



The Ethical Practice of Engineering: Case Studies from Administrative and Court Actions

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If you are the subject of an administrative or court action, consult with an attorney.

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### Presentation Overview

- Minnesota Rules
  - Licensure
  - Practice
- Administrative Actions
  - Minnesota
  - Other jurisdictions
- Court Actions

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Minnesota Statutes Sections 326.01-326.31  
Minnesota Rules 1800.0050-1800.0900; 1800.2500-  
1800.3500; 1800.4000-1800.5900  
Minnesota Rules Chapter 1805

## MINNESOTA RULES

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### Minnesota Statutes § 326.02, subd. 3

- Any person shall be deemed to be practicing professional engineering . . . who holds out as being able to perform . . . any technical professional service, such as planning, design or observation of construction for the purpose of assuring compliance with specifications and design . . .

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### Minnesota Statutes § 326.02, subd. 3

- . . . . In connection with any public or private . . . utilities . . . or projects wherein the public welfare or safeguarding of life, health, or property is concerned or involved . . .

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**Minnesota Statutes § 326.02, subd. 3**

- . . . In connection with any public or private . . . utilities . . . or projects wherein the public welfare or safeguarding of life, health, or property is concerned or involved . . .
- . . . when such professional service requires application of principles of mathematics and the physical and applied engineering sciences . . .

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**Minnesota Statutes § 326.02, subd. 5**

- The provisions of sections 326.02 to 326.15 shall not apply . . . to any standardized manufactured product . . .

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**Minnesota Statutes § 326.107, subd. 1**

- PDHs in a two-year period
- Professional Engineers = 24 hours
- Carryover of 50% permitted
- 2 hours of professional ethics and not eligible for carryover

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### Continuing Education Requirements

- Minn. Stat. § 326.107, subd. 2
  - Defines what qualifies for PDHs
  - Identifies qualifying activities
- Minn. Stat. § 326.107, subd. 3
  - Criteria for courses and activities
- Minn. Stat. § 326.107, subd. 7
  - Recordkeeping and Reporting

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### Board Resources for Continuing Education

- <http://mn.gov/aelslagid/conted.html>
- <http://mn.gov/aelslagid/ceform.pdf>
- <http://mn.gov/aelslagid/cedocumenting.xls>
- <http://mn.gov/aelslagid/cerecord.pdf>

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### Minnesota Rules 1800.0050-1800.0900

- General licensure rules
- Licensees must cooperate with Board requests
- Basic requirements for licensure in MN
  - Examination OR
  - Licensure in another state
    - Any plans signed while comity application is pending must state such
    - Minnesota does not require use of a seal

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### Minnesota Rule 1805.0100

- Rules of Professional Conduct
  - Each licensee . . . is charged with knowledge of this rule. In the exercise of the privileges and rights granted by the certificate of licensure, the licensee shall conform professional conduct . . .*

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### Minnesota Rule 1805.0200

- Personal Conduct
  - Avoid acts to diminish public confidence in the profession
  - Not submit materially false statement connected to any application for licensure in MN or any other state
  - Not further application for licensure of person known to be unqualified

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### Minnesota Rule 1805.0200, Subp. 4

- Licensee shall not:
  - Circumvent professional conduct rules through actions of another
  - Engage in illegal conduct/moral turpitude
  - Engage in dishonest, fraudulent, deceitful, or misrepresentative conduct
  - Engage in conduct reflecting adversely on licensee's fitness to practice
  - Permit licensee's name/seal to be used on plans/specifications/documents not prepared by or under direct supervision

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Minnesota Rule 1805.0300

- Conflict of Interest
  - Employment
  - Compensation
  - Gifts

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Minnesota Rule 1805.0400

- Improper Solicitation of Employment
  - Only work for which licensee is competent and qualified
  - Licensee shall not misrepresent education, training, experience, or qualifications
  - Licensee shall not transmit . . . misleading information on licensee's qualifications
  - Licensee shall not pay/gift anything of substantial value to secure employment

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Minnesota Rule 1805.0500

- False or Malicious Statements
  - Licensee shall not make false or malicious statements that may injure the personal or professional reputation or business of another licensee.

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Minnesota Rule 1805.0600

- Knowledge of Improper Conduct by Others
  - Licensees have a duty to report another licensee’s violation of any statute or rule that regulates the practice of the profession

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Minnesota Rule 1805.0700

- Action by Other Jurisdiction
  - A licensee convicted of a felony or another state’s revocation of licensure . . . is deemed a violation of the Minnesota rules of professional conduct
  - A determination by a court that licensee is mentally incompetent shall be deemed incompetent to practice . . .

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**ADMINISTRATIVE  
ENFORCEMENT**

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### Reporting Another Licensee or Business

- Cannot be anonymous
  - Unless the information supporting the complaint is publicly available
  - If it is, the Exec Director (Doreen Frost) of the Licensure Board can make the complaint
- Must include:
  - Identity of person complaint is against
  - Surrounding circumstances
  - Specifics of the complaint
  - Documentary evidence (if available)

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### Complaint Process

- Overview
  - <http://mn.gov/aelslagid/complaints.html>
  - <http://mn.gov/aelslagid/compform.pdf>
  - Does not include every step of the process

Overview of the Complaint Process

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    graph TD
      A[Complaint Received] --> B[File Opened]
      B --> C[Staff Sends Acknowledgement Letter]
      C --> D[Assign file to Complaint Committee Member]
      D --> E[Determine if Board has Jurisdiction]
      E --> F[Determine elements of complaint]
      E --> G[Close file; Refer to appropriate jurisdiction]
      F --> H[Investigation  
i.e. Allegation Letter, seek documentation from third parties, gather more information from complainant]
      H --> I[Possible Conference with Respondent]
      I --> J[Committee Determines Appropriate Remedy]
      J --> K[Settlement with Respondent]
      J --> L[Settlement not reached with Respondent]
      J --> M[No Violation Discussed]
      L --> N[If Case and Disciplinary Order is appropriate, Board issues Order and Respondent may request a Hearing]
      M --> O[If disciplinary action against licensee or certificate holder is appropriate, Committee issues Notice and Order for Hearing; Hearing is held]
      
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### Disciplinary Actions

- Differ by state
- Some examples:
  - Suspend or revoke a license
  - Civil penalties
  - Fees for costs of proceedings
  - Community service
  - Education

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### Administrative Actions

- Minnesota
- State Survey
  - New York
  - Oklahoma
  - Wyoming

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### Minnesota – Expiration

- 2011-0065
  - 6-month lapse in license
  - Self-reported
  - Reprimand/\$3,000 fine
- 2015-0030
  - 6-month lapse in license
  - Self-reported: email signature block included name followed by "PE"
  - Held employment that required PE
  - Reprimand/\$5,000 fine

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### Minnesota – Other

- 2012-0046
  - Delinquent state taxes
  - Revocation until current and asks for reinstatement

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### New York

- 25622: NYS Office of the Professions
- Claimed Violations
  - Fees from third party
  - Failure to maintain records
  - Lapse in registration
- Action
  - 12-month suspension
  - 2 years probation
  - 100 hours public service
  - \$20,000 fine

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### Oklahoma

- 2009-11
- Claims
  - City of Tulsa Field Manager
  - Conspiratorial behavior with private contractors
  - Participated in fraud Pled guilty to felony charges in US District Court
- Action
  - Revocation of License
  - \$40,000 in Civil Penalties
  - Revocation of License in Wyoming

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## COURT ENFORCEMENT

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*Moransais v Heathman, 744 So.2d 973 (1999)*

- Parties
  - Moransais – Buyer
  - Heathman – Seller
  - Bromwell & Carrier – PE Inspector
- Facts
  - Moransais hired Bromwell for inspection
  - No defects in report
  - Moransais uncovered defects after purchase
  - Bromwell not party to Purchase Agreement

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*Moransais*

- Disposition
  - Defects of the time discoverable during inspection
  - FL law holds professionals liable for negligent acts
  - Liability regardless of whether they signed the contract

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*United States v. Wynn, 684 F.3d 473 (4<sup>th</sup> Cir. 2012)*

- Parties
  - Wynn – Eng'r for runway plan
  - Talbert & Bright – Wynn's employer
  - Oconee County – Contract with Talbert
  - Dept. of Health – Permitting agency
- Facts
  - Wynn drafted runway stormwater plan
  - County approved plans
  - Wynn failed to send plans to DoH for permit
  - Wynn cut seal off other plans and copied onto runway plan

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*Wynn*

- Disposition
  - Wynn's mail fraud and wire fraud conviction upheld
  - \$118,000 in damages plus additional fraud charges

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*Clark v Morsilli, 714 A.2d 597 (1998)*

- Parties
  - Clarke – PE and Board of Registration Member
  - Anthony – PE
- Facts
  - Clarke participated in Anthony's disciplinary proceedings
  - Clarke's firm took Anthony's firm's project
  - Anthony filed complaint
- Disposition
  - Code of Ethics violation

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