. After receiving such letter, Big Oil had Landman Bob, an independent landman, check the title and, following Landman Bob's report and its own in-house legal review of the applicable deeds, Big Oil realized that, based upon the doctrine of after-acquired title, Joe Blackacre had a legitimate claim which could very well result in its loss of the well. Big Oil then asked Landman Bob to meet with Joe Blackacre and try to get him to sign a document renouncing his title to the drillsite tract in favor of Big Oil's lessor, Bill Whiteacre, and suggested that Landman Bob also take along a case of beer.

Questions:

Should Landman Bob comply with Big Oil's request to meet with Joe Blackacre?

Should Landman Bob also take the case of beer if he meets with Joe Blackacre?

Did the landman who contacted Big Oil on Joe Blackacre's behalf do anything wrong?

7. *The Unknowing Front Man*

Landman Pete is contacted by an attorney representing Big Dude Ranch LLC who requests Pete to research title for a vacant section of fee land in Carbon County, WY. Pete doesn't know the attorney or anything about Big Dude Ranch LLC other than it is apparently an entity represented by the attorney who contacted him. Pete researches County records and provides his report and title documents to the attorney for review. About a month later Big Dude's attorney contacts Pete and asks him to negotiate the purchase of the land for Big Dude Ranch LLC from the absentee owner residing in TX. Pete asks what the intended use of the land would be, and is told that Big Dude Ranch LLC is looking to start up a dude ranch in the area, and is instructed to negotiate the purchase at the going rate for Ranch-Ag lands in the area. Pete does some online research of land values in the area, and comes up with a price range of \$1,500 – \$2,000 acre. The attorney gives Pete the go ahead and Pete successfully negotiates the purchase coming in at high end of the price range. Big Dude's attorney prepares the closing documents, a title insurance policy is obtained, the deal closes, Pete gets paid for his services, and everyone appears satisfied with the deal.

Six months later Pete gets a call from the irate seller, accusing Pete of misrepresentation and unfair dealing in the negotiation, citing a recent press release by Big Dude Oil LLC in the TX Oil News of its huge new oil field discovery in Carbon County, WY. The Seller threatens to sue Pete, claiming that Pete was acting as a Front Man for Big Dude Oil LLC. Pete does some checking and finds that Big Dude Ranch LLC is a wholly owned subsidiary of Big Dude Oil LLC.

Questions:

Did Landman Pete do anything illegal – unethical – should he be worried?

Was Pete obligated to learn of the relationship of Big Dude Ranch and Big Dude Oil prior to representing Big Dude Ranch? If Pete had learned of the relationship, would have made any difference?

Did Big Dude's attorney do anything illegal or unethical?

Did Big Dude do anything illegal or unethical?

Does the irate seller have grounds to have the sale rescinded?

VI. RECENT ETHICS CASES IN TEXAS

Following are some of the cases which have dealt with ethical issues during the last three years.

Kennedy v. Gulf Coast Cancer & Diagnostic Center at Southeast, Inc., 326 S.W.3d 352 (Tex.App –Houston [1st Dist.] 2010, no writ) ruled that a former in-house counsel cannot use or reveal work product and opinions for the benefit of his prior employer which he either created or had access to during his tenure as in-house counsel. “As the client's agent, the work product generated by the attorney in representing the client belongs to the client. (Citations Omitted). An attorney who uses a client's confidential information for his own interest and against the client's interest to the client's detriment may be liable for breach of fiduciary duty. (observing that, in context of attorney-client relationship, “[a]n attorney breaches his fiduciary duty when he benefits improperly from the attorney-client relationship by, among other things improperly . . . using client confidences”).” (Citations omitted).

In re Columbia Valley Healthcare System, 320 S.W.3d 819 (Tex. 2010) held that it was proper to disqualify a law firm which had hired a legal assistant who had worked at another firm and on a case in which her prior firm and her current firm were on opposite sides. After noting that it is impermissible for an attorney who has previously represented a client to represent another client in the same or substantially related matter, the court then stated:

A supervising lawyer may not order, encourage, or permit a nonlawyer to engage in any conduct that, if engaged in by the lawyer, would subject the lawyer to discipline. . . . the nonlawyer employee who worked on a matter at a prior firm is also subject to an irrebuttable presumption “that confidences and secrets were imparted” to the employee at the firm. . . . However, unlike with attorneys, a nonlawyer is not generally subject to an irrebuttable presumption of having shared confidential information with members of the new firm. Instead, this second presumption can be overcome, but only by a showing that: (1) the assistant was instructed not to perform work on any matter on which she worked during her prior employment, or regarding which the assistant has information related to her former employer's representation, and (2) the firm took “other reasonable steps to ensure that the [assistant] does not work in connection with matters on which the [assistant] worked during the prior employment, absent client consent.

In re Guaranty Ins. Services, Inc., 343 S.W.3d 130 (Tex. 2011) was another case dealing with a nonlawyer, this time a paralegal, who worked first for the plaintiff's initial law firm and then, after a lapse of 2 years after leaving the plaintiff's initial law firm, applied for and was hired by the defendant's law firm. During that time period, the plaintiff changed law firms. The trial court found that although the defendant's law firm had been “exemplary” in its screening procedures and, in essence, had done everything it could to make sure that the paralegal would not be placed in any situation where he might violate any client confidences from the prior law firms where the paralegal had worked, disqualification was still required because the screening procedures had to actually be

effective, which they were not in this matter because the paralegal had worked on both sides of the litigation, with under 7 hours at the plaintiff's initial law firm and 27 hours at the defendant's firm. In reversing both the trial court and court of appeals, the Texas Supreme Court pointed out that lawyers and nonlawyers are treated differently and that the defendant's firm had satisfied the two requirements stated in *In re Columbia Valley Healthcare System* for negating the presumption that a nonlawyer had shared confidential information obtained from his prior employment with members of his new firm because of the formal screening procedures employed by it as well as evidence that the paralegal was instructed not to share information and, as soon as the firm learned of his being previously involved for the other side, took steps to isolate the paralegal from any further involvement with the suit. In support, the Texas Supreme Court stated:

But we have never said that ineffective screening measures merited automatic disqualification for nonlawyers. On the contrary, we have explained that in most cases, disqualification is not required provided "the practical effect of formal screening has been achieved." *Phoenix Founders*, 887 S.W.2d at 835 (citation omitted). In *In re Columbia*, we equated this to "effective screening," and cited to the six *Phoenix Founders* factors that guide such an inquiry:

- (1) the substantiality of the relationship between the former and current matters;
- (2) the time elapsing between the matters;
- (3) the size of the firm;
- (4) the number of individuals presumed to have confidential information;
- (5) the nature of their involvement in the former matter; and
- (6) the timing and features of any measures taken to reduce the danger of disclosure.

320 S.W.3d at 824-25 (citing *Phoenix Founders*, 887 S.W.2d at 836). Whether screening actually works is not determinative. Instead, the "ultimate question in weighing these factors" is whether the second firm "has taken measures sufficient to reduce the potential for misuse of confidences to an acceptable level."

....

Today we clarify, under that scenario: The presumption of shared confidences is rebuttable if the non-lawyer has actually performed work on the matter at a lawyer's directive and the lawyer reasonably should not know about the conflict of interest. Put differently, if the nonlawyer has actually worked on the matter, the presumption of shared confidences is not rebuttable unless the assigning lawyer should not have known of the conflict.

....

... The failure of a screening method to actually screen a tainted party will not translate into disqualification where "the practical effect of formal screening has been achieved."

In re Murphy, Case No. 14-08-01017-CV (Tex.App.--Houston [14th Dist.] 2009) (Mem. Op.) is an attorney disqualification case in which the trial court's order of disqualification for conflict of interest was set aside for failure to enumerate with sufficient particularity the bases upon which the disqualification was made. The appellate court recited the factors required for disqualification:

Rule 1.09, thus forbids a lawyer to appear against a former client if the current representation in reasonable probability will involve the use of confidential information or if the current matter is substantially related to the matters in which the lawyer has represented the former client. *In re Hoar Construction*, 256 S.W.3d 790, 800 (Tex.App.-Houston [14th Dist.] 2008, orig. proceeding).

The party moving to disqualify an attorney must prove: (1) the existence of a prior attorney-client relationship, (2) in which the factual matters involved were so related to the facts in the pending litigation, (3) that it involved a genuine threat that confidences revealed to his former counsel will be divulged to his present adversary.

. . . the client's privilege in confidential information disclosed to her attorney is not nullified by the fact that the circumstances to be disclosed are part of a public record, or that there are other available sources for such information. *In re American Airlines, Inc.*, 972 F.2d 605, 614 (5th Cir. 1992), citing *Emle Industries, Inc. v. Patentex, Inc.*, 478 F.2d 562, 572-73 (2d Cir. 1983). "This ethical precept exists without regard to the nature or source of information or the fact that others share the knowledge." *Brennan's, Inc. v. Brennan's Rests., Inc.*, 590 F.2d 168, 172 (5th Cir. 1979).

. . . .

The severity of disqualification of counsel requires the movant to produce evidence of specific similarities capable of being recited in the disqualification order. *Id.* A substantial relationship may be found only after "the moving party delineates with specificity the subject matter, issues and causes of action" common to prior and current representations and the court engages in a "painstaking analysis of the facts and precise application of precedent." *American Airlines*, 972 F.2d at 614. Morelock failed to meet this burden by failing to show evidence of specific similarities capable of being recited in the disqualification order.

VII. FINAL THOUGHTS

The following excerpt states some of the basic reasons why ethics codes for attorneys are important and the ideas and purposes which they serve:

The public must be able to have confidence in the legal profession and the administration of justice. To this end it is desirable that clearly articulated rules of

conduct are introduced - not only so that the profession is aware of their ethical obligations but also because this is in the public interest . . . Professional Codes of Ethics are one of the most important characteristics of a profession.

Professional ethics are frequently formulated in Codes of Conduct or Rules of Professional Practice, which illustrate the high standards on which reputations for professionalism rest. [P]rofessional Codes or Rules are designed in part to help reassure the public of two conditions. These conditions are that any particular set of professional services is being given not only by (i) properly qualified or technically expert persons but also (ii) by persons whose professional standards merit the high degrees of public trustworthiness which are typically required of professionals.

....

Finally, there is a growing concern over the subordination of service and professionalism to profit, personal aims and ambitions. We need to remind ourselves of the honourable nature of the profession otherwise there is little point talking about ethics. It is the substance and not the form that matters here. Comprehensive Codes of Ethics do not guarantee ethical practice; rather, this lies in the fundamental nature of being 'called to the Bar'. Fifty years ago, in the case of *In re John Cameron Foster* (1950) 50 SR NSW 149 Street CJ observed:

It is to be borne in mind that all barristers are members of a profession as distinct from being engaged in a trade. A trade or business is an occupation or calling in which the primary object is the pursuit of pecuniary gain. Honesty and honourable dealing are, of course, expected from every man, whether he be engaged in professional practice or in any other gainful occupation. But in a profession, pecuniary success is not the only goal. Service is the ideal, and the earning of remuneration must always be subservient to this main purpose.

Peter MacFarlane “*The Importance of Ethics and the Application of Ethical Principles to the Legal Profession*”, *Journal of South Pacific Law*, Vol. 6, No. 2 (2002)

Although Mr MacFarlane tailored his article for the legal profession, a number of the sentiments expressed therein should also apply to other professionals such as landmen, petroleum engineers and petroleum geologists.

Landmen have substantial contact with members of the public and often on an individual basis. They represent the exploration and production company for which they are providing services at a local level and have the capacity to do either great good or great harm to the reputation of the company for which they are working and, on a broader scale, of the oil and gas industry as a whole. relations o to reinforce statements and concerns.

Petroleum engineers and geologists greatly influence how and where drilling is to occur as well as a number of other aspects of the business. One need look no further than the BP Macondo Well disaster for the impact that poor decisions, some of which were influenced more by financial considerations than ethical business and engineering practices, can have upon not only a particular company but also the industry as a whole. In discussing the causes for the disaster in its September 14, 2011, “*Report Regarding the Causes of the April 20, 2010 Macondo Well Blowout*”, the Bureau of Ocean Energy Management, Regulation and Enforcement repeatedly noted the amount of cost overruns which totaled over 50 million dollars, “found evidence that BP personnel were compensated and their performance reviewed, at least in part, based upon their abilities to control or reduce costs” but that there was “no comparable performance measure for occupational safety achievements”, and, as part of its conclusion, stated:

. . . the blowout at the Macondo well on April 20, 2010 was the result of a series of decisions that increased risk and a number of actions that failed to fully consider or mitigate those risks. While it is not possible to discern which precise combination of these decisions and actions set the blowout in motion, it is clear that increased vigilance and awareness by BP, Transocean and Halliburton personnel at critical junctures during operations at the Macondo well would have reduced the likelihood of the blowout occurring.

Ethical conduct is, however, not always a matter of either black or white, and the implementation of ethical decision making is far from simple and easy. As noted by Linda Klebe Trevino and Michael E. Brown in their paper, “*Managing to be Ethical: Debunking Five Business Ethics Myths*” published in the *Academy of Management Executive*, 2004, Vol. 18, No. 2, ethical decision-making is a complex, multi-stage process in which the correct and ethical path is often far from clear. An example of how complex it can be to determine what should be included in an ethical code can be found in the State Bar of Texas’ recent attempt to revise its ethical code and the sharp divide of opinions on a number of the proposed changes; ultimately, the vast majority of attorneys who voted on the proposed amendments rejected them.

In addition to the complexity of trying to determine the correct and ethical path in any given situation, there are other factors which must be overcome in order to implement ethical decision making in any setting involving more than one person. One such factor is that people will usually be influenced by the environment they find themselves in and will tend to pay attention to what others do and will often perform similarly to what others around them are doing or expecting them to do.

Another is that a company or other entity also has to be willing to do more than just adopt a code of ethics; implementation of ethical policies has to be treated as only the first step towards achieving ethical behavior and decision making, not the ending step. Ethical behavior has to start at the top with leaders and executives being willing not only to lead by example, but also to make clear their expectations that others are expected to act in an ethical manner and to hold all of their subordinates accountable to maintaining ethical standards at all times.

Another factor and impediment to the implementation of ethical behavior and decision making, which may be the most difficult of all of the factors and impediments, was summed up by Alan Greenspan in a statement he made on July 16, 2002:

It is not that humans have become any more greedy than in generations past. It is that the avenues to express greed [have] grown so enormously.

FABIO & MERRILL
TWELVE GREENWAY PLAZA, SUITE 101
HOUSTON, TEXAS 77046-1208

TEL: (713) 961-0408
FAX: (713) 961-2934

THEA M. FABIO

Attorney-at-Law
E-mail: tfabio@fabiomerrill.com
Board Certified - Family Law - Texas Board of Legal Specialization
-Licensed in Massachusetts and Texas

RICHARD L. MERRILL

Attorney-at-Law/Mediator
E-mail: rmerrill@fabiomerrill.com
-Licensed in Massachusetts, New Hampshire and Texas

January 30, 2012

ABC Exploration Co.
1 Oil Driller Blvd.
Houston, TX

Attention: Ms. Susie Oilwoman

Re: **DRILLING TITLE OPINION**

25.00 acres, more or less, out of the Big Oil Survey, A-1, Petroleum County, Texas, and being the same tract of land as conveyed by Peter Blackacre to John Whiteacre in that certain Warranty Deed dated August 29, 2001, and recorded in Volume 1000, Page 1 of the Official Public Records of Petroleum County, Texas

Dear Ms. Oilwoman:

At your request, I have examined title to the acreage described below:

A. ACREAGE EXAMINED

25.00 acres, more or less, out of the Big Oil Survey, A-1, Petroleum County, Texas, and being the same tract of land as conveyed by Peter Blackacre to John Whiteacre in that certain Warranty Deed dated August 29, 2001, and recorded in Volume 1000, Page 1 of the Official Public Records of Petroleum County, Texas

B. DEFINITIONS

1. The term "Big Oil Survey" will refer to the Big Oil Survey, A-1, Petroleum County, Texas.
2. The term "25.00 Acre Tract" will refer to the lands described above as the Acreage Examined and which tract is also depicted on the plat attached hereto as Exhibit "A".
3. Unless otherwise indicated, all references herein to a volume and page are to the Deed Records, Official Public Records, or Official Records of Petroleum County, Texas. At some point after 1960 and prior to 1975, the County Clerk of Petroleum County, Texas started recording documents in the Official Public Records rather than in the Deed Records and

ATTACHMENT "A"

sometime around January 1, 2000, began recording documents in the Official Records rather than Official Public Records.

C. MATERIALS EXAMINED

This opinion is based upon my examination of the following described materials:

1. Copies of instruments pertaining to the title of the Acreage Examined as furnished by and disclosed on the Title Runsheet prepared by Jim Oilman of OGM Land Services, which Runsheet was certified from sovereignty of the soil to January 1, 2012 at 5:00 p.m.;
2. Copy of documents from the file of the General Land Office, including Field Notes from a January 1, 1875 survey and Corrected Field Notes filed June 1, 1877;
3. Tobin and computer generated plats (with the computer generated plats being created utilizing the metes and bounds descriptions contained in various of the instruments in the chain of title);
4. General Land Office of Texas online records relating to the Big Oil Survey Survey;
5. Tax certificate issued by the Petroleum County Tax Office and showing no ad valorem property taxes due as of July 31, 2011, for the 25.00 Acre Tract;
6. Chain of title flowchart;
7. Production and Unit Information, including copies of documents filed with the Texas Railroad Commission and pertaining to the Big Dog Well No. 1, API #42-000-11111, Petroleum County, Texas, documents generated by the Texas Railroad Commission with regard to the Big Dog Well No. 1, API #42-000-11111, and plats of the units formed and location of wells; and

D. OWNERSHIP

Based upon my examination of the above described materials and subject to satisfaction of the requirements stated below, I find title to the Acreage Examined, being the 25.00 Acre Tract, as of the closing date of the Materials Examined (January 1, 2012, at 5:00 p.m.) to be vested as follows:

SURFACE ESTATE INTERESTS

Owner

Fractional/Percentage Interest

John Whiteacre

100%

OIL, GAS AND MINERAL INTERESTS
(INCLUDING EXECUTIVE RIGHTS, BONUS AND DELAY RENTALS)

<u>Owner</u>	<u>Fractional MI</u>	<u>Decimal MI</u>
Ima Mineral Owner	$\frac{8}{8}$	1.00 MI

ROYALTY INTERESTS

<u>Owner</u>	<u>Fractional RI</u>	<u>Decimal RI</u>
Ima Mineral Owner	$\frac{1}{5}$.20 RI

NON-PARTICIPATING ROYALTY INTERESTS

None		-0-
------	--	-----

OIL AND GAS WORKING INTERESTS
AND LEASEHOLD NET REVENUE INTERESTS

<u>Owner</u>	<u>Working Interest</u>	<u>Fractional NRI</u>	<u>Decimal NRI</u>
ABC Exploration Co.	100.00%	$\frac{4}{5}$ less $\frac{1}{100}$.79 NRI

OVERRIDING ROYALTY INTERESTS

<u>Owner</u>	<u>Fractional ORRI</u>	<u>Decimal ORRI</u>
Sam Geologist	$\frac{1}{100}$.01 ORRI

RECAPITULATION

Total Royalty Interest (RI)	.20
Total Non-Participating Royalty Interest (NPRI)	-0-
Total Working Interest Owner's Net Revenue Interest (NRI)	.79
<u>Total Overriding Royalty Interest</u>	<u>.01</u>
Total	1.00

E. ANALYSIS OF LEASE

Date: January 1, 2010

Lessor: Ima Mineral Owner

ABC Exploration Co.

January 30, 2012

Page 4

Lessee: ABC Exploration Co.

Recorded: Volume 1000, Page 1

Amendments: None shown by the Materials Examined

Land Covered: 25.00 Acre Tract (Par. 1 and Exhibit "A")

Minerals Covered: Oil and gas of whatsoever nature or kind, including coalbed methane gas and other liquid or gaseous hydrocarbons, and sulphur, as well as such other minerals or substances as may be produced incidental to and as a part of or mixed with oil, gas and other liquid or gaseous hydrocarbons; lease specifically excludes gravel, uranium, fissionable materials, coal, lignite or any hard minerals or substance of any type which shall be produced separate and apart from, or independently of, oil, gas, sulphur, coalbed methane gas or other liquid and gaseous hydrocarbons (Exhibit "A")

Primary Term: Three (3) years from the date of the lease (Par. 2)

Delay Rentals: None, paid-up lease

Royalties: Oil - one-fifth ($\frac{1}{5}$)
Gas and all other substances covered by the lease - one-fifth ($\frac{1}{5}$)
(Par. 3 and Exhibit "A")

Shut-In Gas Well Royalty Amount:

\$500.00 per annum (Par. 3)

Time for Payment of Shut-In Royalties:

Annually, with the first payment being due on or before 90 days after the date of shutting-in of such well unless the lease is within its primary term and there is shut-in well on the leased premises or acreage pooled therewith at expiration of the primary term, in which event shut-ins are due on or before the 90th day following the expiration of the primary term. The obligation to pay shut-in royalties shall be an obligation running with the land and in no event shall Lessee's failure to comply with such obligation serve or be used to terminate the lease or work any forfeiture of rights granted to Lessee. (Par. 3)

Shut-In Limitations: None

Pooling Provisions: 80 acres for oil, plus a 10% tolerance

640 acres for gas, plus a 10% tolerance

If an applicable governmental authority should require, prescribe or permit the creation of units larger than those established, then a unit may conform in size to that permitted or prescribed by governmental authority. (Par. 5)

Depository: Lessor, at Lessor's address of 1 Oil Royalty Way, Dallas, TX

Offset Provisions: If a well producing oil or gas should be brought in on adjacent land and with 330 feet of the leased premises and draining the leased premises, then Lessee shall drill such offset well as a reasonably prudent operator would drill under the same or similar circumstances. (Par. 4)

Drilling and Reworking Provisions:

If at the expiration of the primary term, oil, gas and other minerals are not then being produced and Lessee is then engaged in actual drilling or reworking operations, then the lease will remain in force so long as drilling or reworking operations are prosecuted with no cessation of more than 90 consecutive days and if such operations result in the production of oil, gas or other minerals, then for so long as such production continues with no cessation of more than 90 days. If, after the expiration of the primary term, operations or production of oil, gas or other liquid hydrocarbons on said land or on acreage pooled therewith should cease and the lease is not then being otherwise maintained, the lease shall not terminate if Lessee commences or resumes actual drilling or reworking operations within 90 days of the cessation of such production and prosecutes drilling or reworking operations without any cessation of more than 90 days and if such operations result in production, then for so long as production continues and as long as additional operations are had on the lands or pooled lands. (Par. 4)

Proportionate Reduction Provision:

If Lessor owns less than the entire fee simple estate in the minerals, then the royalties and shut-in royalties to be paid Lessor shall be proportionately reduced. (Par. 10)

Warranty: The lease is made with warranty of title. (Par. 10)

Force Majeure: Lessee shall not be liable for delays or defaults in performance of any agreement or covenant in the lease due to force majeure. "Force Majeure" is defined as: any act of God, including, but not limited to storms, floods, washouts, landslides, and lightning, acts of the public enemy, wars, blockades, insurrection or riots, strikes or lockouts, epidemics or quarantine regulations, laws, acts, orders or requests of federal, state, municipal or other

governments or other governmental officers or agents under color of authority, freight embargoes or failures, exhaustion or unavailability or delays in delivery of any product, labor, service or material. The suspension of Lessee's obligations and of any termination of the lease under any other provision which might operate to terminate the lease shall extend during the period of such force majeure and for a period of 90 days following the termination of such force majeure. (Par. 9)

Lease Form and Special Provisions:

The lease appears to be on the Lessee's lease form but there is a rider attached as Exhibit "A" which contains various provisions not usually found in commercial forms of leases. In order not unduly to lengthen this opinion, I am not setting forth all of the unusual provisions or discussing in depth all possibilities raised by the lease form, but your particular attention is directed to the following:

Par. 6:

Lessee will have the right to free use of oil, gas, and water from the leased premises in its operations on the leased premises or acreage pooled therewith, except for water from Lessor's wells and tanks

Par. 8:

Paragraph 8 provides that the breach by Lessee shall not work a forfeiture or termination of the lease or be grounds for such forfeiture or termination. In the event of an asserted breach, Lessor must give Lessee written notice of the breach and Lessee, if in default, shall have 60 days following receipt of the notice within which to remedy the breach. This Paragraph also contains a provision providing for reasonable development of the leased premises on the basis of 80 acres, plus a 10% tolerance, per oil well, 640 acres, plus a 10% tolerance, per gas well, and 1,280 acres, plus a 10% tolerance, per horizontal drainhole well, whether oil or gas.

Exhibit "A":

The royalties to be paid to Lessor are to be paid free of all costs and expenses, except severance and ad valorem taxes.

Prior to the commencement of any dirt work for the building of any road or location, Lessee must obtain Lessor's written consent, which shall not unreasonably be withheld, to any proposed entry route. Lessee will fill and level all pits and other excavations upon termination of use and shall fence

all pits and excavations sufficient to turn livestock until the pits and excavations have been filled. Lessee will pay for all actual permanent damage caused by Lessee in its operations to any buildings, fences, roads, culverts, merchantable timber, growing crops, or other improvements on the leased premises, or to livestock on the leased premises.

Without the express written consent of Lessor, there shall be no hunting and fishing on the leased premises and no firearms, alcohol, or illegal substance shall be brought upon the leased premises by Lessee and its employees, agents, contractors or representatives.

In the event of pooling, all of the leased premises must be included in any unit formed around a well located on the leased premises and at least 50% of the leased premises must be included in any unit formed around a well located off the leased premises.

There is a two year extension option which can be exercised by Lessee by the payment to Lessor of the same sum paid to Lessor as the original bonus for the lease on or before the expiration of the initial primary term.

F. ASSIGNMENT OF LEASE

None in the Materials Examined. However, ABC Exploration Co. assigned a 1.00% overriding royalty interest as to production obtained from such lease to Sam Geologist by instrument dated December 31, 2010 and recorded in Volume 1050, Page 100.

G. PATENT

On July 1, 1880, the State of Texas issued Letter Patent No. 100, Vol. 1 to Big Oil, which conveyed 1000 acres of land, including all of the Acreage Examined. A copy of the Patent was recorded on January 1, 1885 in Volume 25, Page 25 of the Official Records of Petroleum County, Texas.

H. COMMENTS AND REQUIREMENTS

Title as shown above is subject to the following comments and requirements:

I.

The furnished instruments detailing title to the Acreage Examined show the following irregularity since the Patent:

There is an early break in the chain of title. In 1900, Richard Lionheart conveyed the 25.00 Acre Tract to Prince John, but the Materials Examined failed to disclose any conveyance into Richard Lionheart prior to 1900. The Materials Examined did contain a copy of a Deed dated June 1, 1895, from Henry King and his wife Eleanor to Thomas Beckett, recorded in

Volume Z, Page 300, and conveying all of the Big Oil Survey save and except for the 25.00 Acre Tract, which was recited in such deed as belonging to Richard Lionheart. The recitation in the 1895 Deed would constitute sufficient grounds to utilize several legal doctrines, including presumed grant, to affirm that there was a lost or missing conveyance of the 25.00 Acre Tract and that the owner in 1900 was Richard Lionheart. I have therefore assumed that there was a lost grant out of Henry King and his wife Eleanor or their predecessors into Richard Lionheart and that the lack of a recorded copy has been cured by the doctrine of presumed grant as well as limitations.

Considering the lengthy period of time since this irregularity first arose and the lack of any adverse claims, I believe you would be safe in relying upon my assumptions stated above.

The Materials Examined also contain documents disclosing that the Petroleum County Courthouse burned down in 1875, at which time all deed, probate and court records were destroyed. As a result of this disaster, there may be other potential claims against the title to the Acreage Examined which did not appear in the Materials Examined. However, considering that it has been in excess of one hundred thirty six since the courthouse burning and no stranger has filed any claims to the Acreage Examined which appear of record, it is very unlikely that there will be any adverse claims based upon documents once of record but destroyed in 1875.

COMMENT NO. 1:

The foregoing is brought to your attention for advisory purposes.

II.

The mineral estate was severed from the surface estate on September 1, 1970. As a result, any adverse possession of the surface that commenced either after September 1, 1970 or before 1970 but which had not ripened into a valid limitations title prior to the 1970 severance would not impact ownership of the mineral estate. Following the 1970 severance, an adverse claim to the mineral estate would require actual drilling and utilization of the mineral estate. The Materials Examined did not contain any use and possession affidavits which would disclose that, for the 25 year period preceding the 1970 severance, there was not any adverse use of the surface by an adverse claimant who commenced occupying or using all or part of the surface of the 25.00 Acre Tract which might be of sufficient nature and duration to have vested such claimant with title to both the surface and mineral interests adversely possessed and that since September 1, 1970, there has been no drilling and production from the 25.00 Acre Tract by an adverse claimant which might be of sufficient nature and duration to have vested such claimant with title to the mineral interests adversely possessed .

REQUIREMENT NO. 1:

Although it is highly unlikely that any adverse possession has occurred with respect to the 25.00 Acre Tract, you should either (i) secure statements in affidavit form from at least two disinterested persons setting forth in detail all of the facts known to such persons with regard to the use and possession of the 25.00 Acre Tract as to use of the surface for the twenty-five

year period prior to the 1970 severance, which would evidence that there were no third parties who could have displaced the record owners by adverse possession and as to drilling upon and production from the 25.00 Acre Tract since September 1, 1970, which would evidence that there has been no utilization of the mineral estate by an adverse party sufficient to displace the record mineral owners, or (ii) conduct such an investigation into the past and current use and possession which you deem suitable to verify that there have been no third parties who could have displaced the record mineral owners by adverse possession.

III.

The Oil, Gas and Mineral Lease taken by ABC Exploration Co. and described above in the Analysis of Lease section of this opinion was executed by “Ima Mineral Owner” as lessor. At the time of execution of such Lease, the record owner of the oil, gas and mineral estate as disclosed by the Materials Examined was “Ima Mineral”, who was the named grantee in that deed dated June 1, 2000, from Jimmy Severance and recorded in Volume 900, Page 900. I have assumed that at some point after 2000, Ima Mineral married and is the same person as Ima Mineral Owner.

REQUIREMENT NO. 2:

You should either obtain an affidavit of identity disclosing that Ima Mineral Owner is the same person as Ima Mineral, or otherwise satisfy yourself that Ima Mineral Owner is the same person as Ima Mineral.

IV.

The Materials Examined reflect that the Acreage Examined or portions thereof have been subject to the following described prior, unreleased oil, gas and mineral leases, all of which are beyond their respective primary terms:

- a. Oil, Gas & Mineral Lease dated August 1, 1975, from Jimmy Severance to Dallas Exploration Co., recorded in Volume 500, Page 500 and covering the 25.00 Acre Tract;
- b. Oil, Gas & Mineral Lease dated August 1, 1990, from Jimmy Severance to Tombstone Oil and Gas, recorded in Volume 666, Page 666, and covering the 25.00 Acre Tract;
- c. Oil, Gas & Mineral Lease dated February 1, 2005, from Ima Mineral to Pronghorn Production, LLC, recorded in Volume 800, Page 800, and covering the 25.00 Acre Tract.

The 1975 Oil, Gas and Mineral Lease described above in item a. was included in the Big Dog Well No. 1 Gas Unit pursuant to that pooling declaration dated June 1, 1977, executed by Big Dog Oil Co. *et al*, and counterparts of which were recorded in Volume 575, Page 575 and Volume 580, Page 580. In 1988, Big Dog Oil Co. and Black Petrol Corporation released their interests in such 1975 Oil, Gas

and Mineral Lease by instrument recorded in Volume 645, Page 645. At the time such release was executed, the record owners of the 1975 Oil, Gas and Mineral Lease were Big Dog Oil Co. (as to rights from the surface down to 100 feet below the Mesozoic Formation) and Black Petrol Corporation (as to all depths). It is also possible that Dallas Exploration Co. may have owned some rights in such lease as to rights beneath 100 feet below the Mesozoic Formation down to 100 feet below the total depth drilled in the Big Dog Well No. 1 drilled on the above mentioned Big Dog Well No. 1 Gas Unit if such drilled depth was deeper than 100 feet below the Mesozoic Formation, and, if that is the case, then the executed release would not have released: Dallas Exploration Co.'s interest in the 1975 Oil, Gas and Mineral Lease as to any depth between 100 feet below the total depth drilled in the Big Dog Well No. 1 and 100 feet below the Mesozoic Formation.

REQUIREMENT NO. 3:

- (a) Since it would likely prove impossible to obtain appropriate instruments releasing all of the prior unreleased leases, you will need to satisfy yourself that all of such leases have terminated and are no longer in effect. However, if you can obtain releases of such leases, that would be the better practice.
- (b) As noted above with respect to the 1975 Oil, Gas and Mineral Lease described in item a. above, such lease may not have been released by all of the owners in such lease if Dallas Exploration Co. still owns an interest in same because 100 feet below the depth drilled in the Big Dog Well No. 1 is deeper than 100 feet below the Mesozoic Formation. Therefore, in order to determine whether such lease was in fact released *in toto* by all owners of interest in same, you will need to determine whether Dallas Exploration Co. still owns an interest in same based upon whether that subsurface depth which is 100 feet below the depth drilled in the Big Dog Well No. 1 is deeper than 100 feet below the Mesozoic Formation. Alternatively, since all other interest in such lease was released, you may elect to assume the business risk that the lease has in fact expired.

V.

The examined materials reflect that the Acreage Examined is or may be burdened with the following easements and rights-of-way:

- a. Telephone and telegraph line easement dated February 1, 1940, from John Plantagenet to Telephone and Telegraph Company, and recorded in Volume 150, Page 150; and
- b. Electric line easement dated August 1, 2000, from Peter Whiteacre to Electric Line, Inc., and recorded in Volume 850, Page 318.

REQUIREMENT NO. 4:

- a. You will need to locate the above described easements and conduct your operations in such a manner so as not to interfere, without consent, with such easements.
- b. You should conduct an examination of the surface to verify that there are no persons, companies, or governmental entities making such use of the surface so as to have acquired an easement by prescription or limitations. If you find a prescriptive easement, then you will need to conduct your operations in such a manner so as not to interfere with such easement.

VI.

In order to locate the exact boundaries of the Acreage Examined and to verify that there has not been any surface encroachment along such boundaries, I recommend that you conduct a survey on the ground..

COMMENT NO. 2:

The foregoing is brought to your attention for advisory purposes. However, I strongly recommend that you have a survey made of the 25.00 Acre Tract.

VII.

Your attention is called to the various provisions contained in the Oil, Gas and Mineral Lease discussed in the Analysis of Lease section of this opinion, and you are advised that you will need to observe and abide by the provisions contained in such lease.

COMMENT NO. 3:

No requirement is made in this regard but your attention is directed to the foregoing for advisory purposes.

VIII.

This opinion does not address any environmental or pollution matters. You are advised that you will need to make the appropriate inspections of the Acreage Examined in order to satisfy yourself that there are not any environmental or pollution problems associated with the Acreage Examined for which you may be liable for damages or remediation under the various local, state and federal laws governing same.

COMMENT NO. 4:

No requirement is made in this regard but your attention is directed to the foregoing for advisory purposes.

IX.

This opinion does not cover ownership of coal, lignite, uranium, other metallic ores and other minerals not covered by the oil, gas and mineral leases which cover the Acreage Examined.

COMMENT NO. 5:

No requirement is made in this regard but your attention is directed to the foregoing for advisory purposes.

X.

This opinion does not cover area, boundaries, conflicts with adjacent tracts or surveys, or any other matters not shown by the Materials Examined or that can be determined by an actual survey on the ground. I assume that you will satisfy yourselves as to all such matters. This opinion does not take into account any fraudulent acts, forgeries, unrecorded instruments which are not included in the Materials Examined, recorded instruments not properly indexed by the District and County Clerks, or rules, regulations, restrictions, orders or ordinances of governmental agencies having or asserting jurisdiction (or compliance or noncompliance therewith).

This opinion does not purport to pass upon the authorization of persons acting in a representative capacity on behalf of persons or entities for whom they purport to act.

This opinion has been prepared at the request of and rendered solely for the benefit of ABC Exploration Co. Consequently, only ABC Exploration Co. is entitled to rely upon this opinion and no other person or entity shall be entitled to rely upon this opinion, including, but not limited to, any persons or entities with whom ABC Exploration Co. is contractually obligated to furnish a copy of this opinion. Further, this opinion shall not be quoted in whole or in part or otherwise referred to in any report or document furnished to any other person or entity without the undersigned's permission. ABC Exploration Co. is also advised that should it disseminate this opinion or any of the confidential information contained herein to other persons and entities, then such action would likely negate the attorney-client privilege currently existing between the undersigned counsel and ABC Exploration Co. with regard to this opinion and the matters contained in and discussed in this opinion.

COMMENT NO. 6:

No requirement is made in this regard but your attention is directed to the foregoing for advisory purposes.

ABC Exploration Co.
January 30, 2012
Page 13

Yours very truly,

FABIO & MERRILL

By: _____
Richard L. Merrill

Code of Ethics

The Code of Ethics shall be the basis of conduct, business principles and ideals for the members of the AAPL; and it shall be understood that conduct of any member of the Association inconsistent with the provisions set forth in this Article shall be considered unethical and said individual's membership status shall be subjects to review for possible disciplinary action as prescribed in Article XVII of these Bylaws. In the area of human endeavor involving trading under competitive conditions, ethical standards for fair and honest dealing can be made increasingly meaningful by an association organized and dedicated not only to the definition, maintenance, and enforcement of such standards, but to the improvement and education of its members as set out in the Standards of Practice. Such is the objective of the AAPL and such is its public trust.

Section 1. It shall be the duty of the Land Professional at all times to promote and, in a fair and honest manner, represent the industry to the public at large with the view of establishing and maintaining goodwill between the industry and the public and among industry parties.

The Land Professional, in his dealings with landowners, industry parties, and others outside the industry, shall conduct himself in a manner consistent with fairness and honesty, such as to maintain the respect of the public.

Section 2. Competition among those engaged in the mineral and energy industries shall be kept at a high level with careful adherence to established rules of honesty and courtesy.

A Land Professional shall not betray his partner's, employer's, or client's trust by directly turning confidential information to personal gain.

The Land Professional shall exercise the utmost good faith and loyalty to his employer (or client) and shall not act adversely or engage in any enterprise in conflict with the interest of his employer (or client). Further, he shall act in good faith in his dealings with the industry associates.

The Land Professional shall represent others in his areas of expertise and shall not represent himself to be skilled in professional areas in which he is not professionally qualified.

Standards of Practice

The Bylaws of the American Association of Professional Landmen (AAPL) provide that a Code of Ethics has been established “to inspire and maintain a high standard of professional conduct” for the members of the Association. The Code of Ethics is the basis of conduct, business principles and ideals for AAPL members. This standard of professional conduct and these guiding principles and ideals mandated by the Code of Ethics within the AAPL Bylaws are summarized as follows:

A. Fair and honest dealing with landowners, industry associates and the general public so as to preserve the integrity of the profession (Article XVI, Section 1);

B. Adherence to a high standard of conduct in fulfilling his fiduciary duties to a principal

ATTACHMENT "B-1"

(Article XVI, Section 2);

C. Avoiding business activity which may conflict with the interest of his employer or client or result in the unauthorized disclosure or misuse of confidential information (Article XVI, Section 2);

D. Performance of professional services in a competent manner (Article XVI, Section 2);

E. Adherence to any provisions of the Bylaws, Code of Ethics, or any rule, regulation, or order adopted pursuant thereto (Article V, Section 9);

F. Avoiding the aiding or abetting of any unauthorized use of the title "Certified Professional Landman," "Registered Professional Landman," "P.Land" or "CPL/ESA" (Article V, Section 9); and

G. Avoiding any act or conduct which causes disrespect for or lack of confidence in the member to act professionally as a land professional (Article V, Section 9).

The masculine gender used herein shall refer to both men and women landmen. (*References are to the applicable Article and Section of the AAPL Bylaws.)

Preamble

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. The Code of Ethics shall be the basis of conduct, business principles and ideals for the members of the American Association of Professional Landmen.

In the area of human endeavor involving trading under competitive conditions, ethical standards for fair and honest dealing can be made increasingly meaningful by an association organized and dedicated not only to the definition, maintenance and enforcement of such standards, but to the improvement and education of its members. Such is the objective of the American Association of Professional Landmen and such is its public trust.

Such standards impose obligations beyond those of ordinary trading. They impose grave social responsibility and a duty to which the land professional should dedicate himself. A land professional, therefore, is zealous to maintain and improve the standards of his calling and shares with his fellow land professionals common responsibility for its integrity and honor. The term "Land Professional" has come to connote competency, fairness, integrity and moral conduct in business relations. No inducement of profit and no instruction from clients can ever justify departure from these ideals.

In order to inform the members of the specific conduct, business principles and ideals mandated by the Code of Ethics, the Association has adopted the following Standards of Practice, and every member shall conduct his business in accordance therewith:

1. In justice to those who place their interests in his care, a land professional shall be informed

regarding laws, proposed legislation, governmental regulations, public policies and current market conditions in his area of represented expertise, in order to be in a position to advise his employer or client properly (D, E).*

(*) References are to the foregoing summary of the standards of professional conduct and guiding principles and ideals mandated by the Code of Ethics and AAPL Bylaws.

2. It is the duty of the land professional to protect the members of the public with whom he deals against fraud, misrepresentation and unethical practices. He shall eliminate any practices which could be damaging to the public or bring discredit to the petroleum mining or environmental industries.
3. In accepting employment, the land professional pledges himself to protect and promote the interests of his employer or client. This obligation of absolute fidelity to the employer's or client's interest is primary but it does not relieve the land professional of his obligation to treat fairly all parties to any transaction, or act in an ethical manner (A, B).
4. The land professional shall not accept compensation from more than one principal for providing the same service, nor accept compensation from one party to a transaction, without the full knowledge of all principals or parties to the transaction (B, C).
5. The land professional shall not deny equal professional services to any person for reasons of race, creed, sex or country of national origin. The land professional shall not be a party to any plan or agreement to discriminate against a person or persons on the basis of race, creed, sex or country of national origin.
6. A land professional shall provide a level of competent service in keeping with the standards of practice in those fields in which a land professional customarily engages. The land professional shall not represent himself to be skilled in nor shall he engage in professional areas in which he is not qualified such as the practice of law, geology, engineering or other disciplines (D).
7. The land professional shall not undertake to provide professional services concerning a property or a transaction where he has a present or contemplated interest, unless such interest is specifically disclosed to all affected parties (C).
8. The land professional shall not acquire for himself or others an interest in property which he is called upon to purchase for his principal, employer or client. He shall disclose his interest in the area which might be in conflict with his principal, employer or client. In leasing any property or negotiating for the sale of any block of leases, including lands owned by himself or in which he has any interest, a land professional shall reveal the facts of his ownership or interest to the potential buyer (C).
9. If a land professional is charged with unethical practice or is asked to present evidence in any disciplinary proceeding or investigation, or has direct knowledge of apparent unethical

misconduct of another member, he shall place all pertinent facts before the proper authority of the American Association of Professional Landmen (E).

10. The land professional shall not accept any commission, rebate, interest, overriding royalty or other profit on transactions made for an employer or client without the employer's or client's knowledge and consent (B).
11. The land professional shall assure that monies coming into his possession in trust for other persons, such as escrows, advances for expenses, fee advances and other like items, are properly accounted for and administered in a manner approved by the employer or client (B).
12. The land professional shall avoid business activity which may conflict with the interest of his employer or client or result in the unauthorized disclosure or misuse of confidential information.
13. The land professional shall at all times present an accurate representation in his advertising and disclosures to the public (A).
14. The land professional shall not aid or abet the unauthorized use of the title "Certified Professional Landman," "Registered Professional Landman," "P.Land"and "CPL/ESA."
15. The land professional shall not participate in conduct which causes him to be convicted, adjudged or otherwise recorded as guilty by any court of competent jurisdiction of any felony, any offense involving fraud as an essential element or any other serious crime.

Code of Ethics for Engineers

Preamble

Engineering is an important and learned profession. As members of this profession, engineers are expected to exhibit the highest standards of honesty and integrity. Engineering has a direct and vital impact on the quality of life for all people. Accordingly, the services provided by engineers require honesty, impartiality, fairness, and equity, and must be dedicated to the protection of the public health, safety, and welfare. Engineers must perform under a standard of professional behavior that requires adherence to the highest principles of ethical conduct.

I. Fundamental Canons

Engineers, in the fulfillment of their professional duties, shall:

1. Hold paramount the safety, health, and welfare of the public.
2. Perform services only in areas of their competence.
3. Issue public statements only in an objective and truthful manner.
4. Act for each employer or client as faithful agents or trustees.
5. Avoid deceptive acts.
6. Conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.

II. Rules of Practice

1. Engineers shall hold paramount the safety, health, and welfare of the public.
 - a. If engineers' judgment is overruled under circumstances that endanger life or property, they shall notify their employer or client and such other authority as may be appropriate.
 - b. Engineers shall approve only those engineering documents that are in conformity with applicable standards.
 - c. Engineers shall not reveal facts, data, or information without the prior consent of the client or employer except as authorized or required by law or this Code.
 - d. Engineers shall not permit the use of their name or associate in business ventures with any person or firm that they believe is engaged in fraudulent or dishonest enterprise.
 - e. Engineers shall not aid or abet the unlawful practice of engineering by a person or firm.
 - f. Engineers having knowledge of any alleged violation of this Code shall report thereon to appropriate professional bodies and, when relevant, also to public authorities, and cooperate with the proper authorities in furnishing such information or assistance as may be required.
2. Engineers shall perform services only in the areas of their competence.
 - a. Engineers shall undertake assignments only when qualified by education or experience in the specific technical fields involved.
 - b. Engineers shall not affix their signatures to any plans or documents dealing with subject matter in which they lack competence, nor to any plan or document not prepared under their direction and control.
 - c. Engineers may accept assignments and assume responsibility for coordination of an entire project and sign and seal the engineering documents for the entire project, provided that each technical segment is signed and sealed only by the qualified engineers who prepared the segment.
3. Engineers shall issue public statements only in an objective and truthful manner.
 - a. Engineers shall be objective and truthful in professional reports, statements, or testimony. They shall include all relevant and pertinent information in such reports, statements, or testimony, which should bear the date indicating when it was current.
 - b. Engineers may express publicly technical opinions that are founded upon knowledge of the facts and competence in the subject matter.
 - c. Engineers shall issue no statements, criticisms, or arguments on technical matters that are inspired or paid for by interested parties, unless they have prefaced their comments by explicitly identifying the interested parties on whose behalf they are speaking, and by revealing the existence of any interest the engineers may have in the matters.

4. Engineers shall act for each employer or client as faithful agents or trustees.
 - a. Engineers shall disclose all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services.
 - b. Engineers shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.
 - c. Engineers shall not solicit or accept financial or other valuable consideration, directly or indirectly, from outside agents in connection with the work for which they are responsible.
 - d. Engineers in public service as members, advisors, or employees of a governmental or quasi-governmental body or department shall not participate in decisions with respect to services solicited or provided by them or their organizations in private or public engineering practice.
 - e. Engineers shall not solicit or accept a contract from a governmental body on which a principal or officer of their organization serves as a member.
5. Engineers shall avoid deceptive acts.
 - a. Engineers shall not falsify their qualifications or permit misrepresentation of their or their associates' qualifications. They shall not misrepresent or exaggerate their responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint venturers, or past accomplishments.
 - b. Engineers shall not offer, give, solicit, or receive, either directly or indirectly, any contribution to influence the award of a contract by public authority, or which may be reasonably construed by the public as having the effect or intent of influencing the awarding of a contract. They shall not offer any gift or other valuable consideration in order to secure work. They shall not pay a commission, percentage, or brokerage fee in order to secure work, except to a bona fide employee or bona fide established commercial or marketing agencies retained by them.

III. Professional Obligations

1. Engineers shall be guided in all their relations by the highest standards of honesty and integrity.
 - a. Engineers shall acknowledge their errors and shall not distort or alter the facts.
 - b. Engineers shall advise their clients or employers when they believe a project will not be successful.
 - c. Engineers shall not accept outside employment to the detriment of their regular work or interest. Before accepting any outside engineering employment, they will notify their employers.
 - d. Engineers shall not attempt to attract an engineer from another employer by false or misleading pretenses.
 - e. Engineers shall not promote their own interest at the expense of the dignity and integrity of the profession.
2. Engineers shall at all times strive to serve the public interest.
 - a. Engineers are encouraged to participate in civic affairs; career guidance for youths; and work for the advancement of the safety, health, and well-being of their community.
 - b. Engineers shall not complete, sign, or seal plans and/or specifications that are not in conformity with applicable engineering standards. If the client or employer insists on such unprofessional conduct, they shall notify the proper authorities and withdraw from further service on the project.
 - c. Engineers are encouraged to extend public knowledge and appreciation of engineering and its achievements.
 - d. Engineers are encouraged to adhere to the principles of sustainable development¹ in order to protect the environment for future generations.

3. Engineers shall avoid all conduct or practice that deceives the public.
 - a. Engineers shall avoid the use of statements containing a material misrepresentation of fact or omitting a material fact.
 - b. Consistent with the foregoing, engineers may advertise for recruitment of personnel.
 - c. Consistent with the foregoing, engineers may prepare articles for the lay or technical press, but such articles shall not imply credit to the author for work performed by others.
4. Engineers shall not disclose, without consent, confidential information concerning the business affairs or technical processes of any present or former client or employer, or public body on which they serve.
 - a. Engineers shall not, without the consent of all interested parties, promote or arrange for new employment or practice in connection with a specific project for which the engineer has gained particular and specialized knowledge.
 - b. Engineers shall not, without the consent of all interested parties, participate in or represent an adversary interest in connection with a specific project or proceeding in which the engineer has gained particular specialized knowledge on behalf of a former client or employer.
5. Engineers shall not be influenced in their professional duties by conflicting interests.
 - a. Engineers shall not accept financial or other considerations, including free engineering designs, from material or equipment suppliers for specifying their product.
 - b. Engineers shall not accept commissions or allowances, directly or indirectly, from contractors or other parties dealing with clients or employers of the engineer in connection with work for which the engineer is responsible.
6. Engineers shall not attempt to obtain employment or advancement or professional engagements by untruthfully criticizing other engineers, or by other improper or questionable methods.
 - a. Engineers shall not request, propose, or accept a commission on a contingent basis under circumstances in which their judgment may be compromised.
 - b. Engineers in salaried positions shall accept part-time engineering work only to the extent consistent with policies of the employer and in accordance with ethical considerations.
 - c. Engineers shall not, without consent, use equipment, supplies, laboratory, or office facilities of an employer to carry on outside private practice.
7. Engineers shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other engineers. Engineers who believe others are guilty of unethical or illegal practice shall present such information to the proper authority for action.
 - a. Engineers in private practice shall not review the work of another engineer for the same client, except with the knowledge of such engineer, or unless the connection of such engineer with the work has been terminated.
 - b. Engineers in governmental, industrial, or educational employ are entitled to review and evaluate the work of other engineers when so required by their employment duties.
 - c. Engineers in sales or industrial employ are entitled to make engineering comparisons of represented products with products of other suppliers.
8. Engineers shall accept personal responsibility for their professional activities, provided, however, that engineers may seek indemnification for services arising out of their practice for other than gross negligence, where the engineer's interests cannot otherwise be protected.
 - a. Engineers shall conform with state registration laws in the practice of engineering.
 - b. Engineers shall not use association with a nonengineer, a corporation, or partnership as a "cloak" for unethical acts.
9. Engineers shall give credit for engineering work to those to whom credit is due, and will recognize the proprietary interests of others.
 - a. Engineers shall, whenever possible, name the person or persons who may be individually responsible for designs, inventions, writings, or other accomplishments.
 - b. Engineers using designs supplied by a client recognize that the designs remain the property of the client and may not be duplicated by the engineer for others without express permission.
 - c. Engineers, before undertaking work for others in connection with which the engineer may make improvements, plans, designs, inventions, or other records that may justify copyrights or patents, should enter into a positive agreement regarding ownership.
 - d. Engineers' designs, data, records, and notes referring exclusively to an employer's work are the employer's property. The employer should indemnify the engineer for use of the information for any purpose other than the original purpose.
 - e. Engineers shall continue their professional development throughout their careers and should keep current in their specialty fields by engaging in professional practice, participating in continuing education courses, reading in the technical literature, and attending professional meetings and seminars.

Footnote 1 "Sustainable development" is the challenge of meeting human needs for natural resources, industrial products, energy, food, transportation, shelter, and effective waste management while conserving and protecting environmental quality and the natural resource base essential for future development.

As Revised July 2007

"By order of the United States District Court for the District of Columbia, former Section 11(c) of the NSPE Code of Ethics prohibiting competitive bidding, and all policy statements, opinions, rulings or other guidelines interpreting its scope, have been rescinded as unlawfully interfering with the legal right of engineers, protected under the antitrust laws, to provide price information to prospective clients; accordingly, nothing contained in the NSPE Code of Ethics, policy statements, opinions, rulings or other guidelines prohibits the submission of price quotations or competitive bids for engineering services at any time or in any amount."

Statement by NSPE Executive Committee

In order to correct misunderstandings which have been indicated in some instances since the issuance of the Supreme Court decision and the entry of the Final Judgment, it is noted that in its decision of April 25, 1978, the Supreme Court of the United States declared: "The Sherman Act does not require competitive bidding."

It is further noted that as made clear in the Supreme Court decision:

1. Engineers and firms may individually refuse to bid for engineering services.
2. Clients are not required to seek bids for engineering services.
3. Federal, state, and local laws governing procedures to procure engineering services are not affected, and remain in full force and effect.
4. State societies and local chapters are free to actively and aggressively seek legislation for professional selection and negotiation procedures by public agencies.
5. State registration board rules of professional conduct, including rules prohibiting competitive bidding for engineering services, are not affected and remain in full force and effect. State registration boards with authority to adopt rules of professional conduct may adopt rules governing procedures to obtain engineering services.
6. As noted by the Supreme Court, "nothing in the judgment prevents NSPE and its members from attempting to influence governmental action . . ."

Note: In regard to the question of application of the Code to corporations vis-a-vis real persons, business form or type should not negate nor influence conformance of individuals to the Code. The Code deals with professional services, which services must be performed by real persons. Real persons in turn establish and implement policies within business structures. The Code is clearly written to apply to the Engineer, and it is incumbent on members of NSPE to endeavor to live up to its provisions. This applies to all pertinent sections of the Code.



**National Society of
Professional Engineers®**

1420 King Street
Alexandria, Virginia 22314-2794
703/684-2800 • Fax:703/836-4875
www.nspe.org

Publication date as revised: July 2007 • Publication #1102



Guide for Professional Conduct

Preamble

Engineers recognize that the practice of engineering has a vital influence on the quality of life for all people. Engineers should exhibit high standards of competency, honesty, integrity, and impartiality; be fair and equitable; and accept a personal responsibility for adherence to applicable laws, the protection of the environment, and safeguarding the public welfare in their professional actions and behavior. These principles govern professional conduct in serving the interests of the public, clients, employers, colleagues, and the profession.

The Fundamental Principle

The engineer as a professional is dedicated to improving competence, service, fairness, and the exercise of well-founded judgment in the ethical practice of engineering for all who use engineering services with fundamental concern for protecting the environment and safeguarding the health, safety and well-being of the public in the pursuit of this practice.

Canons of Professional Conduct

1. Engineers offer services in the areas of their competence and experience, affording full disclosure of their qualifications.
2. Engineers consider the consequences of their work and societal issues pertinent to it and seek to extend public understanding of those relationships.
3. Engineers are honest, truthful, ethical, and fair in presenting information and in making public statements, which reflect on professional matters and their professional role.
4. Engineers engage in professional relationships without bias because of race, religion, gender, age, ethnic or national origin, attire, or disability.
5. Engineers act in professional matters for each employer or client as faithful agents or trustees disclosing nothing of a proprietary or confidential nature concerning the business affairs or technical processes of any present or former client or employer without the necessary consent.
6. Engineers disclose to affected parties any known or potential conflicts of interest or other circumstances, which might influence, or appear to influence, judgment or impair the fairness or quality of their performance.
7. Engineers are responsible for enhancing their professional competence throughout their careers and for encouraging similar actions by their colleagues.
8. Engineers accept responsibility for their actions; seek and acknowledge criticism of their work; offer honest and constructive criticism of the work of others; properly credit the contributions of others; and do not accept credit for work not their own.
9. Engineers, perceiving a consequence of their professional duties to adversely affect the present or future public health and safety, shall formally advise their employers or clients, and, if warranted, consider further disclosure.
10. Engineers seek to adopt technical and economical measures to minimize environmental impact.
11. Engineers participate with other professionals in multi-discipline teams to create synergy and to add value to their work product.
12. Engineers act in accordance with all applicable laws and the canons of ethics as applicable to the practice of engineering as stated in the laws and regulations governing the practice of engineering in their country, territory, or state, and lend support to others who strive to do likewise.

— Approved by the Board of Directors 26 September 2004

The American Association of Petroleum Geologists Constitution¹ and Bylaws² Constitution

ARTICLE I. NAME

This Association, which is incorporated under the laws of the State of Colorado, shall be called "The American Association of Petroleum Geologists."

ARTICLE II. PURPOSES

The purposes of this Association are to advance the science of geology, especially as it relates to petroleum, natural gas, other subsurface fluids, and mineral resources; to promote the technology of exploring for, finding, and producing these materials in an economically and environmentally sound manner; to foster the spirit of scientific research throughout its membership; to disseminate information relating to the geology and the associated technology of petroleum, natural gas, other subsurface fluids, and mineral resources; to inspire and maintain a high standard of professional conduct on the part of its members; to provide the public with means to recognize adequately trained and professionally responsible geologists; and to advance the professional well-being of its members.

ARTICLE III. MEMBERSHIP

SECTION 1.

The members of this Association shall consist of persons concerned with the professional applications of the geological science.

SECTION 2.

Various classifications of memberships and the qualifications thereof shall be established by the Bylaws of the Association.

ARTICLE IV. CODE OF ETHICS

SECTION 1. General Principles

(a) Geology is a profession, and the privilege of professional practice requires professional morality and professional responsibility.

(b) Honesty, integrity, loyalty, fairness, impartiality, candor, fidelity to trust, and inviolability of confidence are incumbent upon every member as professional obligations.

(c) Each member shall be guided by high standards of business ethics, personal honor, and professional conduct. The word "member" as used throughout this code includes all classes of membership.

SECTION 2. Relation of Members to the Public

(a) Members shall not make false, misleading, or unwarranted statements, representations or claims in regard to professional matters, nor shall they engage in false or deceptive advertising

(b) Members shall not permit the publication or use of their reports or maps for any unsound or illegitimate undertakings.

(c) Members shall not give professional opinions, make reports or give legal testimony without being as thoroughly informed as reasonably required.

SECTION 3. Relation of Members to Employers and Clients

(a) Members shall disclose to prospective employers or clients the existence of any pertinent competitive or conflicting interests.

(b) Members shall not use or divulge any employer's or client's confidential information without their permission and shall avoid conflicts of interest that may arise from information gained during geological investigations.

SECTION 4. Relation of Members to One Another

(a) Members shall not falsely or maliciously attempt to injure the reputation or business of others.

(b) Members shall freely recognize the work done by others, avoid plagiarism, and avoid the acceptance of credit due others.

(c) Members shall endeavor to cooperate with others in the profession and shall encourage the ethical dissemination of geological knowledge.

SECTION 5. Duty to the Association

(a) Members of the Association shall aid in preventing the election to membership of those who are unqualified or do not meet the standards set forth in this Code of Ethics.

(b) By applying for or continuing membership in the Association each member agrees to uphold the ethical standards set forth in this Code of Ethics.

(c) Members shall not use AAPG membership to imply endorsement, recommendation, or approval by the Association of specific projects or proposals.

SECTION 6. Discipline for Violations of Standards

Members violating any standard prescribed in this Article shall be subject to discipline as provided by the Bylaws.

ARTICLE V. GOVERNMENT

The government of this Association shall be vested in seven (7) elected officers, an Executive Committee, a House of Delegates, and an Advisory Council. The composition of each body, the manner of selection, the terms of office, the specific duties, responsibilities, and other matters relevant to such bodies and officers shall be as provided in the Bylaws of this Association. Any responsibility and authority of government of this Association not otherwise specified in these governing documents shall be reserved to the Executive Committee.

ARTICLE VI. DISPOSITION OF ASSETS

The American Association of Petroleum Geologists is a non-profit organization. In the event of the dissolution of the Association, the Association shall distribute any assets remaining after the discharge of all liabilities, for charitable, scientific, or educational purposes in strict compliance with exemption provided under Section 501 (c)(6) of the Internal Revenue Code of 1954. It is recognized that, under these circumstances, no member of the Association shall have any right or interest in or to the property or assets of the Association.

ARTICLE VII. BYLAWS

The Bylaws, consisting of fourteen (14) articles as appended hereto, are hereby adopted and may be amended, enlarged, or reduced as provided in the Bylaws.

ARTICLE VIII. AMENDMENTS

SECTION 1. Mail, Electronic Mail or Other Suitable Ballot by Members

Amendments to this Constitution may be made by a two-thirds (2/3) majority vote of the members of this Association responding by mail, electronic mail, or other suitable ballot.

SECTION 2. Proposal of Amendments

Such amendments may be proposed by the following:

(a) Resolution by the Executive Committee;

(b) Resolution by a special constitutional committee appointed by the President;

(c) Resolution of the House of Delegates;

(d) A proposal in writing signed by any fifty (50) members of the Association.

¹As amended June 25, 2006

²As amended April 10, 2011

ARTICLE XI. GRIEVANCE PROCEEDINGS

SECTION 1. Adoption and Publication of Implementing Procedures

The Executive Committee shall, in accordance with and subject to the provisions of these Bylaws, adopt procedures governing the investigation, hearing, and disposition of charges of misconduct in violation of Article IV of the Constitution, in accordance with the provisions of this Article XI, and shall publish such procedures in the Bulletin or by other suitable means.

SECTION 2. Investigation Procedure

Charges of misconduct in violation of Article IV of the Constitution shall first be submitted in writing to the Executive Director at Association headquarters with a statement of the evidence on which the charges are based. The Executive Director shall submit the charges to the Ethics Committee of the Association which shall be a standing committee and which shall consist of five (5) members of the technical division of the Association charged with conducting the program or programs of certification of members in professional categories and who shall be appointed by the Executive Committee of the Association for staggered three (3) year terms as members of the Ethics Committee. The provisions of Article VIII of these Bylaws shall not apply to the Ethics Committee. The Ethics Committee shall be charged with the investigation and prosecution of such charges, and may conduct such investigation as the Ethics Committee deems necessary to reasonably and thoroughly investigate the charges. If in the judgment of the Ethics Committee and after consultation with AAPG legal counsel, the evidence supports further action by the Association on the charges, the committee shall prepare and file with the Advisory Council at Association headquarters formal charges against the accused member. Upon such filing the Chair of the Advisory Council shall appoint a Hearing Body from the Advisory Council members, in accordance with Section 3 of this Article XI, and the Ethics Committee shall appoint one of its members as the prosecutor. Notwithstanding anything to the contrary contained in these Bylaws and except for proceedings pursuant to the provisions of Section 8 of this Article, disposition of the charges on any terms or conditions agreed to by all of the Ethics Committee, the Chair of the Advisory Council, and the accused member, and approved by the Executive Committee of the Association (regardless of whether such terms or conditions are listed in phrases (a), (b), (c), or (d) of Section 4 of this Article XI) may be made at any time prior to the conclusion of the proceedings provided for in this Article XI and upon such disposition all proceedings under this Article XI concerning the charges of misconduct against the accused member shall cease. The existence of allegations against any member, and the basis and content thereof, is confidential.

SECTION 3. Hearing Procedure

The Hearing Body shall consist of five (5) members of the Advisory Council, including at least one (1) past president of the Association, all of whom shall be appointed by the Chair of the Advisory Council. Each of the prosecutor and the accused member may challenge and have removed not more than two (2) members of the Hearing Body and such removed members shall be replaced with other members of the Advisory Council selected by the Chair of the Advisory Council. The Hearing Body shall set the time, date, and place for a hearing on the charges and the accused member shall be given notice in writing of the time, date, and place of the hearing, mailed to the member by registered mail to the member's last-known mailing address not less than thirty (30) days prior to such date, accompanied by a copy of the formal charges and a copy of this Article. The accused member may appear with legal counsel before the Hearing Body, hear any witnesses called in support of the charges and, at the member's option, cross-examine the same, present witnesses in the member's behalf, and submit oral or written statements in the member's behalf. The prosecutor may likewise be represented by legal counsel, present witnesses, and cross-examine the accused member's witnesses. The Hearing Body may consult at any time with legal counsel of its choosing at all stages

of the proceedings in which it is involved. At the accused member's option, the accused member may, by registered letter addressed to the Chair of the Advisory Council at Association headquarters, postmarked not less than ten (10) days prior to the date of the hearing, waive personal appearance and request the Hearing Body to adjudge the matter on the basis of a written statement of the member's defense accompanying such letter.

SECTION 4. Decision of Hearing Body

After the conclusion of the hearing or study of the written defense submitted in lieu thereof, the Hearing Body shall consider and vote to sustain or dismiss the charges. If, by not less than a four-fifths (4/5) vote of all of the members of the Hearing Body, the Hearing Body shall declare sustained the charges against the accused member, then the Hearing Body may impose the following discipline:

- (a) issue a private or public admonition of the member; or
- (b) suspend the member for a stated period of time; or
- (c) allow the member to resign; or
- (d) expel the member.

Failure of the accused member to appear, or to submit a waiver letter and a written defense, as provided in this section, shall not prevent the Hearing Body from rendering final judgement. Notice of the decision of the Hearing Body shall be sent by registered mail to the accused member at the member's last-known post office mailing address.

SECTION 5. Appeals Procedure

Action taken by the Hearing Body may be appealed to the Executive Committee of the Association by either the accused member or the Ethics Committee within thirty (30) days of the date notice of the decision of the Hearing Body is sent to the accused member. The Executive Committee shall have final authority whether to sustain or order a rehearing on the decision of the Hearing Body.

SECTION 6. Resignation

Resignation by the accused member from the Association, at any stage in the foregoing prescribed proceedings, shall automatically terminate the proceedings. Following resignation, the accused person so resigning shall not be eligible for reinstatement to membership unless by unanimous vote of all members of the Executive Committee of the Association.

SECTION 7. Expulsion

Persons expelled from the Association under these proceedings shall thenceforth be ineligible for reinstatement to membership unless by unanimous vote of all members of the Executive Committee of the Association.

SECTION 8. Alternative Procedure

Any member (a) who pleads guilty to a misdemeanor involving moral turpitude or to any felony, (b) who admits to the violation of any governmental statute, regulation, rule, or code of ethics relating to the practice of geology, or (c) who the Executive Committee determines falsely stated qualifications for membership in an application for Association membership may be expelled from membership in the Association upon a majority vote of all members of the Executive Committee of the Association.

Any member who does not plead guilty to but is convicted of a misdemeanor involving moral turpitude or of any felony or who is found by a governmental body to have violated any governmental statute, regulation, rule, or code of ethics relating to the practice of geology may be suspended from membership in the Association upon a majority vote of all members of the Executive Committee of the Association. If such a conviction or finding is reversed on appeal, the member shall be reinstated to membership. If such a conviction or finding is not appealed or is upheld on final appeal, the member may be expelled from membership in the Association upon a majority vote of all members of the Executive Committee of the Association. If such a conviction or finding is the subject of an executive pardon, the member shall

be reinstated to membership upon a majority vote of all members of the Executive Committee of the Association.

In the event that (a) expulsion of a member so pleading guilty or so admitting violation is proposed, (b) expulsion of a member for so falsely stating qualifications is proposed, or (c) suspension or expulsion of a member so convicted or so found is proposed, a date shall be set for a hearing thereon and for consideration by the Executive Committee of such proposed suspension or expulsion. The member shall be given notice in writing of the date and place for the hearing, mailed to the member by registered mail to the member's last-known mailing address not less than thirty (30) days before said date, accompanied by, as applicable, a copy of a court document or other official document indicating such plea of guilty or admission of violation, a copy of the judgment or other document indicating such conviction or finding and a copy of any applicable order of an appellate court or other appellate body, or a statement explaining such charge of falsely stating qualifications for membership, and a copy of this section. At the hearing the member may appear before the Executive Committee with legal counsel, may submit oral or written statements to the Executive Committee, may present written evidence to the Executive Committee, and may present witnesses to testify on the member's behalf before the Executive Committee. The Executive Committee shall have the right to cross-examine the member and any witnesses presented by the member on the member's behalf. At the member's option, the member may, by registered letter addressed to the President of the Association at Association headquarters, postmarked not less than ten (10) days prior to the date of the hearing, request the Executive Committee to consider the matter on the basis of a written statement by the member accompanying such a letter without the personal appearance of the member before the Executive Committee. The Executive Committee, if such oral or written statements, written evidence, or testimony of witnesses are presented, shall consider said statements, evidence, and testimony prior to voting on the suspension or expulsion of the member.

A member expelled from the Association under the procedure stated above shall be ineligible for reinstatement to membership unless reinstated by a unanimous vote of all members of the Executive Committee of the Association.

SECTION 9. Authority

Subject to the provisions of these Bylaws, the Executive Committee shall have primary authority over matters of professional conduct and discipline. No member, committee, Division, Section, or Region of the Association shall initiate or conduct any investigation or hearing or impose any sanction concerning the professional conduct of an Association member or applicant for Association membership, except as expressly permitted by these Bylaws. Procedures adopted by the Executive Committee as authorized by Section 1 of this Article XI shall be in accordance with, and subject to, the provisions of these Bylaws.

SECTION 10. Definition

The term "member" as used in this Article XI shall refer to a member of the Association of any classification.

SECTION 11. Publication of Grievance Matters

The Executive Director of the Association shall cause to be published annually in the Bulletin or by other suitable means a summary of all grievance proceedings initiated, pending, or considered each year. The summary shall include, but not be limited to, the general type of complaint, the level of grievance procedure attained, and status or disposition of the case. Names of parties shall not be published, except that the name of any member expelled from the Association shall be published in said summary.

ARTICLE XII. MEETINGS

The Association shall hold at least one (1) stated meeting of its members each year, at a time and place designated by the Executive Committee.

ARTICLE XIII. DUES

SECTION 1. Fiscal Year

The fiscal year of the Association shall begin on July 1 and end on June 30 of the following calendar year.

SECTION 2. Dues Benefit

The payment of annual dues for any fiscal year entitles the Active Member, Emeritus Member, Student, or Associate to receive without further charge a copy of the *Bulletin* and the *Explorer* of the Association for that year.

SECTION 3. Dues Schedule and Billing

The annual dues of members shall be payable in advance of the fiscal year in accordance with a schedule to be established annually by the Executive Committee, provided that the dues shall not exceed the sums set forth below:

Active—Up to \$125
 Emeritus—Up to \$62.50
 Honorary—None
 Student—Up to \$10
 Associate—Up to \$125

The above schedule shall be subject to the following provisos:

- (a) That dues are not refundable;
- (b) That members having previously obtained exemption under the former Life Member category shall not be required to pay dues;
- (c) Students will be reclassified as Associates twenty-four (24) months after termination of academic enrollment.

(d) There shall be three levels of annual dues for Active Members and Associates which shall be based on gross annual personal income in United States dollars. The levels are: Level 1 – Annual income greater than \$50,000; Level 2 – Annual income greater than \$25,000 but not more than \$50,000; and Level 3 – Annual income of \$25,000 or less. Level 2 dues shall be one-half of Level 1 dues; Level 3 dues shall be one-fourth of Level 1 dues; provided, however, that in no event shall annual dues based on any level of annual income be less than \$20.00. An Active Member or an Associate whose annual income is in Level 2 or Level 3 may, at his or her option, pay dues which correspond with any higher level of annual income. The Executive Committee may provide for access to the *Bulletin* and the *Explorer* by different means for persons paying different levels of dues.

(e) Except as required to initiate the various dues levels as set out in subsection (d) above, that the annual change in dues for Active Members and Associates cannot exceed twenty percent (20%), and that this annual change is noncumulative; and

(f) That a penalty to be established annually by the Executive Committee will be levied for each quarter year of delinquency beginning on July 1.

A statement shall be mailed to each Active Member, Emeritus Member, Honorary Member, Student, and Associate before July 1 of each year, stating the amount of annual dues.

SECTION 4. Arrears and Suspension

Any member of whatever classification whose dues are in arrears for more than sixty (60) days and for less than one (1) year shall be suspended from membership in the Association and shall not be entitled to the privileges of membership.

SECTION 5. Forfeit of Membership

Any member of whatever classification who is more than one (1) year in arrears in payment of dues shall forfeit membership in the Association and the member's name shall be removed from membership rolls.