

# Landman at the Door

Presented by: Kevin L. Colosimo

Managing Partner, Burleson LLP – Pittsburgh

[kcolosimo@burlesonllp.com](mailto:kcolosimo@burlesonllp.com)



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# Syllabus

Choose Chapter



Ethical Rules



American Association of  
Professional Landmen



The Other Side of the Coin



Potential Solutions



Judicial Approach to  
Claims



Fraudulent Misrepresentation



Parol Evidence Concerns



Practice Points for Lawyers

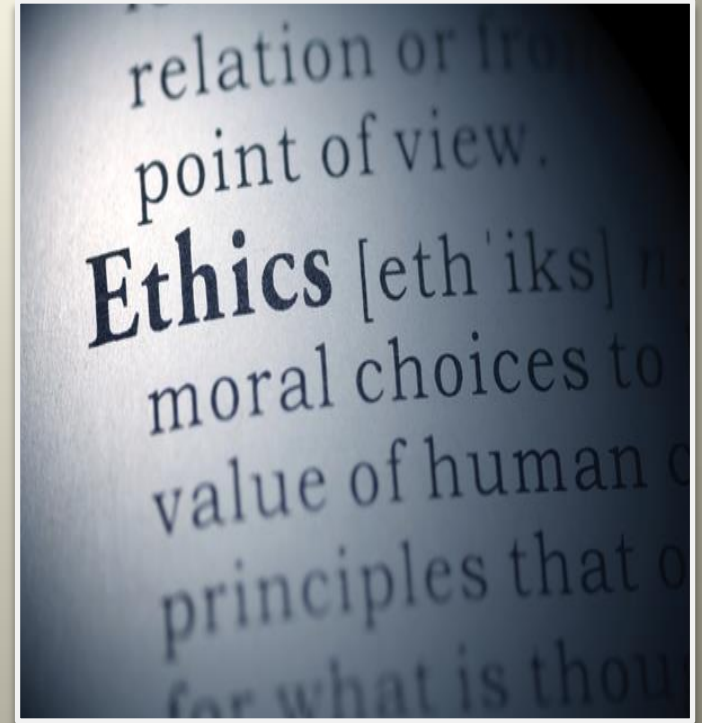


Conclusion



## Ethical Rules Governing Landmen

- **Professional organizations attempting to establish ethical standards for landmen.**
- **Enforcement is problematic.**
  - Membership is purely voluntary
- **But these professional organizations are the first step in regulating conduct.**





## American Association of Professional Landmen

### ● Established 1956

- Membership includes approximately 17,000 landmen and land-related professionals.

### ● Membership benefits:

- Industry resources.
- Professional certifications.





## AAPL Code of Ethics

### 🕒 **Two main duties:**

1. Promoting and representing the industry to the public in a manner that advances their stature and encourages sound stewardship of energy and mineral resources.
2. Maintaining a high level of competition amongst those involved in the energy industry.

### 🕒 **See Appendix 1 for full text:**





# Appendix 1

## CODE OF ETHICS

The Code of Ethics shall be the basis of the principles and ideals for the members of the AAP and understood that conduct of any member inconsistent with the provisions set forth in the considered unethical and said individuals may shall be subject to review for possible action prescribed in Article XVII of the Bylaws.

In the area of business endeavor involving competitive conditions, ethical standards for dealing can be made increasingly meaningful organized and dedicated not only to the definition and enforcement of such standards, but to the education of its members as set out in the Bylaws. Such is the objective of AAP and each shall maintain goodwill between the industry among industry parties.

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

The Land Professional, in his dealings with industry parties, and others outside the industry, shall conduct himself in a manner consistent with fairness and 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 only in his areas of expertise and shall not represent himself to be skilled in professional areas in which he is not professionally qualified.

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## AAPL Standards of Practice

- **Informs members of specific ideals mandated by Code of Ethics.**
- **Second level of protection**
- **See Appendix 2 for full text**







# Appendix 2

## Standards of Practice American Association of Professional Landmen

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 (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 (CPL)," "Registered Professional Landman (RPL)," "Registered Landman (RL)," "P.Land" (Canadian designation) 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.)

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1. To conduct business with integrity and honesty.
2. To adhere to a high standard of conduct in fulfilling his fiduciary duties to a principal.
3. To 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.
4. To perform professional services in a competent manner.
5. To adhere to any provisions of the Bylaws, Code of Ethics, or any rule, regulation, or order adopted pursuant thereto.
6. To avoid the aiding or abetting of any unauthorized use of the title "Certified Professional Landman (CPL)," "Registered Professional Landman (RPL)," "Registered Landman (RL)," "P.Land" (Canadian designation) or "CPL/ESA".
7. To avoid any act or conduct which causes disrespect for or lack of confidence in the member to act professionally as a land professional.

15. The term "professional services" shall mean those services which require a license or other form of government approval or regulation to perform. This term shall not include any other services which do not require such approval or regulation.





## The Other Side of the Coin

- ⦿ **PA law does not mandate landmen to be members of professional organizations**
  - Or licensed, or professionally certified.
- ⦿ **No oversight to control ethical practices of unscrupulous landmen.**





## Ohio Landman's Manual

⦿ **Unintentionally dropped in driveway of Ohio landowner.**

⦿ **Talking Points of Selling Oil and Gas Rights:**

- Less than flattering approach to obtaining leases
- Suggests creative methods for deflecting potential lessor questions

⦿ **See Appendix 2 for full text**





## Appendix 3

### Talking Points for Selling Oil and Gas Lease Rights:

As we position to move into the greater Ohio market, it is critical that Field Agents have a consistent selling plan for that market. The following points will outline our answers to commonly asked questions, including what to talk about and what topics to avoid. Oil and Gas exploration and drilling is meeting increasing resistance from local community groups, so it is essential to contact land holders and acquire signatures before sentiment by environmental and other public organizations limits our ability to obtain access to private land for oil and gas development. Remember, if at all possible try not to deliberately mislead the landowner, that only makes our position harder to defend at a later date. It is in our best interest to present our side of the issue in a manner that makes it more attractive. Do not discuss the detracting points of view in a manner that gives them any credibility. Don't feel that you have to discuss every point and question. Do not argue when you cannot win. Successful field agents understand what points to focus on so the benefits outweigh the cons.



Potential Solutions: Mandatory Licensing or Voluntary Certification?

**Other states unsuccessfully trying to mandate landmen licensing:**

- Texas, Colorado, New Mexico
- Only North Carolina requires landman registration

**Mandatory licensing vs. voluntary certification.**



  
 Judicial Approach to Claims Involving Landmen **Two main concerns in litigating claims involving landmen:**

1. Fraudulent misrepresentation
2. Parol Evidence Concerns

 **No bright line rule, but cases offer insight into valuable defense strategies**



## Fraudulent Misrepresentation

### 🕒 Plaintiff must prove the following by clear and convincing evidence:

1. A false representation of an existing fact or a non-privileged failure to disclose;
2. Materiality, unless the misrepresentation is intentional or involves a non-privileged failure to disclose;
3. Scienter, which may be either actual knowledge or reckless indifference to the truth;
4. Justifiable reliance on the misrepresentation, so that the exercise of common prudence or diligence could not have ascertained the truth; and
5. Damage to him as a proximate result.





## Fraudulent Misrepresentation

Standefer v. T.S. Dudley Land Co.

### ⦿ Middle District of Pa., July 13, 2010

### ⦿ Alleged landman statements:

1. Amount offered was highest offered to anyone
2. Landowner had a deadline to sign the lease

### ⦿ Claim 1: Lease Value

- Landowner reliance unjustifiable
  - Attorney advised against signing, landowner signed anyway

### ⦿ Claim 2: Leasing Deadline

- No Scierer: could not demonstrate that landman knew statements were false or recklessly disregarded the truth







## Fraudulent Misrepresentation

Julia v. Elexco Land Servs.

- **Middle District of Pa., May 11, 2010**
- **Alleged landman statements:**
  1. Original offer was ceiling
  2. Failure to sign = capture of landowners gas
  3. Royalty payments
- **Landowner claim dismissed**
  - Complaint failed to allege scienter





## Fraudulent Misrepresentation

Harrison v. Cabot Oil & Gas Corp.

🕒 **Middle District of Pa., 2012**

🕒 **Alleged landman statements:**

1. Original offer was ceiling

🕒 **Reliance on landman statements was unjustifiable**

- Landowner did not consult attorney

- Or even consult her neighbors before signing

- No evidence of fraudulent inducement = summary judgment for energy company





## Parol Evidence Concerns

- **Recap of the parol evidence rule.**
- **Parol evidence often complicates the seemingly simple test for fraudulent inducement.**





### Price v. Elexco Land Servs.

#### ● Middle District of Pa., July 9, 2009

#### ● Alleged landman statements:

1. No signature = gas taken by rule of capture

#### ● Parol evidence controlled outcome

- Regardless of whether evidence supported fraudulent misrepresentation claim
- Was the agreement fully integrated?
  - No, so parol evidence rule was inapplicable here
  - Motion to dismiss based on parol evidence denied





Cabot Oil & Gas Corp. v. Jordan

⦿ **Middle District of Pa., 2010**

⦿ **Alleged landman statements:**

1. No other landowner being paid more
2. No signature = gas taken by rule of capture

⦿ **Fraudulent inducement claims were dependent on application of parol evidence rule**

- “[w]hile Pennsylvania courts have extensively discussed the operation of the parol evidence rule related to [fraudulent inducement] claims, their pronouncements on the matter are far from clear.”
- Court declined the exercise jurisdiction.





Markowicz v. Swepi LP

🕒 **Middle District of Pa., 2013**

🕒 **Alleged landman statements:**

1. Cotenant led to believe the lease dealt with her mother's estate, not new O&G lease.

🕒 **Court declined to rule on whether fraudulent inducement claim was barred by parol evidence**

- Cited Cabor Oil
- Ultimately decided the case on other grounds





## Practice Points for Lawyers Representing Landmen

### 🕒 **Preemptive strike → recommend professional certification**

- And disclose this to the landowner at start of negotiations

### 🕒 **Fraudulent inducement claims**

- Each element proven by clear and convincing evidence
- Case will likely hinge on scienter

### 🕒 **Parol evidence concerns**

- Fully integrated contract may bar admission of landman statements into evidence
- But PA law is far from clear on this subject
- Courts may decline to rule until PA Supreme Court hears the issue





## ” Conclusion

- ⦿ **Attorneys must be aware that claims of fraudulent inducement will likely hinge on the applicability of the parol evidence rule.**
- ⦿ **A proactive approach by the attorney and the landman is likely the best defense.**

# Questions?

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