

CHAPTER 4  
DISCIPLINE AND PROFESSIONAL CONDUCT OF LICENSEES

[Prior to 6/1/88, see Engineering and Land Surveying Examiners, Board of[390] Ch 4]  
[Prior to 11/27/91, for disciplinary rules see 193C—1.10(114) to 193C—1.29(114)]  
[Rules 4.7(542B) to 4.28(542B) renumbered as 4.8(542B) to 4.29(542B) IAC 11/23/94]

**193C—4.1(542B) General statement.** Protection of the life, health and welfare of the people in Iowa requires that the board deal with cases involving malpractice or violation of Iowa Code chapter 542B.

**193C—4.2(542B) Reprimands, probation, license suspension or license revocation.** Acts or omissions on the part of a licensee that are grounds for a reprimand, period of probation, license suspension or license revocation are as follows:

**4.2(1)** Acts or offenses defined in Iowa Code section 542B.21.

**4.2(2)** Acts or omissions which constitute negligence or carelessness that licensees must report to the board as defined in rule 4.3(542B).

**4.2(3)** Unethical conduct including, but not limited to, violation of the code of professional conduct in rule 4.8(542B).

**4.2(4)** Failure to respond within 30 days to written communications from the board and to make available any relevant records with respect to an inquiry or complaint about the licensee's unprofessional conduct. The period of 30 days shall commence on the date when such communication was sent from the board by registered or certified mail with return receipt requested to the address appearing in the last licensure.

**4.2(5)** Failure to comply with a warning from the board with respect to licensee behavior.

**4.2(6)** Rescinded IAB 2/25/98, effective 4/1/98.

This rule is intended to implement Iowa Code section 542B.21.

**193C—4.3(542B) Reporting of acts or omissions.** Licensees shall report acts or omissions by a licensee which constitute negligence or carelessness. For the purposes of this section of the administrative rules, negligence or carelessness shall mean demonstrated unreasonable lack of skill in the performance of engineering or land surveying services by failure of a licensee to maintain a reasonable standard of care in the licensee's practice of engineering or land surveying. In the evaluation of reported acts or omissions, the board shall determine if the engineer or land surveyor has applied learning, skill and ability in a manner consistent with the standards of the professions ordinarily possessed and practiced in the same profession at the same time. Standards referred to in the immediately preceding sentence shall include any minimum standards adopted by this board and any standards adopted by recognized national or state engineering or land surveying organizations.

**193C—4.4(542B) Peer review committees.** The board may appoint a peer review committee for the investigation of a complaint about the acts or omissions of one or more licensees.

**4.4(1) Membership.** A committee shall generally consist of three or more licensed engineers or licensed land surveyors or both, as determined by the board, who are selected for their knowledge and experience in the type of engineering or land surveying involved in the complaint. The board may appoint a two-member peer review committee or a single peer review consultant to perform the function of a peer review committee when, in the board's discretion, appointing a committee with three or more members would be impractical, unnecessary or undesirable given the nature of the expertise required, the need for prompt action or other circumstances of the complaint.

The following are ineligible for membership:

- a. Members of the Iowa Engineering and Land Surveying Examining Board.
- b. Relatives of the respondent or complainant.
- c. Individuals employed by the same firm or governmental unit as the respondent or complainant.

**4.4(2) Authority.** The committee's investigation may include activities such as interviewing the complainant, the respondent, individuals with knowledge of the alleged violation, and individuals with knowledge of the respondent's reputation in the community; gathering documents; site visits; and independent analyses as deemed necessary.

The committee may not hire legal counsel, investigators, secretarial help or any other assistance without written authorization from the board.

**4.4(3) Compensation.** Committee members may receive per diem compensation equal to that received by board members for performing board duties. Committee members may be paid reasonable and necessary expenses that are incurred for travel, meals and lodging while performing committee duties within established budget limitations.

**4.4(4) Reports.** Each peer review committee shall submit a written report to the board within a reasonable period of time. The report shall recommend dismissal of the complaint, further investigation or disciplinary proceedings. If further investigation or disciplinary proceedings are recommended, supporting information shall be submitted to the secretary.

The peer review committee may be discharged at the pleasure of the board. The board may dismiss individual members of a committee or add new members at any time. Committee members may be required to testify in the event of formal disciplinary proceedings.

**4.4(5) Disciplinary recommendations.** The recommendations of a peer review committee which shall constitute disciplinary recommendations which must be reported to the board are those acts and omissions that constitute grounds for a reprimand, license suspension, or license revocation. These acts and omissions are defined in rule 4.2(542B).

**193C—4.5(542B) Disputes between licensees and clients.** Reports from the insurance commissioner or other agencies on the results of judgments or settlements of disputes arising from malpractice claims or other actions between professional engineers or land surveyors and their clients may be referred to counsel or peer review committee. The counsel or peer review committee shall investigate the report for violation of the statutes or rules governing the practice or conduct of the licensee. The counsel or peer review committee shall advise the board of any probable violations, any further action required, or recommend dismissal from further consideration.

**193C—4.6(542B) Mental competence.** Any licensee adjudged mentally incompetent shall, until restored to mental competency, be deemed to be incompetent to practice engineering or land surveying as defined by Iowa Code section 542B.2.

**193C—4.7(542B) Practice of engineering or land surveying by firms.** A firm shall not directly or by implication offer professional engineering services to the public unless it is owned or managed by, or regularly employs, one or more licensed professional engineers who directly control and personally supervise all professional engineering work performed by the firm.

A firm shall not directly or by implication offer land surveying services to the public unless it is owned or managed by, or regularly employs, one or more licensed land surveyors who directly control and personally supervise all land surveying work performed by the firm.

A firm may not satisfy these requirements by hiring a licensed professional engineer or land surveyor on an as-needed, occasional, or consulting basis, whether an employee or independent contractor.

“To offer” shall mean to advertise in any medium, or to infer in writing or orally that these services are being performed by owners or permanent employees of that firm. Nothing in this rule is intended to prevent a firm from truthfully offering services as a project manager, administrator, or coordinator of a multidisciplinary project.

For purposes of this rule, the term “firm” includes regular corporations, professional corporations, registered limited liability partnerships, partnerships, limited liability companies, private practitioners employing others, persons or entities using fictitious or assumed names, or other business entities.

This rule is intended to implement Iowa Code section 542B.26.

**193C—4.8(542B) Code of professional conduct.** In order to establish and maintain a high standard of integrity, skills and practice in the professions of engineering and land surveying, and to safeguard the life, health, property and welfare of the public, the following code of professional conduct shall be binding upon every person holding a certificate of licensure as a professional engineer or land surveyor in this state.

The code of professional conduct as promulgated herein is an exercise of the police power vested in the board by virtue of the Acts of the legislature, and as such the board is authorized to establish conduct, policy, and practices.

All persons licensed under Iowa Code chapter 542B are charged with having knowledge of the existence of this code of professional conduct and shall be deemed to be familiar with its several provisions and to understand them. Such knowledge shall encompass the understanding that the practices of engineering and land surveying are a privilege, as opposed to a right, and the licensee shall be forthright and candid in statements or written response to the board or its representatives on matters pertaining to professional conduct.

**4.8(1) Responsibility to the public.** Licensees shall at all times conduct their professional practices in a manner that will protect life, health and property and enhance the public welfare. If their professional judgment is overruled under circumstances where safety, health and welfare of the public are endangered, they shall inform their employer or client of the possible consequences, notify such other proper authority as may be appropriate, and shall withdraw from further services on the project.

Licensees shall neither approve nor certify engineering or land surveying documents that may be harmful to the public health and welfare and that are not in conformity with accepted engineering or land surveying standards.

**4.8(2) Competency for assignments.** Licensees shall undertake to perform engineering or land surveying assignments only when qualified by education or experience in the specific technical field of professional engineering or land surveying involved. Licensees shall engage or advise engaging experts and specialists whenever the client or employer’s interests are best served by such service.

Licensees may accept an assignment on a project requiring education or experience outside their field of competence, but only to the extent that their services are restricted to those phases of the project in which they are qualified. All other phases of such projects shall be performed by qualified associates, consultants or employees.

**4.8(3) Truth in reports and testimony.** Licensees, when serving as expert or technical witnesses 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 their testimony. Under these circumstances, should knowledge be inadequate, the licensee must so state.

Licensees shall be objective and truthful in all professional reports, statements or testimony. All relevant and pertinent information shall be included in such reports, statements or testimony.

**4.8(4)** *Conflicts of interest.* Licensees shall not issue statements, criticisms or arguments on engineering or land surveying matters connected with public policy which are influenced or paid for by an interested party, or parties, unless they have prefaced their comments by explicitly identifying themselves, by disclosing the identities of the party or parties on whose behalf they are speaking, and by revealing the existence of any pecuniary interest.

Licensees shall avoid all known conflicts of interest with their employers or clients, and when unforeseen conflicts arise, shall promptly inform their employers or clients of any business association, interest, or circumstances which could influence judgment or the quality of services.

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.

Licensees shall act in professional matters for each employer or client as faithful agents or trustees and shall maintain full confidentiality on all matters in which the welfare of the public is not endangered.

**4.8(5)** *Unethical or illegal conduct.* Licensees shall not pay or offer to pay, either directly or indirectly, any commission, political contribution, gift, or other consideration in order to secure work, exclusive of securing positions through employment agencies.

Licensees, as employers, shall refrain from engaging in any discriminatory practice prohibited by law and shall, in the conduct of their business, employ personnel upon the basis of merit.

Licensees shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with their clients or employers in connection with work for which they are responsible.

Licensees shall not solicit or accept an engineering or land surveying contract from a governmental body when a principal or officer of their organization serves as a member.

Licensees shall not associate with or permit the use of their names or firms in a business venture by any person or firm which they know, or have reason to believe, is engaging in business or professional practice of a fraudulent or dishonest nature.

Licensees shall not use association with nonengineers, corporations or partnerships as "cloaks" for unethical acts. Licensees shall not violate any local, state or federal criminal law in the conduct of professional practice.

Licensees shall not violate licensure laws of any state or territory.

**4.8(6)** *Standards of integrity.* Licensees shall answer all questions of a duly constituted investigative body of the state of Iowa concerning alleged violations by another person or firm.

Licensees shall admit and accept their own errors when proven wrong and shall refrain from distorting or altering the facts to justify their own decisions.

If licensees have knowledge or reason to believe that another person or firm may be in violation of any Iowa regulations regarding conduct of professional engineering or land surveying practice, they shall present such information to the Iowa engineering and land surveying examining board in writing and shall cooperate with the board in furnishing further information or assistance required by the board.

Licensees shall not assist in the application of an individual known by the licensee to be unqualified for licensure by reason of education, experience or character.

**193C—4.9(542B) Complaints and investigations.**

**4.9(1) *Complaints.*** The board shall, upon receipt of a complaint in writing, or may upon its own motion, pursuant to other evidence received by the board, review and investigate alleged acts or omissions which reasonably constitute cause under applicable law or administrative rule for licensee discipline.

**4.9(2) *Form and content.*** A written complaint should include the following facts:

- a. The full name, address, and telephone number of complainant.
- b. The full name, address, and telephone number of respondent.
- c. A statement of the facts concerning the alleged acts or omissions.

The written complaint may be delivered personally or by mail to the secretary of the board. The current office address is 1918 S.E. Hulsizer, Ankeny, Iowa 50021.

**4.9(3) *Investigation of allegations.*** In order to determine if probable cause exists for a hearing on the complaint, the board may cause an investigation to be made into the allegations of the complaint. It may refer the complaint to a peer review committee or the department of inspections and appeals for investigation, review and report to the board.

**4.9(4) *Informal discussion.*** The board, if it considers it advisable, or if requested by the affected licensee, may grant the licensee an opportunity to appear before the board for a voluntary informal discussion of the facts and circumstances of an alleged violation. An informal discussion constitutes a part of the board's investigation of a pending disciplinary case, and the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing.

This rule is intended to implement Iowa Code section 542B.22.

**193C—4.10(542B) Informal settlement.** A contested case may be resolved by informal settlement. Negotiation of an informal settlement may be initiated by the state of Iowa represented by discipline counsel, the respondent, or the board. The board may designate a board member with authority to negotiate on behalf of the board. Negotiation shall be limited to the parties and the board's designee until presentation of a final, written form to the full board for approval.

**4.10(1) *Informal settlement—waiver of notice and opportunity to be heard.*** Consent to negotiation by the respondent constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 during informal settlement negotiation. Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board's designee.

**4.10(2) *Informal settlement—board approval.*** All informal settlements are subject to approval of a majority of the full board. No informal settlement shall be presented to the board for approval except in final, written form executed by the respondent. If the board fails to approve the informal settlement, it shall be of no force or effect to either party.

**4.10(3) *Informal settlement—disqualification of designee.*** A board member who is designated to act in negotiation of an informal settlement is not disqualified from participating in the adjudication of the contested case.

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

**193C—4.11(542B) Ruling on the initial inquiry.**

**4.11(1) *Dismissal.*** If a determination is made by the board that a complaint is without grounds or merit, the complaint shall be dismissed. A letter of explanation concerning the decision of the board shall be sent to the respondent and the complainant.

**4.11(2) Requirement of further inquiry.** If determination is made by the board to order further inquiry, the complaint and initial recommendations shall be provided to the investigator(s) along with a statement specifying the information deemed necessary.

**4.11(3) Acceptance of the case.** If a determination is made by the board to initiate disciplinary action the board may enter into an informal settlement or recommend formal disciplinary proceedings.

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

**193C—4.12(542B) Subpoena powers.** In connection with the investigation of a complaint, the board is authorized by law to subpoena books, papers, records and any other real evidence whether or not privileged or confidential under law, to help it determine whether it should institute a contested case proceeding. After service of the notice of hearing, the following procedures are available to the parties in order to obtain relevant and material evidence:

**4.12(1)** Board subpoenas for books, papers, records and other real evidence will be issued to a party upon request. Application should be made to the secretary specifying the evidence sought. Subpoenas for witnesses may also be obtained. The secretary shall issue all subpoenas for both parties upon request.

**4.12(2)** Discovery procedures applicable to civil actions are available to the parties in a proceeding under these rules.

**4.12(3)** Evidence obtained by subpoena or through discovery shall be admissible at the hearing if it is otherwise admissible under rule 4.19(542B) or by statute.

**4.12(4)** The evidence outlined in Iowa Code section 17A.13(2), where applicable and relevant, shall be available to a party upon request.

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

**193C—4.13(542B) Refusal to obey subpoena.** In the event of a refusal to obey a subpoena, the board may petition the district court for its enforcement. Upon proper showing, the district court shall order the person to obey the subpoena, and if the person fails to obey the order of the court, the person may be found guilty of contempt of court. The presiding officer of a hearing panel or an administrative law judge may administer oaths and affirmations and take or order that depositions be taken.

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

**193C—4.14(542B) Adjudicatory procedures.** Counsel shall commence adjudicatory proceedings by filing a formal complaint with the board as specified in Iowa Code section 542B.22.

**4.14(1) Form.** The formal complaint shall be drafted in general pleading form as contemplated by the Iowa Rules of Civil Procedure, and it shall contain a clear and concise statement of the factual and legal issues presented by the complaint.

The formal complaint shall be executed under oath and shall be filed with the board. Counsel or the secretary of the board may sign the complaint.

**4.14(2) Notice.** After the formal complaint has been filed, the board shall set a date for a formal hearing, and it shall cause notice to be served upon the respondent. Such notice shall contain the following:

- a. The time and place for filing a responsive pleading.
- b. The time and place for a prehearing conference.
- c. The time and place for the formal hearing.
- d. A statement of the legal authority and jurisdiction under which the hearing is to be held.

- e. A reference to the particular sections of the statutes and rules involved.
- f. A copy of the formal complaint.
- g. A statement that the complaint, if established by evidence, would be a basis for revocation or suspension of the licensee's certificate of licensure or for formal reprimand.

The notice shall be served upon the respondent by mailing a copy thereof, certified mail, return receipt requested.

**4.14(3) Prehearing conference.** A prehearing conference shall be conducted by an assistant attorney general or administrative law judge for the purpose of facilitating and expediting the formal hearing, and it shall be attended by the state's counsel and counsel for the respondent or the respondent pro se. At the conference, the state's counsel and the respondent or counsel shall present each other with a copy of each exhibit which is intended to be offered as evidence at the formal hearing, and these exhibits shall be marked for identification. Objections to the foundation of any such exhibit shall be filed in writing with the board no less than five days before the formal hearing, and in the event none are filed, all objections to foundation shall be deemed waived. The exchange of documentary evidence need not include rebuttal or impeachment exhibits.

**4.14(4) Prehearing stipulation.** At the time of the prehearing conference, the state's counsel and the respondent or counsel shall submit to the attorney general representative or administrative law judge a prehearing stipulation, which shall contain:

- a. A concise statement of the circumstances giving rise to the formal complaint.
- b. A statement of the undisputed facts.
- c. A statement of the facts alleged, which are not conceded, but which will not be disputed by proof at the formal hearing.
- d. A concise statement of each legal and factual issue.
- e. A list of witnesses who will be called by the respective parties, excluding, however, rebuttal or impeachment witnesses.
- f. The estimated time necessary for completion of the formal hearing.

**193C—4.15(542B) Failure by respondent to appear.** If a respondent, upon whom a proper notice of hearing has been served, fails to appear either in person or by counsel at the hearing, the board or hearing panel shall proceed with the conduct of the hearing, and the respondent shall be bound by the results of such hearing to the same extent as if the respondent were present.

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

**193C—4.16(542B) Record of proceedings.** Oral proceedings shall be recorded either by mechanical or electrical means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription thereof shall be filed with and maintained for at least five years from the date of decision. Any party to a proceeding may record, at the party's own expense, stenographically or electronically, any portion or all of the proceedings.

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

**193C—4.17(542B) Hearings.**

**4.17(1)** A hearing shall be conducted before the board or before a three-member hearing panel appointed by the board chairperson in accordance with 272C.6(1). An administrative law judge may sit with the board or hearing panel to conduct the hearing. The administrative law judge shall be in control of the proceedings and shall have the power to administer oaths, to admit or execute testimony or other evidence, and to rule on all motions and objections.

**4.17(2)** When, in the opinion of a majority of the board, it is desirable to obtain specialists within an area of practice of the profession when holding disciplinary hearings, the board may appoint a panel of not less than three specialists not having a conflict of interest to make findings of fact and to report to the board. The findings shall not include any recommendation for or against licensee discipline.

**4.17(3)** The presiding officer and board members have the right to conduct a direct examination at the outset of a witness's testimony or at a later stage thereof. Direct examination and cross-examination by board members is subject to objections properly raised in accordance with the rules of evidence.

**4.17(4)** The hearing shall be open to the public unless the licensee or the licensee's attorney requests that the hearing be closed to the public.

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

**193C—4.18(542B) Order of proceedings.** Before testimony is presented, the record shall show the identity of any board members present, hearing panel, or administrative law judge, and the identity of the primary parties and their representatives, and of the fact that all testimony is being recorded.

Hearings shall generally follow the order established by these rules, subject to modification at the discretion of the board or of the panel of the board conducting the proceedings.

1. The presiding officer or designee shall read the specification of charges and the answer thereto, or other responsive pleading, filed by the respondent prior to the hearing. The respondent may waive the reading of the specification of charges.

2. The state's counsel representing the public interest before the board shall make an opening statement.

3. The respondent or respondents shall each be offered the opportunity to make an opening statement. A respondent may elect to reserve an opening statement until just prior to the presentation of evidence by the respondent.

4. The presentation of evidence on behalf of the state.

5. The presentation of evidence on behalf of the respondent(s).

6. Rebuttal evidence on behalf of the state.

7. Rebuttal evidence on behalf of the respondent(s).

8. Closing arguments first on behalf of the state, then on behalf of the respondent, and then on behalf of the state.

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

**193C—4.19(542B) Rules of evidence—documentary evidence—official notice.**

**4.19(1)** Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial.

**4.19(2)** Objections to evidentiary offers may be made and shall be noted in the record. Motions and offers to amend the pleadings may also be made at the hearing and shall be noted in the record together with the rulings thereon.

**4.19(3)** Subject to the above requirements, if a witness is unavailable, and if a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be submitted in verified written form with both parties' consent.

**4.19(4)** Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given the opportunity to compare the copy with the original, if available. Accurate copies of the documents offered at the hearing may be furnished to those members of the board sitting at the hearing and to opposing parties.

**4.19(5)** Official notice may be taken of all facts of which judicial notice may be taken.

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

**193C—4.20(542B) Decisions.** When five or more members of the board preside over the reception of the evidence at the hearing, their decision is a final decision if that decision receives the affirmative vote of five or more members of the board.

**4.20(1)** When a panel of three specialists presides over the reception of the evidence at the hearing, a transcript of the proceedings, together with exhibits presented and the findings of fact of the panel, shall be considered by the board at the earliest practicable time. The respondent or the respondent's attorney, upon notice prescribed by the board, shall have the opportunity to appear personally to present the respondent's position and arguments to the board. The decision of the board is a final decision.

**4.20(2)** When the hearing is conducted by a three-member panel of the board, their decision is a proposed decision and subject to the review provisions of rule 4.21(542B).

**4.20(3)** A proposed or final decision shall be in writing and shall consist of the following parts:

- a. A concise statement of the facts was presented by the parties.
- b. Findings of fact.
- c. Conclusions of law which shall be supported by cited authority or reasoned opinion.
- d. The decision or order which sets forth the action to be taken or the disposition of the case.

**4.20(4)** The decision may include one or more of the following:

- a. Exoneration of respondent.
- b. Revocation of license.
- c. Suspension of license until further order of the board or for a specified period.
- d. Nonrenewal of license.
- e. Prohibition, until further order of the board or for a specific period, of engaging in specified procedures, methods or acts.

f. Probation.

g. Requirement of additional education or training.

h. Requirement of reexamination.

i. Issuance of a reprimand.

j. Imposition of civil penalties as follows:

- (1) In the event of revocation, not to exceed \$1,000,
- (2) In the event of suspension, not to exceed \$1,000,
- (3) In the event of reprimand, not to exceed \$500.

k. Issuance of citation and warning.

l. Other sanctions allowed by law as may be appropriate.

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

**193C—4.21(542B) Proposed decision—appeal to board—procedures and requirements.** A proposed decision becomes a final decision unless appealed in accordance with the following procedure:

**4.21(1)** A proposed decision may be appealed to the board or a quorum thereof consisting of at least five members by a party to the decision who is adversely affected thereby. An appeal is commenced by serving on the secretary, either in person or by certified mail, a notice of appeal within 30 days after service of the proposed decision or order on the appealing party. The appealing party shall be the appellant and all other parties to the appeal shall be the appellee.

**4.21(2)** The board may review a proposed decision or order on its own motion by serving notice on all parties within 30 days of a proposed decision or order.

**4.21(3)** Within 7 days after service of the notice of appeal, the appellant shall serve ten copies of the exceptions, if any, together with the brief and argument on the secretary. The appellant shall also furnish copies to each appellee by first-class mail. Any appellee to the appeal shall have 14 days following service of exceptions and brief on the secretary to file a responsive brief and argument. Except for the notice of appeal, the above time requirements may be extended by stipulation of the parties.

**4.21(4)** Oral argument of the appeal is discretionary but may be required by the board upon its own motion. At the times designated for filing briefs and arguments, either party may request oral argument. If a request for oral argument is granted or such is required by the board on its own motion, the secretary shall notify all parties of the date, time and place. The board chairperson or designee shall preside at the oral argument and determine the procedural order of the proceedings.

**4.21(5)** The record on appeal shall be the entire record made before the hearing panel or administrative law judge.

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

**193C—4.22(542B) Confidentiality.** At no time prior to the release of the final decision by the board shall any portion or the whole thereof be made public or be distributed to any persons other than the parties.

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

**193C—4.23(542B) Notification of decision.** All parties to a proceeding shall be promptly furnished a copy of any final or proposed decision or order either in person or by first-class mail, or by telephone if necessary to ensure that the parties learn of the decision or order first.

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

**193C—4.24(542B) Motion for rehearing.** Within 20 days after issuance of a final decision, any party may file an application for a rehearing. The application shall state the specific grounds for rehearing and the relief sought and copies shall be timely mailed to all other parties. The application shall be deemed denied if not granted within 20 days after service on the secretary.

**4.24(1)** Upon a rehearing, the board shall consider facts not presented in the original proceeding if either:

- a. Such facts arose subsequent to the original proceedings; or
- b. The party offering such evidence could not reasonably have provided such evidence at the original proceedings; or
- c. The party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceedings.

**4.24(2)** The decision made upon a rehearing may incorporate by reference any and all parts of the decision made upon the conclusion of the original proceedings.

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

**193C—4.25(542B) Judicial review and appeal.** Judicial review of the board's action may be sought in accordance with the terms of the Iowa administrative procedure Act, from and after the date of the final order.

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

**193C—4.26(542B) Rules of general applicability.** Ex parte communications, separation of functions, judicial review and appeals shall be in accordance with the terms of Iowa Code section 17A.17.

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

**193C—4.27(542B) Reinstatement.** Any person whose license to practice professional engineering or land surveying has been revoked, or suspended by the board, may appeal to the board for reinstatement in accordance with the terms and conditions of the order of revocation or suspension.

**4.27(1)** If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the secretary's order or the date of voluntary surrender.

**4.27(2)** All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for the reinstatement of the respondent's license. Such application shall be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the petition for reinstatement, including all matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board.

**4.27(3)** An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish such facts shall be on the respondent.

**4.27(4)** An order of reinstatement shall be based upon a decision which incorporates findings of fact and conclusions of law, and must be based upon the affirmative vote of not fewer than five members of the board. This order will be published as provided for in rule 4.28(542B).

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

**193C—4.28(542B) Publication of decisions.** Following suspension of a land surveyor's license, the county recorders and county auditors of the county of residence and immediately adjacent counties in Iowa shall be notified of the suspension by mail. Following revocation of a land surveyor's license, all county auditors in Iowa and the county recorders in the county of residence and immediately adjacent counties shall be notified by mail.

Other boards of examiners for engineers and land surveyors under the jurisdiction of the government of the United States of America shall be notified of the suspension or revocation of the license of a professional engineer or land surveyor. This notification may be through the National Council of Examiners for Engineering and Surveying or other national organizations recognized by the board. In addition, if the licensee is known to be licensed in another nation in North America, the appropriate board(s) shall be notified of the action.

Information regarding informal settlements and disciplinary actions may be supplied for publication to newspapers of widespread circulation in the state of Iowa and to appropriate engineering and land surveying publications that circulate within the state of Iowa.

The findings and conclusions of formal hearings, informal settlements, and other disciplinary actions during the year shall be summarized in the annual report of the Iowa engineering and land surveying examining board.

**193C—4.29(272C) Disciplinary hearings—fees and costs.**

**4.29(1)** The board may charge a fee not to exceed \$75 for conducting a disciplinary hearing which results in disciplinary action taken against the licensee by the board. An order assessing a fee shall be included as part of the board's final decision. The order shall direct the licensee to deliver payment directly to the professional licensing and regulation division as provided in subrule 4.29(8).

**4.29(2)** In addition to this fee, the board may also recover from the licensee the costs for transcripts, witness fees and expenses, depositions, and medical examination fees. The board may assess these costs in the manner it deems most equitable.

**4.29(3) Transcript.**

*a.* The cost of the transcript includes the transcript of the original contested case hearing before the board, as well as transcripts of any other formal proceedings before the board which occur after the notice of the contested case hearing is filed.

*b.* In the event of an appeal to the full board from a proposed decision, the appealing party shall timely request and pay for the transcript necessary for use in the agency appeal process. The board may assess the transcript costs against the licensee pursuant to Iowa Code section 272C.6(6) or against the requesting party pursuant to Iowa Code section 17A.12(7).

**4.29(4) Witness fees and expenses.**

*a.* The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing.

*b.* The board may assess a licensee the witness fees and expenses incurred by witnesses called to testify on behalf of the state of Iowa.

*c.* The costs for lay witnesses shall be determined in accordance with Iowa Code section 622.69. For purposes of calculating the mileage expenses allowed under this section, the provisions of Iowa Code section 625.2 do not apply.

*d.* The costs for expert witnesses shall be determined in accordance with Iowa Code section 622.72. For purposes of calculating the mileage expenses allowed under this section, the provisions of Iowa Code section 625.2 do not apply.

*e.* The provisions of Iowa Code section 622.74 regarding advance payment of witness fees and the consequences of failure to make such payment are applicable with regard to witnesses who are subpoenaed by either party to testify at the hearing.

*f.* The board may assess as costs the meal and lodging expenses necessarily incurred by witnesses testifying at the request of the state of Iowa. Meal and lodging costs shall not exceed the reimbursement employees of the state of Iowa receive for these expenses under department of revenue and finance guidelines in effect on January 1, 1994.

**4.29(5) Depositions.**

*a.* The costs for depositions include the cost of transcripts, the daily charge of the court reporter for attending and transcribing the deposition, and all mileage and travel time charges of the court reporter for traveling to and from the deposition which are charged in the ordinary course of business.

*b.* Deposition costs for purposes of allocating costs against a licensee include only those deposition costs incurred by the state of Iowa. The licensee is directly responsible for the payment of deposition costs incurred by the licensee.

*c.* If the deposition is of an expert witness, the deposition cost includes a reasonable expert witness fee. This fee shall not exceed the expert's customary hourly or daily fee, and shall include the time reasonably and necessarily spent in connection with such depositions, including the time spent in travel to and from the deposition, but excluding time spent in preparation for that deposition.

**4.29(6)** Within ten days after conclusion of a contested case hearing and before issuance of any final decision assessing costs, the designated staff person shall certify any reimbursable costs to the board. The designated staff person shall calculate the specific costs, certify the cost calculated, and file the certification as part of the record in the contested case. A copy of the certification shall be served on each party of record at the time of filing.

**4.29(7)** A final decision of the board imposing disciplinary action against a licensee shall include the amount of any fee assessed, which shall not exceed \$75. If the board also assesses costs against the licensee, the final decision shall include a statement of costs delineating each category of costs and the amount assessed. The board shall specify the time period in which the fees and costs must be paid by the licensee.

*a.* A party must file an objection to any fees or costs imposed in a final decision in order to exhaust administrative remedies. An objection must be filed in the form of an application for rehearing pursuant to Iowa Code section 17A.16(2).

*b.* The application will be resolved by the board consistent with the procedures for ruling on an application for rehearing. Any dispute regarding the calculations of any fees or costs to be assessed may be resolved by the board upon receipt of the parties' written objections.

**4.29(8)** All fees and costs assessed pursuant to this chapter shall be in the form of a check or money order made payable to the State of Iowa and delivered by the licensee to the professional licensing and regulation division.

**4.29(9)** Failure of a licensee to pay a fee and costs within the time specified in the board's decision shall constitute a violation of an order of the board and shall be grounds for disciplinary action.

**193C—4.30(252J) Certificates of noncompliance.** The board shall suspend or revoke a certificate of licensure upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code chapter 252J. In addition to the procedures set forth in chapter 252J, this rule shall apply.

**4.30(1)** The notice required by section 252J.8 shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with Rules of Civil Procedure 56.1. Alternatively, the licensee may accept service personally or through authorized counsel.

**4.30(2)** The effective date of revocation or suspension of a certificate of licensure, as specified in the notice required by section 252J.8, shall be 60 days following service of the notice upon the licensee.

**4.30(3)** The board's executive secretary is authorized to prepare and serve the notice required by section 252J.8 and is directed to notify the licensee that the certificate of licensure will be suspended, unless the licensure is already suspended on other grounds. In the event a licensure is on suspension, the executive secretary shall notify the licensee of the board's intention to revoke the certificate of licensure.

**4.30(4)** Licensees shall keep the board informed of all court actions and all child support recovery unit actions taken under or in connection with chapter 252J and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

**4.30(5)** All board fees for license renewal or reinstatement must be paid by licensees before a certificate of licensure will be renewed or reinstated after the board has suspended or revoked a license pursuant to chapter 252J.

**4.30(6)** In the event a licensee files a timely district court action following service of a board notice pursuant to sections 252J.8 and 252J.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of revocation or suspension, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**4.30(7)** The board shall notify the licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a certificate of licensure, and shall similarly notify the licensee when the licensure is reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

These rules are intended to implement Iowa Code sections 542B.21, 542B.22, 272C.3, and 272C.6 and Iowa Code Supplement chapter 252J.

[Filed 12/8/78, Notice 8/9/78—published 12/27/78, effective 1/31/79]

[Filed 1/4/79, Notice 10/18/78—published 1/24/79, effective 2/28/79]

[Filed 7/20/79, Notice 4/18/79—published 8/8/79, effective 9/12/79]

[Filed 12/21/84, Notice 7/18/84—published 1/16/85, effective 2/20/85]

[Filed 9/5/85, Notice 7/31/85—published 9/25/85, effective 10/30/85]

[Filed 5/13/88, Notice 3/9/88—published 6/1/88, effective 7/6/88]

[Filed 11/4/91, Notice 8/21/91—published 11/27/91, effective 1/1/92]

[Filed 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]

[Filed 6/3/94, Notice 3/30/94—published 6/22/94, effective 7/27/94]

[Filed 11/4/94, Notice 6/22/94—published 11/23/94, effective 12/28/94]

[Filed 5/2/96, Notice 1/3/96—published 5/22/96, effective 6/26/96]

[Filed 3/6/97, Notice 11/20/96—published 3/26/97, effective 4/30/97]

[Filed 2/6/98, Notice 12/3/97—published 2/25/98, effective 4/1/98]

**OBJECTION**

At its September 12th meeting the Administrative Rules Review Committee voted the following objection:

The Committee objects to Engineering rule 4.2(6), appearing as ARC 0464 in Vol. II, Number 3, IAB, August 8, 1979, on the grounds it exceeds the authority of the board. The rule in effect establishes a form of statute of limitations for the imposition of licensee discipline. Chapter 114, the Code empowers the board to impose licensee discipline on certain specified grounds; it does not appear to contain any time limitations for the imposition of discipline.