

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 39 ENGINEERING AND SURVEYING PRACTITIONERS
PART 8 CODE OF PROFESSIONAL CONDUCT--ENGINEERING AND SURVEYING

16.39.8.1 ISSUING AGENCY: State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505) 476-4565.
[16.39.8.1 NMAC - Rp, 16 NMAC 39.8.1, 1/01/2002; A, 7/01/2006; A, 7/1/2015]

16.39.8.2 SCOPE: Provisions for part 8 apply to persons certified as engineer interns or surveyor interns, licensed as professional engineers or professional surveyors or anyone applying for certification as an engineer intern or surveyor intern or licensed as a professional engineer or professional surveyor.
[16.39.8.2 NMAC - Rp, 16 NMAC 39.8.2, 1/01/2002; A, 7/01/2006]

16.39.8.3 STATUTORY AUTHORITY: Subsection B of Section 61-23-10 NMSA 1978 prescribes that "the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying." Part 8 applies to both engineering and surveying.
[16.39.8.3 NMAC - Rp, 16 NMAC 39.8.3, 1/01/2002; A, 7/01/2006; A, 12/28/2017]

16.39.8.4 DURATION: Permanent
[16.39.8.4 NMAC - Rp, 16 NMAC 39.8.4, 1/01/2002]

16.39.8.5 EFFECTIVE DATE: January 1, 2002, unless a later date is cited at the end of a section.
[16.39.8.5 NMAC - Rp, 16 NMAC 39.8.5, 1/01/2002]

16.39.8.6 OBJECTIVE: The objective of part 8 is to establish and maintain rules of professional conduct for professional engineers and professional surveyors.
[16.39.8.6 NMAC - Rp, 16 NMAC 39.8.6; 1/01/2002; A, 7/01/2006]

16.39.8.7 DEFINITIONS: In these Rules of Professional Conduct, the word "licensee" shall mean any person holding a current license or certification issued by the Board.
[16.39.8.7 NMAC - Rp, 16 NMAC 39.8.7, 1/01/2002]

16.39.8.8 PREAMBLE:

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 apply to every person holding a certificate of licensure to perform engineering or surveying services in the State of New Mexico.

B. The Rules of Professional Conduct as promulgated herein are an exercise of the regulatory power vested in the Board by virtue of the acts of the legislature. These rules are in addition to but are not intended to supersede, the provisions of the New Mexico Engineering and Surveying Practice Act.

C. All persons licensed under the New Mexico Engineering and Surveying Practice Act are charged with having knowledge of the existence of these Rules of Professional Conduct and shall be deemed to be familiar with the provisions of these rules and to understand them. Such knowledge shall encompass understanding these rules of Professional Conduct and failure to follow these rules may be considered misconduct by the Board.
[16.39.8.8 NMAC - Rp, 16 NMAC 39.8.8, 1/01/2002]

16.39.8.9 RULES OF PROFESSIONAL CONDUCT:

A. The protection of the public safety, health, welfare and property in the performance of professional duties.

(1) Perform those duties in conformance with accepted engineering and surveying practices.

(2) Notify their employer or client and such other authority as may be appropriate of any instance in which their professional judgment is overruled under circumstances endangering the public safety, health, welfare or property.

(3) Approve and seal only those engineering and surveying documents which conform to applicable engineering and surveying standards.

(4) Shall not reveal privileged or confidential facts, data or information without prior consent of the client or employer except as authorized or required by law or this code.

(5) Refuse to associate in a business venture with any person or firm whom they may have reason to believe is engaging in fraudulent or dishonest business or professional practices as an engineer or surveyor and refuse to use or permit the use of their name or firm in connection with any such business venture.

(6) Inform the board of any violation of this code. Cooperate with the board in furnishing information or assistance as may be requested by the board in matters concerning violations.

(7) Shall not assist or participate in the unlawful practice of engineering and surveying by a person or firm.

B. Specialization and the performance of services only in specific areas of competence.

(1) Licensees shall undertake assignments only when qualified by education, experience or examination in the specific technical fields of engineering or surveying involved.

(2) Licensees shall not affix their signatures or seals to any plans or documents dealing with subject matter in which they lack competency, nor to any such plan or documents not prepared under their responsible charge.

(3) Licensees may accept an assignment when the total work involves technical fields beyond those in which they are qualified, providing their services are limited to those phases in which they are qualified and that the phases in which they are not qualified are performed by licensees who are properly qualified. In this instance, each qualified licensee will sign and seal the documents for their phase of the assignment.

C. The issuance of public statements.

(1) Licensees shall be objective and truthful in professional reports, statements or testimony. A professional report or professional opinion issued by or under the responsible charge of a licensee shall not contain any intentionally false, misleading or deceitful statements or testimony. Any report, statement or testimony by a licensee shall contain all relevant and pertinent information as required by accepted engineering or surveying principles.

(2) If a licensee issues statements on technical matters in his or her capacity as a professional engineer or professional surveyor on behalf of an interested party, the licensee must expressly preface his or her remarks by identifying said interested party and by revealing the existence and nature of any interest the licensee may have in the matter.

(3) A licensee who is competent in the subject matter may express publicly technical opinions that are found upon knowledge of the facts.

D. Professional relationships with employer or client.

(1) Licensees shall act in professional matters for each employer or client to avoid conflicts of interest. Licensees shall disclose all known or potential conflicts of interest to their employers or clients by promptly informing them of any business association, interest or other circumstances which could reasonably be expected to influence their judgment or the quality of their services.

(2) Licensees shall not accept compensation, financial or otherwise, from more than one party for services on the same project, unless the circumstances are fully disclosed to, and agreed to, by all interested parties.

(3) Licensees shall not solicit or accept any gratuity, material favor, or any valuable consideration, directly or indirectly, from contractors, their agents, servants or employees or from any other party dealing with his client or employer in connection with any project for which he is performing or has contracted to perform engineering or surveying services. (The phrase "valuable consideration" is defined to mean any act, article, money or other material possession which is of such value or proportion that its acceptance creates a clandestine obligation on the part of the receiver or otherwise compromises his ability to exercise his own judgment.)

(4) Licensees in public service as a member or employee of a governmental body, agency or department shall not participate, directly or indirectly in deliberations or actions which would constitute a conflict of interest with respect to services offered or provided by him, his associates, or the licensee's business entity to such governmental body, agency or department.

(5) Licensees shall not solicit or accept a professional contract from a governmental body on which a principal or officer of their business entity serves as a member, except upon public disclosure of all pertinent facts and circumstances and consent of appropriate public authority.

(6) Licensees shall not reveal privileged or confidential facts, data or information obtained in a professional capacity without prior consent of the client or employer except:

- (a) As provided in Paragraphs (2) and (6) of Subsection A of 16.39.8.9 NMAC.
- (b) As authorized or required by law.
- (c) Any document that is a matter of public record by virtue of it being on file with a public agency.
- (d) Any fact, data or information which is clearly the property of the engineer or surveyor.

E. Solicitation of professional employment.

(1) Licensees shall not falsify or permit misrepresentation of their, or their associates' academic or professional qualifications. They shall not misrepresent or exaggerate their degree of responsibility in or for the subject matter of prior assignments. Brochures or other representations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures or past accomplishments with the intent and purpose of enhancing their qualifications and their work.

(2) Licensees shall not offer, give, solicit or receive, either directly or indirectly, any commission, gift, or other valuable consideration in order to secure or influence the award of work and shall not make any political contribution in an amount intended to influence the award of a contract by public authority, and which may be reasonably construed by the public as having the effect or intent to influence the award of a contract.

F. Avoiding conduct or practice that deceives the public.

(1) Licensees shall avoid the use of a statement containing a material misrepresentation of a fact or omitting a material fact.

(2) Consistent with the foregoing, licensees may prepare articles for the lay or technical press, but such articles shall not imply credit to the author for work performed by others.

G. Interaction with other licensees.

(1) Licensees shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of other licensees.

(2) Licensees in private practice shall not review the work of another licensee for the same client, except with the knowledge of such licensees, or unless the connection of such licensee with the work has been terminated.

(3) Licensees in governmental, industrial, or educational employment are entitled to review and evaluate the work of other licensees when so required by their employment duties.

[16.39.8.9 NMAC - Rp, 16 NMAC 39.8.9, 1/01/2002; A, 7/1/2015; A, 12/28/2017; A, 12/16/2022]

HISTORY OF 16.39.8 NMAC:

Pre-NMAC History: The material in this part is derived from that previously filed with the state records center & archives under: PELS 89-2, Rules of Professional Conduct, filed 8-15-89; PE/PS Rule No. 89-2, Rules of Professional Conduct, filed 8-15-89; Rule No. 700.1, Code of Professional Conduct -Preamble, filed 10-28-94; and Rule No. 700.2, Code of Professional Conduct - Rules of Professional Conduct, filed 10-28-94.

History of Repealed Material:

16 NMAC 39.8, Code of Professional Conduct--Engineering and Surveying (filed 03-31-1998) repealed 01/01/2002.

Other History:

Rule No. 700.1, Code of Professional Conduct -Preamble (filed 10-28-94) and Rule No. 700.2, Code of Professional Conduct - Rules of Professional Conduct (filed 10-28-94) were renumbered, reformatted and replaced by 16 NMAC 39.8, Code of Professional Conduct--Engineering and Surveying, effective 04-15-1998.

16 NMAC 39.8, Code of Professional Conduct--Engineering and Surveying (filed 03-31-1998) was renumbered, reformatted and replaced by 16.39.8 NMAC, Code of Professional Conduct--Engineering and Surveying, effective 01-01-2002.