

# Ethics in the Petroleum Industry

## Issues and Overview



**Jacob T. Haseman**  
jhaseman@thronelaw.com  
(307) 672 - 5858



Society of Petroleum Evaluation Engineers – Northern Rockies Chapter  
February 13, 2017

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# Introduction

- Professional Engineers and members of the Society of Petroleum Evaluation Engineers (“SPEE”) are subject to professional codes of conduct.
  - ▣ **SPEE By-Laws** → Article VI (“Ethics”) and Appendix A (“Code of Ethics of Engineers”)
  - ▣ **State of Wyoming Board of Professional Engineers and Professional Land Surveyors**
    - Rules and Regulations → Chapter 5, Section 7 (“Rules of Professional Conduct”)
      - Also adopts National Society of Professional Engineers (“NSPE”) “Code of Ethics”

# Ethics Requirement

**SPEE By-Laws, Article VI, Section 3** → All members are required to certify on the annual dues statement that they have:

- 1) Completed a continuing education course in ethics of sufficient length to satisfy a requirement of professional licensing;
- 2) Completed a continuing education course in ethics where not required by licensing or other professional requirements; or
- 3) Read and affirmed their knowledge of the ethics requirements of this Article in the By-laws of SPEE.

# SPEE By-Laws – Article VI, Section 1

“Each Member shall be guided by the highest standards of business ethics, personal honor, and professional conduct, as exemplified by the Code of Ethics of Engineers as adopted by the Accreditation Board for Engineering and Technology (ABET) as shown in Appendix A . . . . ***Honesty, integrity, loyalty, fairness, impartiality, candor, fidelity to trust, and inviolability of confidence are incumbent upon every Member, not for submissive observance, but as a set of dynamic principles to guide a way of life.***”

# Appendix A

## Code of Ethics of Engineers – Fundamental Principles

Engineers uphold and advance integrity, honor and dignity of the engineering profession by:

- 1) Using their knowledge and skill for the enhancement of human welfare;
- 2) Being honest and impartial, and serving with fidelity the public, their employers and clients;
- 3) Striving to increase the competence and prestige of the engineering profession; and
- 4) Supporting the professional and technical societies of their disciplines.

# Appendix A

## Code of Ethics of Engineers – **Fundamental Canons**

- Engineers shall hold paramount the safety, health and welfare of the public in the performance of their professional duties.
- Engineers shall perform services only in the areas of their competence.
- Engineers shall issue public statements only in an objective and truthful manner.
- Engineers shall act in professional matters for each employee or client as faithful agents or trustees, and shall avoid conflicts of interest.

# Appendix A

## Code of Ethics of Engineers – **Fundamental Canons**

- Engineers shall build their professional reputation on the merit of their services and shall not compete unfairly with others.
- Engineers shall act in such a manner as to uphold and enhance the honor, integrity and dignity of the profession.
- Engineers shall continue their professional development throughout their careers and shall provide opportunities for the professional development of those engineers under their supervision.

# Board of Professional Engineers

## Rules and Regulations

- **Chapter 5, Section 7 (“Rules of Professional Conduct”)**
  - Expounds standards encouraging the professional to exhibit the highest standard of honesty, integrity, and competence.
  - In **Chapter 5, Section 7(b)**, the Board also adopted and incorporated the **National Society of Professional Engineers (“NSPE”) “Code of Ethics for Engineers.”**
    - In the event the “Code of Ethics for Engineers” adopted by the NSPE conflicts with the standards expounded by the Board in Chapter 5, Section 7 (“Rules of Professional Conduct”), the standards expounded by the Board control. **See Chapter 5, Section 7(a).**

# Board of Professional Engineers

## Rules and Regulations - Highlights

- Shall not submit any materially false statements or fail to disclose any material facts requested in connection with the application for a license.
- Shall not engage in fraud, deceit, misrepresentation, or concealment of material facts in advertising, soliciting, or providing professional services to members of the public.
- Shall not knowingly seal, sign and date any plans, drawings, blueprints, land surveys, etc... not prepared or without thorough technical review by the licensee or under the licensee's direct supervision.
- Shall not knowingly violate any federal or state statute concerning bribery.

# Board of Professional Engineers

## Rules and Regulations – Highlights (con't)

- Shall comply with all federal, state, and local building, fire, safety, real estate, and mining codes, and any other laws, codes, ordinances, or regulations pertaining to the licensee's professional practice.
- Shall not violate any state or federal criminal statute involving fraud, misrepresentation, embezzlement, theft, forgery or breach of fiduciary duty, where the violation is related to his/her professional practice.
- Shall apply the technical knowledge and skill which would be applied by other qualified licensees who practice the same profession.
- Shall perform only those professional services for which the licensee is qualified and shall seal, sign and date only the work prepared by the licensee or under the licensee's direct supervision.

# Board of Professional Engineers

## Rules and Regulations – Highlights (con't)

### Conflicts of Interest Provisions

- Shall not accept an assignment where the duty to a client or the public would conflict with the licensee's personal interest or the interest of another client without full disclosure of all material facts of the potential conflict to each person who might be related to or affected by the project or engagement in question.
- Shall not accept compensation for services related to the same project or professional engagement from more than one private party without making full disclosure to all parties involved and obtaining the express written consent of all parties involved.
- As members, advisors, or employees, shall recuse themselves from any conflict of interest decision and act in the best interest of an organization when serving governmental or quasi-government organizations or departments, or are board members of any organization which receives government funds.

# National Society of Professional Engineers

## Code of Ethics for Engineers

The **NSPE Code of Ethics for Engineers** is comprehensive – outlines Fundamental Canons, Rules of Practice, and Professional Obligations of all licensed engineers, and is adopted by the State of Wyoming Board of Professional Engineers.

**PREAMBLE:** *“Engineering is an important and learned profession. As members of this profession, engineers are expected to exhibit the highest standards of honesty and integrity. Engineering has a direct and vital impact on the quality of life for all people. Accordingly, the services provided by engineers require honesty, impartiality, fairness, and equity, and must be dedicated to the protection of the public health, safety, and welfare. Engineers must perform under a standard of professional behavior that requires adherence to the highest principles of ethical conduct.”*

# National Society of Professional Engineers

## Code of Ethics for Engineers – **Fundamental Canons**

1. Hold paramount the safety, health, and welfare of the public.
2. Perform services only in areas of their competence.
3. Issue public statements only in an objective and truthful manner.
4. Act for each employer or client as faithful agents or trustees.
5. Avoid deceptive acts.
6. Conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.

# Wyoming Board of Professional Geologists

## Rules and Regulations - Overview

### Wyoming Board of Professional Geologists, Rules and Regulations, Chp. 4, § 1, Code of Professional Conduct

- Expounds standards encouraging the professional to exhibit the highest standards of “honesty, integrity, loyalty, fairness, impartiality, candor, fidelity to trust, inviolability of confidence, and honorable conduct as a way of life.”

Main tenets and summary of Code of Professional Conduct – Geologists shall:

- Be accurate, truthful, and candid in all communications;
- Serve their employers and clients faithfully and competently within their overall professional obligations;
- Shall protect, to the fullest possible extent, the interest of an employer or client so far as is consistent with public welfare of the safeguard of life, health, property, and the environment;
- Shall provide competent service to their employers and clients;
- Shall serve their employers and client diligently and perform their services in a timely manner.

# Consequences of Unethical Conduct

## **SPEE By-Laws, Article VI, Section 2**

A Member who, after due investigation, is found guilty of violating any of the standards prescribed in Section 1 (inclusive of Appendix A) may be ***suspended, admonished, allowed to resign, or expelled*** from SPEE.

Investigation procedures are outlined in **Article XII**, and include investigation by the Grievance Committee and Executive Committee, and anticipate an administrative hearing to evaluate the charges.

# Consequences of Unethical Conduct (con't)

## **Board of Professional Engineers, Chapter 6 ("Application Review, Complaints, and Hearing Procedures")**

- Complaints against Engineers may be filed with the Board in writing in order to obtain/investigate facts relating to violations of the Rules and Regulations.
  - An administrative hearing is contemplated to evaluate the adjudicate the charges/complaint.
  - Consequences of violations:
    - Letter of Warning;
    - Suspension of license (Wyo. Stat. § 33-29-701(a)(ii));
    - Impose probation (Wyo. Stat. § 33-29-701(a)(iii));
    - Voluntary/involuntary surrender of license (involuntary only after formal hearing procedure);
    - Recommended terms for a conditional certificate or license;
    - Impose peer review (Wyo. Stat. § 33-39-701(a)(v)); and/or
    - Require continuing education (Wyo. Stat. § 33-29-701(a)(vi)).

## Consequences of Unethical Conduct (con't)

### **Board of Professional Geologists, Chapter 5 ("Application Review, Complaints, and Hearing Procedures")**

- Complaints against Geologists may be filed with the Board in writing in order to obtain/investigate facts relating to violations of the Rules and Regulations.
  - ▣ An administrative hearing is contemplated to evaluate the adjudicate the charges/complaint.
  - ▣ Consequences of violations:
    - Conditional terms for settlement, which may include additional educational courses; and or
    - Voluntary/involuntary surrender of license – Board has significant discretion.

# Avoiding Conflicts of Interest

Generally, **all** codes of ethics forbid conflicts of interest.

- Spell out the extent to which such conflicts should be avoided, and what the parties should do where such conflicts are permitted by a code of ethics (disclosure, recusal, etc...).

## **SPEE By-Laws, Appendix A (“Code of Ethics”)**

- Engineers uphold and advance integrity, honor and dignity of the engineering professional by being honest and impartial, and ***serving with fidelity the public, their employers and clients.*** (Fundamental Principle No. 2)
- Engineers shall act in professional matters for each employer or client as ***faithful agents or trustees, and shall avoid conflicts of interest.*** (Fundamental Canon No. 4)

# Avoiding Conflicts of Interest (con't)

## Board of Professional Engineers, Chapter 5

- ❑ **Section 7(a)(vii)** → A licensee shall not accept an assignment where the duty to a client or the public would conflict with the licensee's personal interest or the interest of another client without ***full disclosure of all material facts of the potential conflict*** to each person who might be related to or affected by the project or engagement in question.
- ❑ **Section 7(a)(ix)** → Licensees shall not accept compensation for services related to the same project or professional engagement from more than one private party without ***making full disclosure to all parties involved and obtaining the express written consent of all parties involved***.
- ❑ **Section 7(a)(x)** → Licensees who serve governmental or quasi-governmental organizations or departments, or are board members of any organization which receives government funds, as members, advisors or employees ***shall recuse themselves from any conflict of interest decision and act in the best interests of that organization***.

# Avoiding Conflicts of Interest (con't)

**NSPE, Code of Ethics for Engineers, Fundamental Canon No. 4** → Engineers shall act for each employer or client as ***faithful agents or trustees***.

**Section II, Paragraph 4** → Engineers shall act for each employer or client as ***faithful agents or trustees***:

- a. Engineers shall ***disclose all known or potential conflicts of interest*** that could influence or appear to influence their judgment or the quality of their services.
- b. Engineers shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, ***unless the circumstances are fully disclosed and agreed to by all interested parties***.
- c. Engineers shall not solicit or accept financial or other valuable consideration, directly or indirectly, from outside agents in connection with work for which they are responsible.
- d. Engineers in public service as members, advisors, or employees of a governmental or quasi-governmental body or department ***shall not participate in decisions*** with respect to services solicited or provided by them or their organizations in private or public engineering practice.
- e. Engineers shall not solicit or accept a contract from a governmental body on which a principal or officer of their organization serves as a member.

# Avoiding Conflicts of Interest (con't)

## **Board of Professional Geologists, Chapter 4, Section 1(a)**

- A licensee shall not knowingly accept an assignment where the duty to a client or the public would conflict with the personal interest or the interest of another client without full disclosure of all material facts of the potential conflict to each person who might be related to or affected by the project or engagement in question.
- Licensees and trainees shall not accept compensation for services related to the same project or professional engagement from more than one private party without making full disclosure to all parties involved and obtaining the express written consent of all parties involved.
- Licensees and trainees who serve governmental or quasi-governmental organizations or departments, or are board members of any organization which receives government funds as members, advisors, or employees shall recuse themselves from any conflict of interest decision and act in the best interest of that organization.

# Solutions to Conflicts of Interest

- Avoid them entirely!
- Disclosure and Written Consent → disclose any actual or potential conflicts of interest and obtain a **waiver** of the conflict in writing, if possible.
- Recusal → abstain from representation/action where a conflict exists.
- \*\*Look to provisions within each respective Code(s), Standard(s), etc... to avoid conflict of interest situations.

# Confidentiality

- Engineers shall act in professional matters for each employer or client as faithful agents or trustees . . . . (**SPEE Code of Ethics, Fundamental Canon No. 4**)
- **NSPE, Code of Ethics, Section III(4)** → Engineers shall not disclose, without consent, confidential information concerning the business affairs or technical processes of any present or former client or employer, or public body on which they serve.
  - Engineers shall not, without the consent of all interested parties, promote or arrange for new employment or practice in connection with a specific project for which the engineer has gained particular and specialized knowledge.
  - Engineers shall not, without the consent of all interested parties, participate in or represent an adversary interest in connection with a specific project or proceeding in which the engineer has gained particularized specialized knowledge on behalf of a former client or employer.
- A licensee or trainee shall not use, directly or indirectly, any confidential information obtained from or in the course of performing services for an employer or client in any way that is adverse or detrimental to the interest of the employer or client, except with the prior consent of the employer or client or when disclosure is required by law. (**Board of Professional Geologists, Chapter 4, Section 1(a)(xiv)**)

# Confidentiality (con't)

- In addition to ethical duties imposed by rule/codes of conduct, parties owe **common law fiduciary duties** to their clients/employees.
  - ▣ There is a duty NOT to disclose confidential information gained in the employer/client relationship.
    - **SURVIVES TERMINATION OF RELATIONSHIP.**
      - Former agent(s) may NOT use or disclose confidential information gained in an agency relationship after relationship has terminated.
      - Employment contracts can modify the duty. Written consent?
      - Consequences may include disciplinary action from licensing body, judicial liability, and/or punitive damages.

# Confidentiality (con't)

## □ ***Tenneco Oil Co. v. Joiner*, 696 F.2d 768**

- Landman acquired confidential information about profitable prospects during the course of his employment with an oil company. After leaving his company, the landman acquired 30 leases in the same prospect based on the confidential information.
- The court found the landman in breach of the duty owed to his former employer to NOT use confidential information.

## □ ***Tlapek v. Chevron Oil Co.*, 407 F.2d 1129**

- Geologist used a company's confidential information to develop a theory about the location of a very lucrative prospect. The company refused to begin exploration until further data confirmed his theory. Upset about the company's failure to act on his theory, the geologist quit and began personally acquiring leases in the prospect lands.
- The court found that the geologist breached his fiduciary duties, and imposed a constructive trust (in favor of former employer) over all of the leases he had acquired.

# Solutions and Guidelines

- Recognize and respect ethical obligations arising under both applicable codes of ethics and general fiduciary duties under the common law;
- Avoid taking a new position or engagement with a company working in an area that is in direct competition with a current or former employer;
- If taking a new position or engagement with a company adverse or partially adverse to a current or former employer, ensure that the new employment involves projects not directly adverse to a current or former employer; and
- Most importantly, if information learned in the course of former employment is confidential, a trade secret, or could be used to the detriment of the former employer, do not use the information because serious legal consequences may follow.

# Conclusion

- AT ALL TIMES, be familiar with the applicable Code of Ethics/Standard of Practice
- USE COMMON SENSE – if it feels fishy, it might be fishy.
- Know the boundaries of your specific employment situation.
- Conduct thorough conflict checks for every new opportunity.
- DO NOT use confidential information learned during former (or current!) employment(s), as serious legal consequences may follow.
- In addition to duties owed to your employer/client, protect the public interest!
- **Reputation is critical** to a successful career in the oil and gas industry!