

## ARTICLE 28-03.1 RULES OF PROFESSIONAL CONDUCT

Chapter  
28-03.1-01      Code of Ethics

### CHAPTER 28-03.1-01 CODE OF ETHICS

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#### **28-03.1-01-01. General statement.**

In order to establish and maintain a high standard of integrity, skills, and practice in the profession of engineering and land surveying, the code of ethics contained in this chapter is binding upon every person holding a certificate of registration as a professional engineer or professional land surveyor, and upon all agents, employees, officers, or partners.

This chapter is specifically designed to further safeguard the life, health, property, and public welfare of the citizens of North Dakota, and must be construed to be a reasonable exercise of the police power vested in the board of registration for professional engineers and land surveyors by virtue of North Dakota Century Code chapter 43-19.1, and as such the board can establish conduct, policy, and practices to be adopted.

These rules are to be read and interpreted without regard to race, creed, or sex.

The engineer or land surveyor who holds a certificate of registration from the board is charged with having knowledge of the existence of this chapter for professional conduct as an engineer or land surveyor, and also must be deemed to be familiar with the provisions and to understand them. Such knowledge shall encompass the understanding that the practice of engineering and land surveying is a privilege as opposed to a right, and the engineer or land surveyor must be forthright and candid in statements or written responses to the board or its representatives on matters pertaining to professional conduct.

**History:** Effective January 1, 1988; amended effective April 1, 1999; October 1, 2010.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

### **28-03.1-01-02. Action by another jurisdiction.**

A registrant who acts, either as an individual or through a business entity, may be deemed by the board to be guilty of misconduct in professional practice for an action that in this state would constitute a violation of North Dakota Century Code chapter 43-19.1, or of this title, and:

1. The registrant has received a reprimand or civil penalty as a result of a disciplinary action in another jurisdiction.
2. The registrant's license has been suspended, revoked, denied, or voluntarily surrendered as a result of disciplinary action in another jurisdiction.
3. The registrant is convicted in a court of competent jurisdiction of a felony without restoration of civil rights.

**History:** Effective January 1, 1988; amended effective October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-25

### **28-03.1-01-03. Standards of integrity.**

Registrants shall be guided in all their professional relations by the highest standards of integrity. The registrant will act in professional matters as a faithful agent or trustee for each client or employer.

1. Registrants shall admit and accept their own errors when proven wrong and refrain from distorting or altering the facts in an attempt to justify their decisions.
2. Registrants shall advise their clients or employers when they believe a project will not be successful.
3. Registrants shall not accept outside employment to the detriment of their regular work or interest. Before accepting any outside engineering or land surveying employment, registrants shall receive written approval from their employer. This subsection does not require the registrant to notify a current employer of a pending application or acceptance of subsequent employment.
4. Registrants shall not employ or attempt to employ an individual by false or misleading pretenses.
5. Registrants shall not engage in any act tending to promote their own interests to the detriment of the profession.
6. Registrants shall be truthful in professional reports, statements, or testimony. Registrants shall include all relevant and pertinent information in such reports, statements, or testimony.
7. Registrants shall not willfully engage in any conduct or practice that intentionally deceives the public.
8. Registrants shall not use statements containing a material misrepresentation of fact or omitting a material fact necessary to keep statements from being misleading or statements intended or likely to create an unjustified expectation.

**History:** Effective January 1, 1988; amended effective April 1, 1999; October 1, 2004; October 1, 2010; October 1, 2021.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

#### **28-03.1-01-04. Protection of public.**

Registrants shall be cognizant that their first and foremost responsibility is to the public welfare in the performance of services to clients and employers. The registrant:

1. Will regard one's duty to the public welfare as paramount.
2. Will not complete, sign, or seal plans or specifications that are not of a design safe to the public health and welfare and in conformity with accepted standards. In the course of work on a project, if a registrant becomes aware of an action taken by the client or employer against the registrant's advice that violates applicable state or municipal laws and regulations and which, in the registrant's judgment, will adversely affect the public life, health, or safety, the registrant shall take the following actions:
  - a. Advise the client or employer in writing of the registrant's refusal to consent to the decision and give reasons for that refusal; and
  - b. If the registrant's advice is ignored despite the objection, the registrant shall provide a copy of the registrant's objection and reasoning to the public official charged with the enforcement of the applicable state or municipal laws and regulations.

**History:** Effective January 1, 1988; amended effective October 1, 2004; October 1, 2010.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

#### **28-03.1-01-05. Advertising.**

Registrants 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 presentations incident to the advertisement 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.

**History:** Effective January 1, 1988; amended effective April 1, 1999; October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

#### **28-03.1-01-06. Aid public understanding.**

Repealed effective October 1, 2010.

#### **28-03.1-01-07. Issuance of public statements related to engineering or surveying.**

Registrants shall express a professional opinion publicly only when it is founded upon an adequate knowledge of the facts and a competent evaluation of the subject matter.

1. Registrants shall not willfully engage in any conduct or practice that deceives the public.
2. Registrants shall not use statements containing a material misrepresentation of fact or omitting a material fact.
3. Registrants shall express an opinion only when it is founded upon accurate information.
4. The registrant shall be completely objective and truthful in all professional reports, statements, or testimony. Registrants shall include all relevant and pertinent information in such reports, statements, or testimony.

5. The registrant, when serving as an expert or technical witness before any court, commission, or other tribunal, shall express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of the testimony.
6. The registrant will issue no statements, criticisms, or arguments on professional matters connected with public policy that are inspired or paid for by an interested party or parties, unless such statement is prefaced with a comment explicitly identifying the registrant, by disclosing the identity of the party or parties on whose behalf the statement is being made, and by revealing the existence of any pecuniary interest the registrant may have in the instant matter.

**History:** Effective January 1, 1988; amended effective April 1, 1999; October 1, 2004; October 1, 2010.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

#### **28-03.1-01-08. Qualification for work projects.**

The registrant will undertake assignments for which the registrant will be responsible only when qualified by education or experience. The registrant will engage, or advise engaging, experts and specialists whenever the client's or employer's interests are best served by such service.

1. The registrant may accept an assignment requiring education, training, or experience outside of the registrant's own field of competence, but only to the extent that such services are restricted to those phases of the project in which the registrant is qualified. All other phases of such project shall be performed by qualified associates, consultants, or employees.
2. The registrant shall not affix the registrant's signature or seal, or both, to any plan or document dealing with subject matter in which the registrant lacks competence acquired through education or experience, nor to any plan or document not prepared by the registrant or under the registrant's responsibility. In the event a question as to the competence of a registrant to perform a professional assignment in a specific technical field arises and cannot be otherwise resolved to the satisfaction of the board, the board, upon request of the registrant or by its own volition, may require the registrant to submit to whatever examination it deems appropriate.
3. In providing services, the registrant shall take into account all applicable federal, state, and local laws and regulations. The registrant shall not knowingly provide services resulting in violation of such laws and regulations.

**History:** Effective January 1, 1988; amended effective October 1, 2004; October 1, 2010.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

#### **28-03.1-01-09. Disclosure of confidential information.**

Registrants may not disclose, or use for the purpose not related to their employment, or retain other than in connection with their employment, confidential information concerning the business affairs or technical processes of any present or former client or employer without the client's or employer's consent, as applicable. Confidential information concerning business affairs includes information that would be considered a trade secret or technical process. Confidential information also includes financial information, information regarding clients or vendors, information regarding market strategy, information regarding compensation paid to other employees, and any other information either not generally known to the public or designated by the client or employer as confidential. In addition:

1. Registrants in the employ of others, without the consent of all interested parties, shall not enter promotional efforts or negotiations for work or make arrangements for other employment

as a principal or to practice in connection with a specific project for which the registrant has gained particular and specialized knowledge.

2. Without the consent of all interested parties, registrants shall not participate in or represent an adversary interest in connection with a specific project or proceeding in which the registrant has gained particular specialized knowledge on behalf of a former client or employer.

**History:** Effective January 1, 1988; amended effective October 1, 2004; October 1, 2021.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

#### **28-03.1-01-10. Disclosure of conflict of interest.**

Registrants shall make full prior disclosures to their employers or clients of all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services to either their employer or their clients.

1. If the employer or client objects to such an association or financial interest, the registrant shall either terminate the association or interest or offer to give up the employment.
2. Registrants serving as members, advisors, or employees of a governmental body or department, who are the principals or employees of a private concern, shall not participate in decisions with respect to professional services offered or provided by said concern to the governmental body that they serve.
3. Registrants shall not solicit or accept a professional contract from a governmental body on which a principal or officer of their organization serves as a member.
4. A registrant shall not accept employment when duty to the client or the public would conflict with the personal interest of the registrant or the interest of another client and would influence the registrant's judgment or the quality of the registrant's services.

**History:** Effective January 1, 1988; amended effective April 1, 1999; October 1, 2004; October 1, 2010; October 1, 2021.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

#### **28-03.1-01-11. Compensation from other parties.**

The registrant will not accept compensation, financial or otherwise, from more than one interested party for the same service. The registrant:

1. Will not accept financial or other considerations, including free engineering designs or land surveying plans, from material or equipment suppliers for specifying their product.
2. Will not accept commissions or allowances, directly or indirectly, from contractors or other parties dealing with the registrant's clients or employer in connection with work for which the engineer or land surveyor is responsible.
3. Shall not solicit or accept gratuities, gifts, travel, lodging, loans, entertainment, or other favors, directly or indirectly, from contractors, their agents, or other third parties dealing with a client or employer in connection with work for which the registrant is responsible, which can be determined to be an effort to improperly influence the registrant's professional judgment. Minor expenditures such as advertising trinkets, novelties, and meals are excluded. Neither shall a registrant make any such improper offer.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

#### **28-03.1-01-12. Solicitation of work.**

A registrant shall seek and engage in only the professional work or employment the professional is competent and qualified to perform by reason of education, training, or experience.

1. A registrant shall not falsify or misrepresent the extent of the registrant's education, training, experience, or qualifications to any person or to the public or misrepresent the extent of the registrant's responsibility in connection with any prior employment or projects.
2. A registrant shall not transmit, distribute, or publish or allow to be transmitted, distributed, or published, any false or misleading information regarding the registrant's own qualifications, training, or experience or that of the registrant's employer, employees, associates, or joint venturers.
3. Registrants shall not offer, give, solicit, or receive, either directly or indirectly, any political contribution in an amount intended to influence the award of a contract by public authority, or which may be reasonably construed by the public of having the effect or intent to influence the award of a contract.
4. Registrants shall not pay a commission, percentage, or brokerage fee in order to secure work except to a bona fide employee.
5. A registrant shall not tender any gift, pay, or offer to pay, directly or indirectly, anything of substantial value, whether in the form of a commission or otherwise, as an inducement to secure employment. A registrant is not prohibited from paying a commission to an employment agency for securing a position.
6. A registrant shall not knowingly seek or accept employment for professional services for an assignment for which another registrant is employed or contracted to perform. This prohibition shall not preclude a registrant from responding to a client-initiated or owner-initiated solicitation.

**History:** Effective January 1, 1988; amended effective April 1, 1999; October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

#### **28-03.1-01-13. Reporting of unethical or illegal practice**

. A registrant who has knowledge or reasonable grounds for believing that another registrant has violated any statute or rule regulating the practice of the profession shall have the duty of presenting such information to the board.

1. A registrant possessing knowledge of a violation shall report such knowledge to the board in writing and shall cooperate with the board in furnishing such further information or assistance as it may require.
2. A registrant, when questioned concerning any alleged violation on the part of another person by any member or authorized representative of the board commissioned or delegated to conduct an official inquiry, shall neither fail nor refuse to divulge such information as the registrant may have relative thereto.
3. Registrants must notify the board within thirty days if another state has disciplined them with a reprimand, censure, suspension, temporary suspension, probation, revocation, or refusal to

renew a license, or if they have voluntarily surrendered their license as part of a settlement proceeding.

4. If a registrant, during the course of the registrant's work, discovers a material discrepancy, error, or omission in the work of another registrant, which may impact the life, health, property, and welfare of the public, the discoverer shall make a reasonable effort to inform, in writing, the registrant whose work is believed to contain the discrepancy, error, or omission. Such communication shall reference specific codes, standards, or physical laws that are believed to be violated and identification of documents that are believed to contain the discrepancies. The registrant whose work is believed to contain the discrepancy shall respond in writing within thirty calendar days to any question about the work raised by another registrant. Failure to respond on the part of the registrant whose work is believed to contain the discrepancy shall be considered a violation of these rules. The discoverer shall notify the board in the event a response satisfactory to the discoverer is not obtained within thirty days.

**History:** Effective January 1, 1988; amended effective April 1, 1999; October 1, 2004; October 1, 2010.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

#### **28-03.1-01-14. Professional relationships.**

The registrant shall not knowingly associate professionally with or allow the use of one's name with persons not legally qualified to render the professional services for which the association is intended.

1. Registrants in private practice shall not review the work of another registrant for the same client, except with the knowledge of such registrant, or unless the connection of such registrant with the work has been terminated. This prohibition shall not preclude a registrant from responding to a client-initiated or owner-initiated solicitation for a second opinion.
2. Registrants in governmental, industrial, or educational employment may review and evaluate the work of other registrants when so required by their employment duties.
3. Registrants in sales or industrial employment may make engineering comparisons of represented products with products of other suppliers.
4. Registrants shall not use association with a nonregistrant, a corporation, or partnership, as a cloak for unethical acts.
5. The registrant shall not furnish limited services in such a manner as to enable unregistered persons to evade:
  - a. Federal, state, and local laws and regulations, including building permit requirements; or
  - b. Registration requirements.
6. The registrant may not take over, review, revise, or sign or seal drawings or revisions thereof when such plans are begun by persons not properly registered and qualified or do any other act to enable either such persons or the project owners, directly or indirectly, to evade the registration requirements.

**History:** Effective January 1, 1988; amended effective October 1, 2004; October 1, 2010.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

#### **28-03.1-01-15. Proprietary interests of others.**

1. Whenever possible, the registrant will name the person or persons who may be individually responsible for designs, inventions, writings, or other accomplishments.
2. Designs supplied by a client remain the property of the client and should not be duplicated by the registrant for others without express permission.
3. Before undertaking work for others in which the registrant may make improvements, plans, designs, inventions, or other records that may justify copyrights or patents, the registrant should enter into an agreement regarding the ownership of the improvements, plans, designs, inventions, or other records.
4. All files of an employer of the registrant are the property of the employer and may not be retained, removed, or copied by the registrant upon termination of the registrant's employment unless the employer specifically consents otherwise in writing. The files of an employer include all of the employer's records; data; research materials; copies of contracts; requests for proposals; proposals; plans, including preliminary plans, specifications, and drawings; client lists; client information; billing or financial information; notes; research materials; historical or background materials; copies of sample specifications, contracts, or documents; and computer data banks of any kind. If the registrant has any of the employer's files before termination of employment in any form or format, including actual physical copies or on computer memory storage devices, the registrant shall return or destroy such files immediately upon termination of employment unless otherwise instructed or agreed upon by the employer.

**History:** Effective January 1, 1988; amended effective October 1, 2004; October 1, 2010; October 1, 2021.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

#### **28-03.1-01-16. Professional enhancement.**

Repealed effective October 1, 2010.

#### **28-03.1-01-17. Professional conduct.**

1. Registrants shall indicate any reservation on a reference for an applicant if they have reason to believe the applicant is unqualified by education, training, or experience to become licensed. The registrant's opinion shall be based on the qualifications a reasonable and prudent professional would require an applicant to possess.
2. A registrant shall not submit a materially false statement or fail to disclose a material fact requested in connection with the application for certification or licensure in this state or any other state.
3. Registrants shall comply with the licensure laws and rules governing their professional practice in any United States jurisdiction.
4. A registrant shall not further the application for certification or licensure of another person known by the registrant to be unqualified in respect to character, education, or other relevant factor.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24



### **28-03.1-01-18. Public understanding and professional enhancement.**

Sections 28-03.1-01-01 through 28-03.1-01-17 of this code of ethics are requirements of professional conduct and noncompliance with any of those sections is subject to disciplinary action. To enhance the professions of engineering and land surveying, the board also encourages, but does not require, a registrant to:

1. Seek opportunities to be of constructive service in civic affairs and work for the advancement of the safety, health, and well-being of the registrant's community.
2. Cooperate in extending the effectiveness of the profession by interchanging information and experience with other engineers or land surveyors and students.
3. Extend public knowledge and appreciation of engineering or land surveying and its achievements and to protect the profession from misrepresentation and misunderstanding.
4. Maintain interest in the public welfare and be ready to apply the registrant's special knowledge, skill, and training for the use and benefit of the public.
5. Seek opportunities to provide career guidance for youths.
6. Provide opportunity for the professional development and advancement of engineers or land surveyors under the registrant's supervision by:
  - a. Encouraging efforts to improve the registrant's education.
  - b. Encouraging attendance and presentation of papers at professional and technical society meetings.
  - c. Promoting professional registration at the earliest possible date.

**History:** Effective October 1, 2010.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24