

NJSPE OPERATING PROCEDURE 103

Discipline of an NJSPE Member

In accordance with NJSPE Bylaw 23, the Board of Directors may take disciplinary action against a member. This OP defines the process by which such action shall be taken.

Section 1. Initiation of Action

Disciplinary action may be taken by the Board only upon the filing of charges of unethical conduct under the procedures of the following Sections.

Section 2. Filing Charges

Charges must be filed in writing by a member in good standing. Charges shall be filed with the Professional Conduct Committee in specific detail and with supporting documents, if applicable. The Professional Conduct Committee may require additional information or documentation as it deems necessary.

Section 3. Notification to Person Charged

The Professional Conduct Committee shall, unless it determines that the charges are frivolous or are without possible merit, determine whether there is a reasonable basis to consider further the charges, and may secure such additional information as may be desired. Upon finding a reasonable basis for the charges, the Professional Conduct Committee shall notify the person charged in writing of the substance of the charges made against that person.

Section 4. Conduct of Hearings

The person charged shall be given every possible opportunity to present her/his defense to the Committee on Professional Conduct, including personal appearance, an opportunity to argue a defense, and to present such witnesses or documents as the person charged may consider pertinent. Hearings and deliberations of the Professional Conduct Committee relating to any such charge shall be in closed unless the person charged requests otherwise and the Professional Conduct Committee concurs in that request.

Section 5. Dismissal of Charges

If the Professional Conduct Committee dismisses the charges as unwarranted or unfounded, it shall notify the party filing the charges of such action.

Section 6. Conveying Recommendation for Action

Upon a determination that there is reasonable ground for the consideration of disciplinary action or other recommendation, the Professional Conduct Committee shall file with the Executive Committee of NJSPE at least thirty (30) days before the meeting at which the case is to be considered a detailed statement of the case, including such supporting documents as may be applicable, and the findings and recommendations of the Professional Conduct Committee. The Executive Committee shall append to the report such comments or recommendation as it may desire and present the full report to the Board not less than ten (10) days before the said Board meeting at which the case is to be considered. Deliberations by the Executive Committee and by the Board of Trustees in matters pertaining to this Bylaw shall be in closed session.

Section 7. Hearing Charges by the Board

The Board shall hear the charges as filed by the Executive Committee and such defense as the person charged shall care to present. The person charged shall be entitled to present a defense in person or through counsel, and may offer such additional information, witnesses, or documents as s/he considers pertinent. Upon request of the person charged, the entire proceedings before the Board may be

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10 below. The party requesting the stenographic recording of those proceedings shall bear the cost of that recording and shall provide a copy of any transcript made to the Board, free of charge, in the event of an appeal. Upon request of the person charged, the Board may postpone further consideration of the charges for good reason shown.

Section 8. Action by the Board

After hearing the charges and any defense thereto, the Board of Trustees shall in closed session weigh the evidence and reach a decision. A three-fourths (3/4) vote of the Board of Trustees, present and voting, shall be required for a finding sustaining the charges. Upon a finding sustaining the charges, in whole or in part, the Board of Trustees shall assess the penalty to be imposed by a majority vote. The decision of the Board shall be memorialized in a written document, which shall set forth the findings made and the factual bases for them. In the event that the Board finds cause for action in connection with the charges, the Board may assess one of the following penalties:

- a) Admonition, in instances where the cited conduct may have been improper but the violation of the Code of Professional Conduct was either de minimis or was unintentional;
- b) Censure, in instances where the violation of the Code of Professional Conduct was determined to be intentional but of such a minor nature that suspension of the person's membership is not warranted;
- c) Suspension, in instances where the violation of the Code of Professional Conduct was of an intentional nature and of such consequence that a suspension of the person's membership is warranted in order to serve as a deterrent to such future conduct; or
- d) Expulsion, in instances where the violation of the Code of Professional Conduct was of such an egregious and intentional nature that termination of the person's membership in NJSPE is warranted.

Section 9. Right of Appeal of Board's Decision

In instances where the Board of Trustees imposes a penalty pursuant to Section 9, a person aggrieved of such a decision may, upon written request filed within ten (10) business days of the date of the person's receipt of the written decision of the Board of Trustees, appeal that decision to an Appeals Committee, which shall consist of the following members:

- a) The Chair of the Professional Conduct Committee.
- b) The President of NJSPE.
- c) A current member of NJSPE who is neither a member of the Board nor a member of the Professional Conduct Committee and has been a member in good standing for the most immediate three preceding dues payment cycles, chosen by the appellant
- d) A licensed Professional Engineer of the State of New Jersey, chosen by the appellant.
- e) A licensed Professional Engineer of the State of New Jersey who is chosen by the members of the Appeals Committee enumerated in categories a and b above, but who also is not a member of the Board or the Professional Conduct Committee.

The identity of the individuals specified in categories c, d, and e shall be provided to all parties at least 10 business days before the first gathering of the Appeals Committee.

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A person appealing any decision of the Board may be represented by counsel. Any appeal of the decision of the Board shall be accompanied by the Board's record of the proceedings; the transcript of the proceeding, if any; and a written statement of no more than ten 8-1/2" by 11" pages in minimum 11-point font which sets forth the basis for the appeal. Issues not raised in the hearing below shall be considered to be waived.

The Appeals Committee shall meet within thirty calendar days of its receipt of the appeal to consider the decision of the Board and hear oral argument of the appeal, if requested by the appellant. The Appeals Committee shall render a written decision concerning the appeal within thirty days thereafter. All five members of the Appeals Committee must participate.

In rendering a decision on the appeal, the Appeals Committee shall:

- a) Ratify the decision of the Board;
- b) Modify the decision of the Board; or
- c) Remand the matter to the Board with direction for further consideration of the matter.

Any decision made by the Appeals Committee to ratify or modify a decision of the Board shall be final.

Any decision made by the Board on Remand shall be subject to the appeal process set forth within this section.

Section 10. Notification to Person Charged

The person filing the charges shall be notified of the Board's decision and it shall be published in the official publication of the Society, unless the Board shall have determined that the ends of justice would be better served by withholding publication. The Secretary shall take appropriate action to implement the decision of the Board. Any official contact by any representative of NJSPE with the person charged in accordance with Section 4 shall be by certified mail with return receipt required.

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