

1 21 NCAC 56 .0701 is proposed for amendment as follows:

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3 **SECTION .0700 – RULES OF PROFESSIONAL CONDUCT**

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5 **21 NCAC 56 .0701 RULES OF PROFESSIONAL CONDUCT**

6 (a) In order to safeguard the life, health, property and welfare of the public and to establish and maintain a high
7 standard of integrity, skills, and practice in the professions of engineering and land surveying, the Rules of Professional
8 Conduct in this Rule are adopted in accordance with G.S. 89C-20 and are binding upon every person holding a
9 certificate of licensure as a Professional Engineer or Professional Land Surveyor (licensee), and on all business entities
10 authorized to offer or perform engineering or land surveying services in this state. All persons licensed under the
11 provisions of Chapter 89C of the General Statutes are charged with having knowledge of the Board Rules, including
12 the Rules of Professional Conduct, and are deemed to be familiar with their provisions and to understand them.

13 (b) A licensee shall conduct the practice in order to protect the public health, safety and welfare. The licensee shall at
14 all times recognize the primary obligation to protect the public in the performance of the professional duties. If the
15 licensee's engineering or land surveying judgment is overruled under circumstances where the safety, health and
16 welfare of the public are endangered, the licensee shall inform the employer, the client, the contractor, other affected
17 parties and any appropriate regulatory agency of the possible consequences of the situation.

18 (c) A licensee shall perform services only in areas of the licensee's competence and:

19 (1) Shall undertake to perform engineering and land surveying assignments only when qualified by
20 education or experience in the specific technical field of professional engineering or land surveying
21 involved;

22 (2) May accept an assignment or project requiring education or experience outside of the licensee's own
23 ~~field~~ areas of competence, but only to the extent that the services are restricted to those portions or
24 disciplines of the ~~project assignment~~ in which the licensee is qualified. All other portions or
25 disciplines of such ~~project assignment~~ shall be performed by associates, consultants, or employees
26 who are licensed and competent in those portions or ~~disciplines~~; disciplines.

27 ~~(3) Shall not affix the signature or seal to any engineering or land surveying plan or document dealing~~
28 ~~with subject matter for which the licensee lacks competence by virtue of education or experience,~~
29 ~~nor to any such plan or document not prepared under the licensee's direct supervisory control. Direct~~
30 ~~supervisory control (responsible charge) requires a licensee or employee to carry out all client~~
31 ~~contacts, provide internal and external financial control, oversee employee training, and exercise~~
32 ~~control and supervision over all job requirements to include research, planning, design, field~~
33 ~~supervision and work product review. Direct supervisory control may be accomplished face to face~~
34 ~~or by other means of communication. A licensee shall not contract with a non-licensed individual~~
35 ~~to provide these professional services. Research, such as title searches and soil testing, may be~~
36 ~~contracted to a non-licensed individual, provided that individual is qualified or licensed to provide~~
37 ~~such service and provided the licensee reviews the work. The licensee may affix the seal and~~

signature to drawings and documents depicting the work of two or more professionals provided it is designated by a note under the seal the specific subject matter for which each is responsible; and

~~(4)~~ In circumstances where a licensee in responsible charge of the work is unavailable to complete the work, or the work is a design plan signed and sealed by an out-of-jurisdiction licensee (not a site adaptation of a standard design plan under Rule 21 NCAC 56 .1106) a successor licensee may take responsible charge by performing and documenting all professional services to include developing a design file including work or design criteria, calculations, code research, and any necessary and appropriate changes to the work. The non-professional services, such as drafting, need not be redone by the successor licensee but must distinguish in a clean and obvious manner and accurately reflect the successor licensee's work. The burden is on the successor licensee to show such compliance. The successor licensee shall have control of and responsibility for the work product and the signed and sealed originals of all documents.

(d) A licensee shall not affix his or her signature or seal to any engineering or land surveying plan or document for which the licensee was not in responsible charge of the work through direct control and personal supervision. In order to exercise responsible charge of engineering or surveying work, either (a) when delegating tasks to others, (b) in circumstances where a licensee in responsible charge of the work is unavailable to completed the work, or (c) the work is a design plan signed and sealed by an out-of-jurisdiction licensee (not a site adaptation of a standard design plan under Rule 21 NCAC 56 .1106), the licensee must possess full professional knowledge of and control over the work and shall:

(1) Have and exercise the authority to review and to change, reject or approve both the work in progress and the final work product, through examination, evaluation, communication and direction throughout the development of the work;

(2) Be personally aware of the scope of the work, its needs, parameters, limitations and special requirements;

(3) Be capable of answering questions relevant to the surveying or engineering decisions made as part of the services provided, in sufficient detail to demonstrate knowledge of the proficiency in the work; and

(4) Accept full responsibility for the work.

(A) The Burden for demonstrating responsible charge lies with the licensee, including maintaining records, calculations, drawings, surveys, specifications, and other documents associated with the work.

(B) A licensee may affix his or her seal and signature to drawings and documents depicting the work of two or more professionals, provided it is designated by a note under the seal the specific subject matter for which each is responsible.

~~(d)~~(e) A licensee shall issue public statements only in an objective and truthful manner and:

(1) Shall be objective and truthful in all professional reports, statements or testimony. The licensee shall include all relevant and pertinent information in such reports, statements or testimony;

- 1 (2) When serving as an expert or technical witness before any court, commission, or other tribunal, shall
2 express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a
3 background of technical competence in the subject matter, and upon honest conviction of the
4 accuracy and propriety of the licensee's testimony;
- 5 (3) Shall issue no statements, criticisms, or arguments on engineering or land surveying matters
6 connected with public policy which are inspired or paid for by an interested party, or parties, unless
7 the licensee has prefaced the comment by explicitly identifying the licensee's name, by disclosing
8 the identities of the party or parties on whose behalf the licensee is speaking, and by revealing the
9 existence of any pecuniary interest the licensee may have in the matters; and
- 10 (4) Shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation,
11 prospects, practice or employment of another engineer or land surveyor, nor indiscriminately
12 criticize another engineer or land surveyor's work in public. Indiscriminate criticism includes
13 statements without valid basis or cause or that are not objective and truthful or that fail to include
14 all relevant and pertinent information. If the licensee believes that another engineer or land surveyor
15 is guilty of misconduct or illegal practice, such information shall be presented to the North Carolina
16 Board of Examiners in the form of a complaint.

17 ~~(e)~~(f) A licensee shall avoid conflicts of interest and:

- 18 (1) Shall inform the employer or client, and any reviewing agency, of any business association,
19 interests, or circumstances which could influence judgment or the quality of services;
- 20 (2) Shall not accept compensation, financial or otherwise, from more than one party for services on the
21 same project, or for services pertaining to the same project, unless the circumstances are disclosed
22 to, and agreed to, in writing, by all interested parties;
- 23 (3) Shall not solicit or accept financial or other valuable considerations from material or equipment
24 suppliers for specifying their products;
- 25 (4) Shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other
26 parties dealing with the client or employer in connection with work for which the licensee is
27 responsible;
- 28 (5) When in public service as a member, advisor, or employee of a governmental body or department,
29 shall not participate in considerations or actions with respect to services provided by the licensee or
30 the licensee's firm in private engineering and land surveying practices;
- 31 (6) Shall not solicit or accept an engineering or land surveying contract from a governmental body on
32 which a principal or officer of the licensee's firm serves as a member; and
- 33 (7) Shall not attempt to supplant another engineer or land surveyor in a particular employment after
34 becoming aware that the other has been selected for the employment.

35 ~~(f)~~(g) A licensee shall solicit or accept work only on the basis of qualifications and:

- 1 (1) Shall not offer to pay, either directly or indirectly, any commission, political contribution, gift, or
2 other consideration in order to secure work, exclusive of securing salaried positions through
3 employment agencies;
- 4 (2) Shall compete for employment on the basis of professional qualification and competence to perform
5 the work. The licensee shall not solicit or submit proposals for professional services containing a
6 false, fraudulent, misleading, deceptive or unfair statement or claim regarding the cost, quality or
7 extent of services to be rendered;
- 8 (3) Shall, with regard to fee bidding on public projects, comply with the provisions of G.S. 143-64.31
9 et seq., (or for federal projects, the Brooks Act, 40 U.S. Code 541 et seq.) and shall not knowingly
10 cooperate in a violation of any provision of G.S. 143-64.31 et seq. (or of 40 U.S. Code 541 et seq.);
11 and
- 12 (4) Shall not falsify or permit misrepresentation of academic or professional qualifications and shall
13 only report educational qualifications when a degree or certificate was awarded, unless it is stated
14 that no degree or certificate was awarded. The licensee shall not misrepresent degree of
15 responsibility in or for the subject matter of prior assignments. Brochures or other presentations
16 incident to the solicitation of employment shall not misrepresent pertinent facts concerning
17 employers, employees, associates, joint ventures, or past accomplishments with the intent and
18 purpose of enhancing qualifications and work.

19 ~~(g)~~(h) A licensee shall perform services in an ethical manner, as required by the Rules of Professional Conduct (21
20 NCAC 56 .0701), and in a lawful manner and:

- 21 (1) Shall not knowingly associate with or permit the use of the licensee's name or firm name in a
22 business venture by any person or firm which the licensee knows, or has reason to believe, is
23 engaging in business or professional practices of a fraudulent or dishonest nature or is not properly
24 licensed; and
- 25 (2) If the licensee has knowledge or reason to believe that another person or firm may be in violation
26 of the Board Rules (21 NCAC 56) or of the North Carolina Engineering and Land Surveying Act
27 (G.S. 89C), shall present such information to the Board in writing in the form of a complaint and
28 shall cooperate with the Board in furnishing such further information or assistance as may be
29 required by the Board. The licensee shall timely respond to all inquiries and correspondence from
30 the Board and shall timely claim correspondence from the U. S. Postal Service, or other delivery
31 service, sent to the licensee from the Board. Timely is defined as within the time specified in the
32 correspondence, or if no time is specified, within 30 days of receipt. Certified mail is timely claimed
33 if prior to being returned by the Post Office to the Board office.

34 ~~(h)~~(i) A Professional Engineer or Professional Land Surveyor who has received a reprimand or civil penalty or whose
35 professional license is revoked, suspended, denied, refused renewal, refused reinstatement, put on probation,
36 restricted, or surrendered as a result of disciplinary action by another jurisdiction is subject to discipline by the Board
37 if the licensee's action constitutes a violation of G.S. 89C or the rules adopted by the Board.

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History Note: Authority G.S. 89C-17; 89C-20;
Eff. February 1, 1976;
Readopted Eff. September 29, 1977;
Amended Eff. _____; September 1, 2011; May 1, 2009; August 1, 2002; August 1, 2000;
August 1, 1998; November 2, 1992; April 1, 1989; January 1, 1982; March 1, 1979;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27,
2019.