

engineering," "engineering," "land surveying," "surveying," "professional engineer on staff," "land surveyor on staff," "professional engineering services," "land surveying services" or the substantial equivalent thereof and may be made only by a professional business entity.

2. An advertisement shall include the name and license number of a professional engineer or land surveyor, as appropriate, and, if applicable, the name of the professional business entity and its certificate of authorization number.

3. Each professional engineer and land surveyor, who is a principal, partner, or officer of a professional business entity, shall be responsible for the form and content of any advertisement which offers to provide professional engineering and/or land surveying services.

4. A copy of each advertisement shall be retained by each professional engineer and land surveyor who is a principal, partner or officer of a professional business entity, for a period of three years from the date of the last authorized publication or dissemination of the advertisement and shall be made available for review upon request by the Board.

5. Any professional engineer, land surveyor or professional business entity that uses an advertisement containing false or misleading information, including claims of superiority that cannot be substantiated, or that fails to meet the requirements set forth in this subsection shall be deemed to be engaged in professional misconduct.

New Rule, R.2006 d.80, effective February 21, 2006.
See: 37 N.J.R. 3253(a), 38 N.J.R. 1202(a).

13:40-3.4 Release of project records

(a) As used in this section, the term "records" shall include, but not be limited to, any plans, reports, documents, field notes, or other items of work product generated for an engineering or land surveying project as contractually defined which would be reasonably necessary to the completion of the project for which the professional engineer or land surveyor was originally retained.

(b) Originals of records shall remain in possession of the professional engineer or land surveyor unless otherwise provided by statute or written contractual agreement.

(c) The client of a professional engineer or land surveyor shall be entitled to complete copies of all records generated for the engineering and/or land surveying project within a reasonable period of time after forwarding a written request to the professional engineer or land surveyor and upon payment of such proportion of fees as reflect the extent of all services performed.

1. Such copies may be signed but shall not be sealed where data utilized as the basis for the preparation of same may have changed since the date the documents were originally prepared.

2. A disclaimer shall be put on said documents which indicates that the data utilized in the documents may have changed. The disclaimer shall read as follows:

"This drawing/map/plat reflects conditions as of (insert place, date of the original drawing/map/plat) and may not show current conditions as of (insert the present date)."

(d) The professional engineer or land surveyor shall be compensated for the reasonable costs of research and reproduction for copies of records released pursuant to this rule.

Amended by R.1995 d.474, effective September 5, 1995.

See: 27 N.J.R. 1748(a), 27 N.J.R. 3370(a).

Recodified from N.J.A.C. 13:40-8.1 and amended by R.2006 d.80, effective February 21, 2006.

See: 37 N.J.R. 3253(a), 38 N.J.R. 1202(a).

In (a), substituted "section" for "subchapter."

13:40-3.5 Enumeration of prohibited acts

(a) Misconduct in the practice of professional engineering or land surveying shall include, without limitation:

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.

3. Advertising in violation of N.J.A.C. 13:40-3.3.

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.

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.

5. Affixing his or her signature and seal to any plans, specifications, plats or reports or surveys which were not prepared by him or her or under his or her supervision by his or her employees or subordinates.

6. Failure to comply with Federal, state or local laws, rules or regulations relating to the practice of the profession.

7. Permitting or allowing any person not appropriately licensed pursuant to N.J.S.A. 45:8-27 et seq. or this chapter to act for or on behalf of the licensee as his representative, surrogate or agent while appearing before any public or private body for the purpose of rendering professional engineering or land surveyor services.

8. Failure to determine and document the identity of the client prior to commencing any work. All correspondence, contracts, bills shall be addressed to that client, unless expressly directed otherwise, in writing, by the client.

9. Failure to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

10. Failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions.

11. Failure of a licensee to respond in writing within 30 days to a written communication from the State Board of Professional Engineers and Land Surveyors with respect to any investigative inquiry relating to the possible violation of any statute or regulation administered by the Board, and to make available any relevant records with respect to such an inquiry. The 30-day period shall begin on the day when such communication was sent from the Board by certified mail with return receipt requested to the address appearing on the last registration.

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 land surveying that is involved.

13. Engaging in any activity which results in suspension, revocation or surrender of a professional license or certification in another jurisdiction.

14. Failure to comply with the requirements set forth in N.J.A.C. 13:40-5.1(d) and 5.2 concerning the waiver of the setting of corner markers.

R.1970 d.67, eff. June 8, 1970.

See: 2 N.J.R. 35(a), 2 N.J.R. 55(g).

As amended. R.1976 d.228, eff. July 21, 1976.

See: 8 N.J.R. 250(a), 8 N.J.R. 402(a).

As amended. R.1983 d.16, eff. February 7, 1983.

See: 14 N.J.R. 1196(b), 15 N.J.R. 158(a).

Deleted reference to N.J.S.A. 45:8-38. Also deleted language concerning "practice likely to discredit or reflect unfavorably upon the dignity or honor of the profession." Also deleted limitations on listings.

As amended, R.1984 d.486, eff. November 5, 1984.

See: 16 N.J.R. 1321(a), 16 N.J.R. 3055(a).

Section recodified.

Amended by R.1987 d.355, effective September 8, 1987.

See: 19 N.J.R. 851(a), 19 N.J.R. 1649(a).

Added (a)8, 9 and 10.

Amended by R.1988 d.394, effective August 15, 1988.

See: 20 N.J.R. 736(a), 20 N.J.R. 2068(a).

Substantially amended.

Amended by R.1995 d.474, effective September 5, 1995.

See: 27 N.J.R. 1748(a), 27 N.J.R. 3370(a).

Amended by R.2005 d.280, effective September 6, 2005.

See: 36 N.J.R. 3500(a), 37 N.J.R. 3440(a).

In (a), added 14.

Recodified from N.J.A.C. 13:40-3.1 and amended by R.2006 d.80, effective February 21, 2006.

See: 37 N.J.R. 3253(a), 38 N.J.R. 1202(a).

Rewrote (a)3, in (a)5, deleted "*" throughout; in (a)7, added "et seq. or this chapter"; in (a)11, added "State."

Case Notes

License revocation. (Decided on statutory grounds). Hyland v. Ponzio, 159 N.J.Super. 233, 387 A.2d 1206 (App.Div.1978).

13:40-3.6 Reporting incidents of professional misconduct

If a licensee has knowledge or reason to believe that another person or firm may be in violation of or has violated any of the statutes or rules administered by the State Board of Professional Engineers and Land Surveyors, he or she shall present such information to the Board in writing and shall cooperate with the Board in furnishing such information or assistance as may be required by the Board.

New Rule. R.1985 d.465, effective September 3, 1985.

See: 17 N.J.R. 799(a), 17 N.J.R. 2140(a).

Recodified from N.J.A.C. 13:40-3.2 and amended by R.2006 d.80, effective February 21, 2006.

See: 37 N.J.R. 3253(a), 38 N.J.R. 1202(a).

Added "State."

SUBCHAPTER 4. GENERAL PROVISIONS

13:40-4.1 Notification of change of address; service of process

(a) A licensee of the State Board of Professional Engineers and Land Surveyors shall notify the Board in writing of any change of address from that currently registered with the Board and shown on the most recently issued certificate. Such notice shall be sent to the Board by certified mail, return