
Engineering Ethics for Delaware Professional Engineers

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Chapter 1

Overview of the DE Engineering Ethics and Professional Responsibility

Engineering Ethics

Engineering ethics is (1) the study of moral issues and decisions confronting individuals and organizations involved in engineering and (2) the study of related questions about moral conduct, character, ideals and relationships of peoples and organizations involved in technological development (Martin and Schinzinger, *Ethics in Engineering*).

The Delaware Association of Professional Engineers

The Delaware Association of Professional Engineers (DAPE) is the primary government body that regulates the practice of engineering within the State of Delaware. The DAPE is established by law and consists of professional engineers licensed in Delaware. These "members" are selected by voting 12 of the 15 members of the "Council" of the DAPE with the remaining 3 being public members appointed by the Governor. The "Council" performs the duties of "The Board of Licensing for Engineers" in other states. Its objectives are best described by Section 2804 of the Law.

The DAPE has the authority to implement the provisions of the Delaware Professional Engineers' Act, Title 24, Chapter 28 of the Delaware Code. Pertinent excerpts of the Act present the laws of professional conduct and responsibility for Delaware professional engineers and engineering firms. The DAPE has also promulgated the Code of Ethics in accordance with the Delaware Professional Engineers' Act for Delaware professional engineers and engineering firms.

Delaware Professional Engineers' Act

The Delaware Professional Engineers' Act is a collection of statutes organized by subject area into a code made up of titles, chapters and articles. The Act was last amended in July 15, 2013 by laws that create, amend, or repeal statutory material.

The Delaware Legislature found that it was necessary in the interest of public health and safety to regulate the practice of engineering in the State of Delaware and thus created Title 24, Chapter 28 of the "Delaware Professional Engineers' Act". Under this Act, the Delaware Association of Professional Engineers is responsible for reviewing applications, administering examinations, licensing qualified applicants, and regulating the practice of engineering throughout the state.

Excerpts of these statutory laws which are pertinent to the laws of professional conduct and responsibility are presented in Chapter 2.

Delaware Engineering Code of Ethics

The Council of the Delaware Association of Professional Engineers promulgated the Code of Ethics in accordance with the Delaware Professional Engineers' Act, Title 24, Chapter 28 of the Delaware Code in order to safeguard life, health and property, and to promote the public welfare, through a high standard of integrity, skills, and practice in the profession of engineering. It presents a broader understanding of the code of professional conduct, responsibility and ethics. It is designed to provide the engineer with positive stimulus for ethical conduct as well as helpful guidance and advice concerning the primary and basic obligations of engineers. The Code was last amended in July 11, 2008.

The Code of Ethics is binding on all applicants and every person holding a certificate of registration as a Professional Engineer and all partnerships or corporations or other legal entities authorized to perform engineering services in the State of Delaware. The revocation or suspension of a Professional Engineer's license by another jurisdiction, if for a cause which in the State of Delaware would constitute a violation of this Code of Ethics, shall be grounds for a charge of violation of this Code of Ethics. Furthermore, persons licensed under the Delaware Professional Engineers' Act must subscribe to the Code of Ethics as part of that person's application and shall be deemed to be familiar with its several provisions and to understand them.

The Delaware Engineering Code of Ethics is presented in Chapter 3.

The Complaint Process

The DAPE Council, through its Law Enforcement Ethics Committee, is responsible for investigating complaints received alleging a violation of Delaware's licensing law and/or the engineering Code of Ethics. The Council has the authority to discipline its licensees.

Any identified member of the public or the Association is encouraged to contact the DAPE office, either orally or in writing, regarding a complaint concerning any aspect of the practice of engineering.

To file a complaint orally, the DAPE office can be contacted at (302) 323-4588. With oral complaints, DAPE staff will complete a complaint form with the information provided and return it to the complainant for review and approval prior to processing it. Written complaints are preferred. A complaint form is available from the DAPE office or may be downloaded from the DAPE website (www.dape.org). A written complaint may be mailed, faxed, e-mailed or otherwise delivered to the DAPE office. Anonymous complaints, oral or written, are not accepted by the DAPE.

A complaint requires specific information about work performed, project location, problems encountered, any resolution attempts and dated facts. It's important to provide as much data as possible; particularly anything that it is believed to assist with the Committee's investigation.

The Law Enforcement/Ethics Committee will forward a written acknowledgement to the complainant within one week of receipt of the complaint. The Law Enforcement/Ethics Committee will make reasonable efforts to maintain anonymity of the complainant and of the person complained against while it investigates the allegation. However, if the complaint is found warranted, the name of the complainant and of the person complained against may become available under the Delaware Freedom of Information Act.

Administrative Penalty Guidelines

The Council is entitled to impose penalties within the minimum and maximum range, as set forth herein, taking into consideration any aggravating or mitigating circumstances proven by clear and convincing evidence presented to Council prior to the imposition of a final penalty.

(1) Aggravating circumstances: circumstances which may justify the maximum penalty shall include but not be limited to the following:

- (a) History of previous violations of this Chapter 28.
- (b) In the case of negligence; of the magnitude and scope of the project and the damage inflicted upon the general public by the licensee.
- (c) Evidence of the violation of professional practice acts in other jurisdictions wherein the licensee has been disciplined by the appropriate regulatory authority.
- (d) Violation of the provisions of Chapter 28 wherein prior action by Council was previously taken against the licensee.

(2) Mitigating circumstances: circumstances which may justify the minimum penalty shall include but not be limited to the following:

- (a) In the case of negligence, the minor nature of the project in question and lack of danger to the public health, safety and welfare resulting from the licensee's violation.
- (b) Lack of previous disciplinary history in this or any other jurisdiction where in the licensee practices.
- (c) Restitution of any damages suffered by the licensee's client.
- (d) The licensee's professional standing among his peers.
- (e) Steps taken by the licensee or his firm to ensure the non-reoccurrence of a similar violation in the future.

The range of administrative penalties imposed by DAPE is provided in Appendix A.

Chapter 2

Delaware Professional Engineers' Act (Amended September 29, 2017)

Title 24, Chapter 28, "Professional Engineers"

The following are excerpts from Title 24, Chapter 28 of the Delaware Professional Engineers' Act. If you wish to review the entire Act, please visit the website of the Delaware Association of Professional Engineers at:

<http://www.dape.org/files/2017%20Law%20Book%202.pdf>

§2803. Definitions

The following words, terms and phrases, when used in this chapter, shall have the meaning ascribed to them, except where the context clearly indicates a different meaning;

(1) 'Active Roster' shall mean the record of members, associate members, permittees and holders of a certificate of authorization.

(2) 'Adjunct member' shall mean an adjunct member of the Association, as defined in §2806(d) of this title.

(3) 'Administrative Order' means an order issued by an Investigating Committee, with the prior approval of the Council pursuant to §2824(b)(1)g.1. of this title, which attempts to resolve a complaint of a violation under §2823 of this title. Administrative orders become final 14 days from the day the order is received by the accused but only if there is positive proof of service, such as a signed return receipt or an affidavit of personal service.

(4) 'Affiliate member' shall mean an affiliate member of the Association, as defined in §2806 (c) of this title.

(5) 'Applicant' shall mean a person who applies to become licensed as a professional engineer, applies to become certified as engineer intern, applies to become an adjunct member of the association, or applies for a certificate of authorization or permit.

(6) 'Associate member' shall mean an associate member of the Association, as defined in §2806 (b) of this title.

(7) 'Association' shall mean the Delaware Association of Professional Engineers.

(8) 'Bylaw' shall mean a bylaw of the Association.

(9) 'Certificate of authorization' shall mean an authorization issued by the Council to engage in the practice of engineering.

(10) 'Committee' shall mean a committee appointed by the Council.

(11) 'Consent Order' means a voluntary agreement between parties attempting resolution of a complaint of a violation under §2823 of this title or a complaint of unlicensed practice under §2825 of this title. To become a final order, a consent order must be approved by Council pursuant to §2824(b)(1)g.2 of this title.

(12) 'Continuing Professional Competency' shall mean and refer to compliance with

or satisfaction of a published set of guidelines and requirements for the maintenance of professional competency in the practice of engineering.

(13) 'Council' shall mean the Council of the Association.

(14) 'Engineer' shall mean a person who, by reason of special knowledge and use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by an engineering education, through graduation with a baccalaureate degree from a Council-approved 4-year educational program in engineering, in engineering technology or in science related to engineering, is qualified to begin the path to licensure.

(15) 'Engineering corporations or partnerships' are corporations or partnerships who practice engineering to provide engineering services to the public.

(16) 'Engineer Intern' shall mean a person certified as an engineer intern by the Council.

(17) 'Examination' shall mean any qualifying examination or examinations required by this chapter.

(18) 'Hearing Committee' means a committee of Council members to which the Council has delegated authority to adjudicate a complaint of a violation under §2823 of this title or allegations of unlicensed practice under §2825 of this title.

(19) 'Investigating Committee' means a committee of the Council to which the Council has delegated authority to investigate a complaint of a violation under §2823 of this title or allegations of unlicensed practice under §2825 of this title.

(20) 'Licensed' means licensure as a professional engineer under this chapter.

(21) 'Licensee' shall mean a person licensed as a professional engineer under this chapter.

(22) 'Member' shall mean a member of the Association, as defined in §2806 (a) of this title.

(23) 'Permit' shall mean a temporary privilege to practice engineering in the State granted to a qualified individual, corporation, or partnership by the Council.

(24) 'Permittee' shall mean an individual, corporation or partnership holding a valid permit from the Association.

(25) 'Practice of engineering' or 'to practice engineering' includes any professional service performed for the general public such as consultation, investigation, evaluation, planning, design, or responsible supervision of construction or operation in connection with any public or private buildings, structures, utilities, machines, equipment, processes, works, or projects wherein the public welfare or the safeguarding of life, health or property is concerned or involved when such professional service requires the application of engineering principles and data, but it does not include the work ordinarily performed by persons who operate or maintain machinery or equipment, neither does it include engineering services performed by an employee of a firm or corporation that does not offer professional engineering services to the general public.

(26) 'Professional engineer' shall mean a person who has been duly licensed as a professional engineer by the Council.

(27) 'Responsible Charge' means a professional engineer's supervision of, control over, and possession of detailed professional knowledge of an engineering work. A professional engineer is only considered to be in responsible charge of an engineering work if the professional engineer makes independent professional decisions regarding the engineering work without requiring instruction or approval from another authority and maintains control over those decisions by the professional engineer's physical presence at the location where the engineering work is performed or by electronic communication with the individual executing the engineering work.

(28) 'Retired Member' shall mean a person who has elected to claim retired status as defined in §2806(g) of this title.

(29) 'Substantially related' shall mean the nature of the criminal conduct, for which

the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the practice of engineering.

§2823. Grounds for discipline; appeals.

(a) Applicants, adjunct and affiliate members, and any person licensed under this chapter shall be subject to disciplinary penalties set forth in §2824(c) of this title, if, after a hearing, the person is found to violate any of the following:

(1) The practice of any fraud or deceit in the attempt to obtain any authorization to practice engineering in this State;

(2) Any gross negligence, incompetence or misconduct in the practice of engineering;

(3) Violation of the code of ethics promulgated by the Council;

(4) A crime that is substantially related to the practice of engineering;

(5) a. An activity resulting in discipline by another jurisdiction, state, territory, or possession of the United States, foreign country, the District of Columbia, the United States government, or any other governmental agency, if at least one of the grounds for discipline is the same or substantially equivalent to those contained in this section;

b. The voluntary surrendering of an engineering license in order to avoid disciplinary action by another jurisdiction, state, territory, or possession of the United States, foreign country, the District of Columbia, the United States government, or any other governmental agency, if at least one of the grounds for disciplinary is the same or substantially equivalent to those contained in this section.

(6) The failure to report instances of out-of-state discipline, as set forth in the immediately preceding paragraph, to the Executive Director of the Delaware Association of Professional Engineers within 60 days of the final order imposing discipline;

(7) Aiding or abetting another person in violating any provision of this chapter; or

(8) Signing, affixing the licensee's seal, or permitting the licensee's seal or signature to be affixed to any specification, report, drawing, plan, plat, design information, construction document or calculation, or revision thereof, that has not been prepared by the licensee or those under his responsible charge;

(9) Failure to comply with and satisfy the Continuing Professional Competency guidelines and requirements.

(b) The Council shall have the power to review the actions of any applicants sitting for any examination that is conducted by, or on behalf of, the Association to determine the applicant's qualification for licensure as a professional engineer or certification as an Engineer Intern.

(1) The following actions by an examinee shall be considered violations of this chapter:

a. Any attempt to remove, or removal of, examination materials or content from the room in which the examination is administered;

b. Any attempt to reproduce, transcribe or transmit the content of examination materials that would permit the removal of such content from the room in which the examination is administered;

c. Any use or possession of unlawfully obtained information that reveals, or is procured by the examinee with the anticipation that it could reveal, any portion of the content of the current examination;

d. Any communication, whether verbal, written, electronic, or by action, made in an effort to seek assistance from another party, that would aid in obtaining a higher grade for the examination during an examination administration, or to provide such assistance to another examinee;

e. Any impersonation, or solicitation of impersonation, that allows another

individual to sit for the examination in place of the designated applicant; or

f. Any violation of the terms of any examination security agreement entered into freely by the examinee with the Association outlining the examinee's responsibilities in taking the examination.

(2) The chief proctor for the examination, acting on behalf of the Council, may at the chief proctor's sole discretion, when presented with evidence of any violation under paragraph (b)(1) of this section above at any time during the examination administration period:

- a. Collect any examination materials provided to the examinee;
- b. Collect any personal property belonging to the examinee, which the proctor reasonably believes may contain content from the examination materials;
- c. Dismiss the examinee from the examination site; and
- d. Seek any law enforcement assistance that the chief proctor feels is necessary to affect paragraphs a. through c. above of this paragraph (b)(2) of this section.

(3) Following its review of the facts associated with any alleged examination impropriety, Council shall have the power to impose any or all of the following penalties on any individual found guilty after a hearing, unless such hearing is waived by the examinee, of an examination impropriety:

- a. Void the results of the subject examination.
- b. Refuse permission for the examinee to take the examination for a period of two (2) years, or such time determined by Council to be required to ensure that a subsequent examination is unlikely to repeat questions contained in the subject examination;
- c. Require successful completion by the examinee of an ethics course before a future examination opportunity;
- d. Revoke any license as a professional engineer or certification as an Engineer Intern granted as a consequence of the examinee receiving a passing score on the subject examination; and
- e. Report any disciplinary action taken to other jurisdictions to help ensure the integrity of their examination process.

(c) The Council, after receipt of a complaint in accordance with §2824(c) of this title associated with the practice of engineering in Delaware, shall have the power to review the actions and representations of individuals, corporations or partnerships not authorized by this chapter to engage in the practice of engineering in Delaware. Upon notice, hearing and review afforded by subchapters III and V of the Administrative Procedures Act, Chapter 101 of Title 29, the Council may issue a cease and desist order to an individual, corporation or partnership found to be engaged in the unauthorized practice of engineering, notwithstanding that the individual's, corporation's or partnership's license has lapsed, expired or has been suspended or revoked.

(d) Subject to notice, hearing and review afforded by subchapters III and V of the Administrative Procedures Act, Chapter 101 of Title 29, the Council may fine any person who violates a cease and desist order not less than \$100 or more than \$1000. Each day a violation continues may be deemed a separate offense in the Council's discretion.

(e) When disciplinary action requires the successful completion of additional training or education courses, Council shall determine the conditions of the additional training or education courses on a case-by-case basis, including, but not limited to, the type and number of hours of training or education. All training or education courses shall be related to the engineering profession and must be approved by Council.

(f) Any individual, corporation or partnership aggrieved by any disciplinary decision by Council may appeal such decision to the Superior Court. The appeal shall be filed within 30 days of the day the notice of the decision was mailed. The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the Council for further proceedings on the record. The Court,

when factual determinations are at issue, shall take due account of the experience and specialized competence of the Council and of the purposes of the Delaware Professional Engineers' Act under which Council has acted. The Court's review, in the absence of actual fraud, shall be limited to determination of whether the Council's decision was supported by substantial evidence on the record before it.

(g) When an action is brought in the Court for review of a Council decision, enforcement of such decision may be stayed by the Court only if it finds, upon a preliminary hearing, that the issues and facts presented for review are substantial and the stay is required to prevent irreparable harm.

(h) No appeal for relief of the Court shall be considered as having been taken or made until it has been filed with the Prothonotary and served upon the Council in accordance with the rules of the Court.

§2824. Disciplinary action; procedure.

(a) Whether prompted by receipt of an accusation of wrongdoing by a third party or upon its own initiative, the Council may review the actions and representations of applicants, adjunct and affiliate members, and any person licensed as a professional engineer under this chapter for alleged violations of §2823 of this title or for unlicensed practice pursuant to §2825 of this title.

(b) Complaint Investigation and Prosecution.

(1) Upon receipt of a written accusation alleging a violation of §2823 of this title or alleging the unlicensed practice of professional engineering in violation of §2825 of this title, the Council may assign the matter to its Investigating Committee for possible prosecution. The Investigating Committee may also initiate the prosecution process based upon firsthand knowledge acquired by a member or upon a member's information and belief whether the accusation of wrongdoing is written or oral. Members of the Investigating Committee shall maintain strict confidentiality of the facts of its investigations and shall not discuss any issues of fact or law relating to an investigation with anyone except other Investigating Committee members, potential witnesses, the target of the investigation, or the target's legal representative.

(a) If any allegations are not supported by the facts stated in the complaint, the Investigating Committee shall submit a written recommendation to the Council for dismissal of the unsupported allegations. The recommendation must recite verbatim all complaint allegations that are recommended for dismissal, indicating the Investigating Committee's reasoning for recommending dismissal of each allegation. By majority vote of the members present at a properly convened Council meeting, the Council shall approve or reject the Investigating Committee's written recommendation based only on the information contained in and included with the written recommendation. The Council shall reject the Investigating Committee's recommendation only if it decides that the Investigating Committee's recommendation is contrary to a specific state or federal law or regulation, is not supported by substantial evidence, or is arbitrary or capricious. If Council does not approve the Investigating Committee's recommendation, the matter must be remanded to the Investigating Committee with the Council's written reasons for withholding its approval. If all allegations in a complaint are dismissed by the Council, the complaint is dismissed.

(b) If the Investigating Committee believes a complaint does state sufficient facts to support one or more allegations, the Investigating Committee shall investigate the allegations and send a copy of the complaint by certified mail with return receipt requested to the last address of record of the accused.

(c) The accused is entitled to submit a written answer to the complaint to the Investigating Committee within 20 calendar days after receiving the complaint.

(d) If, at any time before commencement of a hearing one or more allegations are found to be unsupported, the Investigating Committee shall submit a written

recommendation to the Council for dismissal of the unsupported allegations. The recommendation must recite verbatim all complaint allegations that are recommended for dismissal, indicating the Investigating Committee's reasoning for recommending dismissal of each allegation. By majority vote of the members present at a properly convened Council meeting, the Council shall approve or reject the Investigating Committee's written recommendations based only on the information contained in and included with the written recommendation. The Council shall reject the Investigating Committee's recommendation only if it decides that the Investigating Committee's recommendation is contrary to a specific state or federal law or regulation, is not supported by substantial evidence, or is arbitrary or capricious. If Council does not approve the Investigating Committee's recommendation, the matter must be remanded to the Investigating Committee with the Council's written reasons for withholding its approval. If all allegations in a complaint are dismissed by the Council, the complaint is dismissed.

(e) If, during the course of an investigation, the Investigating Committee finds evidence that there may have been violations in addition to those contained in the complaint or those which formed the basis for an internally initiated investigation, the Investigating Committee may add additional allegations as appropriate.

(f) The Investigating Committee shall issue a final written report at the conclusion of its investigation. The report must list the evidence reviewed and the witnesses interviewed, cite the law alleged to have been violated, and list all facts supporting one or more allegations.

(g) The Investigating Committee shall resolve supported allegations in one of the following ways:

(2) The Investigating Committee may submit a written recommendation to the Council that an Administrative Order be issued. The written recommendation must include a copy of the proposed order. The proposed order must recite all complaint allegations the Investigating Committee believes are supported by its findings, a brief recitation of those findings, and the proposed penalty or penalties. By majority vote of the members present at a properly convened Council meeting, the Council shall approve or reject the Investigating Committee's written recommendation based only on the information contained in and included with the written recommendation. The Council shall reject the Investigating Committee's recommendation only if it decides that the Investigating Committee's recommendation is contrary to a specific state or federal law or regulation, is not supported by substantial evidence, or is arbitrary or capricious. If Council does not approve the Investigating Committee's recommendation, the matter must be remanded to the Investigating Committee with the Council's written reasons for withholding its approval. If the Council approves the recommendation, the order shall be served on the accused by certified mail with return receipt requested to the last address of record of the accused or by personal service. The order must indicate that it will become final unless the accused, within 14 days after receipt of the order, objects to the proposed order and requests a hearing. Administrative orders become final 14 days from the day the order is received by the accused but only if there is positive proof of service, such as a signed return receipt or an affidavit of personal service. Administrative Orders are limited to imposing the following penalties, individually or in combination: warning, public reprimand, censure, or requiring completion of training or education courses. If the accused gives notice to the Investigating Committee that the allegations are contested, the Investigating Committee shall proceed in accordance with paragraph (b)(1)g.3. of this section.

(3) The Investigating Committee is entitled to negotiate a Consent Order with the accused. Consent Orders must be approved by Council before becoming final. By majority vote of the members present at a properly convened Council meeting, the Council shall approve or reject Consent Orders, after considering the Investigating Committee's written recommendation regarding an order, based only on the information contained in and included with the Consent Order and written recommendation. The Council shall reject

Consent Orders only if it decides that a Consent Order is contrary to a specific state or federal law or regulation, is not supported by substantial evidence, or is arbitrary or capricious. If the Council approves a Consent Order, the Consent Order must be served on the accused by certified mail with return receipt requested to the last address of record of the accused or by personal service. If the Council does not approve the Consent Order, the matter must be remanded to the Investigating Committee with the Council's written reasons for withholding its approval.

(4) The Investigating Committee, with the concurrence of the Department of Justice, is entitled to forward the complaint, along with its final investigative report, to the Council with a written recommendation to prosecute the complaint before a Hearing Committee. By majority vote of the members present at a properly convened Council meeting, the Council shall approve or reject the Investigating Committee's written recommendation based only on the information contained in and included with the written recommendation. The Council shall reject the Investigating Committee's recommendation only if it decides that the Investigating Committee's recommendation is contrary to a specific state or federal law or regulation, is not supported by substantial evidence, or is arbitrary or capricious. If Council does not approve the Investigating Committee's recommendation, the matter must be remanded to the Investigating Committee with the Council's written reasons for withholding its approval. If the Council approves the recommendation, the Council shall convene a Hearing Committee if it has not already done so, and assign the matter to the Hearing Committee for further proceedings. The time and place for the hearing must be fixed by the Hearing Committee within 90 days of receipt of the formal complaint.

(5) At a properly convened Council meeting, the Council President shall nominate at least three Council members to serve on a Hearing Committee. Nominees must be approved by a majority vote of Council members present at a properly convened Council meeting. The Council President shall designate one member of a Hearing Committee to serve as the Hearing Committee Chair. Hearing Committees shall consist of Council members only. Members of the Investigating Committee may not be members of the Hearing Committee, but Investigating Committee members are entitled to assist in the prosecution of the complaint before a Hearing Committee.

(6) The Hearing Committee shall properly notice and conduct the hearing. The Delaware Rules of Evidence do not apply to the presentation or admissibility of evidence in hearings. A record must be kept of all public hearings, a transcript of which must be provided at cost upon a party's request. Decisions of the Hearing Committee must be made by majority vote of the Hearing Committee's members. Decisions must be based on the evidence presented at the hearing and must be supported by substantial evidence in the record. Decisions must not be based exclusively on hearsay.

(a) If the Hearing Committee determines that no violation under §2823 of this title or that no unlicensed practice under §2825 of this title has occurred, it shall issue an order dismissing the complaint.

(b) If the Hearing Committee determines that a violation under §2823 of this title or that an unlicensed practice under §2825 of this title has occurred, it shall issue an order stating its findings of fact, conclusions of law, and penalties.

(c) If the accused fails or refuses to appear, the Hearing Committee may proceed to hear the charges and render a decision by default.

(d) Orders issued by the Hearing Committee are not final until approved by Council. After a quorum has been established at a properly convened Council meeting, by majority vote of the members present who are not recused from the matter, the Council shall approve or reject the hearing committee's written order based only on the information contained in that order. The Council shall overturn the decision of a Hearing Committee only if it decides that a Hearing Committee decision is contrary to a specific state or federal law or regulation, is not supported by substantial evidence, or is arbitrary or capricious. If

Council does not approve the Hearing Committee's order, the matter must be remanded to the Hearing Committee for further proceedings in accordance with the Council's written reasons for withholding its approval. Final orders are appealable to Superior Court within 30 days of the date of mailing. Copies of orders must be served personally or by registered or certified mail to each party.

(c) Disciplinary Penalties and Guidelines.

(1) Disciplinary violations under §2823(a) of this title are punishable by the following penalties, or any combination thereof: levy fines up to \$5,000; require the successful completion of additional training or education courses; issue warnings, public reprimands, and censure; refuse or revoke licensure; impose probation with appropriate terms and conditions; impose suspension of license not to exceed two years; and refuse to renew any authorization issued to use the term 'engineer' or practice engineering in Delaware. All fines must be paid to Council within 90 days of the date of mailing of an order. All fines collected by the Council must be deposited in the General Fund of the State through the Division of Revenue, provided that the Council may first deduct from the fines an amount equal to the administrative and other direct expenses incurred by the Council, its Hearing Committee, and its Investigating Committee, in the prosecution of the complaint.

(2) The Council shall prepare and publish a chart of Disciplinary Penalty Guidelines ("Guidelines") indicating the minimum and maximum penalties available for each basis for discipline in §2823 of this title. Penalties must be imposed according to the Guidelines after taking into consideration any aggravating or mitigating circumstances in each case. The Guidelines shall be provided to each Association member, associate member, affiliate member, adjunct member, and permittee and shall be available free of charge to the public. Copies of the Guidelines must also be made available to prospective Applicants as a part of their application materials.

(d) Any person who files a complaint, provides information, or testifies as a witness in a matter alleging a violation under §2823 of this title or a violation under §2825 of this title must be afforded the protections of the Delaware Whistleblowers' Protection Act as codified in Chapter 17 of Title 19.

(e) The Council may, upon petition of an adjunct member, affiliate member, individual licensee, permittee, engineering corporation or partnership holding a certificate of authorization, reissue authorization to use the term engineer, a license, permit or certificate of authorization; provided, however, that a majority of the seated members of the Council vote in favor of such issuance.

§2825. Unlicensed practice.

(a) Persons or engineering corporations or partnerships not licensed, not authorized by Council, or not holding a permit or certificate of authorization may not:

(1) Practice engineering as defined in this chapter.

(2) Use any name, title, description of designation, either orally or in writing, that will lead to the belief that such person is entitled to practice engineering as defined in this chapter, including without limitation the words "engineer" or "engineering" or any modification or derivative of those words.

(3) Advertise or hold oneself or conduct oneself in any way or in any such manner as to lead to the belief that such person is entitled to practice engineering.

(b) Whoever practices or offers to practice engineering in this State without being licensed in accordance with the provisions of this chapter shall be in violation thereof.

(c) Whoever presents or attempts to use as that person's own license, certificate of authorization, permit or the seal of a professional engineer not that person's own shall be in violation of the provisions of this chapter.

(d) Whoever gives any false or forged evidence of any kind to the Council or to any member thereof in obtaining authorization to use the term engineer, a license, a certificate

of authorization, or a permit shall be in violation of the provisions of this chapter.

(e) Whoever falsely impersonates any other adjunct member, affiliate member, licensee, holder of a certificate of authorization, or permittee with a similar or different name shall be in violation of the provisions of this chapter.

(f) Whoever attempts to use an expired or revoked authorization to use the term engineer, license, certificate of authorization or permit shall be in violation of the provisions of this chapter.

(g) Any applicant who misstates or misrepresents any fact in connection with the application or any such applicant who uses improper means to gain information usable by such applicant on or in connection with an examination taken by the applicant to obtain licensure as a professional engineer or certification as an Engineer Intern shall be in violation of the provisions of this chapter.

(h) Each partner of a partnership and each officer or director of a corporation which practices engineering in violation of this chapter shall also be liable jointly and severally with and to the same extent as such partnership or corporation unless such partner, officer or director who is so liable sustains the burden of proof that the partner, officer, or director did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the violation is alleged to exist.

(i) This chapter shall not be construed to prevent or to affect:

(1) The work of an employee or a subordinate of a licensee or permittee, provided such work is done under the direct responsibility, checking and supervision of a licensee or permittee, or

(2) The practice of professional engineering by an architect legally licensed in this State when such practice is incidental to what may be properly considered an architectural project.

(j) Whether prompted by receipt of a complaint or upon its own initiative, the Council or its Investigating Committee may review allegations of unlicensed practice of engineering.

(k) Complaints of unlicensed practice must be investigated and prosecuted in accordance with the administrative hearing procedures in § 2824(b) of this title, except that Administrative Orders are not available for cases of unlicensed practice.

(l) Unlicensed practice is punishable by a fine up to \$5,000 and a cease and desist order that shall include a reasonable date certain for compliance.

(m) Cease and Desist Orders

(1) The Investigating Committee may submit a written recommendation to the Council that a cease and desist order be issued. The written recommendation must include a copy of the proposed order. The proposed order must recite verbatim all complaint allegations the Investigating Committee believes are supported by its findings, brief recitation of those findings, and include a reasonable date certain deadline for the accused to comply with the order. The order must also indicate that the accused may request a hearing in writing any time before passage of the compliance deadline, and that the order will become final and enforceable after passage of the compliance deadline.

(2) By majority vote of the members present at a properly convened Council meeting, the Council shall approve or reject the Investigating Committee's written recommendation based only on the information contained in and included with the written recommendation. The Council shall reject the Investigating Committee's recommendation only if it decides that the Investigating Committee's recommendation is contrary to a specific state or federal law or regulation, is not supported by substantial evidence, or is arbitrary or capricious. If Council does not approve the Investigating Committee's recommendation, the matter must be remanded to the Investigating Committee with the Council's written reasons for withholding its approval. If the Council approves the recommendation, the order must be served on the accused by certified mail with return receipt requested to the last address of record of the accused or by personal service.

(3) Cease and desist orders become final after passage of the compliance deadline only with positive proof of service, such as a signed return receipt or an affidavit of personal service. If the accused requests a hearing in writing to the Investigating Committee, the Investigating Committee shall proceed in accordance with §2824(b)(1) g.3. of this title.

(n) Violations of a cease and desist orders must be investigated and prosecuted in accordance with the procedures in §2824(b) of this title, except that Administrative Orders are not available. Violation of a cease and desist order is punishable by a fine up to \$5,000 for each day a violation occurs.

§2829. Use of Seals and Stamps.

(a) Each licensee shall obtain an embossing seal of the design authorized by the Council, bearing the licensee's name, license number and the legend "professional engineer". Failure of the licensee to substantiate to the Council, within six (6) months of the licensee's application approval date, that such a seal has been procured will result in the licensee being placed by the Council in "delinquent status".

(b) In addition to the embossing seal required by the foregoing provisions of this section,

(1) licensees may procure and use a stamp containing the same data as the embossing seal, or

(2) licensees may use a seal, signature, and date that can be created or transmitted electronically.

§2830. Dating, Signing and Sealing.

(a) All final drawings, specifications and documents involving the practice of engineering as defined in this chapter when issued or filed for public record shall be dated and bear the signature and seal of the licensee(s) who prepared or approved them.

(b) If original tracings are sealed or stamped, the date of sealing or stamping must appear under the signature.

(c) The holder of a temporary permit, using the seal of the State designated by the Council on his permit, shall seal all final drawings, specifications, and documents in accordance with this section. The permittee shall, in addition, write the permittee's permit number and the permittee's signature immediately adjacent to the imprint of the seal.

Chapter 3

Delaware Engineering Code of Ethics (July 11, 2008)

DELAWARE ENGINEERING CODE OF ETHICS

This Code of Ethics follows the practice of Title 1, Section 304(b) of the Delaware Code, in that "Words importing the masculine gender include the feminine as well."

<http://www.dape.org/files/pdf/codeofethics.pdf>

1. THE ENGINEER SHALL HOLD PARAMOUNT SAFEGUARDING LIFE, HEALTH AND PROPERTY AND PROMOTING THE PUBLIC WELFARE IN THE PERFORMANCE OF HIS PROFESSIONAL DUTIES.

A. The engineer shall at all times recognize that his paramount duty is to safeguard life, health and property and to promote the public welfare. If his professional judgment is overruled under circumstances such that upon investigation he believes that the life, health and property or public welfare is endangered, he shall so inform his employer and the Council of the Delaware Association of Professional Engineers.

B. The engineer shall approve and seal only those design documents which in his considered opinion do not endanger the life, health, property and the public welfare in conformity with accepted engineering standards.

C. The Engineer should be committed to improving the environment by adherence to the principles of sustainable development so as to enhance the quality of life of the general public. Sustainable development is the challenge of meeting human needs for natural resources, industrial products, energy, food, transportation, shelter, and effective waste management while conserving and protecting environmental quality and the natural resource base essential for future development.

D. The engineer shall not permit the use of his own, firm's, or associates' name in business ventures with any person or firm which upon investigation he believes is engaging in fraudulent or dishonest business or professional practices.

E. The engineer having knowledge of any alleged violation of the Code of Ethics shall be forthright and candid in cooperating with the Council in furnishing such information or assistance as may be required.

2. THE ENGINEER SHALL PERFORM SERVICES ONLY IN AREAS OF HIS COMPETENCE.

A. The engineer shall undertake to perform engineering only when qualified by

education or experience in the areas of professional engineering involved.

B. The engineer may accept an assignment requiring education or experience outside his areas of competence, provided that such areas will be performed by a Professional Engineer or otherwise qualified associates, consultants, or employees. He may then sign and seal the documents for the total project. The engineer shall not affix his seal to any such document not prepared under his supervisory control and review.

3. THE ENGINEER SHALL ISSUE PROFESSIONAL STATEMENTS ONLY IN AN OBJECTIVE AND TRUTHFUL MANNER.

A. The engineer shall be completely objective and truthful in all professional reports, statements, or testimony, and shall include all relevant and pertinent information.

B. The engineer shall publicly express a professional opinion on technical subjects only when it is founded on adequate knowledge of the facts and competence in the subject matter.

C. The engineer when acting as a representative of an individual or organization shall issue no statements, criticisms, or arguments on engineering matters unless he has prefaced those comments by explicitly identifying on whose behalf he is speaking. When the engineer is acting as a consultant, his expression or professional opinion shall be prefaced by identifying his status as a consultant, without necessarily naming the client. The engineer shall reveal any personal interest he may have in the matter.

4. THE ENGINEER SHALL ACT IN PROFESSIONAL MATTERS FOR EACH EMPLOYER OR CLIENT AS FAITHFUL AGENT OR TRUSTEE, AVOIDING CONFLICTS OF INTEREST.

A. The engineer shall disclose all known or potential conflicts of interest to his employer and/or client by promptly informing them of any business association, interest, or other circumstances which could influence his judgment or the quality of services.

B. The engineer shall not accept compensation, financial or otherwise, from more than one party for services on the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.

C. The engineer shall not solicit or accept financial or other valuable consideration, directly or indirectly, from suppliers, contractors, their agents, or other parties in connection with his work for employers or clients.

D. The engineer in public service as a member, advisor or employee of a governmental body shall not participate in decisions on work which involves professional services solicited or provided by him or his organization.

E. The engineer shall not solicit or accept a professional contract from a governmental body on which a principal or officer of his organization serves as a member, except upon public disclosure of all pertinent facts and circumstances and consent of the appropriate public authority.

F. The engineer shall not reveal proprietary information obtained in a professional capacity without the prior consent of the client or employer, except as authorized or required by law.

5. **THE ENGINEER SHALL AVOID IMPROPER SOLICITATION OF PROFESSIONAL EMPLOYMENT.**

A. The engineer shall not offer, give, solicit, or receive, either directly or indirectly, any commission, gift, or other valuable consideration in order to secure work.

B. The engineer shall not falsify or permit misrepresentation of his own, or associates' academic or professional qualifications. He shall not misrepresent his degree of responsibility in prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or past accomplishments.

C. The engineer shall not submit any proposal for purposes of obtaining professional work in which he falsifies or misrepresents his capability of carrying out that proposal.

6. **THE ENGINEER SHALL SUPPORT AND FAITHFULLY COMPLY WITH THE LAWS OF ANY JURISDICTION WITHIN WHICH HE PRACTICES.**

A. The crimes listed herein have been determined by Council to be substantially related to the practice of engineering, and, as such, the engineer shall report to Council within ninety (90) days of any conviction of any crime specified in the following sections of the Delaware Criminal Code:

Subchapter I. Inchoate Crimes

§502 Criminal solicitation in the second degree
§503 Criminal solicitation in the first degree
§511 Conspiracy in the third degree
§512 Conspiracy in the second degree
§513 Conspiracy in the first degree

Subchapter II. Offenses Against the Person

§603 Reckless endangering in the second degree
§604 Reckless endangering in the first degree

Subchapter III. Offenses Involving Property

§845 Theft of services
§854 Identity theft
§861 Forgery
§862 Possession of forgery devices
§871 Falsifying business records
§873 Tampering with public records in the second degree
§876 Tampering with public records in the first degree
§877 Offering a false instrument for filing
§878 Issuing a false certificate
§881 Bribery
§882 Bribe receiving
§906 Deceptive business practices
§907 Criminal impersonation
§909 Securing execution of documents by deception
§913 Insurance fraud
§933 Theft of computer services

§934 Interruption of computer services
§935 Misuse of computer system information
§936 Destruction of computer equipment
§937 Unrequested or unauthorized elec. mail or use of network
or software to cause same

Subchapter VI. Offenses Against Public Administration

§1201 Bribery
§1203 Receiving a bribe
§1212 Profiteering
§1205 Giving unlawful gratuities
§1221 Perjury in the third degree
§1211 Official misconduct
§1207 Improper influence
§1206 Receiving unlawful gratuities
§1222 Perjury in the second degree
§1223 Perjury in the first degree
§1240 Terroristic threatening of public officials or public
servants
§1233 Making a false written statement
§1261 Bribing a witness
§1269 Tampering with physical evidence
§1262 Bribe receiving by a witness
§1264 Bribing a juror
§1266 Tampering with a juror
§1263 Tampering with a witness

B. The engineer shall report to Council within ninety (90) days any conviction in any other state, municipal, or federal jurisdiction, for a crime similar to those listed in Canon 6.A.

C. The engineer, upon conviction for any felony crime not specifically listed in Canon 6.A, shall provide within ninety (90) days of conviction, information to the Council in sufficient specificity to enable Council to make a determination of whether the crime occurred as a result of conduct substantially related to the practice of engineering.

Chapter 4

Review of Disciplinary Cases

The following disciplinary cases were extracted from the website of the Delaware Association of Professional Engineers. In selecting these cases, different scenarios of violations are depicted along with their corresponding final decisions issued by the DAPE.

CASE No: 08/104
VIOLATION: Engineer Not Competent to Offer Structural Engineering Services

Case Review:

Complaint was filed concerning structural engineering services provided by the Licensee on a three-story professional office building. Design deficiencies revealed that the Licensee is not competent by education or training to offer structural engineering services.

Board Decision:

A Consent Agreement was reached whereby the Licensee was placed on probation for one year; required to enroll in and successfully complete a course in ethics; and no longer offer structural engineering services.

CASE No: 08/107
VIOLATION: Engineer Not Competent to Offer Structural Engineering Services

Case Review:

Complaint was filed concerning the structural integrity of a house's foundation walls certified by the Licensee. An independent review of this project by a structural engineer revealed that the Licensee is not competent by education or training to offer structural engineering services. His attempt to justify calculations constituted a violation of the Code of Ethics.

Board Decision:

A Consent Agreement was reached whereby the Licensee was issued a reprimand; fined \$1,000; placed on probation for two years; required to enroll in and successfully complete a course in ethics; and required to advise the previous home owner of this Consent Agreement.

CASE No: 08/115
VIOLATION: Misconduct in the Practice of Engineering

Case Review:

The Disciplinary Hearing Committee reviewed and heard evidence to support a complaint alleging incompetence, misconduct in the practice of engineering and unethical conduct, concerning a report signed and sealed by the Licensee on the structural integrity of a residence. Testimony established that the Licensee was trying to preserve the sale of the subject residence when he conducted his inspection and issued his report. In his final signed and sealed report, the Licensee did not provide all relevant and pertinent information.

Board Decision:

The Licensee was found to be in violation of the Code of Ethics and was issued an administrative penalty of \$250 and required to successfully pass a course in ethics.

CASE No: 09/094
VIOLATION: Expressing a Professional Opinion on Inadequate Knowledge of the Facts

Case Review:

On November 16 and December 7, 2010, the DAPE Hearing Panel convened a hearing in the matter concerning a residential inspection and the provision of as-built drawings for a residential addition. The inspection report indicated that the property was code compliant, when in fact, it was not. The as-built drawings indicated that the structure met code, without any qualifications for what the Licensee did not do or see; thereby expressing a professional opinion on inadequate knowledge of the facts.

Board Decision:

The Licensee was found guilty of violating Canons 1B and 3B of the Code of Ethics, as well as 24 Del. C. §2823 (a)(3) and was assessed an administrative penalty; issued a warning letter; and was required to successfully pass an approved course in ethics within one year.

CASE No: 10/076
VIOLATION: Unlicensed Practice of Engineering

Case Review

This Delaware firm was issued a Cease & Desist Order for the unlicensed practice of engineering in late 2010. The firm requested a hearing to dispute the charges of unlicensed practice, and a Hearing Panel convened a hearing. The Hearing Panel concluded that the firm still provides expert opinion reports to its clients on its letterhead and maintains a website advertising its services, including engineering services. Furthermore, some of the expert reports issued on the letterhead involved the practice of engineering, including biomechanical engineering, authored by engineers. The owner of the firm is unlicensed and the firm does not hold a Certificate of Authorization to practice engineering.

Board Decision:

The firm was found in violation of §2821 of the Delaware Professional Engineers' Act. At its September, 2011 meeting, the DAPE Council reaffirmed the findings of the Hearing Panel. In its Final Order, the DAPE Council issued the firm a Cease & Desist to discontinue its unlawful activities; providing 60 days for the firm to come into compliance with the cease and desist provisions of the order.

CASE No: 11/146

VIOLATION: Practicing Engineering beyond the Licensee's Competence

Case Review

The Licensee was practicing engineering beyond the limitations of his license; plan stamping; and practicing engineering in an area outside of his competence.

Board Decision:

The Licensee entered into a Consent Agreement under which he surrendered his license and was barred from reapplying for a new license.

CASE No: 13/109

VIOLATION: Failure to Report a License Disciplined in another Jurisdiction

Case Review

The Licensee was practicing engineering in another jurisdiction where his license had been disciplined and he failed to report such action to DAPE as required by law.

Board Decision:

The Licensee was reprimanded with an Administrative Order.

Appendix A

Range of Administrative Penalties

	PROVISION	VIOLATION	MINIMUM	MAXIMUM
(1)	2823 (a) 1 2825 (h)	Attempting to procure a license, permit, or C/A, by fraud, deceit, false or forged evidence.	Reprimand and probation	Revocation or denial and \$5,000 fine
(2)	2823 (a) 2	Incompetence	Reprimand, and \$250 fine, and probation	Revocation and \$5,000 fine
(3)	2823 (a) 2	Misconduct	Warning letter	Revocation and \$5,000 fine
(4)	2823 (a) 2	Gross Negligence	Reprimand, and \$250 fine, and probation	Revocation and \$5,000 fine
(5)	2823 (a) 3	Code of Ethics Violation	\$200 fine and completion of ethics course	Revocation and \$5,000 fine and completion of ethics course
(6)	2823 (a) 3 2823 (a) 7	Improper use of seal or certificate of licensure (Canon 1B)	Warning letter	Reprimand and \$2,000 fine and 2-year probation
(7)	2823 (a) 3	Signing or sealing work not competent to perform (Canon 2)	Warning letter	Reprimand and \$5,000 fine, followed by 1-year suspension and 1-year probation
(8)	2823 (a) 3	Knowingly making or filing false report (Canon	Reprimand and probation	Revocation and \$5,000 fine
(9)	2823 (a) 4	Crime substantially related to practice of	As deemed appropriate by the Board	Revocation or denial and \$5,000 fine
(10)	2823 (a) 5	Discipline by another jurisdiction	Warning letter	Discipline not exceeding original jurisdiction
(11)	2823 (a) 6	Aiding or abetting violation of Act	Reprimand and \$500 to \$1,000 fine, and ethics study course	Revocation and \$5,000 fine
(12)	2823 (a) 7	“Plan stamping”	Reprimand and \$100 fine	Revocation and \$5,000 fine
(13)	2830	Improperly dating, signing and sealing documents	Warning letter	Revocation and \$5,000 fine
(14)	2824	Violation of Board Order	Meet existing conditions and \$100/day fine	Revocation
(15)	2823	Examinee Violations – See §2823 (b) (1)	See §2823 (b) (1)	Limited by law; Denial of

Appendix B

References

How to File a Complaint

<https://www.dape.org/Pages/how-to-file-a-complaint>

Delaware Engineering Code of Ethics

<http://www.dape.org/files/pdf/codeofethics.pdf>

Delaware Professional Engineers' Act

<http://www.dape.org/files/2017%20Law%20Book%202.pdf>

Administrative Penalty Guidelines

<https://www.dape.org/Pages/administrative-penalty-guidelines>

Fall 2009 Newsletter

<https://www.dape.org/documents/view/119/Fall%202009%20Newsletter.pdf>

Summer/Fall 2010 Newsletter

<https://www.dape.org/documents/view/119/Fall%202009%20Newsletter.pdf>

Spring/Summer 2011 Newsletter

<https://www.dape.org/documents/view/128/Spring%20Summer%202011%20Newsletter.pdf>

Fall 2011 Newsletter

<https://www.dape.org/documents/view/129/Fall%202011%20Newsletter.pdf>

Fall/Winter 2014 Newsletter

<https://www.dape.org/documents/view/180/Fall%20Winter%202014%20Newsletter%20Mailed.pdf>