

# THE LAWS, RULES, AND ETHICS GOVERNING THE PRACTICE OF ENGINEERING IN FLORIDA

EDWIN A. BAYÓ  
GROSSMAN, FURLOW, AND BAYÓ, LLC  
2022-2 RAYMOND DIEHL RD.  
TALLAHASSEE, FL. 32308  
(850) 385-1314  
E.BAYO@GFBLAWFIRM.COM



# Four main Sources:

- CHAPTER 471, FLORIDA STATUTES (PRACTICE ACT)
- CHAPTER 455, FLORIDA STATUTES
- 61G15, FLORIDA ADMINISTRATIVE CODE
- CODES OF ETHICS ADOPTED BY NSPE, ASCE, IEEE AND OTHERS



# Florida Engineering Practice Act: Chapter 471, F.S.

- PROVIDES THE REQUIREMENTS FOR LICENSURE AS A PROFESSIONAL ENGINEER.
- CREATES THE BOPE
- PROVIDES THE GROUNDS FOR DISCIPLINARY ACTION AGAINST A PROFESSIONAL ENGINEER
- GRANTS THE BOARD THE AUTHORITY TO PROMULGATE RULES

# Rule Chapter 61G15, Florida Administrative Code

CONTAINS ALL THE RULES PROMULGATED BY THE BOPE,  
INCLUDING:

- EDUCATION, EXPERIENCE AND EXAMINATION REQUIREMENTS
- GROUNDS FOR DISCIPLINARY PROCEEDINGS AND DISCIPLINARY GUIDELINES
- PROCEDURES FOR THE ADOPTION OF ANOTHER'S WORK (SUCCESSOR ENGINEER RULE)
- RESPONSIBILITY RULES (STANDARDS OF PRACTICE)

# Chapter 455, F.S.

CONTAINS A NUMBER OF LAWS APPLICABLE TO ALL PRACTITIONERS UNDER THE UMBRELLA OF DBPR INCLUDING:

- ▣ §455.225, F.S., ESTABLISHES THE AUTHORITY AND PROCEDURES TO CONDUCT AN INVESTIGATION AND DISCIPLINARY ACTION
- ▣ §455.227, F.S., PROVIDES GENERAL GROUNDS FOR DISCIPLINARY ACTION AGAINST ALL DBPR LICENSEES

# Code of Ethics and Fundamental Principles

- Ethics is the study of the moral principles that govern the conduct of individuals or groups. Engineering ethics are the rules and standards that govern the conduct and interactions of engineers as professionals.
- Most Engineering Societies and Associations have a Code of Ethics. These codes are usually stated as general principles and almost never describe specific factual situations. They serve as a starting point for making ethical decisions.
- An engineer cannot be disciplined by the BOPE for being “unethical” or for violating a provision of an ethics code. However, many ethical situations are covered under the Board’s definition of misconduct in 61G15-19.001(6), F.A.C.

# Ethics Resources Available on the Internet

- Online Ethics for Engineering:
  - <http://www.onlineethics.org/>
- National Society of Professional Engineers (NSPE) Code of Ethics:
  - <http://www.nspe.org/resources/ethics>
- Institute of Electrical and Electronics Engineers (IEEE) Code of Ethics:
  - [https://www.ieee.org/about/ieee\\_code\\_of\\_conduct.pdf](https://www.ieee.org/about/ieee_code_of_conduct.pdf)
- American Society of Civil Engineers (ASCE) Fundamental Principles:
  - <http://www.asce.org/code-of-ethics/>

# The Board of Professional Engineers

- THE BOARD CONSISTS OF 11 MEMBERS WHO ARE APPOINTED BY THE GOVERNOR FOR 4 YEAR TERMS.
- OF THOSE MEMBERS, “TWO MUST BE LAYPERSONS WHO ARE NOT AND HAVE NEVER BEEN ENGINEERS OR MEMBERS OF ANY CLOSELY RELATED PROFESSION OR OCCUPATION.” §471.007, F.S.



# The Board of Professional Engineers

- THE BOARD'S HEADQUARTERS ARE LOCATED IN TALLAHASSEE, FL.
- WEBSITE: [WWW.FBPE.ORG](http://WWW.FBPE.ORG)



# §471.005(7), F.S., Engineering

## Defined:

INCLUDES THE TERM "PROFESSIONAL ENGINEERING" AND MEANS ANY SERVICE OR CREATIVE WORK, THE ADEQUATE PERFORMANCE OF WHICH REQUIRES ENGINEERING EDUCATION, TRAINING, AND EXPERIENCE IN THE APPLICATION OF SPECIAL KNOWLEDGE OF THE MATHEMATICAL, PHYSICAL, AND ENGINEERING SCIENCES TO SUCH SERVICES OR CREATIVE WORK AS:

# §471.005(7), F.S., Engineering Defined:

- CONSULTATION,
- INVESTIGATION,
- EVALUATION,
- PLANNING, AND
- DESIGN OF ENGINEERING WORKS AND SYSTEMS,
- **PLANNING THE USE OF LAND AND WATER,**
- TEACHING OF THE PRINCIPLES AND METHODS OF ENGINEERING DESIGN,
- **ENGINEERING SURVEYS, AND**

# §471.005(7), F.S., Engineering

## Defined:

- THE INSPECTION OF CONSTRUCTION FOR THE PURPOSE OF DETERMINING IN GENERAL IF THE WORK IS PROCEEDING IN COMPLIANCE WITH DRAWINGS AND SPECIFICATIONS, ANY OF WHICH EMBRACES SUCH SERVICES OR WORK, EITHER PUBLIC OR PRIVATE, IN CONNECTION WITH ANY UTILITIES, STRUCTURES, **BUILDINGS**, MACHINES, EQUIPMENT, PROCESSES, WORK SYSTEMS, PROJECTS, AND INDUSTRIAL OR CONSUMER PRODUCTS OR EQUIPMENT OF A MECHANICAL, ELECTRICAL, HYDRAULIC, PNEUMATIC, OR THERMAL NATURE, INSOFAR AS THEY INVOLVE SAFEGUARDING LIFE, HEALTH, OR PROPERTY; AND INCLUDES SUCH OTHER PROFESSIONAL SERVICES AS MAY BE NECESSARY TO THE PLANNING, PROGRESS, AND COMPLETION OF ANY ENGINEERING SERVICES.

# Practice Overlap

- THE PRACTICE OF ENGINEERING OVERLAPS WITH THE PRACTICES OF:
  - GEOLOGY
  - ARCHITECTURE
  - LANDSCAPE ARCHITECTURE
  - LAND SURVEYING AND MAPPING

# §471.003(3), F.S.,

## Incidental Practice:

- NO REGISTERED ENGINEER WHOSE PRINCIPAL PRACTICE IS CIVIL OR STRUCTURAL ENGINEERING, OR EMPLOYEE OR SUBORDINATE UNDER THE RESPONSIBLE SUPERVISION OR CONTROL OF THE ENGINEER, IS PRECLUDED FROM PERFORMING ARCHITECTURAL SERVICES WHICH ARE **PURELY INCIDENTAL** TO HER OR HIS ENGINEERING PRACTICE,...

# §471.003(3), F.S., Incidental Practice:

- ...NOR IS ANY REGISTERED ARCHITECT, OR EMPLOYEE OR SUBORDINATE UNDER THE RESPONSIBLE SUPERVISION OR CONTROL OF THE ARCHITECT, PRECLUDED FROM PERFORMING ENGINEERING SERVICES WHICH ARE PURELY INCIDENTAL TO HER OR HIS ARCHITECTURAL PRACTICE. HOWEVER, NO ENGINEER SHALL PRACTICE ARCHITECTURE OR USE THE DESIGNATION "ARCHITECT" OR ANY TERM DERIVED THEREFROM, AND NO ARCHITECT SHALL PRACTICE ENGINEERING OR USE THE DESIGNATION "ENGINEER" OR ANY TERM DERIVED THEREFROM.

# Even though you may be able to practice “incidental architecture”:

- §471.037 EFFECT OF CHAPTER LOCALLY.—
  1. NOTHING CONTAINED IN THIS CHAPTER SHALL BE CONSTRUED TO REPEAL, AMEND, LIMIT, OR OTHERWISE AFFECT ANY LOCAL BUILDING CODE OR ZONING LAW OR ORDINANCE, NOW OR HEREAFTER ENACTED, WHICH IS MORE RESTRICTIVE WITH RESPECT TO THE SERVICES OF LICENSED ENGINEERS THAN THE PROVISIONS OF THIS CHAPTER.



# Status of License

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- ACTIVE
- INACTIVE
- RETIRED
- DELINQUENT
- NULL AND VOID

# §471.023, F.S. Certification of Business Organizations

- The practice of, or the offer to practice engineering services to the public through a business organization, including a partnership, corporation, business trust, or other legal entity is permitted only if the business organization possesses a certification issued by the management corporation pursuant to qualification by the board
- One or more of the principal officers of the business organization or one or more partners of the partnership shall be licensed as provided by this chapter.
- All final drawings, specifications, plans, reports, or documents involving practices licensed under this chapter which are prepared or approved for the use of the business organization or for public record within the state shall be dated and shall bear the signature and seal of the licensee who prepared or approved them.

# As a practical matter...

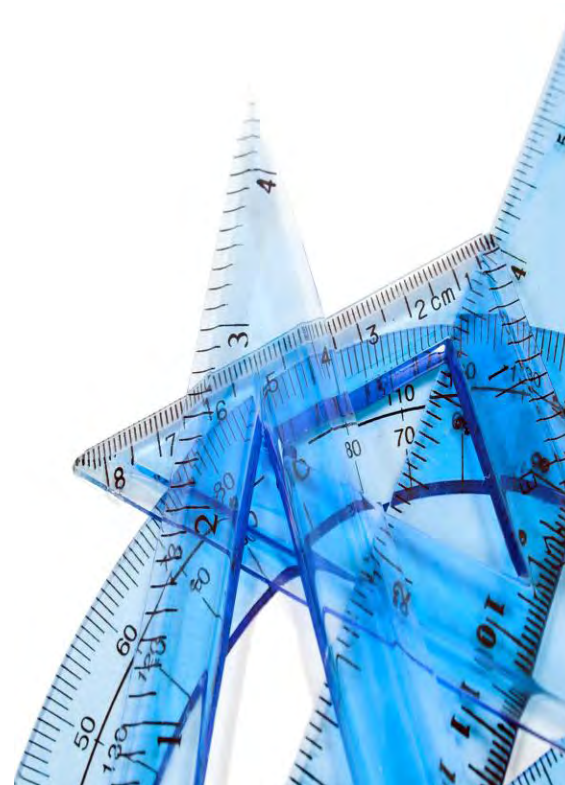
- AN ENGINEER CAN ONLY PRACTICE IN ONE OF TWO WAYS:
  1. AS AN INDIVIDUAL, UNDER HIS/HER OWN NAME, OR
  2. THROUGH AN ENTITY HOLDING A CERTIFICATE OF AUTHORIZATION.
- IF THERE IS ONLY ONE TITLE BLOCK ON THE PLANS, IT MUST BE THE INDIVIDUAL ENGINEER'S TITLE BLOCK, OR THE TITLE BLOCK OF A DULY LICENSED ENTITY.

# Are there ethical considerations when working for a non-P.E.?

- Engineering is a “profession” as opposed to a job or occupation. It requires education, skills, judgment and the exercise of discretion.
- Most Engineering Codes of Ethics stress that engineers shall hold paramount the safety, health and welfare of the public. This means that ethics in engineering is a broad professional concern, rather than simply a personal concern.
- The definition of “engineering” in §471.005(7), F.S., specifically describes a number of services and activities “insofar as they involve safeguarding life, health, or property.”
- You may be pressured to “think like a manager, not an engineer.” The bottom line is that “the boss made me do it” is not an available defense.

# Fictitious name

- FOR THE PURPOSES OF THIS SECTION, A CERTIFICATE OF AUTHORIZATION SHALL BE REQUIRED FOR ANY ORGANIZATION OR PERSON PRACTICING OR OFFERING TO PRACTICE UNDER A FICTITIOUS NAME.
- A PROFESSIONAL ENGINEER, CORPORATION OR PARTNERSHIP SHALL NOT PRACTICE ENGINEERING UNDER AN ASSUMED, FICTITIOUS OR CORPORATE NAME THAT IS MISLEADING AS TO THE IDENTITY, RESPONSIBILITY OR STATUS OF THOSE PRACTICING THEREUNDER OR IS OTHERWISE FALSE, FRAUDULENT, MISLEADING OR DECEPTIVE WITHIN THE MEANING OF SUBSECTION 61G15-19.001(2), F.A.C
- *ENGINEERS SHALL AVOID DECEPTIVE ACTS. (NSPE CODE OF ETHICS)*



# Responsible Charge:

## Rule 61G15-18.011

1. "RESPONSIBLE CHARGE" SHALL MEAN THAT DEGREE OF CONTROL AN ENGINEER IS REQUIRED TO MAINTAIN OVER ENGINEERING DECISIONS MADE PERSONALLY OR BY OTHERS OVER WHICH THE ENGINEER EXERCISES SUPERVISORY DIRECTION AND CONTROL AUTHORITY.

# Test to evaluate whether an engineer is in Responsible Charge:

1. THE ENGINEER SHALL BE **CAPABLE OF ANSWERING QUESTIONS RELEVANT TO THE ENGINEERING DECISIONS MADE DURING THE ENGINEER'S WORK ON THE PROJECT**, IN SUFFICIENT DETAIL AS TO LEAVE LITTLE DOUBT AS TO THE ENGINEER'S PROFICIENCY FOR THE WORK PERFORMED AND INVOLVEMENT IN SAID WORK. IT IS NOT NECESSARY TO DEFEND DECISIONS AS IN AN ADVERSARY SITUATION, BUT ONLY TO DEMONSTRATE THAT THE ENGINEER IN RESPONSIBLE CHARGE MADE THEM AND POSSESSED SUFFICIENT KNOWLEDGE OF THE PROJECT TO MAKE THEM.
2. *ENGINEERS SHALL PERFORM SERVICES ONLY IN AREAS OF THEIR COMPETENCE. (NSPE CODE OF ETHICS)*

# 61G15, Florida Administrative Code

- 61G15-19 GROUNDS FOR DISCIPLINARY PROCEEDINGS
- 61G15-20 APPLICATION FOR LICENSURE, EDUCATION REQUIREMENTS, AND EXPERIENCE
- 61G15-21 EXAMINATIONS
- 61G15-22 LICENSE RENEWAL, CONTINUING EDUCATION



# 61G15-19.004: Disciplinary Guidelines

- PROVIDES A RANGE OF PENALTIES USED BY THE BOARD
- PROVIDES AGGRAVATING CIRCUMSTANCES, INCLUDING HISTORY OF PREVIOUS VIOLATIONS AND THE MAGNITUDE AND SCOPE OF THE NEGLIGENCE.
- PROVIDES MITIGATING CIRCUMSTANCES, INCLUDING LACK OF PREVIOUS DISCIPLINARY HISTORY AND THE MINOR NATURE OF THE PROJECT IN QUESTION.

# Common Ethical Dilemmas and Issues Facing Engineers

- Acknowledging mistakes
- Conflicts of interest
- Safety of products and projects
- Responsibility arising from actions of others
- Whistle blowing
- Cutting corners
- Plan-stamping

# Grounds for Discipline vs. Ethics

- Since Disciplinary Guidelines must be in place and be able to provide reasonable and meaningful notice to licensees, any behavior that is not explicitly listed in the laws and rules as grounds for disciplinary action cannot (should not) be disciplined by the BOPE.
- Even though engineers should always strive to take the most ethical approach possible, one cannot be disciplined for being “unethical” – unless the behavior is specifically defined as “misconduct” in the rule.

## Definition of Misconduct: 61G15-19.001(6), F.A.C.

- Misconduct in the practice of engineering as set forth in 471.033(1)(g), Florida Statutes, shall include, but not be limited to:
- expressing an opinion publicly on an engineering subject without being informed as to the facts relating thereto and being competent to form a sound opinion thereupon;
- *Engineers shall issue public statements only in an objective and truthful manner. (NSPE Code of Ethics)*

## Definition of Misconduct: 61 G15-19.001(6), F.A.C.

- being untruthful, deceptive, or misleading in any professional report, statement, or testimony whether or not under oath or omitting relevant and pertinent information from such report, statement or testimony when the result of such omission would or reasonably could lead to a fallacious conclusion on the part of the client, employer or the general public;
- *Avoid deceptive acts. (NSPE Code of Ethics)*

## Definition of Misconduct: 61 G15-19.001(6), F.A.C.

- performing an engineering assignment when not qualified by training or experience in the practice area involved;
- affixing a signature or seal to any engineering plan or document in a subject matter over which a professional engineer lacks competence because of inadequate training or experience;
- *Perform services only in their area of competence. (NSPE Code of Ethics)*

## Definition of Misconduct: 61 G15-19.001(6), F.A.C.

- offering directly or indirectly any bribe or commission or tendering any gift to obtain selection or preferment for engineering employment.....
- becoming involved in a conflict of interest with an employer or client, without the knowledge and approval of the client or employer, but if unavoidable a professional engineer shall immediately take the following actions:

## Definition of Misconduct: 61 G15-19.001(6), F.A.C.

- Disclose in writing to his employer or client the full circumstances as to a possible conflict of interest; and
- Assure in writing that the conflict will in no manner influence the professional engineer's judgment or the quality of his services to his employer or client; and
- Promptly inform his client or employer in writing of any business association, interest or circumstances which may be influencing his judgment or the quality of his services to his client or employer;



# Hypothetical #1 – Conflict of Interest

- **Facts:** James Smith, P.E. is the director of public works in City A. As part of his job, Mr. Smith is involved in selecting and hiring engineering consultants for projects in the city. These projects may involve the use of government funding. Mr. Smith also moonlights as an independent consulting engineer and has teamed up with another engineer, John Brown, P.E., on federal and state-funded projects in City B in the same state.
- **Question:** Based on these facts, is it ethical for Mr. Smith to work with Mr. Brown as a consultant on federal and state funded projects?

# Hypothetical #1 – Conflict of Interest

- **Conclusion:** Based on the facts presented, it appears to be unethical for Mr. Smith to work with Mr. Brown as a consultant on government funded projects. Mr. Smith's working with Mr. Brown as a consultant on these projects may create the appearance of a conflict of interest.
- **Better Way:** Before Mr. Smith begins any work as an independent consultant, he must obtain the permission of the appropriate authorities in City A. In addition, because the work in question involves government resources, Mr. Smith should also make absolutely certain that his actions are in conformance with applicable government procurement laws and conflict-of-interest provisions, as well as with state engineering licensure laws and rules.

## Definition of Misconduct: 61 G15-19.001(6), F.A.C.

- soliciting or accepting financial or other valuable considerations from material or equipment suppliers for specifying their products without the written consent to the engineer's employer or client;
- soliciting or accepting gratuities directly or indirectly from contractors, their agents or other parties dealing with the professional engineer's client or employee in connection with work for which the professional engineer is responsible without the written consent of the engineer's employer or client;
- *Engineers shall not accept commissions or allowances, directly or indirectly from contractor or other parties dealing with clients or employers of the engineer in connection with work for which the engineer is responsible. (NSPE Code of Ethics)*

## Definition of Misconduct: 61G15-19.001(6), F.A.C.

- use by a professional engineer of his engineering expertise and/or his professional engineering statutes to commit a felony;
- affixing his seal and/or signature to plans, specifications, drawings, or other documents required to be sealed pursuant to 471.025(1), Florida Statutes, when such document has not been personally prepared by the engineer or prepared under his responsible supervision, direction and control;

## Definition of Misconduct: 61 G15-19.001(6), F.A.C.

- a professional engineer shall not knowingly associate with or permit the use of his name or firm name in a business venture by any person or firm which he knows or has reason to believe is engaging in business or professional practices of a fraudulent or dishonest nature;
- *Engineers shall not use association with a non-engineer, a corporation or partnership as a “cloak” for unethical acts. (NSPE Code of Ethics); Engineers shall associate only with reputable persons or organizations. (ASME Code of Ethics)*

## Definition of Misconduct: 61G15-19.001(6), F.A.C.

- if his engineering judgment is overruled by an unqualified lay authority with the results that the public health and safety is threatened, failure by a professional engineer to inform his employer, responsible supervision and the responsible public authority of the possible circumstances;
- if a professional engineer has knowledge or reason to believe that any person or firm is guilty of violating any of the provisions of Chapter 471, Florida Statutes, or any of these rules of professional conduct, failure to immediately present this information to FEMC;

## Definition of Misconduct: 61G15-19.001(6), F.A.C.

- violation of any law of the State of Florida directly regulating the practice of engineering;
- failure on the part of any professional engineer or certificate holder to obey the terms of a final order imposing discipline upon said professional engineer or certificate holder;

## Definition of Misconduct: 61 G15-19.001(6), F.A.C.

- making any statement, criticism or argument on engineering matters which is inspired or paid for by interested parties, unless the professional engineer specifically identifies the interested parties on whose behalf he is speaking, and reveals any interest he or the interested parties have in such matters;
- sealing and signing all documents for an entire engineering project, unless each design segment is signed and sealed by the professional engineer in responsible charge of the preparation of that design segment;



## Definition of Misconduct: 61 G15-19.001(6), F.A.C.

- revealing facts, data or information obtained in a professional capacity without the prior consent of the professional engineer's client or employer except as authorized or required by law.

# Punishment for Misconduct Violations

- The Board sets forth a range of disciplinary guidelines from which disciplinary penalties will be imposed upon practitioners, subject to the discretion of the Board.
- The board shall be entitled to deviate from the guidelines upon a showing of aggravating or mitigating circumstances by clear and convincing evidence presented to the board prior to the imposition of a final penalty.
- Penalties for violation of §471.033(1)(g) range from:
  - Reprimand, 2 years probation, and \$1,000 fine, to
  - Suspension for 2-5 years, a \$5,000 fine, and even revocation of licensure.

# Code of Ethics and Fundamental Principles

American Society of Civil Engineers (ASCE) fundamental principles:

- engineers must uphold and advance the integrity, honor and dignity of the engineering profession by:
  - ▣ (a) using their knowledge and skill for the enhancement of human welfare and the environment
  - ▣ (b) being honest and impartial and serving with fidelity the public, their employers and clients
  - ▣ (c) striving to increase the competence and prestige of the engineering profession
  - ▣ (d) supporting the professional and technical societies of their disciplines.

# Code of Ethics and Fundamental Principles

## ASCE fundamental Principles (cont.):

- Engineers shall build their professional reputation on the merit of their services and shall not compete unfairly with others.
- Engineers shall act in such a manner as to uphold and enhance the honor, integrity, and dignity of the engineering profession and shall act with zero-tolerance for bribery, fraud, and corruption.
- Engineers shall continue their professional development throughout their careers, and shall provide opportunities for the professional development of those engineers under their supervision.
- ASCE provides canons to supplement the above principles on their website.

# Code of Ethics and Fundamental Principles

## National Society of Professional Engineers (NSPE) Code of Ethics:

- Engineers, in the fulfillment of their professional duties, shall:
  - Hold paramount the safety, health, and welfare of the public;
  - Perform services only in areas of their competence;
  - Issue public statements only in an objective and truthful manner;
  - Act for each employer or client as faithful agents or trustees;
  - Avoid deceptive acts;
  - Conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.
- NSPE also provides guidelines to supplement the above canons, as well as a list of Professional Obligations, on their website.

# Code of Ethics and Fundamental Principles

Institute of Electrical and Electronics Engineers (IEEE) Code of Ethics:

Members of the IEEE agree:

- to accept responsibility in making decisions consistent with the safety, health, and welfare of the public, and to disclose promptly factors that might endanger the public or the environment;
- to avoid real or perceived conflicts of interest whenever possible, and to disclose them to affected parties when they do exist;
- to be honest and realistic in stating claims or estimates based on available data;
- to reject bribery in all its forms;

# Code of Ethics and Fundamental Principles

## IEEE Ethics Code (cont.):

- to improve the understanding of technology; its appropriate application, and potential consequences;
- To maintain and improve our technical competence and to undertake technological tasks for others only if qualified by training or experience, or after full disclosure of pertinent limitations;
- to seek, accept, and offer honest criticism of technical work, to acknowledge and correct errors, and to credit properly the contributions of others;

# Code of Ethics and Fundamental Principles

## IEEE Ethics Code (cont.):

- to treat fairly all persons and to not engage in acts of discrimination based on race, religion, gender, disability, age, national origin, sexual orientation, gender identity, or gender expression;
- to avoid injuring others, their property, reputation, or employment by false or malicious action;
- to assist colleagues and co-workers in their professional development and to support them in following this code of ethics.
- IEEE also provides guidelines to supplement the above canons, available on their website.



# The Engineer as Fiduciary

## Fiduciary

1) n. from the Latin fiducia, meaning "trust," a person (or a business like a bank or stock brokerage) who has the power and obligation to act for another (often called the beneficiary) under circumstances which require total trust, good faith and honesty. The most common is a trustee of a trust, but fiduciaries can include business advisers, attorneys, guardians, administrators of estates, real estate agents, bankers, stockbrokers, title companies or anyone who undertakes to assist someone who places complete confidence and trust in that person or company. Characteristically, the fiduciary has greater knowledge and expertise about the matters being handled. A fiduciary is held to a standard of conduct and trust above that of a stranger or of a casual business person. He/she/it must avoid "self-dealing" or "conflicts of interests" in which the potential benefit to the fiduciary is in conflict with what is best for the person who trusts him/her/it.

Does this sound like you?

# Procedures for the adoption of another's work: Chapter 61G15-27.001(1), F.A.C.

- A successor professional engineer seeking to reuse already sealed contract documents under the successor professional engineer's seal must be able to document and produce upon request evidence that he has in fact recreated all the work done by the original professional engineer.
- Calculations, site visits, research and the like must be documented and produceable upon demand.

# Procedures for the adoption of another's work: Chapter 61G15-27.001(1), F.A.C.

- Further, the successor professional engineer must take all professional and legal responsibility for the documents which he sealed and signed and can in no way exempt himself from such full responsibility.
- Plans need not be redrawn by the successor professional engineer; however, justification for such action must be available through well kept and complete documentation on the part of the successor professional engineer as to his having rethought and reworked the entire design process.

## Procedures for the adoption of another's work: Chapter 61G15-27.001(1), F.A.C.

- A successor professional engineer must use his own title block, seal and signature and must remove the title block, seal and signature of the original professional engineer before reusing any sealed contract documents.

# Procedures for the adoption of another's work: Chapter 61 G15-27.001(2), F.A.C.

- Prior to sealing and signing work a successor professional engineer shall be required to notify the original professional engineer, his successors, or assigns by certified letter to the last known address of the original professional engineer of the successor's intention to use or reuse the original professional engineer's work.
- The successor professional engineer will take full responsibility for the drawing as though they were the successor professional engineer's original product

# 61G15-27.001: Procedures for a Successor Professional Engineer Adopting As His Own the Work of Another Engineer

- JUST BECAUSE A P.E. IS HIRED TO PERFORM CONTRACT ADMINISTRATION/SUPERVISION DURING THE CONSTRUCTION OF A PROJECT THAT WAS PERMITTED BASED UPON DESIGN DOCUMENTS SEALED BY ANOTHER P.E. DOES NOT AUTOMATICALLY TRIGGER THE PROVISIONS OF THE SUCCESSOR ENGINEER RULE. HOWEVER, AS A PRACTICAL MATTER, UNLESS ANY CHANGES ARE SUBMITTED TO (AND SIGNED/SEALED BY THE ORIGINAL ENGINEER) THE NEW ENGINEER WILL END UP BECOMING THE EOR.
- THE RULE IS TRIGGERED WHEN A P.E. USES OR REUSES THE PREVIOUSLY SEALED AND SIGNED DOCUMENTS OF ANOTHER P.E.
- HOW MUCH “USE” WILL TRIGGER THE RULE IS DEBATABLE. THE SAFEST COURSE OF ACTION IS TO NOTIFY THE ORIGINAL ENGINEER IF THERE IS ANY DOUBT.

# “Plan stamping”

- One of the most common violations of engineering rules, but one of the easiest to avoid.
- Carries professional and ethical implications.
- By sealing a set of plans or specifications, you are effectively stating that you have reviewed and approved the documents in question and that those plans or specifications are of a design safe to the public health and welfare and in conformity with accepted engineering standards.

# “Plan stamping”

- “plan stamping” takes on a far more sinister tone when one considers that the lives, safety, health and welfare of the general public are dependent upon engineering judgments, decisions and practices incorporated into structures, machines, products, processes and devices.
- Also, the engineer who reviews another engineer’s plans, signs, and seals them may be at risk of an ethical violation if, say, the original engineer was never paid for his services and the subsequent engineer knew of this fact.



# “Plan stamping”

- Engineering ethics are not only for the benefit of the general public, but also for other engineers.
- The National Society of Professional Engineers’ (NSPE) Code of Ethics states at Section III, that engineers shall be guided in all their relations by the highest standards of honesty and integrity- and those relations also include those with your colleagues.

# Case Law Break

**FEMC v. J.H.**: J.H. PROVIDED ENGINEERING SERVICES AS A CONSULTANT TO TWO COMPANIES SPECIALIZING IN ENGINEERING INVESTIGATORY SERVICES. SPECIFICALLY, J.H. PROVIDED 128 SEALED AND SIGNED POST-HURRICANE STORM DAMAGE EVALUATION REPORTS OF RESIDENTIAL STRUCTURES.

- J.H., HOWEVER, DID NOT GO TO ANY PROJECT SITES FOR ANY REPORT ON WHICH HE WORKED AND NEVER PERSONALLY PERFORMED ANY OF THE ANALYSIS WHICH SHOULD HAVE OCCURRED IN ORDER TO DETERMINE THE ASSERTIONS ABOUT WHICH HE OPINED WERE CORRECT.
- INSTEAD, J.H. RELIED UPON ASSERTIONS MADE TO HIM BY THE CONSULTING COMPANIES' PERSONNEL AS THE BASIS FOR THE ASSERTIONS CONTAINED IN THESE REPORTS.

# Case Law Break

- The Board found that J.H. sealed, signed, and dated the post-hurricane storm damage evaluation reports without exercising responsible supervision, direction and control over the means by which the data contained in these reports was collected.
- He was fined \$7,000, reprimanded, his license was placed on probation for 2 years, he was required to complete a course in engineering professionalism and ethics, and was required to submit to the Board a detailed list of all his completed projects at 6 and 18 month intervals from the date of the Final Order for project review.
- The Board will usually require the completion of a course in engineering professionalism and ethics when the nature of the violation evidences an ethical deficit.

# Case Law Break

**FEMC v. L.B.**: L.B. was the principal owner of a land development company and engineering firm. A residential company entered into an agreement with L.B.'s firm to purchase two parcels of property with the sales price to be based on the number of buildable lots.

- L.B. acted as engineer of record for the site development and permitting and signed, sealed and dated all engineering documents filed for public record and permit purposes.
- Because the sales price was based solely on the number of buildable lots, it was particularly important that L.B., the engineer of record, assure that such lots were carefully evaluated and revised as necessary.

# Case Law Break

- L.B.'s engineering plans allowed for the overdevelopment of the parcels and as a result, the number of buildable lots were eventually reduced to conform to local building code, permitting, and zoning requirements.
- The facts of the case indicated that L.B. had numerous opportunities to make corrections to engineering design and to inform the residential company of the necessary lot reductions. L.B. chose to withhold this information in order to boost the profits of the company's sale. L.B. continued to make deceptive claims to the residential company, including that the required permits had been obtained and that the permitting process was on track when in actuality, it was not.

# Case Law Break

- As a result of the claims and withholding of information, L.B. closed the transaction at full price. One year after closing, it was discovered that the actual number of buildable lots was 25, not 30, as was contemplated at closing. The property company was damaged in an amount nearly totaling \$300,000, plus the overpayment made for real property that could not be used as intended.
- L.B.'s license was suspended for 1 year, with 1 year of probation to commence immediately thereafter. L.B. was also ordered to pay Costs, attend a Professionalism and Ethics Course, and complete the Board's Study Guide.
- L.B. had a clear conflict of interest and intentionally withheld negative information.

# Case Law Break

FEMC v. Mr. W.: Got into trouble for failure to notify the previous engineer whose plans he used.

FEMC v. Mr. G.: Website for the company listed the qualifications of certain unlicensed individuals in a way that suggested they were licensed.

# Hypothetical #2 - Employment

- Sally Adams, P.E., was employed full-time by an engineering firm for 14 years. Samuel Bryan, P.E., owns the engineering firm. Ms. Adams decides to depart from the firm to work for another firm. While at the new firm, Ms. Adams decides to seek comity licensure in another state. Ms. Adams contacts Mr. Bryan in order to obtain assistance with her comity application. Mr. Bryan refuses to submit the employment verification and sends Ms. Adams an e-mail detailing the reasons why not.



# Hypothetical #2 - Employment

- In the e-mail, Mr. Bryan states that he refuses to send the employment verification for the following reasons:
  - ▣ Ms. Adams failed to provide a standard two-week notice of her departure, even though her employment contract specified she would do so.
  - ▣ In fact, Ms. Adams' only notice was given 10 minutes before the end of her last day with the firm.
  - ▣ In addition, Ms. Adams left projects unfinished, even though she stated she would follow up on those projects.
  - ▣ Finally, Ms. Adams failed to inform the company's president that she was terminating her employment.

# Hypothetical #2 - Employment

- **Question:** What are the ethical considerations of Ms. Adams and Mr. Bryan in connection with this employment matter?
  - ▣ Potential conflict of interest if Ms. Adams is leaving the firm to go to a competitor or a supply company; a conflict would arise if Ms. Adams' position at the firm allowed her to negotiate and approve bids submitted by the supply company before she began to work for the supply company.
  - ▣ Because she knew she was leaving, Ms. Adams may not have devoted her attention for the benefit of the engineering firm in the final days or weeks of her employment.

# Hypothetical #2 - Employment

## □ Conclusions:

- Because she failed to give timely notice of departure or demonstrate a serious level of commitment to the engineering firm's interests prior to and after her departure, Ms. Adams appears to have acted unethically.
- However, the failure of Mr. Bryan or the engineering firm to fail to meet the ethical, legal, and regulatory requirements for a comity application was also unethical.
- Going forward, Mr. Bryan needs to make sure he provides the necessary information in a factually accurate manner, which includes employment verification, for Ms. Adams' comity application.

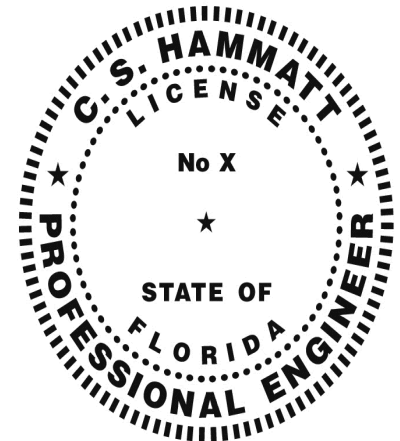
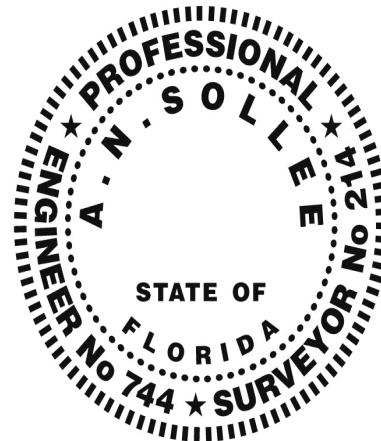
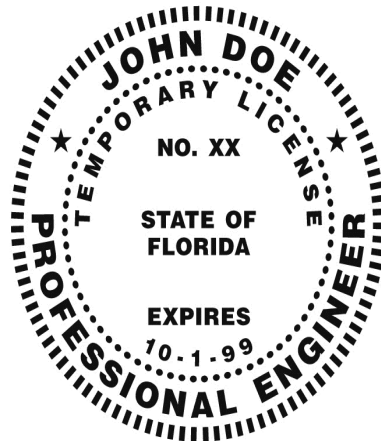
# Ethics Quick Test

- **If you know it's wrong, don't do it!**
- Is the action legal?
- Does it comply with your values as an engineer?
- Does it comply with Florida Statutes and Rules?
- If you do it, will you feel bad?
- How will it look to other engineers?
- If you're not sure, ask your attorney!

# 61G15-23.001 Seals

## Acceptable to the Board.

- ① ANY SEAL CAPABLE OF LEAVING A PERMANENT INK REPRESENTATION OR OTHER FORM OF OPAQUE AND PERMANENT IMPRESSION WHICH CONTAINS THE INFORMATION DESCRIBED HEREIN IS ACCEPTABLE TO THE BOARD. (I.E. RUBBER STAMP).
- ① EMBOSSING IMPRESSION SEALS WHICH OTHERWISE COMPLY WITH THESE PROVISIONS AND WHICH DO NOT PROVIDE AN OPAQUE AND PERMANENT IMPRESSION OR PERMANENT INK REPRESENTATION ARE ALSO ACCEPTABLE TO THE BOARD.



# 61G15-23.002. Seal, Signature and Date Shall Be Affixed

1. A PROFESSIONAL ENGINEER SHALL SIGN BY HAND THE LICENSEE'S HANDWRITTEN SIGNATURE (FACSIMILES ARE NOT ACCEPTABLE) AND AFFIX THE LICENSEE'S SEAL:
  - a) TO ALL FINAL DRAWINGS, SPECIFICATIONS, PLANS, REPORTS, OR DOCUMENTS PREPARED OR ISSUED BY THE LICENSEE AND BEING FILED FOR PUBLIC RECORD; AND
  - b) **TO ALL FINAL DOCUMENTS PROVIDED TO THE OWNER OR THE OWNER'S REPRESENTATIVE;**
  - c) IN ADDITION, THE DATE THAT THE SIGNATURE AND SEAL IS AFFIXED AS PROVIDED HEREIN SHALL BE ENTERED ON SAID PLANS, SPECIFICATIONS, REPORTS, OR OTHER DOCUMENTS IMMEDIATELY ADJACENT TO THE SIGNATURE OF THE PROFESSIONAL ENGINEER.

# Procedures for signing and sealing electronically transmitted documents

## RULE 61G15-23.003, F.A.C.:

- MUST USE A “DIGITAL SIGNATURE” OR AN “ELECTRONIC SIGNATURE”, AS DEFINED IN §668.003, F.S. IF USING AN ELECTRONIC SIGNATURE, THE P.E. MUST CREATE A “SIGNATURE” FILE HAVING AN AUTHENTICATION CODE FOLLOWING THE REQUIREMENTS IN THE RULE.
- A SCANNED IMAGE OF AN ORIGINAL SIGNATURE SHALL NOT BE USED IN LIEU OF A DIGITAL OR ELECTRONIC SIGNATURE.

# Certification

## 61G15-29.001 CERTIFICATION DEFINITION, PROCEDURES, PROHIBITIONS:

THE TERM “CERTIFICATION” AS USED HEREIN SHALL BE AS SET FORTH IN RULE 61G15-18.011(4), F.A.C. (4):

“Certification” shall mean a statement signed and sealed by a professional engineer representing that the engineering services addressed therein, as defined in Section 471.005(6), F.S., have been performed by the professional engineer, and based upon the professional engineer’s knowledge, information and belief, and in accordance with commonly accepted procedures consistent with applicable standards of practice, and is not a guaranty or warranty, either expressed or implied.”

WHEN AN ENGINEER IS PRESENTED WITH A CERTIFICATION TO BE SIGNED AND/OR SEALED, HE OR SHE SHOULD CAREFULLY EVALUATE THAT CERTIFICATION TO DETERMINE IF ANY OF THE CIRCUMSTANCES SET FORTH IN SUBSECTION (3) WOULD APPLY. IF ANY OF THESE CIRCUMSTANCES WOULD APPLY, THAT ENGINEER SHALL EITHER: (A) MODIFY SUCH CERTIFICATION TO LIMIT ITS SCOPE TO THOSE MATTERS WHICH THE ENGINEER CAN PROPERLY SIGN AND/OR SEAL, OR (B) DECLINE TO SIGN SUCH CERTIFICATION.



# Certification

3. ENGINEERS WHO SIGN AND/OR SEAL CERTIFICATIONS WHICH: (A) RELATE TO MATTERS WHICH ARE BEYOND THE ENGINEER'S TECHNICAL COMPETENCE, OR (B) INVOLVE MATTERS WHICH ARE BEYOND THE ENGINEER'S SCOPE OF SERVICES ACTUALLY PROVIDED, OR (C) RELATE TO MATTERS WHICH WERE NOT PREPARED UNDER ENGINEER'S RESPONSIBLE SUPERVISION, DIRECTION, OR CONTROL; WOULD BE SUBJECT TO DISCIPLINE PURSUANT TO RULE 61G15-19.001(6), F.A.C.

# 61G15-30.002: Definitions Common to All Engineer's Responsibility Rules

1. **ENGINEER OF RECORD:** A FLORIDA PROFESSIONAL ENGINEER WHO IS IN RESPONSIBLE CHARGE FOR THE PREPARATION, SIGNING, DATING, SEALING AND ISSUING OF ANY ENGINEERING DOCUMENT(S) FOR ANY ENGINEERING SERVICE OR CREATIVE WORK.
2. **PRIME PROFESSIONAL:** A FLORIDA PROFESSIONAL ENGINEER, OR A DULY QUALIFIED ENGINEERING CORPORATION OR PARTNERSHIP, WHO IS ENGAGED BY THE CLIENT TO PROVIDE ANY PLANNING, DESIGN, COORDINATION, ARRANGEMENT AND PERMITTING FOR THE PROJECT AND FOR CONSTRUCTION OBSERVATIONS IN CONNECTION WITH ANY ENGINEERING PROJECT, SERVICE OR CREATIVE WORK. THE PRIME PROFESSIONAL ENGINEER MAY ALSO BE AN ENGINEER OF RECORD ON THE SAME PROJECT.

# 61G15-30.002: Definitions Common to All Engineer's Responsibility Rules

3. **DELEGATED ENGINEER:** A FLORIDA PROFESSIONAL ENGINEER WHO UNDERTAKES A SPECIALTY SERVICE AND PROVIDES SERVICES OR CREATIVE WORK (DELEGATED ENGINEERING DOCUMENT) REGARDING A PORTION OF THE ENGINEERING PROJECT. THE DELEGATED ENGINEER IS THE ENGINEER OF RECORD FOR THAT PORTION OF THE ENGINEERING PROJECT. A DELEGATED ENGINEER USUALLY FALLS INTO ONE OF THE FOLLOWING CATEGORIES:
  - a. AN INDEPENDENT CONSULTANT.
  - b. AN EMPLOYEE OR OFFICER OF AN ENTITY SUPPLYING COMPONENTS TO A FABRICATOR OR CONTRACTOR, SO LONG AS THE ENGINEER ACTS AS AN INDEPENDENT CONSULTANT OR THROUGH A DULY QUALIFIED ENGINEERING CORPORATION.
  - c. AN EMPLOYEE OR OFFICER OF A FABRICATOR OR CONTRACTOR, SO LONG AS THE ENGINEER ACTS AS AN INDEPENDENT CONSULTANT OR THROUGH A DULY QUALIFIED ENGINEERING CORPORATION.

# Rule 61G15-30.003: Minimum Requirements for Engineering Documents

1. ENGINEERING DOCUMENTS ARE PREPARED IN THE COURSE OF PERFORMING ENGINEERING SERVICES. WHEN PREPARED FOR INCLUSION WITH AN APPLICATION FOR A GENERAL BUILDING PERMIT, THE DOCUMENTS SHALL MEET ALL ENGINEER'S RESPONSIBILITY RULES, SET FORTH IN CHAPTERS 61G15-31, 61G15-32, 61G15-33, AND 61G15-34, F.A.C., AND BE OF SUFFICIENT CLARITY TO INDICATE THE LOCATION, NATURE AND EXTENT OF THE WORK PROPOSED AND SHOW IN DETAIL THAT IT WILL CONFORM TO THE PROVISIONS OF THE FLORIDA BUILDING CODE, ADOPTED IN SECTION 553.73, F.S., AND APPLICABLE LAWS, ORDINANCES, RULES AND REGULATIONS, AS DETERMINED BY THE AHJ. THE DOCUMENTS SHALL INCLUDE:

# 61G15-30.005 Delegation of Engineering Documents: Obligations of the Engineer of Record

1. AN ENGINEER OF RECORD WHO DELEGATES A PORTION OF HIS RESPONSIBILITY TO A DELEGATED ENGINEER IS OBLIGATED TO COMMUNICATE IN WRITING HIS ENGINEERING REQUIREMENTS TO THE DELEGATED ENGINEER.
2. AN ENGINEER OF RECORD WHO DELEGATES A PORTION OF HIS DESIGN RESPONSIBILITY TO A DELEGATED ENGINEER SHALL REQUIRE SUBMISSION OF DELEGATED ENGINEERING DOCUMENTS PREPARED BY THE DELEGATED ENGINEER AND SHALL REVIEW THOSE DOCUMENTS FOR COMPLIANCE WITH HIS WRITTEN ENGINEERING REQUIREMENTS AND TO CONFIRM THE FOLLOWING:

# 61G15-30.005 Delegation of Engineering

## Documents:

### Obligations of the Engineer of Record

- a. THAT THE DELEGATED ENGINEERING DOCUMENTS HAVE BEEN PREPARED BY AN ENGINEER.
- b. THAT THE DELEGATED ENGINEERING DOCUMENTS OF THE DELEGATED ENGINEER CONFORM WITH THE INTENT OF THE ENGINEER OF RECORD AND MEET THE WRITTEN CRITERIA.
- c. THAT THE EFFECT OF THE DELEGATED ENGINEER'S WORK ON THE OVERALL PROJECT GENERALLY CONFORMS WITH THE INTENT OF THE ENGINEER OF RECORD.

# 61G15-30.006 Delegation of Engineering Documents: Obligations of the Delegated Engineer of Record.

1. IT IS THE DELEGATED ENGINEER'S RESPONSIBILITY TO REVIEW THE ENGINEER OF RECORD'S WRITTEN ENGINEERING REQUIREMENTS AND AUTHORIZATION FOR THE DELEGATED ENGINEERING DOCUMENT TO DETERMINE THE APPROPRIATE SCOPE OF ENGINEERING.
2. THE DELEGATED ENGINEERING DOCUMENT SHALL COMPLY WITH THE WRITTEN ENGINEERING REQUIREMENTS RECEIVED FROM THE ENGINEER OF RECORD. THEY SHALL INCLUDE THE PROJECT IDENTIFICATION AND THE CRITERIA USED AS A BASIS FOR ITS PREPARATION. IF A DELEGATED ENGINEER DETERMINES THERE ARE DETAILS, FEATURES OR UNANTICIPATED PROJECT LIMITS WHICH CONFLICT WITH THE WRITTEN ENGINEERING REQUIREMENTS PROVIDED BY THE ENGINEER OF RECORD, THE DELEGATED ENGINEER SHALL TIMELY CONTACT THE ENGINEER OF RECORD FOR RESOLUTION OF CONFLICTS.

# 61G15-30.006 Delegation of Engineering Documents: Obligations of the Delegated Engineer of Record.

3. THE DELEGATED ENGINEER SHALL FORWARD THE DELEGATED ENGINEERING DOCUMENT TO THE ENGINEER OF RECORD FOR REVIEW. ALL FINAL DELEGATED ENGINEERING DOCUMENTS REQUIRE THE IMPRESSED SEAL AND SIGNATURE OF THE DELEGATED ENGINEER AND INCLUDE:
  - a. DRAWINGS INTRODUCING ENGINEERING INPUT SUCH AS DEFINING THE CONFIGURATION AND STRUCTURAL CAPACITY OF STRUCTURAL COMPONENTS AND/OR THEIR ASSEMBLY INTO STRUCTURAL SYSTEMS.
  - b. CALCULATIONS.
  - c. COMPUTER PRINTOUTS WHICH ARE AN ACCEPTABLE SUBSTITUTE FOR MANUAL CALCULATIONS PROVIDED THEY ARE ACCOMPANIED BY SUFFICIENT DESIGN ASSUMPTIONS AND IDENTIFIED INPUT AND OUTPUT INFORMATION TO PERMIT THEIR PROPER EVALUATION. SUCH INFORMATION SHALL BEAR THE IMPRESSED SEAL AND SIGNATURE OF THE DELEGATED ENGINEER AS AN INDICATION THAT SAID ENGINEER HAS ACCEPTED RESPONSIBILITY FOR THE RESULTS.



# 61G15-30.009, F.A.C.: Retention of Engineering Documents

AT LEAST ONE COPY OF ALL DOCUMENTS DISPLAYING THE LICENSEE'S SIGNATURE, SEAL, DATE, AND ALL RELATED CALCULATIONS SHALL BE RETAINED BY THE LICENSEE OR THE LICENSEE'S EMPLOYER FOR A MINIMUM OF THREE YEARS FROM THE DATE THE DOCUMENTS WERE SEALED.



# Responsibility Rules

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- ▣ 61G15-31: DESIGN OF STRUCTURES
- ▣ 61G15-32: DESIGN OF FIRE PROTECTION SYSTEMS
- ▣ 61G15-33: DESIGN OF ELECTRICAL SYSTEMS
- ▣ 61G15-34: MECHANICAL SYSTEMS
- ▣ 61G15-35: THRESHOLD BUILDING INSPECTIONS
- ▣ 61G15-36: PRODUCT EVALUATION



# The Disciplinary Process

# Common grounds for disciplinary action:

- HAVING A LICENSE TO PRACTICE ENGINEERING REVOKED, SUSPENDED, OR OTHERWISE ACTED AGAINST, INCLUDING THE DENIAL OF LICENSURE, BY THE LICENSING AUTHORITY OF ANOTHER STATE, TERRITORY, OR COUNTRY, FOR ANY ACT THAT WOULD CONSTITUTE A VIOLATION OF THIS CHAPTER OR CHAPTER 455.
- BEING CONVICTED OR FOUND GUILTY OF, OR ENTERING A PLEA OF NOLO CONTENDERE TO, REGARDLESS OF ADJUDICATION, A CRIME IN ANY JURISDICTION WHICH DIRECTLY RELATES TO THE PRACTICE OF ENGINEERING OR THE ABILITY TO PRACTICE ENGINEERING.

# More Common grounds for disciplinary action:

- AFFIXING OR PERMITTING TO BE AFFIXED HIS OR HER SEAL, NAME, OR DIGITAL SIGNATURE TO ANY FINAL DRAWINGS, SPECIFICATIONS, PLANS, REPORTS, OR DOCUMENTS THAT WERE NOT PREPARED BY HIM OR HER OR UNDER HIS OR HER RESPONSIBLE SUPERVISION, DIRECTION, OR CONTROL.

# More Common grounds for disciplinary action:



- ❑ VIOLATING ANY ORDER OF THE BOARD OR DEPARTMENT PREVIOUSLY ENTERED IN A DISCIPLINARY HEARING.
- ❑ ENGAGING IN FRAUD OR DECEIT, NEGLIGENCE, INCOMPETENCE, OR MISCONDUCT, IN THE PRACTICE OF ENGINEERING.

# Not Common, but you need to know

## DUTY TO SELF REPORT:

- ENACTED IN 2009 AS AN ADDITIONAL GROUND FOR DISCIPLINARY ACTION UNDER §455.227, F.S.
- FAILING TO REPORT IN WRITING TO THE BOARD WITHIN 30 DAYS OF BEING CONVICTED OR FOUND GUILTY, OR ENTERING A PLEA OF GUILTY OR NOLO CONTENDERE, REGARDLESS OF ADJUDICATION TO A CRIME IN ANY JURISDICTION.
- PREVIOUS CONVICTIONS OR PLEAS MUST HAVE BEEN REPORTED WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THE LAW, OCTOBER 1, 2009.

# Due Process Rights

- Your License is considered a substantial property interest.
- Therefore, it is protected by Due Process rights found in the Constitution





# Three Different Legal Systems

- Civil. Burden of proof is a “preponderance of the evidence.” This means more likely than not, which can be roughly anything over 51%.
- Criminal. Burden of proof is “beyond a reasonable doubt.” Roughly 90%.
- Administrative Disciplinary Proceeding. The law considers these proceedings as “penal” in nature. The burden of proof is “clear and convincing evidence. Roughly 75%.

# Administrative Disciplinary Proceedings



Because it is a “penal” proceeding, the law recognizes that a licensee has many (but not all) of the rights of a criminal defendant, such as the right to remain silent, the right to confront witnesses, and the right to review any evidence against you.

# What can the Board do to you for a violation?

- WHEN THE BOARD, OR THE DEPARTMENT WHEN THERE IS NO BOARD, FINDS ANY PERSON GUILTY OF THE GROUNDS SET FORTH IN SUBSECTION (1), IT MAY ENTER AN ORDER IMPOSING ONE OR MORE OF THE FOLLOWING PENALTIES:
  - a. REFUSAL TO CERTIFY, OR TO CERTIFY WITH RESTRICTIONS, AN APPLICATION FOR A LICENSE.
  - b. SUSPENSION OR PERMANENT REVOCATION OF A LICENSE.
  - c. RESTRICTION OF PRACTICE.

# What can the Board do to you for a violation?

- d. IMPOSITION OF AN ADMINISTRATIVE FINE NOT TO EXCEED \$5,000 FOR EACH COUNT OR SEPARATE OFFENSE.
- e. ISSUANCE OF A REPRIMAND.
- f. PLACEMENT OF THE LICENSEE ON PROBATION FOR A PERIOD OF TIME AND SUBJECT TO SUCH CONDITIONS AS THE BOARD, OR THE DEPARTMENT WHEN THERE IS NO BOARD, MAY SPECIFY. THOSE CONDITIONS MAY INCLUDE, BUT ARE NOT LIMITED TO, REQUIRING THE LICENSEE TO UNDERGO TREATMENT, ATTEND CONTINUING EDUCATION COURSES, SUBMIT TO BE REEXAMINED, WORK UNDER THE SUPERVISION OF ANOTHER LICENSEE, OR SATISFY ANY TERMS WHICH ARE REASONABLY TAILORED TO THE VIOLATIONS FOUND.

What can the Board do to you for a violation?



**COSTS!!!**

# Disciplinary Process

## §455.225, F.S., DISCIPLINARY PROCEEDINGS.—

- A COMPLAINT IS LEGALLY SUFFICIENT IF IT CONTAINS ULTIMATE FACTS THAT SHOW THAT A VIOLATION OF THIS CHAPTER, OF ANY OF THE PRACTICE ACTS RELATING TO THE PROFESSIONS REGULATED BY THE DEPARTMENT, OR OF ANY RULE ADOPTED BY THE DEPARTMENT OR A REGULATORY BOARD IN THE DEPARTMENT HAS OCCURRED.
- THE DEPARTMENT MAY INVESTIGATE AN ANONYMOUS COMPLAINT IF THE COMPLAINT IS IN WRITING AND IS LEGALLY SUFFICIENT, IF THE ALLEGED VIOLATION OF LAW OR RULES IS SUBSTANTIAL, AND IF THE DEPARTMENT HAS REASON TO BELIEVE, AFTER PRELIMINARY INQUIRY, THAT THE VIOLATIONS ALLEGED IN THE COMPLAINT ARE TRUE.

# If you only remember one thing from this presentation:

- ▣ WHEN AN INVESTIGATION OF ANY SUBJECT IS UNDERTAKEN, THE DEPARTMENT SHALL PROMPTLY FURNISH TO THE SUBJECT OR THE SUBJECT'S ATTORNEY A COPY OF THE COMPLAINT OR DOCUMENT THAT RESULTED IN THE INITIATION OF THE INVESTIGATION.
- ▣ **THE SUBJECT MAY SUBMIT A WRITTEN RESPONSE TO THE INFORMATION CONTAINED IN SUCH COMPLAINT OR DOCUMENT WITHIN 20 DAYS AFTER SERVICE TO THE SUBJECT OF THE COMPLAINT OR DOCUMENT. THE SUBJECT'S WRITTEN RESPONSE SHALL BE CONSIDERED BY THE PROBABLE CAUSE PANEL.**

# Notice of Investigation:



## FLORIDA BOARD OF PROFESSIONAL ENGINEERS

JEB BUSH, GOVERNOR

DIANE CARR, SECRETARY  
DEPARTMENT OF BUSINESS  
AND PROFESSIONAL REGULATION

August 1, 2005

*Robert L. Matthews, P.E.*  
CHAIR  
(CIVIL)  
11/26/99-10/31/08

*Hens Rebano, P.E.*  
VICE CHAIR  
(ELECTRICAL)  
11/26/99-10/31/07

*Christian S. Baser, Ph.D., P.E.*  
(INDUSTRIAL)  
4/20/05-10/31/08

*John C. Burke, P.E.*  
(ELECTRICAL)  
1/16/04-10/31/08

*David O. Charland, P.E.*  
(STRUCTURAL)  
4/20/05-10/31/08

*Jorge R. Dujos, P.E.*  
(EDUCATOR)  
2/11/02-10/31/08

*R. Gerry Miller, Ph.D., P.E.*  
(MECHANICAL)  
1/11/97-10/21/08

*Daniel J. Rivera*  
(PUBLIC)  
1/16/04-10/31/07

*Albert E. Rose, P.E.*  
(CIVIL)  
1/16/04-10/31/07

*Paul Tomasino, P.E.*  
(CIVIL)  
2/11/02-10/31/08

*Gloria M. Felazzquez, Esquire*  
(IN-STATE)  
11/26/99-10/31/08

*Paul J. Martin, Esquire*  
EXECUTIVE DIRECTOR

Re: Complaint Case No.

Dear Mr.

Pursuant to Sections 455.225 and 471.038, Florida Statutes, the Board of Professional Engineers is required to investigate legally sufficient complaints that allege violations of the Engineering Practice Act. Section 455.225(1), Florida Statutes, further states that when an investigation is undertaken, the Board shall furnish to the person or his/her attorney a copy of the complaint or document which resulted in the initiation of the investigation.

Attached for your review is a copy of the complaint or document received by the Board. You have the option of submitting a written response to the complaint for consideration by the Board's legal staff and by the Probable Cause Panel for the Board.

Please submit this response directly to the investigator assigned to your case within twenty (20) days. Be advised that providing a response to a board member is not appropriate. Board members sitting on the Probable Cause Panel and those who are present at disciplinary proceedings may have to recuse themselves if they have prior knowledge of the cases coming before them.

Please be advised that pursuant to Section 471.038(7) Florida Statutes, complaints are confidential and exempt from Section 119.07(1), Florida Statutes, until ten days after the Board makes a determination regarding probable cause.

Please mail your response to the FBPE office below.

Sincerely,

Investigator  
Florida Board of Professional Engineers  
/ s/

Encl.



# If you only remember one thing from this presentation:

- UPON COMPLETION OF THE INVESTIGATION AND PURSUANT TO A WRITTEN REQUEST BY THE SUBJECT, THE DEPARTMENT SHALL PROVIDE THE SUBJECT AN OPPORTUNITY TO INSPECT THE INVESTIGATIVE FILE OR, AT THE SUBJECT'S EXPENSE, FORWARD TO THE SUBJECT A COPY OF THE INVESTIGATIVE FILE. THE SUBJECT MAY FILE A WRITTEN RESPONSE TO THE INFORMATION CONTAINED IN THE INVESTIGATIVE FILE.
- **SUCH RESPONSE MUST BE FILED WITHIN 20 DAYS, UNLESS AN EXTENSION OF TIME HAS BEEN GRANTED BY THE DEPARTMENT.**

# If you only remember one thing from this presentation:

- WHEN ITS INVESTIGATION IS COMPLETE AND LEGALLY SUFFICIENT, THE DEPARTMENT SHALL PREPARE AND SUBMIT TO THE PROBABLE CAUSE PANEL OF THE APPROPRIATE REGULATORY BOARD THE INVESTIGATIVE REPORT OF THE DEPARTMENT. THE REPORT SHALL CONTAIN THE INVESTIGATIVE FINDINGS AND THE RECOMMENDATIONS OF THE DEPARTMENT CONCERNING THE EXISTENCE OF PROBABLE CAUSE.
- THE DETERMINATION AS TO WHETHER PROBABLE CAUSE EXISTS SHALL BE MADE BY MAJORITY VOTE OF A PROBABLE CAUSE PANEL OF THE BOARD, OR BY THE DEPARTMENT, AS APPROPRIATE.
- ALL PROCEEDINGS OF THE PANEL AND ALL DOCUMENTS AND INFORMATION OBTAINED DURING AN INVESTIGATION ARE CONFIDENTIAL ONLY UNTIL AN INVESTIGATION CEASES TO BE ACTIVE. AN INVESTIGATION CEASES TO BE ACTIVE WHEN THE CASE IS DISMISSED WITHOUT A FINDING OF PROBABLE CAUSE OR 10 DAYS AFTER PROBABLE CAUSE IS FOUND.

# If you only remember one thing from this presentation:

- IN LIEU OF A FINDING OF PROBABLE CAUSE, THE PROBABLE CAUSE PANEL, OR THE DEPARTMENT WHEN THERE IS NO BOARD, MAY ISSUE A LETTER OF GUIDANCE TO THE SUBJECT.
- IF THE PROBABLE CAUSE PANEL FINDS THAT PROBABLE CAUSE EXISTS, IT SHALL DIRECT THE DEPARTMENT TO FILE A FORMAL COMPLAINT AGAINST THE LICENSEE.

# Other Probable Cause

## Panel Options:

- ▣ SEND THE CASE FOR FURTHER EXPERT REVIEW.
- ▣ OUTRIGHT DISMISSAL.

# Letter Closing Case:



## FLORIDA BOARD OF PROFESSIONAL ENGINEERS

CHARLIE CRIST, GOVERNOR

HOLLY BENSON, SECRETARY  
DEPARTMENT OF BUSINESS  
AND PROFESSIONAL REGULATION

May 30, 2008

*John C. Burke, P.E.*  
CHAIR  
(ELECTRICAL)  
1/9/04-10/31/10

*David O. Charland, P.E.*  
VICE CHAIR  
(STRUCTURAL)  
4/20/05-10/31/08

*Christian S. Bauer, Ph. D., P.E.*  
(INDUSTRIAL)  
4/20/05-10/31/08

*Henn Rebano, P.E.*  
(ELECTRICAL)  
11/29/99-10/31/07

*Zafar Hyder, Ph. D., P.E.*  
(CIVIL)  
6/22/07-10/31/10

*Paul Tomasino, P.E.*  
(CIVIL)  
2/1/02-10/31/10

*Jonathan F. Earle, P.E.*  
(EDUCATIONAL)  
2-12-08-10-31-09

*Nota Garcia*  
(PUBLIC)  
2/12/08-10/31/10

*Vacant*  
(CIVIL)

*Vacant*  
(Public Member)

*Vacant*  
(MECHANICAL)

*Carrie Flynn*  
EXECUTIVE DIRECTOR

c/o EDWIN BAYO, ESQ  
METZGER GROSSMAN FURLOW & BAYO LLC  
1408 N PIEDMONT WAY  
TALLAHASSEE, FLORIDA 32308

RE:  
Complaint No. \_\_\_\_\_

Dear Mr. Bayó:

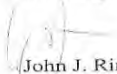
This letter is sent to inform you of the action taken in regard to the complaint filed against your client, \_\_\_\_\_ P.E.

This case was investigated by the Florida Engineers Management Corporation (FEMC), reviewed by FEMC's legal staff, and then presented to the Probable Cause Panel of the Board of Professional Engineers in accordance with Section 455.225, Florida Statutes.

After reviewing the entire investigative report and considering the recommendations of FEMC, the Panel determined there was no probable cause to believe your client violated the rules and regulations governing the practice of engineering. Therefore, the Panel directed that the case be DISMISSED without a finding of probable cause.

If you should have any questions or comments regarding this matter, please contact my office at (850) 521-0500. Thank you very much for your cooperation during these proceedings.

Sincerely,

  
John J. Rimes III  
Prosecuting Attorney

JR/jt  
Enclosures

# What are your options?

- ▣ **FORMAL HEARING** BEFORE AN ADMINISTRATIVE LAW JUDGE. FACTS IN DISPUTE
- ▣ **INFORMAL HEARING** BEFORE THE BOARD. YOU ADMIT THE FACTS AND ARGUE THE LAW, AND/OR OFFER MITIGATING CIRCUMSTANCES
- ▣ **SETTLEMENT STIPULATION**
- ▣ **DO NOTHING** (DEFAULT)

# What is the best way to avoid legal and disciplinary problems?

- ▣ BECOME FAMILIAR WITH THE LAWS AND RULES.
- ▣ RENEW YOUR LICENSE AND KEEP UP WITH YOUR CONTINUING EDUCATION.
- ▣ RESPOND (TIMELY) TO ANY NOTICE FROM THE BOARD.

# The Best Advice You'll Get Today:

---

**IF YOU BECOME THE  
SUBJECT OF A  
COMPLAINT...**

**GET A GOOD LAWYER!**



# END OF PRESENTATION

Edwin A. Bayó  
Grossman, Furlow, and Bayó  
2022-2 Raymond Diehl RD.  
Tallahassee, FL. 32308  
(850) 385-1314  
e.bayo@gfblawfirm.com

