Ethics, Laws and Rules for Louisiana Professional Engineers

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Thinkers Thinking Thoughts about Ethics

"Education without values, as useful as it is, seems rather to make man a more clever devil."

- C.S. Lewis

"The word "good" has many meanings. For example, if a man were to shoot his grandmother at a range of five hundred yards, I should call him a good shot, but not necessarily a good man."

G. K. Chesterton

"There may be times when we are powerless to prevent injustice, but there must never be a time when we fail to protest."

Elie Wiesel

<u>Defining Professional Ethics</u>: What is a Professional?

*Center for the Study of Ethics in the Profession, Illinois Institute of Technology http://ethics.iit.edu/teaching/professional-ethics

HISTORY

"Profess": a public declaration, vow on entering a religious order, a commitment (vows) to serve for a good end.

16th century: commitment to learned pursuits (three learned professions are divinity, law, and medicine, then the military); being an authority on a body of knowledge, belonging to an occupation; being skilled, being a fractioned, not an amateur.

19th century (late): "New professions have come into existence, and the old professions are more esteemed" Oxford English Dictionary) (1)

OCCUPATION AND PROFESSION

An Occupational Group:

- 1) Delivers important services
- 2) Makes a commitment to serve the public
- 3) Claims a special relationship to the marketplace, not merely in the rough and tumble; distinguished from a trade.

An Occupation Becomes a Profession when:

- 1) A group of individuals sharing the same occupation organize to work in a morally permissible way, or to work to support a moral ideal. (i.e. Doctors organize to cure the sick, librarians organize to promote access to information, etc.)
- 2) Members set and follow special standards for carrying on their occupational work.

*At least one of these standards must go beyond what law, the marketplace, ordinary morality (what a ordinary moral person must do) and public opinion demand. (i.e. a good mercenary only needs to fulfill the terms of his contract, a good, professional soldier must serve his country honorably, even when ordinary morality, law, and public opinion do not require it.)

*These special standards are morally binding to "professed" members of the profession. If a member freely declares (or professes) herself to be part of a profession, she is voluntarily implying that she will follow these special moral codes. If the majority of members of a profession follow the standards, the profession will have a good reputation and members will generally benefit; if the majority of members violate these voluntary standards, professed members of a profession will be at a disadvantage or at the least receive no benefit from declaring a profession.

A Professional is a member of an occupational group (characterized above) who:

- 1) Sees other members, including those employed elsewhere, as peers/colleagues
- 2) Exercises judgment in the performance of occupational tasks and follows relevant professional standards.
- 3) Accepts the profession's agreement to work in a morally permissible way (often expressed as a code of ethics) as determining in part the obligations of the role.

Ethics in Engineering

I. 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.
- Avoid deceptive acts.
- Conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.

- NPSE Code of Ethics

Louisiana Engineering Law and the "Rules of the Board"

The Louisiana Professional Engineering and Land Surveying Board is responsible for regulating the practices of Engineering in the state.

The Board implements the provisions of Title 37, Chapter 8 of the "Louisiana Revised Statutes," (LRS) also known as the "Engineering Law" and Title 46, Part LXI of the Louisiana Administrative Code, which constitute the "Rules of the Board." LRS 37:681 through 37:703 establishes and delineates the powers of the Professional Engineering and Land Surveying Board.

Under this law, the Louisiana Board is responsible for reviewing applications, administering examinations, licensing qualified applicants, and regulating the practice of engineering throughout the state.

LAPELS is an <u>administrative body</u> authorized by the legislature to make and enforce the rules governing the profession of engineering

The LRS is supplemented by the rules in the Louisiana Administrative Code (LAC).

Title 46, Professional and Occupational Standards, Part LXI. Professional Engineers and Land Surveyors.

LAC's counter part in the federal system is the Code of Federal Regulations.

Louisiana Board of Disciplinary Process

Under LRS 37:698, the Board has the authority to take disciplinary action against any licensee or certificate holder who is found by the Board to be guilty of any acts or offenses under laws and rules of the engineering profession.

That disciplinary action can include reprimand, probation, suspension, revocation of license or certificate, refusal to renew license or certificate, or fine.

Lawyer Interlude:

Ethical Violations as the Basis for Tort Liability

The Rules of Professional Conduct establish the standard of care required of an attorney and "have the force and effect of substantive law." The breach of the fiduciary duty established under the Rules gives rise to a claim in tort. It would be absurd to conclude a court has no legal authority to award damages to a client for an ethical violation of the Rules. "[T]he very basis for tort liability . . . is the duty-risk concept. When a lawyer commits a breach of duty imposed by the ethical rules and that breach is a cause in fact of his client's damage, she has a right to recover in tort. The fact that the Supreme Court might also take disciplinary action against him hardly deprives her of her tort recovery."

<u>Smith v. Patout</u>, 06-950 (La. App. 3 Cir 04/11/07), 956 So. 2d 689, 694-95

WHAT ABOUT ENGINEERS???

Under Louisiana Revised Statue 37:700, the Board also has the authority to take enforcement action against any nonlicensee or non-certificate holder who is found by the Board to be guilty of any of the acts or offenses under the laws and rules of the engineering profession.

An administrative hearing may result.

- 37:698. Disciplinary proceedings against licensees and certificate holders
- (1) Any fraud, deceit, material misstatement...in applying for a license or certificate.
- (2) Any fraud, deceit, gross negligence, material misrepresentation, gross incompetence, or gross misconduct in the practice of engineering or land surveying.

- (6) Violation of any provision of this Chapter or any rules or regulations adopted and promulgated by the board. (In one case study this applied to sealing documents not prepared by licensee)
- (7) The refusal of the licensing authority of another state, territory, or district of the United States to issue or renew a license, permit, or certificate to practice engineering or land surveying, or the revocation or suspension or other restriction imposed on a license...provided that the reason for the action taken by the other licensing authority was recognized by the Louisiana board as a ground for disciplinary action at the time the action was taken
- (18) prohibits licensees from practicing when not qualified, i.e. no past experience.

37:700. Enforcement proceedings against other persons; procedure.

Title 46, Part LXI: Professional Engineers and Land Surveyors Chapter 25 Professional Conduct:

§2501. Scope; Knowledge; Definition of Licensee

§ 2503. Licensees

§ 2505. Services

§2501. Scope; Knowledge; Definition of Licensee

A. In order to safeguard life, health and property, to promote the public welfare, and to establish and maintain a high standard of integrity and practice, the following rules of professional conduct shall be binding on every licensee. These rules of professional conduct deal primarily with the relationship between licensees and the public, and should not be construed as a substitute for codes of ethics of the various professional and technical societies.

B. All licensees under the licensure law are charged with having knowledge of the existence of these rules of professional conduct, and shall be deemed to be familiar with their provisions and to understand them.

C. In this Chapter, the term licensee shall mean any professional engineer, professional land surveyor, engineer intern, land surveyor intern, or firm holding a license or certificate issued by this board.

§2503. Licensees

- A. Licensees shall hold paramount the safety, health, property and welfare of the public in the performance of their professional duties.
- B. Licensees shall at all times recognize that their primary obligation is to protect the safety, health, property, and welfare of the public. If their professional judgment is overruled by non-technical authority, they will clearly point out the consequences, notifying the proper authority of any observed conditions which endanger public safety, health, property and welfare.
- C. Licensees shall approve and seal only those design documents and surveys which are safe for public health, property, and welfare, which are complete and accurate, which are in conformity with accepted engineering and land-surveying standards or practice, and which conform to applicable laws and ordinances.

§2503(C)(1-3)

- 1. Licensees shall comply fully with Chapter 27 (Use of Seals).
- 2. Except as permitted by §2701.A.3.b.ii.(a), licensees shall not seal the work of or take the professional responsibility for any documents related to engineering or land surveying not performed by the licensee or under the licensee's responsible charge.
- 3. Licensees may not accept the responsibility for, nor review, revise, sign, or seal drawings when such plans are begun by persons not properly licensed and qualified; or do any other act to enable either such licensees or the project owners, directly or indirectly, to evade the requirements of the licensure law.

§2507. Conflicts of Interest

- Gifts
- Compensation

§2509. Improper Solicitation

- Misrepresenting Past accomplishments or Qualifications

- Pay or offer to pay directly or indirectly, any commission or gift, or other valuable consideration

§2511. Conduct of Advertising

- Licensees shall not make exaggerated, misleading, deceptive or false statements or claims about professional qualifications, experience or performance in brochures, correspondence, listings, or other public communications.

(This includes omitting a material fact necessary to keep the statement from being misleading)

Chapter 27 Use of Seals

- § 2701. Seal and Signature
- Application of seal, signature and date constitutes certification that the work was done by the licensee or under his/her responsible charge.
- 1. Plans, specs, drawings, reports, prepared outside of licensees office.
- 2. Checking the work of out-of-state individual licensee (Not under his/her charge)

b. Preliminary Work

i. All preliminary documents, so marked in large bold letters, shall contain a statement that the documents are not to be used for construction, bidding recordation, conveyance, sales, or as the basis for the issuance of a permit. Preliminary are not required to have the licensee's seal, signature and date affixed, but must bear the name and licensure number of the licensee, and the firm's name if applicable.

(Exemptions, electronic transmission, originally sealed documents.)

What about shop drawings?

Chapter 33

§3301. Disciplinary and Enforcement Proceedings

New Rules

Effective January 20, 2019

Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS Part LXI. Professional Engineers and Land Surveyors Chapter 1. General Provisions § 105. Definitions

Practice of Land Surveying—defined in R.S. 37:682.

a. Surveying and mapping functions which require the establishment of relationships to property ownership boundaries are unique to land surveying and must be performed by or under the responsible charge of a professional land surveyor. These functions include:

i. boundary surveys;

ii. subdivision surveys and plats;

iii. public land surveys;

iv. surveys of servitudes (easements) and rights of way;

v. surveys of leases

b. Surveying and mapping functions not unique to land surveying must be performed by or under the responsible charge of a professional land surveyor whenever they require the establishment of relationships to property ownership boundaries. These functions include:

i. topographical surveys;

ii. surveys for record drawing;

iii. layout surveys for construction;

iv. hydrographic surveys;

v. mine surveys;

vi. mapping.

c. Surveying and mapping functions which do not require the establishment of relationships to property ownership boundaries must be performed by or under the responsible charge of either a professional engineer or a professional land surveyor. These surveying and mapping functions include:

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i. topographical surveys;
ii. surveys for record drawing;
iii. layout surveys for construction;
iv. hydrographic surveys;
v. mine surveys;
vi. mapping;
vii. geodetic surveys;
viii. cartographic surveys;
ix. horizontal and vertical control surveys;
x. quantity and measurement surveys;
xi. profiles and cross-sections;
xii. site grading plans.
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Chapter 27. Use of Seals §2701. Seal and Signature A.4. Seal Use a. Completed Work i. - iv.(a). ... v. Compiled As-Built Record Drawings

(a). The preparation of compiled engineering as built record drawings is not considered to be the practice of engineering and such drawings are not required to be sealed or signed by a professional engineer. If the professional engineer was in responsible charge of the original underlying engineering work, he/she should (in lieu of a seal) include on the title page of the compiled engineering as-built record drawings a disclaimer (with date) which incorporates the following:

"These compiled engineering as-built record drawings are a compilation of a copy of the original sealed engineering design drawings for this project, modified by addenda, change orders and information furnished by the contractor or others associated with the construction of the project. The information shown on these compiled engineering as-built record drawings that was provided by the contractor and/or others cannot be verified for accuracy or completeness. The compilation of this information does not relieve the contractor or others of responsibility for errors resulting from incorrect, incomplete or omitted data on their as-built record drawings - nor does it relieve them of responsibility for non-conformance with the original contract documents. The original sealed engineering drawings are on file in the offices of (name of professional engineer)."

Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS Part LXI. Professional Engineers and Land Surveyors Chapter 1. General Provisions § 105. Definitions

Practice of Engineering.

A. practice of engineering is defined in RS. 37:682. The board recognizes in the design of buildings and similar structures that there is overlap between the work of architects and professional engineers. It is recognized that an architect who has complied with all of the current laws of Louisiana relating to the practice of architecture has a right to engage in some activities properly classifiable as the practice of engineering insofar as it is necessarily incidental to his/her work as an architect. Likewise, it is recognized that the professional engineer who has complied with all of the current laws of Louisiana and is properly licensed has the right to engage in some activities properly classifiable as architecture insofar as it is necessarily incidental to his/her work as a professional engineer. Furthermore, the architect or the professional engineer, as the case may be, shall assume all responsibility for compliance with all the laws or ordinances relating to the designs or projects in which he/she may be engaged.

b.i. an architect may perform minor mechanical, electrical or civil-structural engineering work necessarily incidental to his/her practice of architecture, but such incidental engineering work shall not include a complete engineering system unless such complete engineering system does not exceed the area thresholds under the occupancy types listed in clause v below. The incidental engineering work shall be of a secondary nature and shall be substantially less in scope and magnitude when compared to the architectural portion of the work. Incidental engineering work includes renovations or alterations of any size building that do not require significant adjustments to the engineering calculations for the changes to the engineering system(s) or component(s). The incidental work must be safely and competently performed by the architect without jeopardizing the life, health, property and welfare of the public. The incidental engineering work must also satisfy all of the following conditions in new or renovated projects:

(a). the total occupant load must not exceed 49 individuals. The occupant load is defined and determined by the method set forth in the currently enforced building code; (b). the construction value of the incidental engineering work must not exceed 15 percent of the total construction value for new construction; (c). any addition to a building or structure must not cause the gross floor areas of the entire building or structure to exceed those listed in clause v below · (d). any renovations or alterations must not cause the overall construction cost to exceed \$125,000, exclusive of building finishes and furnishings; and (e). any incidental engineering work must not exceed the area thresholds under the following occupancy types: (i). storage-6,250 sq. ft.; (ii). factory and industrial-5,000 sq. ft.; (iii). mercantile-4,000 sq. ft.; (iv). residential (excluding single family)-4,000 sq. ft.; (v). educational-2,500 sq. ft.;

(vi). institutional-2,500 sq. ft.;

(viii). assembly-2,650 sq. ft.;

(ix). business-4,000 sq. ft.;

(vii). high hazard-1,500 sq. ft.;

(x). utility and maintenance-5,000 sq. ft.

Chapter 23. Firms

§2305. Supervising Professional

A 1. Each firm licensed with the board shall designate one or more supervising professionals. Each supervising professional shall be a licensed professional:

a. whose primary employment is with the firm, provided the supervising professional works for the firm for a 12-month average of at least 30 hours per week or 130 hours per month; or

b. whose employment is with the firm, provided the supervising professional has at least a 25 percent ownership interest in the firm.