

APA-1
6/93

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 330 Department or Agency Board of Licensure for Professional Engineers & Land Surveyors
Rule No. 330-X-16-.01
Rule Title: Complaints
 New; XX Amend: Repeal; Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, safety, or welfare? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? N/A

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed rule have any economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

.....
Certification of Authorized Official

I certify that the attached rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama, 1975 and that it conforms to all applicable filing requirements of the Administrative Procedures Division of the Legislative Reference Service.

Signature of certifying officer Regina A. Dinger
Date 4/17/12

ALABAMA STATE BOARD OF LICENSURE FOR
PROFESSIONAL ENGINEERS AND LAND SURVEYORS

NOTICE OF INTENDED ACTION

RULE NO. & TITLE: 330-X-16-.01 Complaints
330-X-16-.05 Disciplinary Hearings
330-X-16-.06 Discipline
330-X-16-.07 Reissuance of Licensure or Certification
after Revocation or Suspension

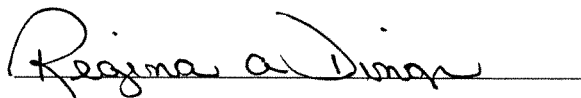
INTENDED ACTION: Amend

SUBSTANCE OF AMENDMENT: The Board proposes to amend existing rules to update the information required on a complaint form, to clarify the process for negotiated settlements, to correct the title of two sections, and to add the process for the reissuance of a license or certification that has been surrendered.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held only if requested by an interested party. A written request should be submitted to the agency contact person listed below. Interested persons may present their views in writing to the Alabama Board of Licensure for Professional Engineers and Land Surveyors, 100 N. Union Street, Suite 382, Post Office Box 304451, Montgomery, Alabama 36130-4451.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: Written comments concerning these changes must be received by the Alabama Board of Licensure for Professional Engineers and Land Surveyors no later than June 6, 2012.

CONTACT PERSON AT AGENCY: Regina A. Dinger, Executive Director; Alabama Board of Licensure for Professional Engineers and Land Surveyors; P.O. Box 304451, Montgomery, AL 36130-4451; (334) 242-5568.



Regina A. Dinger, Executive Director
Alabama State Board of Licensure for
Professional Engineers and Land Surveyors

**BOARD OF LICENSURE FOR
PROFESSIONAL ENGINEERS AND LAND SURVEYORS**

**CHAPTER 330-X-16
DISCIPLINARY ACTION**

- 330-X-16-.01 Complaints
- 330-X-16-.05 Disciplinary Hearings
- 330-X-16-.06 ~~Discipline~~ Disciplinary Actions
- 330-X-16-.07 Reissuance of Licensure of Certification after Revocation, Surrender, or Suspension

330-X-16-.01 Complaints. The Board may initiate action in cases where a person's actions or business entity's actions are in violation of the law. Complaints must be filed within two years of the date the violation occurred or within two years of the date of the discovery of the violation but no later than 10 years from the date of the violation. Any violation that was caused by fraud, deceit, or concealment, however, is not subject to the 10-year time limitation. Upon receipt of evidence from any person that an individual has violated the law and/or the rules of the Board, the Board may assemble the facts, obtain legal guidance, follow the case to completion based on the legal guidance given and begin administrative action, levy a civil administrative penalty, file a civil action, and/or refer the matter for criminal prosecution.

(1) Proceedings to revoke, refuse to renew, or to suspend a license or a certificate of authorization or to censure, place on probation and/or fine a licensee, a certified engineer intern, a certified land surveyor intern or a corporation, partnership, or firm holding a certificate of authorization may be initiated by the Board or by any person upon the filing of a complaint with the Board office.

(2) Proceedings to begin Board administrative action, or to prosecute in criminal court a licensee or a nonlicensee may be initiated by the Board or by any person upon the filing of a complaint with the Board office.

(3) A complaint initiated by an individual or entity against a licensee or nonlicensee shall be in writing and shall contain:

(a) Name and address of the complaining party as well as the name and address of the individual or entity against which the complaint has been filed.

(b) A plain and concise statement of the facts which indicate that the provisions of Chapter 11, Title 34, Code of Alabama 1975, Rules promulgated by the Board, or Rules of Professional Conduct (Code of Ethics) have been violated.

~~(c) The relief sought.~~

~~(d)~~ (c) The signature of the complainant.

(4) A complaint initiated by the Board against a licensee or non-licensee, shall be referred to an investigative committee to determine if sufficient facts are present that indicate provisions of

Chapter 11, Title 34, Code of Alabama, 1975, Rules promulgated by the Board, or Rules of Professional Conduct (Code of Ethics) have been violated. If sufficient evidence is present, the investigation will proceed in strict accordance with due process.

(5) All disciplinary cases involving geology/engineering professional overlaps will be referred to the board issuing the license for hearing and disposition. The complaining board may have a board member or designated representative at the hearing for liaison and evidence as necessary.

Author: Board

Statutory Authority: Section 34-11-11; Section 34-11-15; Section 34-11-16; Section 34-11-35, Code of Alabama 1975

Effective date: September 10, 1982. Amended: December 19, 1984, October 20, 1987, October 28, 1998, June 4, 2003, January 19, 2005, December 5, 2006 and January 16, 2009.

330-X-16-.05 Disciplinary Hearings.

(1) Conduct of Hearing.

(a) Hearing Officer. The Board may, in its discretion, and subject to the applicable provisions of the Alabama Administrative Procedures Act appoint a person to act as Hearing officer at disciplinary hearings. In the event a Hearing officer is appointed to preside at the hearing, he or she shall rule on all questions of evidence and procedure, not withstanding any other provisions of these rules to the contrary.

(1) The Board may, in its discretion and subject to the applicable provisions of the Alabama Administrative Procedures Act, appoint a Hearing officer to hear the evidence and submit a recommendation to the Board, including recommended finding of facts and conclusions of law at disciplinary hearings. The Board will consider the Hearing officer's recommendations and the Board shall issue an appropriate administrative order approving, modifying or rejecting the Hearing officer's recommendation.

(b) Plea. The respondent shall plead either "guilty" or "not guilty" to the charges.

(c) Opening Statement. Each side shall be permitted to make a short opening statement.

(d) The Board shall present its evidence, followed by the respondent, followed by rebuttal by the State. Each witness called may be examined in the following manner:

1. Direct examination.
2. Cross examination.
3. Examination by Board.
4. Re-direct examination.
5. Re-cross examination.
6. Re-examination by Board.