

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-.05  
Rule Title: Disciplinary Hearings  
         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 Adams  
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

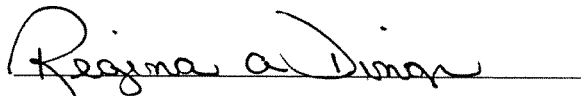
**INTENDED ACTION:** Amend

**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

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.

(e) Closing Argument. Each side shall be permitted to make a short closing statement summarizing the evidence presented and urging the application of relevant law to the evidence presented.

(f) The Board may request one or both sides to prepare within seven days a proposed order of the Board for the Board's consideration including findings of fact, official notice, and conclusions of law. Underlying facts of record which support the findings should be cited.

(g) Order. Following completion of the hearing or upon receipt of the Hearing officer's recommendations, findings of facts and conclusions of law, the Board shall issue an order within 30 days, which shall include findings of fact, official notice taken, and conclusions of law stated separately. A copy of the order shall be delivered by certified mail, return receipt requested, and first class mail, postage prepaid, to the respondent or if represented by counsel, to his or her counsel of record.

(2) Evidence. Evidence shall be admitted in accordance with the Alabama Administrative Procedure Act, Section 41-22-13, Code of Alabama 1975. Relevant Federal, State, and local codes as well as relevant engineering and land surveying society codes, guidelines, and standards may be admitted into evidence in disciplinary proceedings before the Board to set forth standards generally accepted by the professions. These would include relevant engineering or land surveying codes and standards such as, current editions of the National Electrical Code, American Society of Mechanical Engineers' Codes, Standard Building Code, and the Alabama Society of Professional Land Surveyors' Standards of Practice for Surveying in the State of Alabama dated May 7, 2002.

(3) Other. The hearing shall be conducted in compliance with the provisions of the Alabama Administrative Procedure Act, Chapter 22, Title 41, Code of Alabama 1975. If the accused person or corporation fails or refuses to appear, the Board may proceed to hear and determine the validity of the charges.

(4) Negotiated Settlements. The Board attorney, in cooperation with the Investigative Committee, is hereby authorized to negotiate settlements with any respondent wishing to do so. In the event that the ~~Board attorney~~ Investigative Committee and the respondent have reached tentative agreement on a negotiated settlement prior to the date set for hearing of the charges, such agreement shall be presented to the Board at the first available opportunity. The Board may either accept or reject the tentative agreement of negotiated settlement and if accepted, the respondent shall be notified and no hearing held. If the Board rejects the tentative agreement of negotiated settlement, the charges shall be heard by the Board within a reasonable time.

Author: Board

Statutory Authority: Section 41-22-13, Section 41-22-16(c); Section 41-22-19 (d); Section 34-11-11; Section 34-11-16; Section 34-11-35, Code of Alabama 1975

Effective date: September 10, 1982. Amended: December 19, 1984, October 20, 1987, April 9, 1990, August 17, 1992, October 28, 1998, July 23, 2002, and July 24, 2008.

### **330-X-16-.06 Discipline Disciplinary Actions.**

(1) Upon a finding that the respondent has violated any enumerated provision of Sections 34-11-11, 34-11-15, 34-11-16, or any rule adopted pursuant to Section 34-11-35, the Board shall