

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GARY A. BURDEN,)	CASE NOS. 94-0583RU
)	94-0584RU, 94-0585RU,
Petitioner,)	94-0586RU, 94-0587RU,
)	94-0588RU, 94-0589RU,
vs.)	94-0590RU, 94-0591RU,
)	94-0592RU, 94-0593RU,
BOARD OF PROFESSIONAL LAND)	94-0609RX, 94-0610RX,
SURVEYORS,)	94-0611RX, 94-0612RX,
)	94-0613RX, 94-0614RX,
Respondent.)	94-0615RX, 94-0616RX
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BOARD OF PROFESSIONAL LAND)	
SURVEYORS,)	
)	
Petitioner,)	
)	
vs.)	CASE NO. 94-0925F
)	
GARY A. BURDEN,)	
(T. S. MADSON, ESQUIRE))	
)	
Respondent.)	
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FINAL ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, Mary Clark, held a formal hearing in the above-styled cases on March 8 and March 14, 1994, in Tallahassee, Florida.

APPEARANCES

For Petitioner: T. S. Madson, II, Esquire
Post Office Box 13158
Gainesville, Florida 32604

For Respondent: Virginia Daire, Esquire
Department of Legal Affairs
Office of the Attorney General
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Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUES
CASES NUMBER 94-583RU - 94-593RU

Eleven separate petitions were filed pursuant to section 120.535, F.S. alleging various non-rule policies of the Board of Professional Land Surveyors and requesting that those alleged policies be adopted by rule. The threshold issue in these cases is whether such policies exist; if so, it must be determined whether they are rules, as defined in section 120.52(16), and whether rulemaking is feasible and practicable, as provided in section 120.535(1), F.S.

CASES NUMBER 94-0609RX - 94-0616RX

The eight petitions in these consolidated cases are challenges to specific provisions within Chapter 61G17-6, F.A.C. (formerly 21HH-6, F.A.C.), "Minimum Technical Standards", relating to the practice of land surveying, adopted by the Board of Professional Land Surveyors. The issue in these cases is whether those specific provisions are invalid exercises of delegated legislative authority, as alleged by Petitioner.

CASE NUMBER 94-0925F

In this case, Respondent seeks attorney's fees and costs from counsel for Petitioner pursuant to section 120.57(1)(b)5., F.S. The issue, therefore, is whether an award under that section is appropriate.

OTHER ISSUES

Respondent does not dispute the standing of Petitioner in the sections 120.535 and 120.56, F.S. cases.

Petitioner, in his proposed order, argues that he, not Respondent, is entitled to fees and costs. Petitioner also argues that his subpoena were properly served by mail on various board members. Those two issues are thus addressed in this order.

PRELIMINARY STATEMENT

Nineteen petitions challenging alleged unwritten policies and promulgated rules were filed by Petitioner and were assigned by the Division Director on or about February 9, 1994, to Hearing Officer Claude B. Arrington. The cases were consolidated.

After a motion hearing, Hearing Officer Arrington ruled on pending motions in an order entered on March 1, 1994. Thereafter, the cases were transferred to Hearing Officer Don Davis. After considering a motion to recuse, Hearing Officer Davis granted the motion and transferred the case to Hearing Officer Clark, who convened the hearing as scheduled. Case Number 94-0925F was consolidated with the underlying rule challenge cases.

At hearing, Petitioner presented the testimony of Benjamin Paul Blackburn, qualified as an expert in land surveying. Petitioner's exhibits Number 1-11 were received in evidence.

Respondent presented the testimony of Diane Jones, qualified as an expert in land surveying; and Miriam Wilkinson. Respondent's exhibits Number 1 and 2 were received in evidence. Without objection, official recognition was taken of DBPR v. Gary A. Burden, DOAH Number 93-6433, pending a disciplinary case under section 120.57(1), F.S. The hearing officer denied Respondent's request to present testimony of T.S. Madson, counsel for Gary Burden in these cases and the section 120.57(1) case.

After the hearing both parties submitted proposed orders. The findings of fact proposed by each are addressed in the attached appendix.

FINDINGS OF FACT

1. Gary A. Burden (Burden) is a professional land surveyor registered in the state of Florida pursuant to Chapter 472, F.S. The parties have stipulated that he is substantially affected by the rules of the Board of Professional Land Surveyors (Board).

2. On June 22, 1993, the Department of Professional Regulation (now, Department of Business and Professional Regulation, DBPR) issued an administrative complaint alleging that Burden failed to follow minimum technical standards for land surveying in a boundary survey he performed for Lot 33, Lafayette Forest, in Seminole County, Florida. The complaint alleged seven specific deficiencies and cited the Board rule which applies to each. (Petitioner's exhibit Number 9)

3. The seven specific violations are identified in a consultant's report dated April 1, 1993, from Dianne Jones, PLS, to the Board. (Petitioner's Number 10)

4. Burden requested a formal hearing on the complaint and the case was referred to the Division of Administrative Hearings (DOAH) and was assigned DOAH Case Number 93-6433. On February 14, 1994, Hearing Officer, Ella Jane P. Davis issued an order on all motions pending as of that date. The order includes these pertinent provisions describing discussions at a January 20, 1994, conference call between the hearing officer and counsel for the parties:

2. The undersigned also advised the parties that the instant Section 120.57(1), F.S. proceeding was not the appropriate vehicle to raise what appeared to be challenges in existing rules named in Respondent's affirmative defenses and that challenges to existing rules can only be initiated pursuant to Section 120.56, F.S. Further, the parties were informed that challenges to existing rules could not and would not be resolved by the Recommended Order to be entered in the instant Section 120.57(1), F.S. license disciplining proceeding.

3. After hearing oral argument, the undersigned further requested that the parties file their respective memoranda as to whether the instant case had any Section 120.535, F.S. ramifications.

5. Shortly after the January 20th telephone conference, Gary Burden, through counsel, filed the nineteen petitions that are the subject of this proceeding.

6. The eleven petitions filed pursuant to section 120.535, F.S. request that these alleged policies of the Board be promulgated as formal rules:

a) The Board's refusal to allow land surveyor registrants to incorporate other recorded instruments into their drawings by reference;

- b) The Board's determination of what constitutes "substantial compliance" to the minimum technical standards;
- c) The Board's application of a "substantial compliance" standard to probationary registrants, but a "strict compliance" standard to accused registrants.
- d) The Board's assessment of a single penalty, no matter how major or minor the offense;
- e) The Board's refusal to utilize the simple citation rule found at rule 61G17-9.004, F.A.C. (providing for disciplinary citation and fine);
- f) The Board's refusal to allow its registrants to mitigate damage to the public.
- g) The Board's equating the determination of boundaries to real property to the words contained in recorded deeds and plats;
- h) The Board's equating the standards of practice for "corners" with the standards of practice for "monuments".
- i) The Board's need to define the meaning of the term, "fixed improvements";
- j) The Board's requirement that lot and block numbers be shown on a survey drawing in a specific location; and
- k) The Board's requirement that registrants measure distances and directions to "reference points".

7. Burden did not testify at hearing, nor did he appear in person at the hearing. His single witness, Benjamin Paul Blackburn, has been registered as a land surveyor since 1969. Blackburn has been before the Board once on allegations of minimum technical standard violations, and the charges were dismissed; he has attended two Board meetings in the last year, and attended once in 1981 when the Board was promulgating rules. He has been an active member of the state professional association and was president of the association in the past. Blackburn was an articulate and sincere witness; however, he has no competent knowledge of the policies of the Board. His information comes from talking with other surveyors and from attending training seminars sponsored by the association. He freely admits that he has no direct knowledge of many of the policies alleged by Burden; in some instances his understanding of the Board's policy is contrary to that alleged by Burden. For example, Blackburn believes the Board has allowed surveyors to mitigate damages; he also believes the Board allows incorporation by reference on surveys and maps.

8. Counsel for Burden attempted to compel the appearance of Board members by mailing subpoena to them, certified mail, with witness checks enclosed. On the advice of counsel that the service was defective, the members did not appear. Documents sought by the subpoena duces tecum were voluntarily produced by the Board's Executive Director, an employee of the DBPR, Angel Gonzalez, to the extent that he was able to obtain the documents and records.

9. Diane Jones has been registered as a land surveyor for seven years and worked as an intern in the field for fifteen years. She has been employed by

DBPR in the past as a consultant in cases the agency brings to the Board. She was a consultant in the Burden case. Ms. Jones was unable to confirm that the alleged policies were, in fact, Board policies. Her understanding was similar to Blackburn's, generally. In her capacity as consultant to DBPR in discipline cases, she has no difficulty interpreting and applying the minimum technical standards or other rules of the Board, based on her knowledge of the rules and her professional experience.

10. In addition to alleging unwritten policies by the Board, Burden challenges a series of existing Board rules which he claims are invalid exercises of legislative delegation. For each rule that is a subject of his petitions, he claims invalidity based on excess of rulemaking authority, enlargement or modification of the law, vagueness and capriciousness. More specifically, Burden claims the following:

- a) Rules 61G17-6.002(2) and 61G17-6.002(6)(g), F.A.C. (defining "corner" and "land or Boundary Survey", respectively) illegally attempt to grant the land surveyor the right to establish or re-establish "boundary lines";
- b) Rule 61G17-6.003(4), F.A.C. illegally requires a basis of bearing to be shown;
- c) Rule 61G17-6.003(8)(a), F.A.C. is non-specific about the location of lot and block numbers on a survey drawing;
- d) Rule 61G17-6.003(15), F.A.C. illegally requires land surveyors to state certain unnecessary data for survey corners.
- e) Rule 61G17-6.003(18), F.A.C. illegally requires the land surveyor to place almost all abbreviations in a legend or not use such abbreviations;
- f) Rule 61G17-6.003(13), F.A.C. illegally requires the land surveyor to show unidentified "fixed improvements";
- g) Rules 61G17-6.003(8)(c) and (d) illegally require a land surveyor to perform a comparative analysis to reference points other than those described at Rule 61G17-6.002(5), F.A.C.; and
- h) Rule 61G17-6.003(10), F.A.C. illegally requires the land surveyor to show adjoining elements and rights of way which are shown on instruments incorporated by reference into the survey drawing.

11. Rules 61G17-6.002(2) and 61G17-6.002(6)(g) provide:

(2) Corner: shall mean a point on a land boundary that designates a change in direction, for example: points of curvature, points of tangency, points of compound curvature and so forth.

(6) Survey: shall mean the orderly process of determining data relating to the physical

or chemical characteristics of the earth, and may be further defined according to the type of data obtained, the methods and instruments used, and the purpose(s) to be served. All surveys showing land boundary information must be in accordance with Rule 61G17-6.003. For purposes of this rule, types of surveys shall include the following definitions:

. . .

(g) Land or Boundary Survey: shall mean a survey, the primary purpose of which includes, but is not limited to, the determining of the perimeters of a parcel or tract of land by establishing or re-establishing corners, monuments, and boundary lines for the purposes of describing, locating of fixed improvements, or platting or dividing the parcel.

According to Blackburn, the deed rather than the surveyor establishes the land boundaries. This argument or fact does not provide a basis to invalidate the rules as the rules do not require or allow a surveyor to create boundaries as an extent of legal possession. Rather, the purpose of the rules is clearly stated in (6)(g). The language of the rules is consistent with treatises and textbooks that are nationally recognized. The American Congress on Surveying and Mapping (ACSM) and the American Society of Civil Engineers (ASCE) jointly adopted this definition in 1978:

Land surveying is the art and science of:
(1) Re-establishing cadastral surveys and land boundaries based on documents of record and historical evidence; (2) planning, designing and establishing property boundaries; and (3) certifying surveys as required by statute or local ordinance such as subdivision plats, registered land surveys, judicial surveys, and space delineation. Land surveying can include associated services such as mapping and related data accumulation; construction layout surveys; precision measurements of length, angle, elevation, area and volume; horizontal and vertical control systems; and the analysis and utilization of survey data."

(Respondent's exhibit Number 2)

12. Rule 61G17-6.003(4), F.A.C. provides:

(4) A reference to all bearings shown must be clearly stated, i.e., whether to "True North"; "Grid North as established by the NOS"; "Assumed North based on a bearing for a well defined line, such as the center line of a road or right of way, etc."; "a Deed Call for a particular line"; or "the bearing of a particular line shown upon a plat." References to Magnetic North should be

avoided except in the cases where a comparison is necessitated by a Deed Call. In all cases, the bearings used shall be referenced to some well-established line.

Both parties' experts agree that the purpose of this rule is to relate the property surveyed to an established line so that subsequent surveyors could retrace or reconstruct what the surveyor did with regard to angles and the like. "Assumed north" is simply a direction assumed and does not relate to a compass direction. If only angles are shown, and no bearings, the rule does not apply. Bearings are a way of indicating angular relationships; an angle can be developed from the bearings. The rule legitimately fulfills its purpose of avoiding ambiguity.

13. Rule 61G17-6.003(8)(a), F.A.C. provides:

(8) Surveys of all or part of a lot(s) which is part of a recorded subdivision shall show the following upon the drawing:

(a) The lot(s) and block numbers or other designation, including those of adjoining lots.

This is not a complicated rule. Showing the lot numbers helps interpret and orient the map. Even though the title of the survey or text on the survey may identify the lot number of the lot being surveyed, including the number on the face of the drawing makes the survey easier to read.

14. Rule 61G17-6.003(15), F.A.C. provides:

(15) The surveyor shall make a determination of the correct position of the boundary of the real property and shall set monuments, as defined herein, unless monuments already exist at such corners. All monuments, found or placed, must be described on the survey drawing. When the property corner cannot be set, a witness monument shall be placed with data given to show its location upon the ground in relation to the boundary lines or corner. The corner descriptions shall state the size, material, and cap identification of the monument as well as whether the monument was found or set. The distance along boundaries between monuments shall not exceed fourteen hundred feet. When a parcel has a natural and/or an artificial feature such as a roadway, river, lake, beach, marsh, stream or other irregular boundary as one or more of its boundaries, then a monument meander or survey line shall be established either directly along or near the feature. Dimensions shall be shown between the meander or survey line and the boundary line sufficient to show the relationship between the two.

Even though monuments may be accidentally or deliberately moved by contractors, property owners or neighbors, the monuments are still an important feature of a survey. A prudent surveyor would not rely on an existing monument without looking for signs of disturbance and verifying its placement. The efficiency of showing and describing a monument outweighs any danger of including it.

15. Rule 61G17-6.003(18), F.A.C. provides:

(18) ABBREVIATIONS:

(a) Abbreviations generally used by the public or in proper names that do not relate to matters of survey are excluded from the legend requirement.

(b) Acceptable abbreviations on the face of maps, plats, or survey drawings are:

N = North

S = South

E = East

W = West

or any combination such as NE, SW, etc.

. = Degrees

' = Minutes when used in bearing

" = Seconds when used in a bearing

' = Feet when used in a distance

" = Inches when used in a distance

AC = Acres

+ = More or less (or Plus or Minus)

(c) Any other abbreviations relating to survey matters must be clearly shown within a legend or notes appearing on the face of the drawing.

Blackburn contends that the legend requirement is time-consuming, expensive and unnecessary. A surveyor, however, is not required to use abbreviations. To the extent that they are used, they should be explained on the face of the document. A legend facilitates interpretation of the survey and eliminates questions or ambiguities. The rule establishes some clear exceptions to the legend requirement in subsection (b). According to Diane Jones, subsections (a) and (c) of the rule are vague and confusing. In her opinion, every abbreviation that is not addressed in subsection (b) should be explained in a legend on the survey. She, therefore, would prefer to see everything explained on the face of the document, while Petitioner prefers to dispose of the legend altogether. Reasonable minds plainly differ; although the rule could be improved with rewording, as suggested by Ms. Jones, it is not invalid for the reasons advanced by Petitioner.

16. Rule 61G17-6.003(13), F.A.C. provides:

(13) Location of fixed improvements pertinent to the survey shall be shown upon the drawing in reference to the boundaries, either directly or by offset lines. If fixed improvements are not located or do not exist, a note to this effect shall be shown upon the drawing. Pertinent improvements are improvements made for the enjoyment of

the property being surveyed and shall include docks, boathouses, and similar improvements.

According to Blackburn, inclusion of fixed improvements on the survey should depend on what the client has ordered. He also feels the rule results in surveys that are misleading to the public as the inclusion of any fixed improvements would imply that those are the only fixed improvements in the area.

These concerns are mutually inconsistent. The rule is clear and unambiguous. It is also consistent with accepted principles of land survey practice.

17. Rules 61G217-6.003(8)(c) and (d), F.A.C. provide:

(8) Surveys of all or part of a lot(s) which is part of a recorded subdivision shall show the following upon the drawing:

. . .
(c) A comparison between the recorded directions and distances with field measured directions and distances to the nearest street centerline, right of way intersection or other identifiable reference points where the block lines are straight.

(d) A comparison between the recorded directions and distances or computed directions and distances based upon the recorded data with field measured directions and distances to an identifiable reference point where the block lines are curved.

The requirements of these rules are clear to a practicing land surveyor. "Reference point" is described in rule 61G17-6.002(5), F.A.C. as ". . . any defined position that is or can be established in relation to another defined position." Contrary to Petitioner's assertion, there is no conflict between the requirements of (c) and (d), and the definition of "reference point".

18. Rule 61G17-6.003(10), F.A.C. provides:

(10) All recorded public and private rights of way shown on applicable recorded plats adjoining or across the land being surveyed shall be located and shown upon the drawing. Easements shown on applicable record plats or open and notorious evidence of easements or rights of way on or across the land being surveyed shall be located and shown upon the drawing. If streets or street rights of way abutting the land surveyed are not physically open, a note to this effect shall be shown upon the drawing. If location of easements or rights of way of record, other than those on record plats, is required, this information must be furnished to the surveyor.

This rule requires that specific information be included even when that information may already be found on material incorporated by reference, like a

plat, for example. The rule serves the legitimate purpose of saving the user from time consuming research. The survey should stand alone as a complete document.

19. In summary, the rules at issue are valid and reasonably clear and consistent with establishing principles guiding the practice of professional land surveying. According to Brown, Robillard, and Wilson, Evidence and Procedures for Boundary Location, 2nd Ed (Respondent's Ex. 2):

A plat should tell a complete story; it should show sufficient information to allow any other surveyor to understand how the survey was made and why the survey was correct. It also should show complete information on encroachments to enable any attorney or others to evaluate properly the effect of continued possession. (p.350)

. . .
A plat should be complete in itself and should present sufficient evidence of monuments (record and locative) and measurements so that any other surveyor can clearly, without ambiguity, find the locative points and follow the reasonings of the surveyor. A plat does not show the client's land alone; it shows all ties necessary to prove the correctness of location. If it is necessary to measure from a mile away to correctly locate a property, that tie, as measured, is shown. (p. 360)

20. There is no evidence in this proceeding that either party or attorney filed pleadings or papers for any improper purpose, such as delay harassment, increase in cost or otherwise. The petitions are numerous, but they relate to rules or alleged policies at issue in a separate disciplinary action, and, on their face, they raise legitimate issues. Respondent's defense was necessary and appropriate.

CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction in this consolidated proceeding pursuant to sections 120.535, 120.56, and 120.57(1), F.S.

22. Section 120.535, F.S. provides, in pertinent part:

120.535 Rulemaking required.-

(1) Rulemaking is not a matter of agency discretion. Each agency statement defined as a rule under s.120.52(16) shall be adopted by the rulemaking procedure provided by s. 120.54 as soon as feasible and practicable. Rulemaking shall be presumed feasible and practicable to the extent provided by this subsection unless one of the factors provided by this subsection is applicable.

A "rule" is an

. . . agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeat of a rule. . . .

Section 120.52(16), F.S.

23. Petitioner failed to prove the existence of the policies he alleges are applied by the Board. Moreover, if the "policies" described in the petitions in cases Number 94-0584RU through 94-0593RU are being applied in Petitioner's discipline case, there is no evidence whatsoever that these "policies" are generally applied by the Board, to bring them within the definition of a rule. Petitioner failed to prove the threshold element in his section 120.535 cases, and it is unnecessary to address the feasibility or practicality of rulemaking as to the "policies" at issue.

24. Section 120.56, F.S. describes the process through which any person". . . substantially affected by a rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority." As stipulated, Gary Burden is substantially affected by the rules he seeks to have declared invalid in cases Number 94-0609RX through 94-0616RX.

25. "Invalid exercise of delegated legislative authority" means

. . . action which goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one or more of the following apply:

(a) The agency has materially failed to follow the applicable rulemaking procedures set forth in s. 120.54;

(b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(7);

(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(7);

(d) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency or

(e) The rule is arbitrary or capricious.

Section 120.52(8), F.S.

26. The specific authority for, and law implemented by, the existing rules at issue is section 472.027, F.S., which provides:

472.027 Minimum technical standards for land surveying.- The board shall adopt rules relating to the practice of land surveying which establish minimum technical standards to assure the achievement of no less than minimum degrees of accuracy, completeness, and quality in order to assure adequate and defensible real property boundary locations and other pertinent information provided by land surveyors under the authority of ss. 472.001-472.039.

Rulemaking authority of the Board is also found at section 472.008, F.S., which provides, in pertinent part:

472.008 Rules of the board. - The board shall adopt such rules not inconsistent with law as may be necessary to carry out the duties and authority conferred upon the board by this chapter. . . .

27. Case law on rule challenges is succinctly summarized in the recent case, *Department of Labor and Employment Security, etc. v. Jack Bradley, et al*, 19 Fla. Law Weekly D999 (Fla. 1st DCA opinion filed 5/3/94):

It is an established principle that "[w]here the empowering provision of a statute states simply that an agency 'may make such rules and regulations as may be necessary to carry out the provisions of this act,' the validity of the regulations promulgated thereunder will be sustained as long as they are reasonably related to the purposes of the enabling legislation, and are not arbitrary or capricious." *Adam Smith Enterprises v. Department of Environmental Regulation*, 553 So.2d 1260, 1271 (Fla. 1st DCA 1989). See also *General Telephone Co. of Florida v. Florida Public Service Commission*, 446 So.2d 1063, 1067 (Fla. 1984); *General Motors Corp. v. Department of Highway Safety & Motor Vehicles*, 625 So.2d 76, 78 (Fla. 1st DCA 1993).

In a rule challenge, "the burden is upon one who attacks a proposed rule to show that the agency, if it adopts the rule, would exceed its authority; that the requirements of the rule are not appropriate to the end specified in the legislative act; that the requirements contained in the rule are not reasonably related to the purpose of the enabling legislation or that the proposed rule or the requirements thereof are arbitrary or capricious." *Agrico Chemical Co. v.*

Department of Environmental Regulation, 365 So.2d 759, 763 (Fla. 1st DCA 1978), cert. denied, 376 So.2d 74 (Fla. 1979). Another settled principle in the area of administrative rulemaking is that-

agencies are to be accorded wide discretion in the exercise of their rulemaking authority, clearly conferred or fairly implied and consistent with the agencies' general statutory duties. . . . An agency's construction of the statute it administers is entitled to great weight and is not to be overturned unless clearly erroneous . . . the agency's interpretation of a statute need not be the sole possible interpretation or even the most desirable one; it need only be within the range of possible interpretations.

Department of Professional Regulation, Board of Medical Examiners v. Durrani, 455 So.2d 515, 517 (Fla. 1st DCA 1984). See also GMC v. Dept. of Hwy. Safety, 625 So.2d at 77, Florida League of Cities v. Department of Insurance, 540 So.2d 850, 857 (Fla. 1st DCA 1989).

Id., at D1001

28. Petitioner failed to meet his burden of proving the invalidity of the Board's minimum technical standards. He and his expert witness disagree with the Board's interpretations, but that simple disagreement, however sincere, is insufficient to establish the rules' invalidity.

29. As found above, neither party is entitled to fees or other sanctions pursuant to subsection 120.57(1)(b)5., which provides:

5. All pleadings, motions, or other papers filed in the proceeding must be signed by a party, the party's attorney, or the party's qualified representative. The signature of a party, a party's attorney, or a party's qualified representative constitutes a certificate that he has read the pleading, motion, or other paper and that, to the best of his knowledge, information, and belief formed after reasonable inquiry, it is not interposed for any improper purposes, such as to harass or to cause unnecessary delay or for frivolous purposes or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of these requirements, the hearing officer, upon motion or his own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or

parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

The sheer bulk of Petitioner's pleadings does not establish bad faith or improper purpose.

30. Finally, Petitioner claims that his subpoena to Board members were properly served by mail. His reliance on Rule 1.080(b), Fla. Rules of Civil Procedure, is misplaced, as the rule, by its title and text relates to service of pleadings and papers. Service of subpoena is entirely different. See rule 1.410(c), Fla. Rules of Civil Procedure; sections 48.011, .021 and .031, F.S.; and section 120.58, F.S. Note that section 48.031(3), F.S., provides for service by mail only for witness subpoena in misdemeanor criminal cases, and no other cases.

ORDER

Based on the foregoing, it is hereby, ORDERED:

The petitions, in each and every case styled above, are DISMISSED.

DONE AND ORDERED this 27th day of May, 1994, in Tallahassee, Florida.

MARY CLARK
Hearing Officer
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of May, 1994.

APPENDIX

Pursuant to section 120.59(2), F.S., the following constitute specific rulings on the findings of fact proposed by the parties:

Petitioner's Proposed Findings

1. Adopted in paragraph 1.
2. As to the alleged policies that are the subject of the section 120.535 petitions, rejected as unsupported by competent evidence; otherwise, rejected as unnecessary.
3. Addressed in conclusions of law.
4. Rejected as unnecessary.
5. Adopted in part in paragraph 8, otherwise rejected as unnecessary or unsupported by competent evidence.
- 6.-7. Rejected as unnecessary.
8. Adopted in substance in paragraph 20.

9. Adopted in substance in paragraphs 4. and 5.

10.-19. Rejected as immaterial, unsupported by the record or argument, rather than proposed findings of fact. The evidence failed to establish the existence of alleged Board policy or that any such policy meets the definition of "rule" in section 120.52(16), F.S.

20.-27. Rejected as unsupported by the weight of evidence, immaterial or argument, rather than proposed finding of fact.

28.-29. Adopted in substance in paragraphs 4. and 20.

30.-33. Rejected as unsupported by competent evidence, and (as to the conclusion that section 120.57(1)(b)5. was violated) unsupported by the law.

Respondent's Proposed Findings of Fact

1.-6. Addressed in Preliminary Statement.

7.-10. Addressed in Conclusions of Law.

11. Rejected as unnecessary.

12. Addressed in Conclusions of Law.

13. Rejected as unnecessary.

14. Addressed in Conclusions of Law.

15.-20. Rejected as statement of testimony, or as argument, rather than proposed finding of fact.

21.-22. Rejected as contrary to the weight of evidence, and a conclusion unsupported by the record.

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Tallahassee, Florida 32399-1300

NOTICE OF RIGHT TO APPEAL

A party who is adversely affected by this final order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a notice of appeal with the agency clerk of the Division of Administrative Hearings and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the appellate district where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.

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DISTRICT COURT OPINION
=====

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

GARY A. BURDEN,
Cross-appellee,

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION AND
DISPOSITION THEREOF IF FILED.

v.
BOARD OF PROFESSIONAL LAND
SURVEYORS,
Cross-appellant.

CASE NO. 94-2018
DOAH CASE NO. 94-0583RU

_____ /

Opinion filed July 26, 1995.

An appeal from order of the Division of Administrative Hearings.

Robert A. Butterworth, Attorney General and Virginia Daire, Senior Assistant Attorney General, Tallahassee, for cross-appellant.

T.S. Madson, II, Douglas, Georgia, for cross-appellee.

PER CURIAM

AFFIRMED. Florida Rule of Appellate procedure 9.315(a).

ZEHMER, C.J., ALLEN and DAVIS, JJ. CONCUR.

MANDATE
From
DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT

To the Honorable, Mary Clark, Hearing Officer Division of Administrative Hearings

WHEREAS, in that certain cause filed in this Court styled:

GARY A. BURDEN

vs.

BOARD OF PROFESSIONAL
LAND SURVEYORS

Case No. 94-2018
Your Case No. 94-0925F
(CONSOLIDATED UNDER LOWEST
DOAH CASE NO. 94-583RU)

The attached opinion was rendered on July 26, 1995

YOU ARE HEREBY COMMANDED that further proceedings be had in accordance with said opinion, the rules of this Court and the laws of the State of Florida.

WITNESS the Honorable E. Earle Zehrner

Chief Judge of the District Court of Appeal of Florida, First District and the Seal of said court at Tallahassee, the Capitol, on this 30th day of October, 1995

Jon S. Wheeler
Clerk, District Court of Appeal of Florida,
First District