



Ethical Obligations for Professional  
Engineers  
American Water Works Association - NJ

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*Ethical Obligations for Professional Engineers*

## **Outline of Presentation**

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- Introduction
- Overview of “Ethics”
- National Society of Professional Engineer Codes
- NSPE Case Studies & Questions
- NJ Laws & Regulations (w/ certain NY & PA distinctions)
- Completion of 1 CPC – NJ, including NY, PA!!!



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## **Renard E. Barnes, Esq.**

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- B.S. Electrical Engineering, Syracuse University, 1987
- Law Degree, Pace University, 1994
- Heavy Highway/Utility Construction, 1988-1996
- Con Edison Law & Construction Mgt. Dept., 1996-2000
- Construction Litigation, 2000-2002
- Schoor DePalma/CMX, 2002-2010
- CNA, Sr. Litigation Attorney, 2010-2014
- PS&S, General Counsel, 2014-present
- NJIT, Newark College of Engineering Board of Visitors



## **“Ethics”**

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### **Ethics Defined**

The study of the characteristics of morals, and involves the moral choices made by individuals as they interact with other persons.





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## **“Ethics”**

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### **Ethics v. Morals**

**Morals = an individual’s own principles,  
regarding right and wrong**



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## **“Ethics”**

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### **Ethics v. Morals**

**Ethics = Rules provided by an external source (Codes of Conduct)**



## **“Ethics”**

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### **Ethics Defined**

**Engineering professional responsibility encompasses the ethical obligations of engineers in their professional relationships with clients, employers, other engineers, and the public; these obligations include honesty and competence in technical work, confidentiality of proprietary information, collegiality in mentoring and peer review, and above all, the safety and welfare of the public, because engineers' decisions can significantly affect society and the environment.**



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## **“Ethics”**

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### **Hierarchy**

**Primary: Obligations to the Public**

**Secondary: Obligations to your Employer and Client**

**Tertiary: Obligations to other Professionals/Other Parties**





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# **National Society of Professional Engineers**

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## **Fundamental Canons**

**Engineers, in the fulfillment of their professional duties, shall:**

- 1. Hold paramount the safety, health, and welfare of the public.**
- 2. Perform services only in areas of their competence.**
- 3. Issue public statements only in an objective and truthful manner.**
- 4. Act for each employer or client as faithful agents or trustees.**
- 5. Avoid deceptive acts.**
- 6. Conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.**



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## **NSPE Code of Ethics, Rules of Practice**

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1. Engineers shall hold paramount the safety, health, and welfare of the public.
  - a. If engineers' judgment is overruled **under circumstances that endanger life or property**, they shall notify their employer or client and such other authority as may be appropriate.



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## **NSPE – Code of Ethics, Rules of Practice**

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- 1. Engineers shall hold paramount the safety, health, and welfare of the public.**
  - c. Engineers shall not reveal facts, data, or information without the prior consent of the client or employer except as authorized or required by law or this Code.**



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## **NSPE – Code of Ethics, Rules of Practice**

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- 2. Engineers shall perform services only in the areas of their competence.**
  - a. Engineers shall undertake assignments only when qualified by education or experience in the specific technical fields involved.**



## **NSPE – Code of Ethics, **Rules of Practice****

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3. **Engineers shall issue public statements only in an objective and truthful manner.**
  - a. **Engineers shall be objective and truthful in professional reports, statements, or testimony. They shall include all relevant and pertinent information in such reports, statements, or testimony, which should bear the date indicating when it was current.**



## **NSPE – Code of Ethics, Rules of Practice**

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3. Engineers shall issue public statements only in an objective and truthful manner.
  - c. Engineers shall issue no statements, criticisms, or arguments on technical matters **that are inspired or paid for by interested parties**, unless they have prefaced their comments by explicitly identifying the interested parties on whose behalf they are speaking, and by revealing the existence of any interest the engineers may have in the matters.



## **NSPE – Code of Ethics, Rules of Practice**

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4. Engineers shall act for each employer or client as faithful agents or trustees.
  - a. Engineers shall disclose all known or potential conflicts of interest **that could influence or appear to influence their judgment or the quality of their services.**
  - b. Engineers shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, **unless the circumstances are fully disclosed and agreed to by all interested parties.**



## **NSPE – Code of Ethics, Rules of Practice**

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5. Engineers shall avoid deceptive acts.
  - a. Engineers shall not falsify their qualifications or permit misrepresentation of their or their associates' qualifications. They shall not **misrepresent or exaggerate** their responsibility in or for the subject matter of prior assignments. Brochures or other presentations ... shall not misrepresent pertinent facts concerning employers, ...





## **NSPE – Code of Ethics, Rules of Practice**

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- 5. Engineers shall avoid deceptive acts.**
  - b. Engineers shall not offer, give, solicit, or receive, either directly or indirectly, any contribution to influence the award of a contract by public authority, or which may be reasonably construed by the public as having the effect or intent of influencing the awarding of a contract ...**



1. Engineers shall be guided in all their relations by the highest standards of honesty and integrity.
  - a. Engineers shall acknowledge their errors and shall not distort or alter the facts.
  - b. **Engineers shall advise their clients or employers when they believe a project will not be successful.**
  - d. Engineers shall not attempt to attract an engineer from another employer by false or misleading pretenses.



5. **Engineers shall not be influenced in their professional duties by conflicting interests.**
  - b. **Engineers shall not accept commissions or allowances, directly or indirectly, from contractors or other parties dealing with clients or employers of the engineer **in connection with work for which the engineer is responsible.****



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## **NSPE – Code of Ethics, Professional Obligations**

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- 6. Engineers shall not attempt to obtain employment or advancement or professional engagements by untruthfully criticizing other engineers, or by other improper or questionable methods.**



8. Engineers shall accept personal responsibility for their professional activities, provided, however, that engineers may seek indemnification for services arising out of their practice for other than gross negligence, where the engineer's interest cannot otherwise be protected.



## **NSPE – Ethics Case Study, Case #90-5**

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**Tenants of an apartment building sue the Owner to force owner to repair many defects in the building. Owner's attorney hires Engineer to inspect the building and provide expert testimony on behalf of the owner.**

**During Engineer's inspection, he discovers serious structural defects which he believes constitute an immediate threat to the safety of the tenants. Upon reporting his findings to the attorney, he is instructed not to disclose his findings since they were confidential and part of a lawsuit. Engineer complies with the attorney's instruction.**

**Was it ethical for Engineer to fail to disclose his findings?**



## **NSPE – Ethics Case Study, Case #90-5**

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### **BER Decision:**

**In weighing the ethical obligations of protecting the public v. maintaining client confidentiality, the Board found the failure to disclose Unethical. Since Engineer was aware of an imminent danger, he should have revealed the information to the tenants and public authorities.**



## **NSPE – Ethics Case Studies, Case #78-10**

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Engineer retired from a County Zoning Office, where she accumulated years of experience and specialized training, to open her own firm. Many months after she opened her firm, Developer retained Engineer's firm to assist Developer with zoning testimony in support of a petition before the County Zoning Board. The petition was pending when Engineer worked at the County. In fact, Engineer even made preliminary technical evaluations in connection with the zoning petition.

Is it ethical for Engineer's firm to represent Developer?





## **NSPE – Ethics Case Studies, Case #78-10**

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BER Decision:

It was NOT unethical for Engineer's firm to represent Developer on a matter on which she had done some work while being employed by the County. However, the Board commented that this arrangement was inappropriate!



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## **NSPE – Ethics Case Studies & Questions**

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### **FC I.1: True or False?**

**Engineers, in the fulfillment of their professional duties, must carefully consider the safety, health, and welfare of the public?**

**False**



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## **NSPE – Ethics Case Studies & Questions**

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### **ROP II.3.a: True or False?**

**Engineers shall strive to be objective and truthful in professional reports, statements or testimony with primary consideration for the best interests of the engineer's clients or employers?**

**False**



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## **NSPE – Ethics Case Studies & Questions**

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### **ROP II.4.b: True or False?**

**Engineers shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties?**

**True**



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## **NSPE – Ethics Case Studies & Questions**

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### **PO III.1.a: True or False?**

**Engineers shall acknowledge their errors *after* consulting with their employers or clients?**

**False**



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# **New Jersey Statutes & Regulations**

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- Local Government Ethics Law
- New Jersey Conflicts of Interest Law
- Laws & Regulations Governing Practice of Engineering
- Financial Disclosure Statement Forms



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## **Local Government Ethics Law**

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### **Jurisdiction**

**Law applies to employees and officers of any County, Municipal or Independent Local/ Regional Authority.**

**Local Finance Board will have jurisdiction **unless an employee or official is regulated by county or municipal code of ethics promulgated by County or Municipal ethics boards.****



## **Local Government Ethics Law**

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### **Findings and Declarations**

**(N.J.S.A. 40A:9-22.2)**

**The Legislature finds and declares that:**

- a. Public office and employment are a public trust;**
- c. Whenever the public perceives a conflict between the private interests and the public duties of a government officer or employee, that confidence is imperiled;**





## **Local Government Ethics Law**

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### **Provisions Requiring Compliance**

**(N.J.S.A. 40A:9-22.5)**

- a. No local government officer or employee or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;**



## **Local Government Ethics Law**

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### **Provisions Requiring Compliance**

**(N.J.S.A. 40A:9-22.5)**

- b. **No independent local authority shall, for a period of one year next subsequent to the termination of office of a member of that authority:**
  - (1) **award any contract which is not publicly bid to a former member of that authority;**
  - (2) **allow a former member of that authority to represent, appear for or negotiate on behalf of any other party before that authority; or**
  - (3) **employ for compensation, except pursuant to open competitive examination in accordance with Title 11A of the New Jersey Statutes and the rules and regulations promulgated pursuant thereto, any former member of that authority.**



## **Local Government Ethics Law**

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### **Provisions Requiring Compliance**

(N.J.S.A. 40A:9-22.5)

- d. No local government officer or employee **shall act in his official capacity in any matter where** he, a member of his immediate family, or a business organization in which he has an interest, **has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment;**
- e. No local government officer or employee shall undertake any employment or service, whether compensated or not, **which might reasonably be expected to prejudice his independence of judgment** in the exercise of his official duties;



## **Local Government Ethics Law**

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**Munico Associates, L.P. v. Inserra Supermarkets, Inc., et al.**  
(New Jersey Superior Court, Appellate Division, 2016)

In this case, Dean was a consultant, not a member of the Board, **and while his participation was clearly governed by the LGEL and other precedent**, the Board took appropriate steps to remove any taint his conflict of interest may have provoked when it was discovered. The Board terminated his retention and hired a new consultant, who furnished a new report in which he certified that he did not review or rely upon Dean's prior report or testimony resulting from Dean's involvement at the hearings. We find no basis to reverse on this point.



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## **New Jersey Conflicts of Interest Law**

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### **Jurisdiction**

**Law applies to State Agency employees, officers, and members of the NJ Legislature.**

**The State Ethics Commission has the authority and power to review and hear ethics matters. Each State Agency may promulgate its own code of ethics.**



## **New Jersey Conflicts of Interest Law**

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### **N.J.S.A. 52:13D-14**

No State Officer, employee or member of legislature shall accept any gift, favor, service, employment, or any thing of value **which he knows or has reason to believe is offered to him/her with the intent to influence him/her in the performance of his/her duties and responsibilities.** However, this restriction does not apply to the acceptance of contributions to the campaign of an announced candidate for elective public office.

### **N.J.S.A. 52:13D-16(b)**

No State Officer, employee or member of legislature, nor any partnership or corporation in which he has an interest (10% or more), shall represent any other person or party other than the State in connection with any matter pending before the State.



## **New Jersey Conflicts of Interest Law**

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### **N.J.S.A. 52:13D-17**

No State Officer, employee or member of legislature shall represent, or provide information not generally available to the public to, any person or party other than the State in connection with **any cause, matter, or proceeding upon which the employee, officer, or member of the legislature made any investigation, rendered any ruling, gave any opinion, or was otherwise substantially or directly involved at any time during his/her tenure at the State.**



## **Title 45, Chapter 8**

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### **N.J.S.A. 45:8-27**

- Definitions
- **Practice of Engineering** (“Responsible Charge”)
- Establishes the PE & LS Board Duties
- Certificates of Authorization
- Qualifications for Licensure
- Continuing Professional Competency





# **New Jersey Regulations**

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## **Enumeration of Prohibited Acts**

(N.J.A.C. 13:40-3.5)

**Misconduct** in the practice of professional engineering shall include:

- 1) Acting for his or her client or employer in professional matters otherwise than as a faithful agent or trustee; accepting any remuneration other than his or her stated recompense for services rendered.
- 2) Disregarding the safety, health and welfare of the public in the performance of his or her professional duties: preparing or signing and sealing plans, surveys or specifications **which are not of a safe design and/or not in conformity with accepted standards**. If the client or employer insists on such conduct, the licensee shall notify the proper authorities and withdraw from further service on the project.



# New Jersey Regulations

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## Enumeration of Prohibited Acts

(N.J.A.C. 13:40-3.5)

Misconduct in the practice of professional engineering shall include:

- 4) Engaging in any activity **which involves him in a conflict of interest**, including without limitation:
  - i) A licensee shall inform his client or employer of any business connection, interest or circumstance **which might be deemed as influencing his judgment or the quality of his services** to the client or employer.
  - ii) When in **public service** as a member, advisor or employee of a governmental agency, a licensee shall not participate in the deliberations or actions of such agency with respect to services rendered or to be rendered by the licensee or any firm or organization with which he is associated in **private practice**.
  - iii) A licensee shall not solicit or accept a professional contract from a governmental agency upon which a principal, officer or employee of his firm or organization serves as a member, advisor or employee.



# New Jersey Regulations

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## Enumeration of Prohibited Acts

(N.J.A.C. 13:40-3.5)

Misconduct in the practice of professional engineering shall include:

- 4) Engaging in any activity which involves him in a conflict of interest, including without limitation:
  - iv) A licensee shall not accept compensation or remuneration, financial or otherwise, **from more than one interested party for the same service or for services pertaining to the same work, unless** there has been **full disclosure to and consent by all interested parties.**
  - v) A licensee shall not accept compensation or remuneration, financial or otherwise, from **material or equipment suppliers** for specifying their product.
  - vi) A licensee shall not accept commissions or allowances, directly or indirectly, from **contractors** or other persons dealing with his client or employer in connection with work for which he is responsible to the client or employer.



# **New Jersey Regulations**

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## **Enumeration of Prohibited Acts**

(N.J.A.C. 13:40-3.5)

**Misconduct in the practice of professional engineering shall include:**

- 9) Failure to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
  
- 12) Rendering engineering or land surveying services and/or professional opinions **when not qualified by training, education and experience in the specific discipline of professional engineering and/or professional land surveying that is involved.**



## **Disciplinary Actions**

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### **N.J.S.A. 45:1-25. Violations, Penalties**

Any person who engages in conduct in violation of the statutes and regulations administered by the Board shall, in addition to other sanctions, be liable for a civil penalty of not more than \$10,000 for the first violation and not more than \$20,000 for the second and subsequent violations.



## **Distinctions for NY PE's**

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### **New York Rules of the Board of Regents, CH.3**

#### **Part 29: Unprofessional Conduct**

##### **§29.3 General Provisions for design professionals.**

**Unprofessional conduct shall include,**

**a.2.: failing to report in writing to the owner or to the owner's designated agent any unauthorized or improperly authorized substantial disregard by any contractor of plans or specifications for construction or fabrication, when professional observation ... of the work is provided for in the agreement between the owner and the design professional ...**

**a.3.i.: a licensee who signs and seals documents not prepared by the licensee or by an employee under the licensee's direct supervision shall prepare and retain for a period not less than 6 years, a thorough written evaluation of the professional services represented by the documents, ...**



## **Distinctions for NY PE's**

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### **NY Rules of the Board of Regents, CH.3**

#### **Part 29: Unprofessional Conduct**

##### **§29.3 General Provisions for design professionals.**

**Unprofessional conduct shall include,**

**a.4.: failure by a licensee to maintain for at least 6 years all preliminary and final plans, documents, computations, records ... prepared by the licensee, ...**

**a.6.: permitting a person to share in the fees for professional services, other than: a partner, employee, associate, subcontractor or consultant. (i.e., bargaining fees for the use of space, facilities, equipment, etc.)**



## **Distinction for PA PE's**

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### **The Engineer, Land Surveyor and Geologist Law**

**(Act of May 23, 1945)**

#### **Section 4(g) – Code of Ethics**

**It shall be considered unprofessional and inconsistent with honorable and dignified bearing for any professional engineer ... to:**

**(3) Attempt to supplant another engineer after definite steps have been taken toward his employment.**

**(5) To review the work of another engineer, ... for the same client, except with the knowledge of such engineer, ..., or unless the connection of such engineer ... has been terminated.**





## **Suggestions**

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- The Test: Objectivity; Honesty; Trustworthy
- Stop & Think
- “Do the right thing”
- Follow your moral compass (“gut instinct”)
- Obtain written conflict of interest waivers and consents
- Review the matter with a trusted colleague
- Seek legal advice



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# THE END



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## **Renard Barnes' Bio**

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Mr. Barnes has over 20 years of experience and expertise in the representation of architects, engineers and consultants with a variety of disciplines. He currently serves as General Counsel of AJS Shared Services, LLC, an entity that provides legal representation for Paulus, Sokolowski & Sartor and other affiliated entities. Mr. Barnes is also a Sector Leader for the firm's forensic and litigation support practice. Prior to joining AJS and PS&S, he was a Senior Litigation Attorney at the Law Offices of Joseph Carolan, a CNA Staff Counsel Office; Corporate Counsel at Schoor DePalma/CMX; and litigated in various Courts in the City of New York at three prominent law firms law firms, including the Law Department at the Consolidated Edison Co. of New York ("Con Ed").

Over the years, Mr. Barnes has acquired a keen knowledge of the applicable statutes, regulations and common laws governing the practice of design professionals which has enabled him to assist his clients in analyzing and managing their risk exposure to achieve positive results.