

## **201 KAR 18:142. Code of professional practice and conduct.**

RELATES TO: KRS 322.060, 322.180(3), 322.290(11)

STATUTORY AUTHORITY: KRS 322.290(11)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(11) requires the board to promulgate a code of professional practice and conduct, which shall be binding upon persons licensed under KRS Chapter 322. This administrative regulation establishes a code of professional practice and conduct.

### **Section 1. Definitions.**

- (1) "Conflict of interest" means any circumstance in which a licensee has a private or personal interest sufficient to appear to influence or possibly influence the objective exercise of the licensee's professional duty to the public, his or her employer, or current client. The private or personal interests of the licensee include the personal or business interests of the members of the licensee's family, his or her close relatives, or business associates.
- (2) "Direct supervisory control" in the practice of engineering means that an engineer licensee directly supervises and takes responsibility for consultation, investigation, evaluation, planning, design, and certification of an engineering project and includes only that work performed by an employee as defined in subsection (4) of this section.
- (3) "Direct supervisory control" in the practice of land surveying means that a surveyor licensee who certifies a work product directly supervises and takes responsibility for the survey and includes only that work performed by an employee as defined in subsection (4) of this section.
- (4) "Employee":
  - (a) Means a person who works for a licensee or his or her employer for wages or a salary and includes professional and technical support personnel contracted on a temporary or occasional basis, if the compensation is paid directly by the licensee or his or her employer; and
  - (b) Does not mean a person who provides services to the licensee as an outside consultant or specialist.
- (5) "Licensee" means any natural person licensed by the board to practice professional engineering or professional land surveying, or any business entity permitted under KRS 322.060.
- (6) "Work product" means any engineering or land surveying plan, plat, document, or other deliverable requiring certification that is intended to represent activities conducted in the practice of engineering or land surveying.

Section 2. The engineer or land surveyor shall conduct his or her practice in order to protect the public health, safety, and welfare. If a licensee's judgment is overruled and a licensee has reason to believe the public health, safety, or welfare may be endangered, the licensee shall inform his or her employer or client of the possible consequences and, if not resolved, notify appropriate authorities.

Section 3. A licensee shall issue all professional communications and work products in an objective and truthful manner.

- (1) A licensee shall be objective and truthful in all professional reports, statements, or testimony and shall include all material facts.
- (2)
  - (a) If serving as an expert or technical witness before any tribunal, a licensee shall:
    1. Express an opinion only if it is founded on adequate knowledge of the facts in issue, on the basis of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of that testimony; and

2. Act with objectivity and impartiality.

(b) A licensee shall not ignore or suppress a material fact.

(3) A licensee shall not issue a statement or opinion on professional matters connected with public policy unless the licensee has:

(a) Identified himself or herself;

(b) Disclosed the identity of the party on whose behalf the licensee is speaking; and

(c) Disclosed any pecuniary interest the licensee may have in the matter.

(4) A licensee shall not maliciously injure the professional reputation, prospect, practice, or employment of another licensee.

(5) A licensee shall not accept a contingency fee for serving as an expert witness before any tribunal.

(6) A licensee shall maintain for a period of not less than five (5) years, calculations and documents necessary to support work products.

(7) A professional land surveyor shall maintain records for boundary surveys under 201 KAR 18:150, Section 10(2) and (3).

(8) The requirements of subsections (6) and (7) of this section shall be satisfied for the individual licensee employed by a business entity permitted by the board in conformance with KRS 322.060 by that permitted entity's compliance with subsections (6) and (7) of this section.

(9) A licensee shall not solicit or submit proposals for professional services containing a false, fraudulent, misleading, deceptive, or unfair statement regarding the cost, quality, or extent of services to be performed.

(10) A licensee shall not misrepresent his or her professional qualifications or experience, or those of the licensee's associates.

Section 4. A licensee shall avoid conflicts of interest. A professional engineer or land surveyor shall act objectively and independently.

(1) If a situation occurs in which a reasonable person would think that a licensee's professional judgment is likely to be compromised, a licensee shall promptly disclose the possibility of the conflict of interest to his or her employer, or client, and shall, if reasonably possible, withdraw from participation in the situation that gave rise to the conflict of interest.

(2) A licensee shall not accept a valuable consideration from more than one (1) party for services pertaining to the same project, unless the circumstances are fully disclosed to all other principal parties directly involved in the project.

(3) A licensee shall not solicit or accept a valuable consideration from any vendor, contractor, or client, or their agents for acceptance, rejection, approval, or disapproval of any work performed by others, or for specifying materials or equipment in connection with work for which the licensee is responsible.

(4) A licensee serving as a member, advisor, or employee of a governmental body shall not, while utilizing either his or her status as a licensed professional engineer or land surveyor, or his or her skill, experience, or knowledge as a licensed professional engineer or land surveyor, participate in decisions in which he or she has a private or personal interest, and shall not review or approve work that was performed by the licensee, or by others, on behalf of a business entity in which the licensee has any control, or private or personal interest.

Section 5. A licensee shall solicit or accept engineering or land surveying work only on the basis of his or her, or the licensee's firm's or associates' qualifications for the work offered.

(1) A licensee shall not offer or accept any valuable consideration in order to secure specific work, exclusive of commissions paid by individual licensees for securing salaried positions through employment agencies. A licensee may participate in design-build projects.

- (2) A licensee may advertise professional services if the advertising is not false or misleading.

Section 6. A licensee shall not knowingly associate with any person engaging in fraudulent, illegal, or dishonest activities.

- (1) A licensee shall not permit the use of his or her, or the licensee's business entity's name by any person or business entity that he or she knows or has reason to believe is engaging in fraudulent, dishonest, or illegal activities.
- (2) A licensee shall not aid or abet the illegal practice of engineering or land surveying.

Section 7. A licensee shall perform his or her services only in the areas of his or her competence.

- (1) A licensee shall undertake to perform professional assignments only if qualified by education or experience in the specific technical field involved.
- (2) A licensee may accept an assignment requiring education or experience outside his or her own field of competence, but only to the extent that his or her services are restricted to those parts of the project in which the licensee is competent. All other parts of the project shall be certified by licensed associates, consultants, or employees.
- (3) If a question of the competence of a licensee to perform a professional assignment in a specific technical field is an issue and cannot be otherwise resolved, the board, upon a majority vote or upon request by the licensee, may require the licensee to satisfactorily complete a relevant examination.

Section 8. Except as provided by this section, a licensee shall not certify any work product dealing with subject matter in which he or she lacks competence by virtue of education or experience, or any work product not prepared by him or her under his or her direct supervisory control.

- (1) A professional engineer may review and certify the work product of another professional engineer if:
  - (a) The review and certification are made at the request of the other professional engineer;
  - (b) He or she does not remove or obliterate the identity of the other professional engineer;
  - (c) He or she performs and retains in his or her possession for not less than five (5) years all calculations and documents necessary to perform an adequate review; and
  - (d) He or she confirms that the other professional engineer was licensed when the work was created.
- (2) If a professional engineer undertakes to review only a portion of the work product of another professional engineer, his or her certification shall clearly identify the portion reviewed.
- (3) A professional engineer may modify the work product of another professional engineer, whether or not the project has been built, if he or she retains in his or her possession for not less than five (5) years a record of his or her modifications.
- (4) If a professional engineer modifies the work product of another professional engineer, his or her certification shall clearly identify, by words or graphics, that portion that was modified.
- (5) A professional engineer may incorporate in his or her work product the designs of manufactured or standard components developed by manufacturers, suppliers or professional or technical societies, and associations.
- (6) If, in the professional land surveyor's reasonable judgment, his or her personal participation is not required in performing a particular aspect of a project, he or she may delegate those tasks to an employee, if all work is actually reviewed by the licensee.

(7) The need for a professional land surveyor to make a site visit shall be dictated by the nature, size and complexity of a project. The failure to make a site visit in a substantial percentage of surveys shall be construed as a failure to exercise direct supervisory control.

(8) While an employee may investigate the circumstances of a potential project, only a licensee may establish the scope of work to be performed.

Section 9. The professional engineer or professional land surveyor shall avoid conduct likely to discredit or reflect unfavorably upon the dignity or honor of his or her profession.

Section 10.

(1) If a licensee has knowledge or reason to believe that any person or other licensee is in violation of KRS Chapter 322 or 201 KAR Chapter 18, the licensee shall submit to the board in writing the relevant information within his or her knowledge.

(2) A licensee, upon request by the board, shall cooperate with the board in an investigation, by providing any relevant information within his or her knowledge.

Section 11.

(1) A licensee shall not, directly or indirectly, contact a board member concerning any ongoing disciplinary action, or any existing investigation being conducted by the board staff.

(2) Any communication by a licensee concerning an ongoing disciplinary action or an existing investigation shall be directed to a board staff member.

Section 12. A licensee who is in doubt about the ethical propriety of any professional act or omission contemplated by that licensee may request an informal opinion from the executive director of the board.

(1) The request shall be in writing or by email with the subject line of "Request for Advisory Opinion Pursuant to 201 KAR 18:142." The request shall include the name and address of the licensee making the request, a phone number and email address at which the licensee can be contacted, and all relevant information.

(2) Based on the information provided in the request, the executive director shall respond in writing as to the ethical propriety of the act or course of conduct in question.

(3) A licensee shall not be disciplined for any professional act performed by that licensee in compliance with the written advisory opinion furnished by the executive director pursuant to the licensee's written request, if the licensee's written request clearly, fairly, accurately, and completely states the licensee's contemplated professional act and all relevant information.

(27 Ky.R. 2603; Am. 3122; 3239; eff. 6-8-2001; 35 Ky.R. 2337; 2768; 36 Ky.R. 25; eff. 7-31-2009; TAm eff. 4-4-2011; 39 Ky.R. 2383; 40 Ky.R. 278; eff. 9-6-2013; 42 Ky.R. 831; 1478; eff. 12-4-2015; Crt eff. 2-14-2020.)