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BEFORE THE
BOARD FOR PROFESSIONAL ENGINEERS LAND SURVEYORS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **PHILIP KIRK MOSLEY** 7477 Scenic Drive, #I-13 Wrightwood, CA 92397 Land Surveyor License No. L-3988 Respondent.	Case No. 918-A **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. David E. Brown (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Board for Professional Engineers and Land Surveyors.

2. On or about September 8, 2010, the Board issued Land Surveyor License Number L-3988 to Philip Kirk Mosley (Respondent). The Land Surveyor License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2012, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

5. Section 8761 states, in pertinent part:

"(a) Any licensed land surveyor or civil engineer authorized to practice land surveying may practice land surveying and prepare maps, plats, reports, descriptions, or other documentary evidence in connection with that practice.

"(b) Interim maps, plats, reports, descriptions, or other land surveying documents shall be prepared by, or under the responsible charge of a licensed land survey or civil engineer authorized to practice land surveying and shall include his or her name and license number.

"(c) Interim maps, plats, reports, descriptions, or or other land surveying documents shall include a notation as to the intended purpose of the map, plat, report, description, or other document, such as "preliminary" or "for examination only."

"(d) All final maps, plats, reports, descriptions, or other land surveying documents issued by a licensed land surveyor or civil engineer authorized to practice land surveying shall bear the signature and seal of the licensee and the date of signing and sealing or stamping. If the land surveying document has multiple pages or sheets, the signature seal or stamp, and date of signing and sealing or stamping shall appear, at a minimum, on the title sheet, cover sheet or page, or signature sheet, unless otherwise required by law."

6. Section 8762 states, in pertinent part:

"(a) Except as provided in subdivision (b), after making a field survey in conformity with the practice of land surveying, the licensed surveyor or licensed civil engineer may file with the county surveyor in the county in which the field survey was made, a record of the survey.

"(b) Notwithstanding subdivision (a), after making a field survey in conformity with the practice of land surveying, the licensed land surveyor or licensed civil engineer shall file with

the county surveyor in the county in which the field survey was made a record of the survey relating to land boundaries or property lines, if the field survey discloses any of the following:

"(1) Material evidence or physical change, which in whole or in part does not appear on any subdivision map, official map, or record of survey previously recorded or properly filed in the office of the county recorder or county surveying department, or map or survey record maintained by the Bureau of Land Management of the United States.

"(2) A material discrepancy with the information contained in any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States. For purposes of this subdivision, a "material discrepancy" is limited to a material discrepancy in the position of points or lines, or in dimensions.

"(3) Evidence that, by reasonable analysis, might result in materially alternate positions of lines or points, shown on any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States.

"(4) The establishment of one or more points or lines not shown on any subdivision map, official map, or record of survey, the positions of which are not ascertainable from an inspection of the subdivision map, official map, or record of survey.

"(5) The points or lines set during the performance of a field survey of any parcel described in any deed or other instrument of title recorded in the county recorder's office are not shown on any subdivision map, official map, or record of survey.

"(c) The record of survey required to be filed pursuant to this section shall be filed within 90 days after the setting of boundary monuments during the performance of a field survey or within 90 days after completion of a field survey, whichever occurs first.

"(d) (1) If the 90-day time limit contained in subdivision (c) cannot be complied with for reasons beyond the control of the licensed land surveyor or licensed civil engineer, the 90-day

time period shall be extended until the time at which the reasons for delay are eliminated. If the licensed land surveyor or licensed civil engineer cannot comply with the 90-day time limit, he or she shall, prior to the expiration of the 90-day time limit, provide the county surveyor with a letter stating that he or she is unable to comply. The letter shall provide an estimate of the date for completion of the record of survey, the reasons for the delay, and a general statement as to the location of the survey, including the assessor's parcel number or numbers.

"(2) The licensed land surveyor or licensed civil engineer shall not initially be required to provide specific details of the survey. However, if other surveys at the same location are performed by others which may affect or be affected by the survey, the licensed land surveyor or licensed civil engineer shall then provide information requested by the county surveyor without unreasonable delay.

"(e) Any record of survey filed with the county surveyor shall, after being examined by him or her, be filed with the county recorder.

"(f) If the preparer of the record of survey provides a postage-paid, self-addressed envelope or postcard with the filing of the record of survey, the county recorder shall return the postage-paid, self-addressed envelope or postcard to the preparer of the record of survey with the filing data within 10 days of final filing. For the purposes of this subdivision, "filing data" includes the date, the book or volume, and the page at which the record of survey is filed with the county recorder."

7. Section 8772 states:

"Any monument set by a licensed land surveyor or registered civil engineer to mark or reference a point on a property or land line shall be permanently and visibly marked or tagged with the certificate number of the surveyor or civil engineer setting it, each number to be preceeded by the letters "L.S." or "R.C.E.," respectively, as the case may be or, if the monument is set by a public agency, it shall be marked with the name of the agency and the political subdivision it serves.

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Nothing in this section shall prevent the inclusion of other information on the tag which will assist in the tracing or location of the survey records which relate to the tagged monument."

8. Section 8780 states, in pertinent part:

"The board may receive and investigate complaints against licensed land surveyors and registered civil engineers, and make findings thereon.

"By a majority vote, the board may reprove, suspend for a period not to exceed two years, or revoke the license or certificate of any licensed land surveyor or registered civil engineer, respectively, licensed under this chapter or registered under the provisions of Chapter 7 (commencing with Section 6700), whom it finds to be guilty of:

. . .

"(b) Any negligence or incompetence in his or her practice of land surveying.

. . . .

"(d) Any violation of any provision of this chapter or of any other law relating to or involving the practice of land surveying."

REGULATORY PROVISIONS

9. Code of Regulations, title 16, section 464, states in pertinent part:

. . . .

"(c) The corner record shall be filed within 90 days from the date a corner was found, set, reset, or used as control in any survey. The provisions for extending the time limit shall be the same as provided for a record of survey in Section 8762 of the Code.

(d) A corner record may be filed for any property corner, property controlling corner, reference monument, or accessory to a property corner, together with reference to record information. Such corner record may show one or more property corners, property controlling corners, reference monuments, or accessories to property corners on a single corner record document so long as it is legible, clear, and understandable."

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COST RECOVERY

10. Section 125.3 provides, in pertinent part, that the board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

BOARD COMPLAINT CASE NO. 2006-06-265

11. In September 2003, Respondent performed a survey of APN 0355-1 83-11, aka 1341 Irene Street in Wrightwood, California (Wrightwood Parcel). Respondent monumented the lot corners with 1" iron pipes tagged "3988'" (Wrightwood Pins). James and Tammy Gucwa (the Gucwas) own an adjoining parcel, known as 1343 Irene Street inWrightwood. On March 29, 2005, James Gucwa (Gucwa) sent a letter to the Joint Professional Practice Committee for Riverside and San Bernardino counties (JPPC), stating that Respondent had failed to file a Record of Survey for his survey of the Wrightwood Parcel. Gucwa alleged deficiencies in Respondent's survey, stating that Respondent's parcel boundaries did not match occupation, nor did they resemble the rectangular parcel shapes of record. Gucwa also stated that property disputes had arisen as a consequence of Respondent's survey of the Wrightwood Parcel and Respondent's subsequent failure to file a corresponding Record of Survey.

On or about June 13, 2005, the JPPC sent a letter to Respondent, directing him (Respondent) to file a Record of Survey or Corner Record for the Wrightwood Pins within 90 days.

On or about July 21, 2005, the JPPC sent another letter to Respondent, reiterating their previous demand that he file a Record of Survey or Corner Record for the Wrightwood Pins within 90 days.

On or about August 1, 2005, Respondent sent a letter to the JPPC, stating that he had found monuments at all four corners of the property in question and that as a result thereof, he was of the understanding that he was not required to file a Corner Record or a Record of Survey under such circumstances. Respondent further stated that he lacked the tools to do so. Respondent enclosed a sketch of his Wrightwood Parcel survey. The sketch showed that Respondent had

found substandard monuments at the northeast and southeast corners and that he had set his own monuments in their place. The sketch was a Land Surveying document, but it was not signed, stamped and dated by Respondent.

On or about September 7, 2005, the JPPC sent a letter to Respondent advising him that a Record of Survey or Corner Record was required to be filed by him relative to the Wrightwood Parcel and that his (Respondent's) lack of drafting tools did not excuse his failure to do so. The JPPC further requested evidence that a Record of Survey had been filed or in the alternative, evidence to the effect that Respondent had provided the County Surveyor with an estimate of time for such filing.

On or about October 11, 2005, Respondent's brother sent a letter to the JPPC which stated that Respondent was temporarily incapacitated at that time.

On or about January 9, 2006, Respondent went to the San Bernardino County Surveyor's Office, at which time Respondent conducted research and purchased copies of record documents.

On or about January 24, 2006, Respondent opened Charge Account No. 567 with the San Bernardino County Surveyor's Office in order to obtain copies of recorded maps from the County. On January 30, 2006, Respondent used this account.

On on or about February 21, 2006, Joseph Miller (Miller), a land surveyor licensed in the State of California (Land Surveying Certificate No. L5803), sent a fax to the JPPC which included a sketch that Respondent had prepared. The sketch depicted a survey of APN 437-36 1-77. The sketch showed monuments at the four property corners. One of them had the following notation: "DENOTES 1/2" RE-BAR SET WITHIN ONE INCH OF CORNERS - UNLESS NOTED OTHERWISE." The sketch was a Land Surveying document, but it was not signed, stamped and dated by Respondent. Miller's letter of February 21, 2006 further suggested that Respondent should have filed a Record of Survey, but had failed to do so.

On or about March 4, 2006, Craig Sundgren (Sundgren), a civil engineer licensed in the State of California (Civil Engineering Certificate No. C23227), sent a letter to the JPPC which included a sketch that Respondent had prepared. The sketch depicted a survey of APN 450-163-08. The sketch showed monuments at the four property corners. One of them had the following

notation: "DENOTES 1/2" RE-BAR WITHIN ONE INCH OF CORNERS". The sketch was a land surveying document, but it was not signed, stamped and dated by Respondent. Sundgren stated that Respondent had also failed to tag his monuments with his Land Surveyor license number. Sundgren further expressed that Respondent should have filed a Record of Survey, but had failed to do so.

On or about May 26, 2006, the JPPC filed a complaint with the Board regarding Respondent and the aforementioned chronology of events involving him (Respondent).

On or about June 19, 2006, Board Enforcement Analyst Tiffany Criswell (Criswell) sent Respondent a letter advising him of the allegations in the complaint that had been filed against him by the JPPC and requested that Respondent provide a response to those allegations by July 20, 2006.

On or about July 17, 2006, Criswell received a letter dated July 14, 2006 from Respondent, wherein Respondent advised that he would file a Record of Survey for the Wrightwood Parcel upon renewal of his license. With regard to the property identified (by Skinner above) as APN 450-163-08, Respondent stated in his letter dated July 14, 2006 that "the points set were for fencing corners and the owner was told to keep any fences a minimum of 2" inside them. The points are not nor were they represented as being property corners. I acknowledge that I should have included a statement to clarify this on the sketch I provided the owner." Respondent further stated in that same letter that he "was planning on retiring in 2008".

On or about August 28, 2006, Criswell sent Respondent a letter confirming that Respondent had failed to file Records of Survey relative to the aforementioned properties and instructing him to do so by September 28, 2006.

On October 17, 2006, Respondent faxed a letter to the Board stating that he (Respondent) previously had been unable to respond to Criswell's August 28, 2006 letter due to his ongoing health problems. Respondent further stated that he had closed his business and would be terminating his telephone service in connection therewith at the end of that month. Respondent ended the letter by stating said that he still believed that he "was legally entitled to set fence line survey points without filing a map".

On December 15, 2006, the JPPC sent another letter to the Board, stating that Respondent had not filed a Corner Record with the county since February of 2006 or a Record of Survey since August of 2000.

On or about September 22, 2008, Board Enforcement Analyst Criswell provided documents in connection with the aforementioned chronology of events involving Respondent to independent Technical Expert Patrick Minturn (Minturn), a civil engineer and land surveyor licensed in the State of California. Criswell requested that Minturn review these documents and thereafter provide the Board with his written opinion as to whether there are sufficient facts and evidence to support the allegation that Respondent had committed acts which constitute violations of the Professional Land Surveyors' Act.

On or about October 9, 2008, Board Enforcement Analyst Criswell received a written report from Minturn dated October 6, 2008 in connection with the instant matter involving Respondent. In this report, Minturn opined that Respondent was required to file a Record of Survey or Corner Record within ninety (90) days of setting monuments in regard to the subject properties in question; that Respondent had failed to tag his monuments as required; and that Respondent's map had failed to contain Respondent's signature, stamp, and date of signing. According to Minturn, all of these actions by Respondent constituted negligence on the part of Respondent in connnection with his (Respondent's) land surveying practice.

FIRST CAUSE FOR DISCIPLINE

(Negligence - Failure to Include on Survey Map Signature, Stamp and Date of Signing)

12. Respondent is subject to disciplinary action under sections 8761 and 8780 in that Respondent failed to include his signature, stamp and date of signing on land surveying documents he prepared. Complainant refers to and hereby incorporates paragraph 11 above as though fully set forth herein.

SECOND CAUSE FOR DISCIPLINE

(Negligence - Failure to File a Record of Survey within Ninety Days of Setting Monuments)

13. Respondent is subject to disciplinary action under sections 8762 and 8780, and Code of Regulations, title 16, section 464, in that Respondent failed to file a Record of Survey or

Corner Record within ninety (90) days after monumenting property boundaries on multiple surveys he (Respondent) conducted. Complainant refers to and hereby incorporates paragragh 11 above as though fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Negligence - Failure to Tag Monuments with License Number)

14. Respondent is subject to disciplinary action under sections 8772 and 8780 in that Respondent failed to tag his monuments with his Land Surveyor license number in connection with the survey of APN 450-163-08 conducted by Respondent. Complainant refers to and hereby incorporates paragragh 11 above as though fully set forth herein.

BOARD COMPLAINT CASE NO. 2007-06-293

15. The Sisters of Social Service of Los Angeles (Sisters) owns APN 0355-061-71 (Sisters Parcel). The Sisters Parcel is on the west side of Acorn Drive, near Wrightwood, California. It is in Sections 7 and 8. T3N, R7W. S.B.M. In 1946, Sisters purchased the Sisters Parcel from Security First National Bank of Los Angeles, for $10. The Grant Deed contained a metes-and-bounds legal description.

In October 2001, Respondent surveyed the Sisters Parcel (Mosley Survey) after Sisters had provided him (Respondent) with the Grant Deed. Respondent surveyed the parcel and resolved the boundary. Respondent monumented the property corners with 1/2 rebar tagged "LS 3988" (Mosley Pins). However, Respondent failed to file a Record of Survey for his survey, as required.

In November 2006, Miller performed a boundary survey for the SE 1/4 Section 7 and a part of the SW 1/4 Section 8, T3N, R7W, S.B.M (Miller Survey). Miller performed an exhaustive records search and found record maps (P.M. 14589, P.M.B. 193/49-50) which showed the courses and distances per the Sisters Parcel legal description; Miller rotated these bearings 0°03'06" clockwise to match his Basis of Bearings. Miller also performed a field survey and found the Mosley Pins, at which point Miller determined that the spatial relationships of the Mosley Pins were reasonably internally consistent, but that they were rotated relative to record data. Miller's Record of Survey indicates that the Mosley Pins are all approximately three feet out of position in a northerly and/or westerly direction relative to record data, and there is no indication that

Respondent conducted any records search in connection with this project (the Mosley Survey). According to Minturn, who reviewed the underlying facts, circumstances and documentation in regard to the Mosley Survey at the Board's request, Respondent's failure to mount a diligent records search and his (Respondent's) failure to file a Record of Survey or Corner Record constituted negligence on the part of Respondent in connnection with his (Respondent's) land surveying practice. .

FOURTH CAUSE FOR DISCIPLINE

(Negligence - Failure to File a Record of Survey within Ninety Days of Setting Monuments)

16. Respondent is subject to disciplinary action under sections 8762 and 8780, and Code of Regulations, title 16, section 464, in that Respondent failed to file a Record of Survey or Corner Record within ninety (90) days after monumenting property boundaries in connection with the Mosley Survey. Complainant refers to and hereby incorporates paragragh 15 above as though fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(Negligence – Failure to Mount a Diligent Records Search for Survey)

17. Respondent is subject to disciplinary action under section 8780, in that Respondent failed to mount a diligent records search in connection with the Mosley Survey. Complainant refers to and hereby incorporates paragragh 15 above as though fully set forth herein.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Land Surveyor License Number L-3988, issued to Philip Kirk Mosley;

2. Ordering Philip Kirk Mosley to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: August 19 2010

Original Signed

DAVID E. BROWN
Executive Officer
Board for Professional Engineers and Land Surveyors
State of California
Complainant

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