

A. What are “Ethics”

In his *Jacobellis v. Ohio*, 378 U.S. 184 (1964) opinion, U.S. Supreme Court Justice Potter Stewart wrote:

“I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description [“hard-core pornography”]; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it, and the motion picture involved in this case is not that.”

Over the years, that statement has become famously paraphrased as “I can’t define pornography, but I know it when I see it.”

Ethics is similar, not to pornography itself but to its definition and recognition. We may each struggle with quantifying it in words, but we’re pretty sure we know when someone engages in unethical behavior. At least we think so...

Merriam-Websters online dictionary defines Ethics as:

1. *plural but sing or plural in constr* : the discipline dealing with what is good and bad and with moral duty and obligation

2 a : a set of moral principles : a theory or system of moral values <the present-day materialistic *ethic*> <an old-fashioned work *ethic*> - often used in plural but singular or plural in construction <an elaborate ethics> <Christian ethics>

b *plural but sing or plural in constr* : the principles of conduct governing an individual or a group <professional ethics>

c : a guiding philosophy

d : a consciousness of moral importance <forge a conservation ethic>

3 *plural* : a set of moral issues or aspects (as rightness) <debated the ethics of human cloning>

Well, *that* certainly clears it up, right?

What is *good*, *bad*? What are *moral principles*? To what does a *guiding philosophy* guide?

B. Values, Morals, Laws, and Ethics

Values are personal beliefs in which we have an emotional investment. Values include such things as hard work, punctuality, self-reliance, stick-to-it-iveness, and so on. We feel good when we achieve our values - “a job well done it its own reward.”

Morals are rules which guide our decisions about right or wrong, good or bad, thoroughness or efficiency, should I or shouldn’t I, etc. *Morals* are how we go about, and the degree to which we enjoy, achieving our values. For instance, we feel good by finishing our first marathon, but if we take a short cut instead of running the entire race, do we have full satisfaction?

Morals can change based on the intensity of a value. For example, a Timex and Rolex do basically the same thing but the potential watch-wearer may be more willing to “bend the rules” a bit to acquire the latter. We sometimes refer to a “tipping point,” the point at which what we’re willing to do changes in relation to value

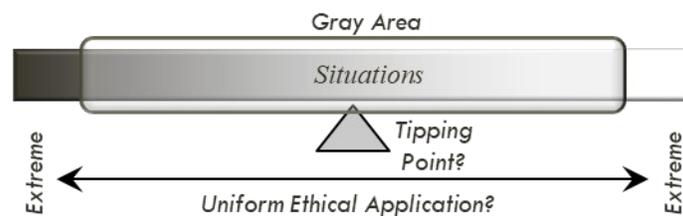
intensity. A public agent responsible for granting contracts accepting a pen with a company logo from a vendor is innocuous, but what if the vendor instead offers a new pickup truck? Where between the pen and truck is it considered wrong to accept a gift? Congress, interestingly enough, has decided that \$50 is one tipping point¹: an unsolicited gift valued less than that is acceptable.

Laws are binding rules of conduct formally adopted and enforced by a group. The group may be Society in which case the rules are statutes, ordinances, or the like, or it may be a company which has its own policies (which must not be contrary to Society’s laws). Laws generally reflect the values and morals of the group. For example, Society has decided it is illegal to intentionally harm another. If an individual violates the law, he/she must answer to Society and its police power.

We can consider *Ethics* to be a systematized framework of moral principles for making decisions where values conflict. Those values may be internal, external, or a combination, but under the conditions at hand some are in conflict. If an individual violates ethics, he/she must answer to him/herself.

In general, we can all pretty much agree that Ethics is a standard of right or wrong that proscribes how we should behave in regard to others. This behavior considers and weighs rights, obligations, benefits, responsibilities, values, etc, resulting from the interaction. The first social group external to our family in which most of us participate is school. There, in addition to the three R’s we learn that we should (1) not hurt anyone, (2) tell the truth, and (3) obey or respect our parents and teachers. This, then, is our first ethical code as individuals interacting with others.

A “perfect” ethical code would be one which is impartial and universal: uniform application regardless of situation. Can we go through life ensuring that our actions never (1) hurt anyone, (2) result in a lie to another, and (3) disrespect others? Ethical code perfection is not achievable since it must be applied in less than ideal situations. We often encounter “gray areas” which exist between the extremes. At the extremes (where the situation is black or white) appropriate ethical behavior is much easier to determine. In between in those gray areas, though, it’s harder to figure out sometimes what’s “the right thing to do” especially since it can depend on your perspective (e.g, are you the one lying or the one lied to?, do we tell a “white lie” to preserve harmony?, etc).



Somewhere along that spectrum is the tipping point, or maybe more appropriately, a tipping area.

¹See <https://www.citizen.org/documents/Gift-Rules-for-Congress.pdf> for Congress’ gift rules.

C. Laws and Ethics

Can we use Laws to define Ethics? Laws are pretty structured and they're written down so everyone has access to them. "Ignorance of the law is no excuse" refers to the fact that because these laws are readily accessible, we have a responsibility to be aware of them. However, if ethics is how we should behave in regard to others, we may find that ethics and laws aren't always harmonious.

For example, while camping my wife has a heart attack. I put her into the car and drive as fast as I can to get her to the emergency room at the nearest hospital, 15 miles away. In the process, I break the speed limit by considerable amounts. A police cruiser picks me up on its radar and begins pursuit. Its lights flashing signaling me to stop, I ignore it and keep speeding for the hospital.

What I did was ethical (in my mind) but in the course of that action I broke the law. Society may consider waiving (or minimizing) its penalty based on why I broke their law: to save my wife's life. Given the facts at the time, I chose my wife's life over any speeding ticket I would get - the choice was simple.

Any act is either legal or illegal, based on Society's or a company's rules. Legal and illegal actions aren't necessarily equally divided based on the rules they operate within: what may be legal under Society's rules may not be under a company's rules (which is why you don't see many people wearing pajama pants at an engineering firm).



Similarly, an act can be either ethical or unethical. This distinction, as we've seen, can be highly personalized and limited to a single perspective.

Combined, that means for each action there are four possible consequences. An action may be:

- Unethical but legal
- Ethical and legal
- Ethical but illegal
- Unethical and illegal



Just because there are four consequences doesn't mean there's an equal chance of any act meeting only one of them. Legal/illegal *should* be easy to determine since the rules defining them are codified. Ethical/unethical is more difficult as is its relationship to



dual A



Individual B

Indivi

legal/illegal. Because ethics are personalized they differ among individuals. If ethical/unethical schemes change so do the magnitudes of the four consequences.

Considering that the distinction between ethical and unethical may be fuzzy, some acts can fall on the edge of more than a single consequence.

Laws and Ethics have a symbiotic relationship similar to that of accuracy and precision: they're related and concern the same actions, but mean different things in terms of those actions. As laws are modified and individuals mature, the proportions and relationships of legal/illegal and ethical/unethical change.

An important distinction is that laws involve *compliance* while ethics involve *choice*. This can lead to a dilemma. Of course, if we mandate (or strongly *guide*) ethics, then choice is removed and the dilemma can be avoided.

D. Professional Ethics?

But what about *professional* ethics?

1. Profession

A *profession* consist of individuals who share areas of specialized skill and knowledge based on advanced education and experience. A profession has sets of values which help maintain its integrity and provide a favorable impression of itself to others.

Although individuals, we operate within a profession with defined and shared responsibilities. Does that mean that professional ethics are more socially driven than personally? That is, they are consistent within the profession for all as opposed to individually defined. If that's the case, does it make ethics easier to define (and enforce) because they then take on the nature of laws?

The only authority over a profession is generally a licensing entity which is usually government derived (with some notable exceptions). Because of this, rules are generally in the form of laws and code so maybe conduct can be mandated...

2. Professional Organizations

Professional organizations are collections of like-minded yet diverse individuals and over often large geographic areas. The organizations are formed to help the respective profession evolve and provide members opportunity to grow.

As part of its structure, an organization may identify and codify ethics that concern its membership. This allows for a uniform standards throughout the extent of the organization. These Codes of Ethics tend to identify values areas and are written in general guideline form providing an ethical decision making framework.

Some Codes are overly detailed which begins to take on the nature of laws and leave little, if any, room for the individual to make decisions. A Code of Ethics should not be so general as to be useless nor so detailed as to dictate the action in every situation. Detailed rules cannot predict every type of situation which will ever be encountered. Nor does everything remain constant over time: technology has created and enabled a global perspective affected by our actions and decision. Above all, it is a professional's responsibility is to exercise his or her judgment in difficult or confusing situations.

An organization's Code of Ethics affects only its members. An intentional violation of an organization's code by one of its members is policed by that organization. Although not empowered to imprison its members, an organization does have the authority to revoke membership. An organization which provides certifications can nullify the certification of a member who violates that organization's code of ethics¹. Most have something along the lines of an Ethics and Standards of Practice Committee, where issues can be brought forth and worked out. The function of such committees is not limited to policing compliance but also to provide education and a discussion forum.

3. Land Surveying

Land surveying is highly dependent on law, both written (statutes, codes, ordinances, etc) and unwritten (common). As has been the case for centuries, boundary surveying decisions and actions are made based on a legal framework. The primary evolutionary changes in the surveying profession have been technological allowing faster and more accurate measurements. But the fundamental decision framework remains legal. Corners established by compass and chain belong in their original location regardless of the technology used to re-establish them today. This is reinforced in Wis Admin Code A-E 7.03 *Boundary location*:

- (1) Every property survey shall be made in accordance with the records of the register of deeds as nearly as practicable. The professional land surveyor shall acquire data necessary to retrace record title boundaries such as U.S. Public Land Survey Monument Records, deeds, surveys, maps, certificates of title, highway, and center line or right-of-way lines, and other boundary line locations. The professional land surveyor shall make field measurements necessary for the location of the parcel and shall analyze the data and make a careful determination of the position of the boundaries of the parcel being surveyed.
- (2) The professional land surveyor shall set monuments marking the corners of the parcel unless monuments already exist at the corners.

In addition to A-E 7, we also have A-E 8 *Professional Conduct* whose purpose is defined in A-E 8.02 Intent:

The intent of the examining board in adopting this chapter is to establish rules of professional conduct for the professions of architecture, landscape architecture, professional engineering, designing and professional land surveying. A violation of any standard specified in this chapter may result in disciplinary action under ss. 443.11 to 443.13, Stats.

Wis Stat Sec 443.12 *Disciplinary proceedings against professional land surveyors* the salient parts of which concerning conduct are:

- (1) The professional land surveyor section may reprimand a professional land surveyor, or limit, suspend, or revoke the license of any professional land surveyor, for the practice of any fraud or

¹ Example: The National Society of Professional Surveyors (NSPS) and its Certified Survey Technician (CST) certification program. NSPS issues CST certifications based on qualifications and may revoke an individual's certification based on unethical or illegal behavior

deceit in obtaining the license, or any gross negligence, incompetence, or misconduct in the practice of professional land surveying.

(2) Charges of fraud, deceit, gross negligence, incompetence, or misconduct may be made against any professional land surveyor by the professional land surveyor section or any person. Such charges may be made on information and belief, but shall be in writing, stating the specific acts, be signed by the complainant and be submitted to the examining board. All charges shall be heard according to the rules promulgated under s. 440.03 (1).

(3) If after a hearing 3 members vote in favor of reprimand or limiting, suspending, or revoking the license of a professional land surveyor, the professional land surveyor section shall notify the surveyor to that effect. The surveyor shall return the license to the examining board immediately on receipt of notice of a revocation. The action of the professional land surveyor section may be reviewed under ch. 227.

(4) The professional land surveyor section, for reasons it deems sufficient, may reinstate a license to engage in the practice of professional land surveying that has been revoked, if 3 members vote in favor of such reinstatement. This subsection does not apply to a license that is revoked under s. 440.12.

That last paragraph of Wis Stat Sec 443.12 refers to ss. 440.12 *Credential denial, nonrenewal and revocation based on tax or unemployment insurance contribution delinquency.*

Notwithstanding any other provision of chs. 440 to 480 relating to issuance or renewal of a credential, the department shall deny an application for an initial credential or credential renewal or revoke a credential if any of the following applies:

(1) The department of revenue certifies under s. 73.0301 that the applicant or credential holder is liable for delinquent taxes.

(2) The department of workforce development certifies under s. 108.227 that the applicant or credential holder is liable for delinquent unemployment insurance contributions.

Wis Stat Sec 443.13 *Delinquency in support payments; failure to comply with subpoena or warrant:*

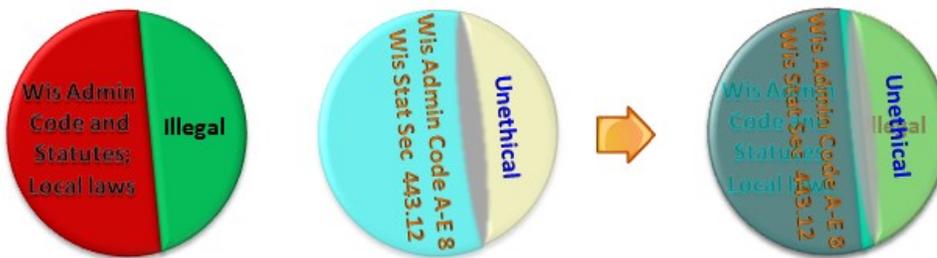
(2) Notwithstanding any other provision of chs. 440 to 480 relating to issuance of an initial credential or credential renewal, as provided in the memorandum of understanding:

(a) With respect to a credential granted by the department, the department shall restrict, limit, or suspend a credential or deny an application for an initial credential if the credential holder or applicant is delinquent in paying support or fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to support or paternity proceedings.

(b) With respect to credential renewal, the department shall deny an application for renewal if the applicant is delinquent in paying support or fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to support or paternity proceedings.

While delinquent tax, insurance, and support payments may have little to do with land surveying, they do fall within the sphere of expected ethical behavior. If a professional fails to meet financial obligations, how does that reflect on their professional ethics? On the other hand, while well intended, ss.443.12 and 443.13 potentially open a can of worms for credential holders. Where is the line drawn - should we include speeding, discrimination, or watching internet pornography as justification to bar or revoke professional licensure? Should poor personal choices (legal or not) legally affect licensure?

Although relatively short, Wis Admin Code A-E 7 defines the minimum standards for resurveys. Creation of new boundaries are defined in varying detail by statutes such as Chapters 236 (subdivisions and CSMs) and 703 (condominiums). Law tells us how to re-establish and create corners, as well as document them, and Wis Admin Code A-E 8 (along with Wis Stat sec 443.12) addresses conduct. Because both are codified they should be consistent so if we faithfully follow them our actions will all be legal and ethical, right?



Wis Admin Code A-E 8 applies to all licensed land surveyors (and other professionals licensed under the same Section) regardless if they belong to a professional organization or not. While the Dept of Safety and Professional Services has the authority to revoke or suspend a license, it is not alone in Code enforcement:

A-E 8.07 Unauthorized practice. An architect, landscape architect, professional engineer, designer, or professional land surveyor:

(1) Shall assist in enforcing laws which prohibit the unlicensed practice of architecture, landscape architecture, professional engineering, designing, and professional land surveying by reporting violations to the board.

and

A-E 8.08 Maintenance of professional standards.

An architect, landscape architect, professional engineer, designer or professional land surveyor:

(1) Shall furnish the board with information indicating that any person or firm has violated provisions in ch. 443, Stats., rules in this chapter or other legal standards applicable to the profession.

Our professional responsibility includes reporting others who violate not just A-E 8, but any area of practice requiring profession surveying licensure. We are part of the enforcement process.

All of that is certainly enough of a big stick to ensure the public is always protected, right?

Play by the rules (statue and code) and never (1) hurt anyone, (2) lie to another, or (3) disrespect others and you're set. How hard can that be?

E. Case Studies

Many formal ethical models and theories exist, some dating back to ancient Greece. A few which make for good philosophical debate include:

- Aristotelian – Virtue Ethics
- Utilitarianism - Consequences
- Kantianism – Principles-based
- Rawlsian - Fairness
- Communitarianism – Community Values

Rather than dissect a model, we instead will examine some case studies specifically involving surveying situations. Each group will discuss each study and then present their opinions to the larger audience.

Consider in your discussions:

- Is there an ethical dilemma? Does it depend on a particular party's perspective?
- If in your opinion there is...
 - ...no ethical dilemma, is there a tipping point which would make it one? What additional events could transition the scenario to an unethical situation?
 - ...an ethical dilemma, can something be changed and still allow the objective to be achieved?
- Is there a legal element which affects your decision on the ethics of the situation? Would removing any legal impediment change your opinion?
- If ethics are involved, is it a case of personal or professional ethics? By/for whom?
- What other parties, besides those directly identified, might be affected and how? Are they identifiable before taking action? Does a responsibility to them change the situational ethics?
- Are there other factors which could change your ethical stance, eg, geographic, financial ("if I do, I won't get paid"), presence of witnesses, etc?
- What happens if ethical perspectives clash?
- What actions should be taken? By whom?

Consider also whether that you are discussing *post-* or *pre-*action ethics. If the action has not yet happened, has it started down an unethical path and if so is it salvageable?

Case Study 1

Nearing retirement, surveyor Wagner was going through his old records when he came across a copy of one of the first resurvey plats he done after receiving his license. While examining the map, he noticed that one of the bearing quadrants of the parcel exterior was incorrect which caused a massive misclosure error. He recalled that his map information was used for the deed description. He checked Wis Stat 893.37:

“Survey. No action may be brought against an engineer or any professional land surveyor, as defined in s. 443.01 (7m), to recover damages for negligence, errors, or omission in the making of any survey nor for contribution or indemnity related to such negligence, errors, or omissions more than 6 years after the completion of a survey.”

Considering the error occurred over forty years ago, Wagner breathed a sigh of relief, packed away the map, and left it at that.

Case Study 2

Surveyor Brown is hired by Anderson to survey his property in preparation for its sale. In the process of retracing the boundaries, Brown finds an encroachment along one side of Anderson’s property and evidence of an unrecorded easement along another. Although Brown completed the fieldwork and drafted his plat of survey, he did not file his map since he did not considered the survey complete until he got paid for it. In the meantime, Anderson found a buyer, Clarke, for his property. Clarke’s attorney, who is familiar with property law, did a title search on the property and checked at the County Surveyor’s Office for resurveys which might affect the property. He found nothing in the records to indicate any boundary problems. Acting on that information, Clarke offered to purchase the property from Anderson. In order to avoid any obstacles to the sale, Anderson pays Brown and tells him to wait 45 days before filing his map. Brown agrees.

Case Study 3

Black performed a property survey for Jones and filed his map at the County Surveyor’s Office. Jones then immediately built a fence along his west line. After the fence was built Smith, the neighbor on the west, questioned the common boundary. Jones was adamant the line was correct just having the survey performed. Smith hired his own surveyor, Alcott, who began researching the properties including obtaining a copy of Black’s map. From his research and measurements, Alcott found some things that didn’t mesh with Black’s map. He contacted Black to ask about his survey. Black said that he would be willing to talk with Alcott but would charge a consulting fee and require Alcott to sign a waiver releasing Black from any responsibility.

Case Study 4

Smith hired Surveyor Jones to resurvey his property. Jones retraced the lines as per Smith’s deed description, compared them to the adjoining’s, and found no conflicts. Although Smith’s description includes a reference to a

recorded document concerning an easement for Badgerland Power, Jones did not perform a title search for easements. Instead, he included in his certificate the statement "...and subject to all easements of record."

Two months after the survey, Smith built a detached garage for his recreational equipment. He used Surveyor Jones' map to locate the garage based on local side yard requirements.

Today, a little more than a year later, Badgerland Power notifies Smith that it will erect a power line across his property within the easement it holds. Because the garage is in the easement area and is an obstruction, Badgerland tells Smith he must remove it or Badgerland will do so and bill Smith for the cost. Smith consults an attorney who, after examining title records, tells him that Badgerland does have a legal easement and can have the building removed since it interferes with the easement.

Upset because he paid for a survey which did not show the easement, Smith threatens to sue Jones for the cost of the garage and its removal. Jones replies that he is without fault as easements are not specifically required by Wis Admin Code A-E 7 to be located and, besides, he indicated on the map that the property is subject to any existing easements.

Case Study 5

Steve is an engineering student who described to his uncle Dave the really neat GPS equipment he used in his just finished introductory surveying class. A few months later Uncle Dave decided to sell his property on his own without using a Realtor¹. He remembered what nephew Steve told him and since Dave knew where his corners were (some being fence corners), he thought he could get more for his property if he had a survey map. Without mentioning his intent to sell, Dave asked if Steve could use the GPS equipment to survey the property and draw up a pretty map in his CAD class "that I can hang up on my wall."

Steve asked the surveying instructor if he could borrow a receiver over a weekend to get more practice with it. Impressed that the student wanted to learn more, the instructor agreed. So Uncle Dave and Nephew Steve spent a few hours on a Saturday doing the survey. Uncle Dave told Steve to draw up a real nice map like a surveyor would and "put all that other stuff" on it. Using Wis Admin Code A-E 7 as a guide Steve compiled the map at school. Wanting to really impress his Uncle he even added a Surveyor's Certificate, complete with a "seal" and signed it.

Uncle Dave was suitably impressed and by way of thanks let Steve use the 'Vette over a weekend ("be sure to bring it back with gas in the tank.")

Once he put the property up for sale, he told prospective buyers he'd recently had the property surveyed and show them the map.

¹Interesting fact: when I type in realtor all in lower case my spell-checker flags it as an error. It suggest it be spelled Realtor with a capital R. On the other hand, it doesn't care if surveyor starts with a lower or upper case S.

Case Study 6

Jack S is a licensed surveyor from a neighboring state who takes a position with a small engineering firm to gain experience and background for an eventual reciprocal license application. One day Bill T, his supervising surveyor, asks Jack's opinion about a unique surveying situation in the neighbor state. Jack tells Bill he'll need some time to evaluate the situation. Bill said would be fine and for Jack to write up a detailed analysis. Jack does so and gives the write up to Bill the next day. Bill thanks him and there is no subsequent follow up.

Until six weeks later when Jack gets an email from Bill with an attached file. Bill asks Jack to examine the file and provide him some feedback. Jack sees that the bulk of the file is the write up he gave to Bill with some added comments about certain aspects of and questions about the analysis. It appears the comments are from the Licensing Board of the neighbor state.

Jack checks the licensing requirements of his home state and sees that part of the application for a reciprocal license a take-home written exam must be completed. Jack suspects the Bill is applying for a license in the neighboring state and the situation he asked Jack to analyzed may have been the take-home exam.

Case Study 7

Pioneer County is a medium sized county located in southwestern Wisconsin. It's a mostly rural county with a few small villages and four municipalities ranging in population from 2,000 to 8,000. The County has an elected Surveyor's Office, but having no budget it has been vacant for more than 20 years. Without a proponent at the county level, PLS maintenance has been nonexistent beyond tie sheets local surveyors filed in the normal course of surveying activities.

Five years ago the County created a GIS office to integrate land records including those of Zoning, Register of Deeds, and Assessor's Offices. The initiative has been gaining momentum since. The municipalities are supportive and have joined in cost-sharing data collection initiatives such as aerial photography and LiDAR data acquisition.

County elections are coming up soon. Seeing an opportunity to address monumentation deficiencies in the PLS network, the Pioneer County Chapter (PCC) of WSLs initiated a multi-part strategy:

- (1) Contact County Board Supervisors to educate them on the importance of the PLS as a critical backbone for GIS as well as property surveys. The education includes PLS remonumentation strategies - identifying priority areas, estimating costs, identifying funding schemes, and quantifying benefits.
- (2) Mount a campaign for the County Surveyor's position, putting the Chapter's support behind a single qualified member candidate. The campaign includes running candidate ads in the local papers and contacting clients encouraging them to vote for the candidate.
- (3) Assist the candidate in formulating a remonumentation plan which includes a multi-year budget centered on contracting the work out of the County Surveyor's Office. The County Surveyor would handle all contract details, oversee the remonumentation quality, and integrate remonumentation data into the GIS.

The Pioneer County Realtors Organization (PCRO) learned of the PCC's effort from a Board Supervisor (who's a member Realtor) and immediately went ballistic. They claimed the plan benefited only the surveyors and would drive up the costs of surveys and land transactions. On top of that, PCRO claimed it was unethical for the surveyors to involve themselves like this, particularly in formulating an operational plan for the County Surveyor's Office and encouraging clients to vote for a specific candidate. PCRO has threatened to file complaints with the Dept of Safety and Professional Services against all licensed members of the PCC unless the chapter immediately ceased its political activities.