

Engineering Codes: Ethics or Law?

Continuing Ed workshop by Richard Skeirik, PE

Sovereign Command Exercise

For a system to be valid law, Sovereign Command requires

Primary rules that require or prohibit behavior must:

- Be commanded by the foremost sovereign;
- Be backed with sanction for noncompliance

Secondary rules must:

- Identify what is and isn't law;
- Define how rules can be changed;
- Define *adjudication* when rules are violated.

Authority from Sovereign:

Use the excerpted Chain of Authority (below). I've done most of the work for you. Just start at the top and verify that the DAPE code of ethics derives authority from the US Constitution.

Sanctions for Noncompliance:

After the Chain of Authority (below), you'll find a page taken from the DAPE web site. What are the three types of penalties for violation of the code of ethics, and what is the range?

Secondary Rules:

What is/isn't law?: DAPE has published a lot of words on its web site, along with the Code of Ethics. How do you know what is/isn't law? Is there an explicit rule that tells you? Is there a way to infer? (If you get stuck on this, ask me for a hint).

How Rules can be changed: Limit this only to the Code of Ethics: is there law that defines how the code can be changed? If not, is there any authority stated to make rules? (If you get stuck, ask me for a hint.)

Rules for Adjudication: Can you identify rules that apply for adjudicating a violation of the Code of Ethics? (If you get stuck, ask me for a hint.)

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Excerpted Chain of Authority – DAPE Code of Ethics

U.S. Constitution

Amendment 10

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The *State of Delaware Constitution and the 31 titles of the Delaware Code* constitute the complete body of laws governing Delaware.



Legislative Council,
General Assembly
State of Delaware

Delaware Code

DELAWARE PROFESSIONAL ENGINEERS' ACT

Authorized: July 7, 1972
Amended thru: September 29, 2017

I

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO THE DELAWARE PROFESSIONAL ENGINEERS' ACT

WHEREAS, because the field of engineering is highly technical and complex and the recipients of professional engineering services do not normally have adequate expertise by which they might be able to evaluate the services rendered by a professional engineer; and

WHEREAS, because of these complexities, the qualifications of a professional engineer should be established and evaluated by other engineers; and

WHEREAS, it is in the best interests of the public property, health, safety and welfare that the evaluation of an engineer and the control of the practice of engineering be vested in members of the engineering profession; and

WHEREAS, this Act constitutes a new departure and experience in the field of state regulatory procedure, being the first of its kind in the Nation, wherein the First State of the Nation delegates to a professional association the powers, duties and responsibilities of self-regulation;

NOW, THEREFORE,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 24 of the Delaware Code by deleting the existing Chapter 28 in its entirety and by substituting in lieu thereof, a new Chapter 28 to read as follows:

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CHAPTER 28. PROFESSIONAL ENGINEERS

§2801. Short title.

This chapter shall be known and may be cited as the 'Delaware Professional Engineers Act.'

§2802. Declaration of purpose; unlawful practice.

In order to safeguard life, health, and property and to promote the public welfare, the practice of engineering in this State is hereby declared to be subject to regulation in the public interest. It shall be unlawful for any person to practice or to offer to practice engineering in this State; to use in connection with such person's name, by verbal claim, sign, advertisement, letterhead, card or to in any other way, represent himself or herself to be an engineer, a professional engineer or through the use of some other title imply that such person is a professional engineer licensed under this chapter; or to advertise any title or description tending to convey the impression that such person is a professional engineer unless such person has been duly licensed, authorized or exempted under this chapter. The right to engage in the practice of engineering shall be deemed a personal right based on the qualifications of the individual as evidenced by such person certificate of licensure, which shall not be transferable.

§2814. Bylaws of the Association.

(a) The Council shall prepare for approval by the membership the following bylaws related to the administrative and domestic duties of the Association:

§2816. Code of **Ethics**.

(a) The Council shall prepare and publish a code of ethics designed for the protection of the public.

(b) All applicants, members, associate members, affiliate members, adjunct members, holders of certificate of authorization and permittees must subscribe to and follow this code of ethics in the practice of professional engineering, or in seeking to register as a professional engineer or seeking certification as an Engineer Intern.

(c) The Code of Ethics is available on the Delaware Association of Professional Engineers' website.

§2823. Grounds for discipline; appeals.

(a) Applicants, adjunct and affiliate members, and any person licensed under this chapter shall be subject to disciplinary penalties set forth in §2824(c) of this title, if, after a hearing, the person is found to violate any of the following:

(1) The practice of any fraud or deceit in the attempt to obtain any authorization to practice engineering in this State;

(2) Any gross negligence, incompetence or misconduct in the practice of engineering;

(3) Violation of the code of **ethics** promulgated by the Council;

(4) A crime that is substantially related to the practice of engineering;

(5) a. An activity resulting in discipline by another jurisdiction, state, territory, or possession of the United States, foreign country, the District of Columbia, the United States government, or any other governmental agency, if at least one

(c) The Council, after receipt of a complaint in accordance with §2824(c) of this title associated with the practice of engineering in Delaware, shall have the power to review the actions and representations of individuals, corporations or partnerships not authorized by this chapter to engage in the practice of engineering in Delaware. Upon notice, hearing and review afforded by subchapters III and V of the Administrative Procedures Act, Chapter 101 of **Title 29**, the Council may issue a cease and desist order to an individual, corporation or partnership found to be engaged in the unauthorized

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§2824. Disciplinary action; procedure.

(b) Complaint Investigation and Prosecution.

(1) Upon receipt of a written accusation alleging a violation of §2823 of this title or alleging the unlicensed practice of professional engineering in violation of §2825 of this title, the Council may assign the matter to its Investigating Committee for possible prosecution. The Investigating Committee may also initiate the prosecution process based upon firsthand knowledge acquired by a member or upon a member's information and belief whether the accusation of

(c) Disciplinary Penalties and Guidelines.

(1) Disciplinary violations under §2823(a) of this title are punishable by the following penalties, or any combination thereof: levy fines up to \$5,000; require the successful completion of additional training or education courses; issue warnings, public reprimands, and censure; refuse or revoke licensure; impose probation with appropriate terms and conditions; impose suspension of license not to exceed two years; and refuse to renew any authorization issued to use the term 'engineer' or practice engineering in Delaware. All fines must be paid to Council within 90 days of the date of mailing of an order. All fines collected by the Council must be deposited in the General Fund of the State through the

17

Division of Revenue, provided that the Council may first deduct from the fines an amount equal to the administrative and other direct expenses incurred by the Council, its Hearing Committee, and its Investigating Committee, in the prosecution of the complaint.

(2) The Council shall prepare and publish a chart of Disciplinary Penalty Guidelines ("Guidelines") indicating the minimum and maximum penalties available for each basis for discipline in §2823 of this title. Penalties must be imposed according to the Guidelines after taking into consideration any aggravating or mitigating circumstances in each case. The Guidelines shall be provided to each Association member, associate member, affiliate member, adjunct member, and permittee and shall be available free of charge to the public. Copies of the Guidelines must also be made available to prospective Applicants as a part of their application materials.

(Approved by Council August 9, 2017)

BY-LAWS

DELAWARE ASSOCIATION OF PROFESSIONAL ENGINEERS

ARTICLE I: NAME

Section 1.0 Name - The corporate name of this organization is the Delaware Association of Professional Engineers.

Section 2.0 Membership shall be as defined in 24 Del. C. 2806.

ARTICLE II: PURPOSE

Section 1.0 Purpose - The purpose of these By-Laws is to provide for the administrative and domestic duties of the Association, as required by 24 Del. C. 2814, hereinafter referred to as The Act.

ARTICLE VII: DUTIES OF THE OFFICERS

Section 1.0 Duties of the President shall be:

.8 To interpret, when required, 24 Del. C., Chapter 28 of the Delaware Law, these By-Laws, the Code of Ethics, and the Roberts Rules of Order, Revised.

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Engineering Codes: Ethics or Law?

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ARTICLE XV: STANDING COMMITTEES OF THE COUNCIL

Section 1.0 The following are the Standing Committees of the Council:

.6 Law Enforcement/Ethics

Section 8.0 The Law Enforcement/Ethics Committee shall have the following duties:

- .1 Recommend changes in the Code of Ethics for the Association to be submitted to Council for approval.
- .2 Review all cases of unethical practice which may be directed to Council and make appropriate recommendations to Council.
- .3 Investigate any written or oral complaint by an identified complainant, and follow through on those complaints which upon investigation appear to be valid and well-founded; make a recommendation to the Council; and proceed as directed in accordance with Section 2824 (b) of Title 24 of the Delaware Code.
- .4 Initiate, at the direction of Council, proper proceedings in those cases where violations of the Law are found probable.

STATE OF DELAWARE



DELAWARE ASSOCIATION OF PROFESSIONAL ENGINEERS

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CODE OF ETHICS

(Approved by Council of Delaware Association of Professional Engineers, July 9, 2008)

PREAMBLE

In order to safeguard life, health and property, and to promote the public welfare, through a high

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Administrative Penalty Guidelines

<https://www.dape.org/Pages/administrative-penalty-guidelines>

The Council is entitled to impose penalties within the minimum and maximum range, as set forth herein, taking into consideration any aggravating or mitigating circumstances proven by clear and convincing evidence presented to Council prior to the imposition of a final penalty.

(1) **Aggravating circumstances** : circumstances which may justify the maximum penalty shall include but not be limited to the following:

- (a) History of previous violations of this Chapter.
- (b) In the case of negligence; of the magnitude and scope of the project and the damage inflicted upon the general public by the Licensee.
- (c) Evidence of the violation of professional practice acts in other jurisdictions wherein the Licensee has been disciplined by the appropriate regulatory authority.
- (d) Violation of the provisions of this Chapter wherein prior action by Council was previously taken against the Licensee.

(2) **Mitigating circumstances** : circumstances which may justify the minimum penalty shall include but not be limited to the following:

- (a) In the case of negligence, the minor nature of the project in question and lack of danger to the public health, safety and welfare resulting from the Licensee's violation.
- (b) Lack of previous disciplinary history in this or any other jurisdiction where in the Licensee practices.
- (c) Restitution of any damages suffered by the Licensee's client.
- (d) The Licensee's professional standing among his peers.
- (e) Steps taken by the Licensee or his firm to ensure the non-reoccurrence of similar violation in the future.

	PROVISION	VIOLATION	MINIMUM	MAXIMUM
(1)	2823 (a) 1 2825 (h)	Attempting to procure a license, permit, or C/A, by fraud, deceit, false or forged evidence.	Reprimand and probation	Revocation or denial and \$5,000 fine
(2)	2823 (a) 2	Incompetence	Reprimand, and \$250 fine, and probation	Revocation and \$5,000 fine
(3)	2823 (a) 2	Misconduct	Warning letter	Revocation and \$5,000 fine
(4)	2823 (a) 2	Gross Negligence	Reprimand, and \$250 fine, and probation	Revocation and \$5,000 fine

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(5)	2823 (a) 3	Code of Ethics Violation	\$200 fine and completion of ethics course	Revocation and \$5,000 fine and completion of ethics course
(6)	2823 (a) 3 2823 (a) 7	Improper use of seal or certificate of licensure (Canon 1B)	Warning letter	Reprimand and \$2,000 fine and 2-year probation
(7)	2823 (a) 3	Signing or sealing work not competent to perform (Canon 2)	Warning letter	Reprimand and \$5,000 fine, followed by 1-year suspension and 1-year probation
(8)	2823 (a) 3	Knowingly making or filing false report (Canon 3A)	Reprimand and probation	Revocation and \$5,000 fine
(9)	2823 (a) 4	Crime substantially related to practice of engineering	As deemed appropriate by the Board	Revocation or denial and \$5,000 fine
(10)	2823 (a) 5	Discipline by another jurisdiction	Warning letter	Discipline not exceeding original jurisdiction
(11)	2823 (a) 6	Failure to report out-of-state discipline	Warning letter	Discipline not exceeding original jurisdiction
(12)	2823 (a) 7	Aiding or abetting violation of Act	Reprimand and \$500 to \$1,000 fine, and ethics study course	Revocation and \$5,000 fine
(13)	2823 (a) 8	"Plan stamping"	Reprimand and \$100 fine	Revocation and \$5,000 fine
(14)	2823 (a) 9	Failure to comply with CPC	In accordance with CPC Guidelines dated 9/11/2013	
(15)	2830	Improperly dating, signing and sealing documents	Warning letter	Revocation and \$5,000 fine
(16)	2824	Violation of Board Order	Meet existing conditions and \$100/day fine	Revocation
(17)	2823	Examinee Violations - See §2823 (b) (1)	See §2823 (b) (1)	Limited by law; Denial of licensure

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