

PROCEDURAL RULES AND REGULATIONS
RHODE ISLAND BOARD OF REGISTRATION
OF PROFESSIONAL LAND SURVEYORS

RULE 1-ORGANIZATION.

1.01 Chapter 5-8.1 of the General Laws establishes the Board of Registration of Professional Land Surveyors (hereinafter Board) and sets forth its jurisdiction and powers. The duties of the Board are set forth in said chapter of the General Laws.

1.02 It is the function of the Board to regulate the practice of land surveying within the State of Rhode Island as defined by the General Laws.

RULE 2-DEFINITIONS.

2.01 The term "Board" wherever used in these regulations shall be deemed to refer to the Board of Registration of Professional Land Surveyors or, when the context permits, to the relevant administration or personnel thereof.

2.02 The term "Chairman" wherever used in these regulations shall be deemed to refer to the Chairman of the Board. When used in connection with proceedings before the Board, the term "Chairman" shall also include the hearing officer conducting any hearing or prehearing for the Board.

RULE 3-PRACTICE BEFORE THE BOARD.

3.01 No person may appear in a representative capacity before the Board other than attorneys at law duly qualified and entitled to practice before the Supreme Court of the State of Rhode Island and attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the State of Rhode Island are permitted to appear in a representative capacity before administrative agencies of such other state, and such other persons as by law are expressly authorized to appear in representative capacities, and if not otherwise prohibited by our state law, but the Chairman, or hearing officer of the Board before which any matter is pending, may in circumstances he deems appropriate, permit a bona fide officer, partner, or full time employee of an individual firm, association, partnership, or corporation to appear for such individual firm, association, partnership, or corporation.

3.02 All persons appearing in proceedings before the Board in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of Rhode Island. If any such person does not conform to such standards, the Board may decline to permit such person to appear in a representative capacity in any proceeding before the Board.

RULE 4-HEARINGS.

4.01 Hearings required by law shall be conducted in accordance with these rules and regulations. Where no hearing is required by law, the Board may nevertheless in its discretion conduct or direct informal hearings or investigations be conducted in such manner and according to such procedures as it may deem appropriate.

4.02 In any contested case, all parties shall be served with such notice as may be provided by law, but in the absence of such provision the Board may order such notice as he deems necessary for the protection of the parties involved.

4.03 Service of Process.

4.03.01 By whom Served. The Board shall cause to be served all orders, notices and other papers Issued by it, together with any other papers which it is required by law to serve. Every other paper shall be served or caused to be served by the party filing it. Service shall be accomplished by certified mail at the last address on file with the Board with return receipt being required.

4.03.02 Upon Whom Served. All papers served by either the Board or any party shall be served upon all counsel of record at the time of such filing and upon parties not represented by counsel or upon their agents designated by them or by law. Any counsel entering an appearance subsequent to the initiation of the proceeding shall notify all other counsel then of record and all parties not represented by counsel of such fact.

4.03.03 Service Upon Parties. The final order, and any other paper required to be served by the agency upon a party, shall be served upon such party or upon the agent designated by him or by law to receive service of such papers, and a copy shall be furnished to counsel of record.

4.03.04 Method of Service. Service of papers shall be made personally or by first-class registered or certified mail.

4.03.05 When Service Complete. Service upon parties shall be regarded as complete: By mail, upon deposit in the United States mail properly stamped and addressed. Proof of service shall be required except that any party may evidence adequate attempts of service by demonstrating two (2) separate attempts at service, each such attempt being not less than two (2) weeks from any prior attempt.

4.03.06 Filing with Board. Papers required to be filed with the Board shall be deemed filed upon actual receipt by the Board at Suite 324, Charles Orms Building, 10 Orms Street, Providence Rhode Island, or at such address as may, at the time of filing, be the location of the Board.

4.04 Subpoenas.

4.04.01 Form. Every subpoena shall state the name and address of the Board and the Title of the proceeding, if any, and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents or things under his control at a specified time and place.

4.04.02 Issuance to Parties. When permitted by law and upon application of counsel for any party to a contested case, there shall be issued to such party subpoenas requiring the attendance and testimony of witnesses or the production of evidence in such proceeding. The Board may issue subpoenas in accordance with law to parties not so represented upon request or upon a showing of general relevance and reasonable scope of the testimony or evidence sought.

4.04.03 Service. Unless the service of a subpoena is acknowledged on its face by the person subpoenaed, service shall be made by delivering a copy of the subpoena to such person and by tendering him on demand the fees for one day's attendance and the mileage allowed by law.

4.04.04 Proof of Service. The person service the subpoena shall make proof of service by filing the subpoena and the required return, affidavit, or acknowledgment of service with the Board or the officer before whom the witness is required to testify or produce evidence. If service is made by a person other than an officer of the Board, and such service has not been acknowledged by the witness, such person shall make an affidavit of service. Failure to make proof of service does not affect the validity of the service.

4.04.05 Quashing. Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed (and upon notice to the party to whom the subpoena was issued) the Board or its authorized member or officer may

(1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion upon just and reasonable conditions.

4.04.06 Enforcement. Upon application and for good cause shown, the Board may seek judicial enforcement of subpoenas issued to parties and which have not been quashed.

4.04.07 Geographical Scope. Such attendance of witnesses and such production of evidence may be required from any place in the State of Rhode Island, at any designated place of hearing.

4.05 Official Notice - Matters of Law.

The Board or its hearing officer, upon request made before or during a hearing, will officially notice:

(1) Federal Law. The Constitution; Congressional Acts, Resolutions, Records, Journals and Committee Reports; Decisions of Federal Courts and Administrative Agencies; Executive Orders and Proclamations; and all rules, orders and notices published in the Federal Register.

(2) State Law. The Constitution of the State of Rhode Island, acts of the Legislature, Resolutions, Records, Journals and Committee Reports; decisions of administrative agencies of the State of Rhode Island, Executive orders and proclamations by the Governor; and all rules orders and notices filed with the Code Revisor.

(3) Governmental Organization. Organization, territorial limitations, officers, departments and general administration of the Government of the State of Rhode Island, the United States, the several states and foreign nations.

(4) Board of Organization. The Board's organization, administration, officers, personnel, official publications, and practitioners before its bar.

4.06 Official Notice - Material Facts.

In the absence of controverting evidence, the Board and its hearing officers, upon request made before or during a hearing, may officially notice:

(1) Board Proceedings. The pendency of, the issues and position of the parties therein, and the disposition of any proceeding then pending before or theretofore concluded by the Board;

(2) Business Customs. General customs and practices followed in the transaction of business;

(3) Notorious Facts. Facts so generally and widely known to all well-informed persons as not to be subject to reasonable dispute, or specific facts which are capable of immediate and accurate demonstration by resort to accessible sources of generally accepted authority, including but not exclusively, facts stated in any publication authorized or permitted by law to be made by any Federal or state officer, department, or agency;

(4) Technical Knowledge. Matters within the technical knowledge of the Board as a body of experts, within the scope or pertaining to the subject matter of its statutory duties, responsibilities or jurisdiction;

(5) Request or Suggestion. Any party may request, or the hearing officer or the Board may suggest, that official notice be taken of a material fact, which shall be clearly and precisely stated, orally on the record, at any pre-hearing conference or oral hearing or argument, or may make such request or suggestion by written notice, any pleading, motion, memorandum, or brief served upon all parties, at any time prior to a final decision;

(6) Statement. Where an initial or final decision of the Board rests in whole or in part upon official notice of a material fact, such fact shall be clearly and precisely stated in such decision. In determining whether to take official notice of material facts, the hearing officer of the Board may consult any source of pertinent information, whether or not furnished as it may be by and party and not admissible under the rules of evidence;

(7) Controversion. Any party may controvert a request or a suggestion that official notice of a material fact be taken at the time the same is made if it be made orally, or by a pleading, reply or brief in response to the pleading or brief or notice in which the same is made or suggested. If any decision is stated to rest in whole or in part upon official notice of a material fact which the parties have not had a prior opportunity to controvert any party may controvert such fact by appropriate exceptions if such notice be taken in an initial or intermediate decision or by a petition for reconsideration if notice of such fact be taken in a final report. Such controversion shall concisely and clearly set forth the sources, authority and other data relied upon to show the existence or non-existence of the material fact assumed or denied in the decision;

(8) Evaluation of Evidence. Nothing herein shall be construed to preclude the Board or its authorized agents from utilizing their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them.

4.07 Presumptions.

Upon of the predicate facts specified in the following six subdivisions hereof without substantial dispute and by direct, clear, and convincing evidence, the Department, with or without prior request or notice, may make the following presumptions, where consistent with all surrounding facts and circumstances:

(1) Continuity. That a fact of a continuous nature, proved to exist at a particular time, continues to exist as of the date of the presumption, if the fact is one which usually exists for at least that period of time;

(2) Identity. That persona and objects of the same name and description are identical;

(3) Delivery. Except in a proceeding where the liability of the carrier for non-delivery is involved, that mail matter, communications, express or freight, properly addressed, marked, billed and delivered respectively to the post office, telegraph, cable or radio company or authorized common carrier of property with of postage trols and charges properly prepaid, is or has been delivered to the addressee or consignee in the ordinary course of business;

(4) Ordinary Course. That a fact exists or does not exist, upon proof of the existence or non-existence of another fact which in the ordinary and usual course of affairs, usually and regularly co-exists with the fact presumed;

(5) Acceptance of Benefit That a person for whom an act is done or to whom a transfer is made has, does or will accept the same where it is clearly in his own self-interest so to do;

(6) Interference with Remedy. That evidence, with respect to a material fact which in bad faith is destroyed, suppressed or withheld by a party in control thereof, would if produced, corroborate the evidence of the adversary party with respect to such fact.

4.08 Stipulations and Admissions of Record.

The existence or non existence of a material fact, as made or agreed in a stipulation or in an admission of record, will be conclusively presumed against any party bound thereby, and no other evidence with respect thereto will be received upon behalf of such party, provided:

(1) Upon Whom Binding. Such a stipulation or admission is binding upon the parties by whom it is made, there privies and upon all other parties to the proceeding who do not expressly and unequivocally deny the existence or non-existence of the material fact so admitted or stipulated, upon the making thereof, if made on the record at a pre-hearing conference, oral hearing, oral argument or by writing filed and served upon all parties within five days after by a writing filed and served upon all parties within five days after a copy of such stipulation or admission has been served upon them;

(2) Withdrawal. Any party bound by a stipulation or admission of record at any time prior to final decision may be permitted to withdraw the same in whole or in part by showing to the satisfaction of the hearing officer or the Department that such stipulation or admission was made inadvertently or under a bona fide mistake of fact contrary to the true fact and that its withdrawal at the time proposed will not unjustly prejudice the rights of other parties to the proceeding.

4.09 Prehearing Conference Rule.

4.09.01 In any proceeding the Board or its designated hearing officer upon its or his own motion, or upon the motion of one of the parties or their qualified representatives, may in its or his discretion direct the parties or their qualified representatives to appear at a specified time and place for a conference to consider:

- (1) The simplification of the issues;
- (2) The necessity of amendments to the pleadings;
- (3) The possibility of obtaining stipulations, admissions of facts and of documents;
- (4) The limitation of the number of expert witnesses;
- (5) Such other matters as may aid in the disposition of the proceeding.

4.09.02 The Board or its designated hearing officer shall make an order or statement which recites the action taken at the conference, the amendments allowed to the pleadings and the agreements made by the parties or their qualified representatives as to any of the matters considered, including the settlement or simplification of issues, and which limits the issues for hearing to those not disposed of by admissions or agreements; and such order or statement shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

4.10 Submission of Documentary Evidence in Advance.

Where practicable the Board or its designated hearing officer may require:

(1) That all documentary evidence which is to be offered during the taking of evidence be submitted to the hearing examiner and to the other parties to the proceeding sufficiently in advance of such taking of evidence to permit study and preparation of cross-examination and rebuttal evidence;

(2) That documentary evidence not submitted in advance, as may be required by subdivision (1), be not received in evidence in the absence of a clear showing that the offering party had good cause for his failure to produce the evidence sooner;

(3) That the authenticity of all documents submitted in advance in a proceeding in which such submission is required, be deemed admitted unless written objection thereto is filed prior to the hearings, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.

4.11 Excerpts from Documentary Evidence.

When portions only of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered, to the hearing examiner and to the other parties. Only the excerpts, so prepared and submitted, shall be received in the record. However, the whole of the original document shall be made available for examination and for use by all parties to the proceeding.

4.12 Continuances.

Any party who desires a continuance shall, immediately upon receipt of notice of a hearing, or as soon thereafter as facts requiring such continuance come to his knowledge, notify the Board or its designated hearing officer of said desire, stating in detail the reasons why such continuance is necessary. The Board or its designated hearing officer, in passing upon a request for continuance, shall consider whether such request was promptly and timely made. For good cause shown, the Board or its designated hearing officer may grant such a continuance and may at any time order a continuance upon its or his own motion. During a

hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the examiner or other officer conducting the hearing may in his discretion continue the hearing and fix the date for introduction of additional evidence or presentation of argument. Such oral notice shall constitute final notice of such continued hearing.

4.13 Rules of Evidence.

4.13.01 Subject to other provisions of these rules, all relevant evidence is admissible which, in the opinion of the officer conducting the hearing, is the best evidence reasonable obtainable having due regard for its necessity, availability and trustworthiness. In passing upon the admissibility of evidence, the officer conducting the hearing shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings, in matters not involving trial by jury, in the superior court of the State of Rhode Island.

4.13.02 When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The officer conducting the hearing may, in his discretion, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered.

4.14 Stenographic Report of Evidence.

An electronic record shall be made of every hearing or contested case before the Board. A copy of the original tape shall be made available to any party to the proceeding upon written request to the Board. A typewritten transcript shall be made of the whole or part of the record upon: (1) a written request filed with the Board by any party to the hearing or case, and (2) a deposit to the Board of an amount equal to the cost thereof, as estimated by the Board at the time of making such request. As soon as practicable, the Board shall ascertain the cost of the transcript and refund any excess deposit over the actual cost thereof, and it shall require the amount of any deficit from the party or parties requesting the report. No transcript shall be made unless the amounts required have been deposited as herein provided. Any party may request that a stenographic record be kept by tendering to the Board an amount equal to the estimated cost thereof not less than seven (7) days prior to any scheduled hearing date.

RULE 5- PETITIONS FOR RULE MAKING. AMENDMENT OR REPEAL.

5.01 Any interested person may petition the Board requesting the promulgation, amendment, or repeal of any rule.

5.02 Where the petition requests the promulgation of rule, the requested or proposed rule must be set out in full. The petition must also include all the reasons for the requested rule together with briefs of any applicable law. Where the petition requests the amendment or repeal of a rule presently in effect, the rule or portion of the rule in question must be set out as well as a suggested amended form if any. The petition must include all reasons for the requested amendment or repeal of the rule.

5.03 All petitions shall be considered by the Board and the Board may, in its discretion, order a hearing for the further consideration and discussion of the requested promulgation, amendment, repeal, or modification of any rule.

5.04 Declaratory Rulings. As prescribed by Section 42-35-8, G. L. 1956, as amended, any interested person may petition the Board for a declaratory ruling. The Board shall consider the petition and within a reasonable time the Department shall:

- (1) Issue a non-binding declaratory ruling; or
- (2) Notify the person that no declaratory ruling is to be issued; or
- (3) Set a reasonable time and place for hearing argument upon the matter, and give reasonable notification to the person of the time and place for such hearing and of the issues involved.

If a hearing as provided in subsection (3) is conducted, the Board shall within a reasonable time:

- (1) Issue a binding declaratory rule; or
- (2) Issue a non-binding declaratory ruling; or,
- (3) Notify the person that no declaratory ruling is to be issued.

5.05 Forms. Any interested person petitioning the Board for a declaratory ruling pursuant to Section 42-35-8 shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording "Before the RI Board of Registration of Professional Engineers." On the left side of the page below the foregoing the following caption shall be set out: "In the Matter of the Petition of (name of petitioning party) for a Declaratory Ruling." Opposite the foregoing caption shall appear the word "Petition."

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall set out the state of facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of this state. The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

The original and four legible copies shall be filed with the Board. Petitions shall be on white paper, either 8 1/2" x 11" or 8 1/2" x 13" in size.

Any interested person petitioning the Board requesting the promulgation, amendment or repeal of any rules shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording "Before the R. I. Board of Registration of Professional Engineers." On the left side of the page below the foregoing the following caption shall be set out: "In the Matter of the Petition of (name of petitioning party) for (state whether promulgation, amendment or repeal) of Rule (or Rules)." Opposite the foregoing caption shall appear the word "Petition."

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether petitioner seeks the promulgation of new rule or rules, or amendment or repeal of existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for amendment, the new matter shall be underscored and the matter proposed to be deleted shall appear in double parentheses. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by department rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interest of the petitioner in the subject matter of rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for action sought.

Petitions shall be dated and signed by the person or entity named in the first paragraph or by his attorney. The original and four legible copies of the petitions shall be filed with the Department. Petitions shall be on white paper, either 8 1/2" x 11" or 8 1/2 " x 13" in size.

RULE 6-PUBLIC INFORMATION.

Members of the general public who may desire to secure information, make submissions or requests in accordance with the applicable statutes of the Board, register complaints, or to conduct business in any manner whatsoever with the Board may do so in writing delivered to the Chairman having jurisdiction, or may appear in person at the offices of the Board during its regular business hours.

RULE 7-COMPLAINTS.

All complaints filed with the Board must be subscribed and verified in the manner prescribed for verification of complaints in the Superior Courts of this state. All complaints must clearly set forth the provisions of law alleged to have been violated as well as sufficient facts and information upon which a reasonable person can support such allegations. Upon receipt of such complaint, the Board shall immediately forward a copy of such complaint to the registered engineer or firm which is the subject matter of said complaint. If, upon review, the Board determines that any complaint fails to comply with these requirements or, if the subject matter of the complaint is not registered or certified by the Board, the Board shall immediately notify the complainant in writing of these facts. The complainant shall be afforded sufficient opportunity to correct any defect in the complaint.

RULE 8-ANSWERS.

Any registrant or corporate body certified by this Board shall, within twenty (20) days of receipt of such a complaint, file or cause to be filed a written answer to such complaint with the Board. The registrant or corporate body shall also file or cause to be filed a copy of such answer with the complaining party at the address set forth in the complaint.

RULE 9-COSTS OF RECORD

The Board may, upon its own motion or for good cause shown, require that a stenographic record be kept of a hearing. The cost of this record shall be assessed against the complaining party unless, after consideration of the evidence, the Board determines that the registrant should bear the cost. The Board may, upon written request and for good cause, waive the costs of the record when a party is indigent or when the party shall be unable to pay.
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