

**FLORIDA ENGINEERING SOCIETY
PROFESSIONAL POLICY PP NO 4-P**

**PROCEDURES FOR THE FLORIDA ENGINEERING SOCIETY'S
HANDLING OF PROFESSIONAL MISCONDUCT COMPLAINTS**

ARTICLE I

GENERAL PROVISIONS

Section 1. This article contains general provisions and definitions which apply to all other articles and sections of these rules.

Section 2. Definitions:

A. Code of Ethics - NSPE Code of Ethics.
B. Executive Director - The Florida Engineering Society Executive Director.
C. Coordinating Committee or Committee - The Florida Engineering Society Ethical Practices Coordinating Committee.

D. Board of Directors or Board - The Florida Engineering Society Board of Directors.

E. Expulsion - A member who is expelled from the Society shall be removed from the state, chapter, national and practice section membership rolls at the earliest date, after final action taken by the Board of Directors consistent with the provisions of these rules. A copy of the letter of expulsion shall be placed in the permanent files of the Florida Engineering Society and in the case of an NSPE member; a copy shall also be transmitted to the National Society of Professional Engineers Headquarters Office for record purposes. Letters of expulsion shall be handled and filed on a confidential basis. An expelled member shall cease to hold any elective office or appointive position at the state, chapter, national and practice section levels effective the date of removal from the Society's membership rolls. An expelled member shall forfeit any claim to any portion of his or her state, national, chapter and practice section dues which have been paid for the fiscal year in which the expulsion becomes effective. An expelled member shall forfeit all rights, privileges, benefits and services provided members of the Society. An expelled member shall be permanently barred from re-admission to membership in the Society. An expelled member shall be expected to return to Society Headquarters not later than thirty (30) days after the effective date of expulsion any Society membership pins, Society membership certificates, or other Society jewelry, insignia or identification then in his or her possession. An expelled member shall not in any way identify or otherwise indicate that he or she is a member of the Society.

F. Suspension - A member who is suspended from the Society shall be removed from the state, chapter, national and practice section membership rolls at the earliest date after final action taken by the Board of Directors consistent with the provisions of these rules. A copy of the letter of suspension shall be placed in the permanent files of the Florida Engineering Society and in the case of an NSPE member a copy shall also be transmitted to the National Society of Professional Engineers Headquarters Office for record purposes. Letters of suspension shall be handled and filed on a confidential basis. A person who is suspended from Society membership shall be suspended for a definite period of time (i.e., 12 months, 2 years, etc.) or until a definite date (i.e., January 1, 2025 etc.). A person who is suspended from membership in the Society may make written application for readmission to membership in the society after the period or time of suspension shall have ended. Society dues for the fiscal year in which a member was suspended and for the fiscal year in which the person reapplies shall be paid in full before a suspended member shall be

reinstated to membership in the Society. Applications for re-affiliation by suspended members shall be submitted to the Board of Directors for approval. A suspended member shall forfeit any claim to any portion of his or her state, national, chapter and practice section dues which have been paid for the fiscal year in which the suspension becomes effective. A suspended member shall cease to hold any elective office or appointive position at the state, chapter, national and practice section levels, effective the date of removal from the Society's membership rolls. A suspended member shall forfeit all rights, privileges, benefits and services provided members of the Society during the period of the suspension. A suspended member shall be expected to return to Society Headquarters not later than thirty (30) days after the effective date the suspension begins any Society membership pins, Society membership certificates, or other Society jewelry, insignia or identification then in his or her possession. Such articles may be returned to a suspended member by the Society at such time as he or she may apply and be approved for readmission to membership in the Society. A suspended member shall not in any way identify or otherwise indicate that he or she is a member of the Society during the period of suspension or until he or she shall apply and be approved for readmission to membership in the Society. A member who has been suspended from membership in the Society shall be permanently ineligible to become a FELLOW of the Florida Engineering Society.

G. Censure - A member who is censured by the Board of Directors shall be so notified by letter from the President of the Florida Engineering Society. A copy of the letter of censure shall be placed in the permanent files of the Florida Engineering Society and in the case of an NSPE member; a copy shall also be transmitted to the National Society of Professional Engineers Headquarters Office for record purposes. Letters of censure shall be handled and filed on a confidential basis. A member who is censured shall cease to hold any elective office or appointive position at the state chapter levels thirty (30) days after the letter of censure is mailed to him or her and shall not be eligible to hold an elective office or appointive position at the state and chapter levels for a period of twelve (12) months from the date the letter of censure is mailed. A member who has been censured shall be permanently ineligible to become a FELLOW of the Florida Engineering Society.

H. Reprimand - A member who is reprimanded by the Board of Directors shall be so notified by letter from the President of the Florida Engineering Society. A copy of the letter of reprimand shall be placed in the permanent files of the Florida Engineering Society and in the case of an NSPE member; a copy shall be transmitted to the NSPE Headquarters Office for record purposes. Letters of reprimand will be handled and filed on a confidential basis. If and when a member who has received a letter of reprimand is considered by the Board of Directors for FELLOW, the Board shall be notified of the fact that a letter of reprimand was issued but the issuance of a letter of reprimand shall not automatically disqualify a member from becoming a FELLOW.

I. Letter of Caution - A member who has committed a violation of ethics that the Committee determines does not warrant expulsion, suspension, censure or reprimand shall receive a letter from the Committee notifying the member of the violation and cautioning the member against future violations. A copy of the letter shall be placed in the permanent files of the Florida Engineering Society. The letter will be handled and filed on a confidential basis. The complainant shall be sent written confirmation of committee action within five (5) days of committee action.

J. Publication - All cases with disciplinary action shall be published in the Florida Engineering Society JOURNAL.

K. Member - A member of the Florida Engineering Society.

L. Complaint - A properly completed complaint form received by the Executive Director.

Section 3. All time limitations contained in these rules of procedure should be strictly followed, and the number of days shall be construed as being intervals of calendar days. However, the Committee may waive the time limitations if the particular facts and circumstances of the case warrant waiver. Failure of any party to comply with the time limitations set forth in these rules shall not be grounds for any other party to object to the continuation of the proceedings or to seek dismissal of the proceedings.

ARTICLE II

INITIATION OF DISCIPLINARY ACTION

Section 1. Any person may file a written complaint based upon actual knowledge he or she has of alleged violations of the code of ethics. The Committee may also initiate disciplinary proceedings by filing a complaint if any member of the Committee becomes aware of alleged ethical violations by a member. The Committee shall investigate a possible ethical violation in each known instance of a member being convicted of a felony, or in each instance of a member being disciplined by the State Board of Professional Engineers.

Section 2. The complaint shall be filed with the Executive Director.

Section 3. The complaint must include the following:

- A. Name and address of complaining party.
- B. Name and address of professional member of FES whose conduct is being questioned.
- C. Approximate dates and times when violations occurred.
- D. Facts describing the alleged violations.
- E. The specific sections of the Code of Ethics which allegedly have been violated.
- F. Signature of complainant.

ARTICLE III

HANDLING COMPLAINTS

Section 1. Upon receipt of a complaint, the Executive Director shall stamp on the face thereof the date on which the complaint was received. Each complaint shall also be assigned a case number which shall be entered on the complaint itself and on a file folder in which the complaint shall be filed.

Section 2. The Executive Director shall, within five (5) days of receipt of the complaint, review the complaint to insure that it complies with the requirements of Article II, Section 3, above, and that it names a respondent who is a member of FES.

Section 3. If the complaint lacks any essential elements as described in Article II, Section 3, if the complaint names a respondent who is not an FES member, or if the complaint is otherwise incomplete, a copy of the complaint shall be returned to the complaining party along with a letter identifying the defect in the complaint.

Section 4. Within five (5) days of receipt of a complaint that complies with the requirements of Article II, Section 3, the Executive Director shall send a copy of the original complaint to the respondent, the party who allegedly violated the Code of Ethics. The copy shall be sent by certified mail, return receipt requested. Subsequent amendments to the complaint shall also

be mailed to the respondent within (five) 5 days of their receipt. If for any reason certified mailing is ineffective, personal service of a copy of the complaint may be served by official process server in the county in which the respondent resides. If this type of service is necessary, confidentiality of the complaint shall be preserved to the extent possible under the circumstances.

Section 5. If the complaint names a respondent who is a member of the Committee or the Board, then the Executive Director, when sending the respondent a copy of the complaint, shall advise the respondent that he or she is disqualified from participating in the disciplinary proceeding as a Committee or Board member.

Section 6. Upon receipt of a written complaint, the Executive Director shall also immediately forward a copy to the Committee.

Section 7. Within ten (10) days of receipt of a written complaint, a respondent may file a written response with the Executive Director. Failure to file a written response shall not be deemed an admission by the respondent of any of the allegations contained in the written complaint.

Section 8. The date the written response is received shall be stamped by the Executive Director on the face of the response. The response shall be assigned the same case number as the complaint, the number shall be entered on the response, and the response shall be filed in the folder in which the complaint is filed.

Section 9. A copy of the written response shall be forwarded to the Committee and to the complainant by the Executive Director within five (5) days of its receipt.

ARTICLE IV

COMMITTEE REVIEW AND INVESTIGATION

Section 1. After receipt of a written complaint, and after the time has passed for the respondent to file a response to the complaint, the committee shall agenda the complaint for review at its next meeting. The Committee shall have the discretion to combine or sever matters for investigation or hearing, or to utilize any other reasonable procedural devices to efficiently and fairly consider all cases. In addition, if at any point in these proceedings the Respondent admits material facts establishing an ethical violation, the Respondent may waive his right to further proceedings in accordance with this Policy and may agree with the Committee on a recommended level of discipline to be presented to the Board.

Section 2. After referral of a matter to the Committee, or at any other point in these proceedings, each Committee member should determine whether he or she has any conflict of interest in considering the matter. If a Committee member seeks to be excused from considering a particular case due to a conflict of interest, he or she should immediately notify the Executive Director.

Section 3. The Committee shall review the complaint and the response, if any, to determine whether the complaint, if all matters alleged therein are assumed to be true, constitutes a breach of the Code of Ethics. In order to make this determination, the Committee may request additional information from the complainant and may obtain information available in the public records.

Section 4. If the Committee finds that the complaint is not sufficient to establish a violation of the Code of Ethics, the complaint will be dismissed and the respondent and the complainant will be so notified. After dismissal of the case, the file will be closed and will remain confidential unless the respondent requests in writing that it be released to the public.

Section 5. If the Committee finds that the allegations of the complaint, assumed to be true for this portion of the review process, are sufficient to establish a violation of the Code of Ethics, the committee may order an investigation thereof.

Section 6. If an investigation is warranted, the Committee may appoint a member or members from the Committee to conduct an investigation or may retain a private investigator to conduct the investigation. Investigations shall be limited to the allegations of the complaint, but additional complaints may be filed based on facts discovered during the investigation. To the extent the allegations of a complaint are similar or identical to allegations filed in a complaint against the same member with the Department of Business and Professional Regulation, Board of Professional Engineers, the Committee may elect to use any investigation file and report from this agency in lieu of or in addition to a separate investigation.

Section 7. The investigator shall inform any person he or she interviews of the confidential nature of the investigation. The investigation must be impartial and unbiased and if at any time the investigator can not be such, then he or she shall notify the Committee and disqualify himself or herself from further conduct of the investigation. The Committee may also terminate the investigator at any time during the investigation if it appears that his or her investigation is no longer impartial and unbiased.

Section 8. The investigator shall complete his or her preliminary investigation and shall prepare a report to the Committee. The report shall be received at the next meeting of the Committee after the completion of the investigative report. The investigative report shall contain a narrative account of all pertinent information obtained through interviews of witnesses, documentary evidence, or other sources and shall include a discussion of any conflicts in the evidence. The report shall not contain any determination or speculation with respect to whether the evidence indicates a breach of the Code of Ethics. The report shall make no recommendations.

Section 9. At the same time the investigator files his or her report, he or she shall also file with the Committee his or her investigatory file. This file shall remain confidential and shall contain:

- A. Copies of all documents obtained during the course of the investigation;
- B. Tape recordings of interviews, if any, with witnesses so long as the prior consent of the interviewee was given to the tape recording and if tape recordings do not exist, a summary of the interview with the witness;
- C. A list of the names and addresses of all persons actually interviewed;
- D. Any other relevant documents.

Section 10. Within five (5) days of the receipt of the investigator's written report and investigatory file, the Executive Director shall forward a copy of the report to both the complainant and the respondent, by certified mail, return receipt requested. A copy of the investigatory file need not be forwarded to either the complainant or the respondent, but shall be open for review by either the complainant or respondent upon written request.

Section 11. Within (ten) 10 days of receipt of a copy of the investigator's report, the complainant and the respondent may file written responses to the report. Failure to file a written response shall not be deemed an admission by either the complainant or the respondent of any of the facts or matters contained in the final investigatory report.

ARTICLE V

COMMITTEE ACTION

Section 1. At the next meeting of the Committee after receipt of the investigator's report and investigatory file, the Committee shall review the initial complaint, any responses filed, the investigatory report, the investigatory file, and any other materials deemed pertinent to determine whether there is probable cause to believe that a violation of the Code of Ethics has occurred.

Section 2. If the Committee determines that there is no probable cause to believe that a violation of the Code of Ethics has occurred, the Committee shall so state its reasons in a final written report, shall close the file on the matter, and shall notify the respondent and the complainant by certified mail, return receipt requested, of this action.

Section 3. If the Committee determines that there is probable cause to believe a violation of some ethical standards has occurred but that the Committee may not have the authority to deal with the specific type of violation, or if the Committee determines that there is probable cause to believe a violation of ethical standards has occurred and both the Committee and some other society or entity have the authority to discipline the violator, the Committee may refer the matter to the other appropriate society or entity. Both the complainant and the respondent shall be notified by certified mail, return receipt requested, of this action by the Committee.

Section 4. If the Committee determines that there is probable cause to believe that a violation of the Code of Ethics has occurred, the Committee shall set the matter down for a hearing. The scheduled date of the hearing shall not be less than seven (7) nor more than 60 days from the date the Committee makes its determination as to probable cause. Both the complainant and the respondent shall be notified by certified mail, return receipt requested, of the date of the hearing. The notice of hearing shall specify the particular sections of the Code of Ethics which there is probable cause to believe the respondent violated. Once these matters are set forth in the notice of hearing, these are the only matters on which the Committee may conduct a hearing and no other issues may be raised subsequent to the issuance of the notice of hearing. The notice shall inform the respondent that he or she must notify the Committee, within ten (10) days after receipt of the notice, as to whether he or she wants to proceed with the hearing or waives his or her right to one. If the respondent does not respond within the specified time, the Committee may cancel the hearing and submit its recommendation to the Board.

ARTICLE VI

HEARINGS

Section 1. Hearings on alleged violations of the Code of Ethics shall be conducted informally by three (3) members of the committee appointed by the Chair at the time probable cause is determined. The chair of the Committee or his or her designee shall be chair of the hearing and shall be responsible for its conduct, including ruling if necessary, on any points of order. If the Chair believes the situation warrants, he or she may suggest the hearing be by electronic means and communicate their suggestion to Respondent in a probable cause letter. The letter shall include a note that Respondent may reject suggestion and demand an in-person hearing.”

Section 2. All persons reporting or testifying at the hearing shall be sworn. Business to be conducted at the hearing shall be in the following order:

A. The investigator who conducted the investigation shall make an oral report to the Committee.

B. The respondent or any legal counsel on his behalf shall respond to the investigator's report.

C. Witnesses, including the complainant, may be called by either the Committee or the respondent to testify on behalf of either party. The Executive Director shall notify the complainant if the Committee desires his presence at the hearing.

D. Both the committee and the respondent shall be entitled to submit any and all documents deemed pertinent to the alleged violations of the Code of Ethics.

Section 3. A sound recording shall be made of all hearings and shall be kept on file at the state headquarters office for a period of three years. In the event a transcript is requested, it will be furnished, at cost, to parties to the hearing.

Section 4. All hearings conducted on alleged Code of Ethics violations and all related documents including file materials shall be considered confidential. The FES legal counsel and the Executive Director may attend the hearing.

Section 5. The Committee may continue the hearing at any time to allow further investigation prior to deliberating to determine if in fact a violation of the Code of Ethics has occurred.

Section 6. At the conclusion of the hearing, the Committee will meet in closed session to deliberate and determine whether in fact a violation of the Code of Ethics has occurred. The Executive Director and the FES legal counsel may attend this closed session. In its deliberations, the Committee shall also decide what, if any, form of discipline is recommended. The Committee is not limited to expulsion, suspension, censure, and reprimand in determining a recommended level of discipline. The Committee shall have the discretion to recommend any discipline appropriate to the ethical violation that has occurred. The Executive Director will advise the EPCC if the individual has received any previous FES EPCC discipline for ethical violations.

Section 7. If the Committee determines that there has been a violation of the Code of Ethics, the Committee shall finalize its findings in a written report. The report shall include:

- A. The allegations of the complaint;
- B. The findings of fact made by the Committee;
- C. The specific violation(s) found to have occurred and the appropriate references to the various sections of the Code of Ethics which have been violated;
- D. The Committee's recommendation for disciplinary action.

Section 8. If the Committee determines that there has not been a violation of the Code of Ethics, the Committee shall file a final written report. The report shall include:

- A. The allegations of the complaint;
- B. The findings of facts made by the Committee;
- C. The specific reasons why the Committee has determined that no violation of the Code of Ethics has occurred.

Section 9. The Committee's final report shall be mailed by certified mail, return receipt requested, to both the respondent and the complainant within five (5) days of the conclusion of the hearing. The Committee's final report shall also be filed within five (5) days with the Executive Director. If a violation is found, the Executive Director shall schedule the matter on the agenda for the next Board meeting.

Section 10. Within ten (10) days of receipt by the respondent of the Committee's final report finding that no violation of the Code of Ethics has occurred, the respondent may request that the Committee's findings be published.

Section 11. Within ten (10) days of receipt of the Committee's final report finding that a violation of the Code of Ethics has occurred, the respondent may file a written appeal with the Board of Directors. Any written appeal must contain all statements or supporting information which will provide the Board with a full understanding of the basis for the appeal.

ARTICLE VII

ACTION BY BOARD OF DIRECTORS

Section 1. At the next meeting of the Board of Directors after receipt of a written case report and any written appeal, the Board of Directors shall review the report and the recommendation of the Committee.

Section 2. In a closed meeting, which the Chair of the Ethical Practices Coordinating Committee, the Executive Director and the FES legal counsel may attend, the Board shall review all materials submitted by the Committee, and shall approve the recommendation of the Committee, reduce the recommended disciplinary action, reverse the findings based upon the appeal statement, or return the case to the Committee for reconsideration based upon new or additional information made known to the Board prior to or at the Board meeting. Under no circumstances may the Board increase the recommended disciplinary action of the Committee.

Section 3. If the Board of Directors returns the matter to the Committee, the Board shall identify in writing the information and the reasons the Board believes justify reconsideration. Both the complainant and the respondent shall be sent written confirmation of the Board's action within five (5) days of the action, by certified mail, return receipt requested. Within 60 days of the Board's action in returning a matter to the Committee, the Committee shall reconsider the cases returned.

Section 4. If the Committee determines, based upon new or additional information, that the recommendation for disciplinary action should be more stringent, the respondent shall be notified in writing within five (5) days by certified mail, return receipt requested. The notification shall extend to the respondent an offer for a rehearing to be conducted in accordance with the hearing procedures set forth in these rules. If a rehearing is requested and conducted, the Committee shall submit its reconsidered final report to the Board of Directors in accordance with the procedures set forth in these rules.

Section 5. The written findings of the Board of Directors shall be considered final. The Board of Directors shall take final disciplinary action against a respondent who is found to have violated the Code of Ethics.

Section 6. When appropriate, the Board may submit any information obtained during the disciplinary process to any other entities or authorities who may have concurrent jurisdiction over alleged violations.

Section 7. Disciplinary actions of the Board of Directors acting for the general membership shall be published in the official magazine of the Society.

ARTICLE VIII

DISCIPLINE AFTER DBPR ACTION

Section 1. This article shall apply to all cases in which the Department of Business and Professional Regulation (DBPR) has disciplined an FES member.

Section 2. Upon receipt of a final order from DBPR indicating an FES member has been disciplined, the Executive Director shall forward the order to the Committee for consideration at its next regularly scheduled meeting. The Committee shall consider the order and shall determine whether there is probable cause to believe an ethical violation occurred. If the Committee

determines there is no probable cause to believe an ethical violation has occurred, the accused FES member shall be immediately notified and the FES file shall be closed on the matter.

Section 3. If the Committee determines that there is probable cause to believe an ethical violation has occurred, the Committee shall direct the Executive Director to send the accused member a letter by certified mail, return receipt requested, explaining the following:

A. that the Committee has found probable cause to believe an ethical violation has occurred;

B. that the Committee seeks to utilize the investigation materials obtained by DBPR in its investigation;

C. that the member may consent to the use of the DBPR investigative materials or may request an independent investigation;

D. that upon receipt of permission to use the DBPR investigative materials or upon completion of an independent investigation a hearing will be scheduled to consider the member's case;

E. that during the hearing, the Committee will proceed according to the procedures for hearings set forth in Article VI of this Policy and final action by the Board shall be according to Article VII of this Policy.

F. that if the member does not appear at the hearing FES will impose sanctions commensurate with the violation and the discipline imposed by DBPR.

Section 4. The Committee and the Board shall proceed according to Articles VI and VII of this Policy for purposes of the hearing and final Board action.

Approved by the FES Board of Directors August 1, 1985

Amended July 31, 1986

Amended November 19, 1987

Amended July 28, 1988

Amended December 5, 1989

Amended November 15, 1990

Amended April 1, 1991

Amended November 29, 1994

Reaffirmed by the FES Board of Directors

August 6, 1998

Amended by the FES Board of Directors

June 11, 2010