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# ARLINGTON, TEXAS

## AAPL 2021 ANNUAL MEETING

PROFESSIONAL DEVELOPMENT AND LAND CONFERENCE

# Andrew Graham



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# COMMON ETHICS PITFALLS FACED BY THE PROFESSIONAL LANDMAN

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# Today's Lineup

- Relevant ethics authorities for Landmen
  - Code of Ethics and Standards of Practice
- Recurring themes in Code of Ethics and Standards of Practice
  - Honesty
  - Fairness
  - Fiduciary
  - Skilled professional
  - Disclosure and consent



# Relevant Authorities

- Code of Ethics
  - Two sections
  - Set forth in Article XVI of the By-Laws and again end of the By-Laws
- Standards of Practice
  - Seven appear under heading “Standards of Practice”
  - Another fifteen appear as part of the Preamble
  - Set forth at the end of the By-Laws



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# Code of Ethics

- Section 1:
  - It shall be the duty of the Land Professional at all times to promote and, in a **fair and honest** manner, represent the industry to the public at large with the view of establishing and maintaining goodwill within the industry and the public among industry parties.
  - The Land Professional, in his dealings with landowners, industry parties, and others outside the industry, shall conduct himself in a manner consistent with **fairness and honesty**, such as to maintain the respect of the public.



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# Code of Ethics

- 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 persons for their gain.
  - The Land Professional shall exercise the **utmost good faith and loyalty** to his employer (or client) and **shall not act adversely** to the employer in any enterprise in **conflict with the interest** of the employer (or client). Further, he shall act in **good faith** in his dealings with the industry associates. The Land Professional shall not represent others in his areas of **expertise** and shall not represent himself to be skilled in professional areas in which he is not professionally qualified.



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# Standards of Practice

- A. Fair and honest dealings 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);



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# Standard of Practice, continued

- E. Adherence to any provisions of the Bylaws, Code of Ethics, or any rule, regulation, or order adopted thereto (Article V, Section 9);
- F. Avoiding the aiding or abetting of an unauthorized use of the title "Certified Professional Landman," "Registered Professional Landman," "P. Land," "Registered Landman," 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 act professionally as a land professional (Article Section 9).



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# Preamble Standards of Practice

- [1] In justice to those who place their interests in his care, a land professional shall be **informed** regarding the laws, proposed legislation, governmental regulations, public policies and current market conditions in his area of represented expertise, in order to be in a position to advise his employer or client properly (D, E);
- [2] It is the duty of the land professional to protect the members of the public with whom he deals against **fraud, misrepresentation and unethical practices**. He shall eliminate any practices which could be damaging to the public or bring discredit to the petroleum mining or environmental industries.
- [3] In accepting employment, the land professional pledges himself to protect and promote the interests of his employer or client. The obligation of **absolute fidelity to the employer's or client's interest** is primary but it does not relieve the land professional of his obligation to **treat fairly** all parties to any transaction, or act in an ethical manner (A, B).



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# Preamble Standards of Practice, cont'

- [4] The land professional shall not accept compensation from more than one principal for providing the same service, nor accept compensation from [more than] one party to a transaction, with the full knowledge of all principals or parties to the transaction (C).
- [5] The land professional shall not deny equal professional services to any person for reasons of race, creed, sex or country of origin. The land professional shall not be a party to any plan or agreement to discriminate against a person or persons on the basis of race, creed, sex or country of national origin.
- [6] A land professional shall provide a level of competent service keeping with the standards of practice in those fields in which a land professional customarily engages. The land professional shall represent himself to be skilled in nor shall he engage in professional areas in which he is not qualified such as the practice of law, geology, engineering or other disciplines (D).



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# Preamble Standards of Practice, cont'

- [7] The land professional shall not undertake to provide professional services concerning a property or a transaction where he has a present or contemplated interest, unless such interest is specifically disclosed to all affected parties (C).
- [8] The land professional shall not acquire for himself others an interest in property which he is called upon purchase for his principal, employer or client. He shall disclose his interest in the area which might be in conflict with his principal, employer or client. In leasing any property negotiating for the sale of any block of leases, including land owned by himself or in which he has any interest, a land professional shall reveal the facts of his ownership or interest to the potential buyer (C).



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# Preamble Standards of Practice, cont'

- [9] If a land professional is charged with unethical practice or asked to present evidence in any disciplinary proceeding investigation, or has direct knowledge of apparent unethical misconduct of another member, he shall place all pertinent facts before the proper authority of the American Association of Professional Landmen (E).
- [10] The land professional shall not accept any commission, rebate, interest, overriding royalty or other profit transactions made for an employer or client without the employer's or client's knowledge and consent (B).
- [11] The land professional shall assure that monies coming into possession in trust for other persons, such as escrows, advances for expenses, fee advances and other like items, are properly accounted for and administered in a manner approved by the employer or client (B).



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# Preamble Standards of Practice, cont'

- [12] The land professional shall avoid business activities which may **conflict with the interest** of his employer or client or result in the **unauthorized disclosure or misuse of confidential information**.
- [13] The land professional shall at all times present **accurate representation** in his advertising and disclosures to the public (A).
- [14] **The land professional shall not aid or abet the unauthorized use of the title "Certified Professional Landman," "Registered Professional Landman," and/or "CPL/ESA."**



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# Preamble Standards of Practice, cont'

- [15] The land professional shall not participate in any conduct which causes him to be convicted, adjudged or otherwise recorded as guilty in any court of competent jurisdiction of any felony offense involving fraud as an essential element of any other serious crime.



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# Recurring Themes

- A Landman is honest
  - CE 1 and 2; SP A, F, [2], [11], [13], [14] and [15]
- A Landman is fair
  - CE 1 and 2; SP A, [2], [3] and [5]
- A Landman is a fiduciary
  - CE 2; SP B, C, [3], [8], [10], [11] and [12]
- A Landman is a skilled professional
  - CE 2; SP D, [1] and [6]
- Disclosure and consent can resolve some ethical issues
  - SP C, [4], [7], [8], [10], [11], and [12]



# A Landman is honest

- The character or quality of being truthful and trustworthy; esp., a disposition to behave in accordance with justice and honorable dealing as regards candor and truth-telling
  - Reasons why:
    - Establish and maintain goodwill (CE 1)
    - Maintain respect of the public (CE 1)
    - Preserve integrity of the profession (SPA)
    - Prevent disrespect for or lack of confidence in Landman
    - Prevent damage to public or discredit to industry (SP A)



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# A Landman is fair

- The quality of treating people equally or in a reasonable way; the qualities of impartiality and honesty
- Reasons why:
  - Establish and maintain goodwill (CE 1)
  - Maintain respect of the public (CE 1)
  - Preserve integrity of the profession (SP A)
  - Prevent disrespect for or lack of confidence in Landman
  - Prevent damage to public or discredit to industry (SP [



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# A Landman is a fiduciary

- Someone who is required to act for the benefit of another person on all matters within the scope of relationship
  - One who owes to another the duties of good faith, loyalty, care, and disclosure
  - Someone who must exercise a high standard of care managing another's money or property
- “Confidential information”: knowledge or facts not in public domain but known to some, esp. to those with a fiduciary duty not to misuse the knowledge or their own advantage



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# A Landman is a skilled professional

- Someone who belongs to a learned profession or whose occupation requires a high level of training and professional expertise
  - Compare the following:
    - Expertise: skill or knowledge in a particular subject; specialized that gives rise to a facility that comparatively few people possess
    - Competence: a basic or minimal ability to do something; adequate qualification
    - Skill: special ability and proficiency; esp., the practical and familiar knowledge of the principles and processes of an art, science, or profession combined with the ability to apply them appropriately, with readiness and dexterity
  - Reason why:
    - Be in a position to advise employer or client properly (SP [1])



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# Disclosure and consent

- Disclosure of confidential information
- Accepting compensation from more than one principal providing same service
- Accepting compensation from more than one party to transaction
- Providing professional services concerning property/transaction in which Landman has present/contemplated interest
- Accepting compensation from party other than employer/client
- Accounting/administering monies in trust for employ



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# Questions?



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# Continued Education Component Code

- ARTX-2



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