

Notice of Agency Rulemaking Proposal

AGENCY: 02-333 Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Licensure of Foresters

CHAPTER NUMBER AND TITLE:

Chapter 100: Code of Ethics (repeal and replace)

TYPE OF RULE (*check one*): Routine Technical Major Substantive

PROPOSED RULE NUMBER (*leave blank; to be assigned by Secretary of State*):

BRIEF SUMMARY:

The Board recently proposed changes to Chapter 100: Code of Ethics with a comment period ending on June 5, 2023. The Board received comments on the proposed rule requesting that the Board consider amending the proposed rule in several sections including Definitions; Obligations to Clients, Suppliers and Employers; and Obligations to the Public. The Board wanted to adopt several comments and is soliciting comments from the public on the changes to the rule that are necessary to adopt those comments.

For a copy of the proposed rule and related documents, please direct your request to the contact person for this filing or visit:

<https://www.maine.gov/pfr/professionallicensing/professions/board-licensure-foresters>
and scroll down to “What’s New.”

Date, time and location of PUBLIC HEARING: Friday, September 15, 2023 at 221 State Street, Augusta, ME at 1:00 p.m. Members of the public will also have the opportunity to attend and participate via remote means. Instructions on remote access and a link will be posted on the board’s webpage in advance of the public hearing at <https://www.maine.gov/pfr/professionallicensing/professions/board-licensure-foresters/home/board-meeting-information>

COMMENT DEADLINE: Monday, September 25, 2023 by 5:00 p.m.

CONTACT PERSON FOR THIS FILING (*include name, mailing address, telephone, fax, TTY, email*): Catherine E. Pendergast, 35 State House Station, Augusta, ME 04333-0035, 207-624-8518, TTY: Maine relay 711, Catherine.Pendergast@maine.gov

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT (*if different*): N/A

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES (*if any*): N.A

STATUTORY AUTHORITY FOR THIS RULE: 32 M.R.S. § 5506

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (*if different*): N/A

AGENCY WEBSITE: <https://www.maine.gov/pfr/professionallicensing/professions/board-licensure-foresters>

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: kristin.racine@maine.gov

* Check one of the following two boxes.

The summary provided above is for publication in both the newspaper and website notices.

The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rulemaking notice posted on the Secretary of State's website. Title 5 §8053, sub-§3, ¶D & sub-§6.

Please approve bottom portion of this form and assign appropriate AdvantageME number.

APPROVED FOR PAYMENT _____ DATE: _____

(authorized signature)

FUND	AGENCY	ORG	APP	OBJ	PROGRAM	FUNDING Profile JVC	FUND Pri JVC	FUND Line JVC
014	02A	4250	01	4946				

Rulemaking Fact Sheet (5 MRS A §8057-A)

AGENCY: 02-333 Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Licensure of Foresters

NAME, ADDRESS, PHONE NUMBER, EMAIL OF AGENCY CONTACT PERSON:
Catherine E. Pendergast, 35 State House Station, Augusta, ME 04333-0035, 207-624-8518,
TTY: Maine relay 711, Catherine.Pendergast@maine.gov

CHAPTER NUMBER AND RULE TITLE:
Chapter 100: Code of Ethics (repeal and replace)

TYPE OF RULE (*check one*): Routine Technical Major Substantive

STATUTORY AUTHORITY: 32 M.R.S. § 5506

DATE, TIME AND PLACE OF PUBLIC HEARING: Friday, September 15, 2023 at 221 State Street, Augusta, Maine at 1:00 p.m. Members of the public will also have the opportunity to attend and participate via remote means. Instructions on remote access and a link will be posted on the board's webpage in advance of the public hearing at <https://www.maine.gov/pfr/professionallicensing/professions/board-licensure-foresters/home/board-meeting-information>

COMMENT DEADLINE: Monday, September 25, 2023 at 5:00 p.m.

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE:
The Board is proposing to repeal and replace Chapter 100, Code of Ethics. The Board is soliciting additional comments from the public on changes it has adopted in response to comments already received on the proposed rule.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? ___YES ___X_NO

ANALYSIS AND EXPECTED OPERATION OF THE RULE:

It is anticipated that these rules will clarify the ethics rule, which the board is authorized by statute to adopt as part of establishing standards of practice that serve the public interests and govern forestry practice.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE

Expertise of board members, sub-committee and staff.

ESTIMATED FISCAL IMPACT OF THE RULE: None anticipated.

ESTIMATED FISCAL IMPACT OF THE RULE: [see §8057-A(1)(C)] **FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:**

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:
[see §8057-A(2)(A)]

INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED: [see §8057-A(2)(B)]

BENEFITS OF THE RULE: [see §8057-A(2)(C)]

Note: If necessary, additional pages may be used.

Rule as proposed in May 2023

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

333 BOARD OF LICENSURE OF FORESTERS

Chapter 100: CODE OF ETHICS

Summary: This chapter defines unprofessional practice as failure to comply with the Code of Ethics adopted by the board in this chapter.

1. Code of Ethics; Unprofessional Practice

The following Code of Ethics defines the conduct of foresters in their relations with clients, employers, other professionals, and the public. Unprofessional practice includes but is not limited to any failure to comply with the Code of Ethics.

2. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings:

1. Client. “Client” means person or entity who has entered into an agreement for services with a forester or the forester’s employer.
2. Conflict of interest. “Conflict of interest” means a situation when a forester has a duty to more than one person or entity but cannot equally represent the actual or potential adverse interests of both parties. This includes when a forester’s personal interests or concerns are inconsistent with the best interests of a client.
3. Fiduciary responsibility. “Fiduciary responsibility” means the obligation to act in the best interests of the client within accepted forestry practice.
4. Forester. “Forester” means a person who holds a license from the Board as a forester or an intern forester. The roles in which a forester may provide services include but are not limited to the following:
 - A. Procurement, which means purchasing forest products that have commercial value;
 - B. Consulting, which means providing services through private practice or employed by an entity whose services are available to the general public;
 - C. Public services, which means providing services to a government entity; or

- D. Landowner or management assistance, which means providing services to a wood buying entity which may offer or perform forestry services.
 - 5. Management. “Management” means the planning and implementation of proven and accepted scientific forestry methods, appropriate to the specific forest conditions, to achieve a desired or improved result compared to current conditions.
 - 6. Stumpage. “Stumpage” means the value of standing trees.
 - 7. Supplier. “Supplier” means a landowner or other entity selling stumpage or severed forest products.
 - 8. Timber appraisal. “Timber appraisal” means the process or methodology of developing an opinion or estimate of value of stumpage or timber value. Timber appraisal is not an offer of a purchase price by a prospective buyer or a published history of past payment for similar property but may be partially based on such history.
3. Obligations to Clients, Suppliers and Employers

A forester bears the following obligations to clients, suppliers and employers, except that subsections 4, 6, 7 and 9 below do not apply to foresters performing management services on land or timber owned, leased, or controlled by the employer of the forester or an agent or affiliate of the employer. Notwithstanding the foregoing, subsections 4, 6, 7 and 9 do apply to foresters performing services in connection with stumpage purchase agreements associated with one-time or intermittent harvesting.

1. General Duty

A forester must act towards the client, supplier, and employer in all professional matters with loyalty, fidelity, and integrity in word and deed.

2. Prior to providing services, a forester must disclose to a client or supplier:
- A. To whom the forester owes a fiduciary duty with respect to the agreement;
 - B. Whether the forester is procuring or soliciting forest products that have a commercial value;
 - C. Any financial or purchase interest the forester or the forester’s employer has in the land or timber including the forester’s or forester’s employer’s interest in the stumpage or timber to be harvested and the relationship to the services to be provided by the forester; and

D. Any contracts to sell forest products exclusively to a particular market, mill, or purchaser.

3. Confidentiality

A forester must not disclose information concerning the forester's current or former client or employer without the client's or employer's express permission, except as required by law.

4. Conflicts of Interest

A. Generally. A forester must avoid a conflict of interest, or the appearance of a conflict of interest. If a conflict of interest a conflict is discovered, the forester must

- (1) Promptly and fully disclose the conflict to the client or employer in writing; and
- (2) Either act immediately to resolve the conflict or obtain written consent from the client or employer.

B. Disclosure. The disclosure required by subparagraph (A)(1) above must include, but not be limited to:

- (1) The nature of the conflict;
- (2) The role in which the forester proposes to provide the services (*e.g.*, procuring, consulting, providing landowner assistance or management assistance, providing services as an employee of a consulting firm, or providing services on behalf of a government entity;
- (3) The person or entity paying for the services and how payments are to be made; and
- (4) A description of any confidential client information that may be disclosed to the person or entity paying for the services.

C. Arising from timber appraisals. In the event that a conflict of interest arises as a result of a timber appraisal, the forester must disclose the conflict to the former client or employer and secure permission to share the appraisal information.

5. Truthful Reporting

A forester must provide truthful reports of forest conditions, health and quality based on current accepted forestry standards and knowledge.

6. Requirements Regarding Written Agreements

Written client agreements minimize the potential for disagreement or misunderstanding.

A. A forester must offer to provide written confirmation to the client of the duties to be performed by the forester for the client or supplier prior to commencing work on a project unless the project is to be completed within seven (7) days of the forester's acceptance of the assignment.

B. A forester must develop a signed written agreement with each client before:

- (1) Administering or overseeing a timber harvest; or
- (2) Undertaking a client engagement that is expected to result in physical alteration of a parcel.

Notwithstanding the foregoing, where a written agreement is required under this section, an exception may exist for minor, urgent or unforeseen circumstances.

C. If a written agreement is requested or required under this chapter, it must include the following provisions:

- (1) Disclosures as described in this chapter as applicable, specifically:
 - (a) To whom the forester owes a fiduciary duty with respect to the agreement;
 - (b) The forester's role, such as procuring forest products of commercial value, consulting, providing landowner assistance or management assistance, providing services as an employee of a consulting firm, or providing services on behalf of a government entity;
 - (c) Any financial or purchase interest the forester of the forester's employer has in the land or timber including the forester's or

forester's employer's interest in the stumpage or timber to be harvested and the relationship to the services to be provided by the forester;

- (d) Any contracts to sell forest products exclusively to a particular market, mill, or purchaser;
- (e) The extent of work, setting forth with reasonable certainty the scope of the project;
- (f) The specific location of the land upon which the work is to be completed;
- (g) The estimated cost consistent with the provisions of subsection 8 below; and
- (h) An estimated completion schedule.

7. Fee Disclosure

Prior to providing services, a forester must disclose all direct and indirect costs or obligations of the services to be provided. This disclosure must include the rates, commissions and methods by which compensation must be calculated and any estimate of the overall cost of the services to be provided. If circumstances cause the fee estimate to become significantly inaccurate, the forester must consult the client and convey a revised estimate to the client as soon as practicable thereafter.

8. Fees

Fees may be negotiated on any mutually agreeable basis. No fee may be established upon a predetermined result or value. With respect to timber appraisals, a forester may not accept a fee based upon the value of the timber being appraised, nor may a forester have any legal or equitable interest in the property being appraised.

9. Client Funds

A forester who has custody of client funds must maintain said funds in separate trust accounts, which are not commingled with the forester's assets, but which may be commingled with other client funds. Such forester must

retain records that accurately reflect the receipt of and debiting of client funds to the forester.

10. Due Care

A forester must strive to deliver all work on time and in a complete, accurate and competent manner, giving fair notice of any delays or deficiencies in the work.

11. Client Objectives

A forester must obtain a clear understanding of the client's objectives in connection with providing any services to the client.

12. Qualified

A forester must perform only those services for which the forester is qualified by education or experience.

13. Other Experts

A forester must advise the client or employer to engage other experts and specialists in forestry or related fields whenever the interest of the client or employer would be best served by such action and the forester will work cooperatively with other professionals.

14. Endorsement of Document

A forester must only sign or seal those plans, reports, prescriptions, maps and specifications personally prepared by the forester or produced under the direct supervision or review of the forester. Any maps or property descriptions prepared for public record by a forester must clearly disclose "not a legal survey."

15. Professional Standards

If a forester is asked to participate in forestry operations which would deviate from accepted forestry practices that could cause harm to the client, supplier, employer or forest, the forester must advise the client or employer in advance of the consequences of such deviation. In no event must a forester participate in or condone any violation of any laws.

4. Obligations to the Public

1. Disclosure of Role

A forester must clearly state on whose behalf the forester provides any opinions or makes any professional statements. In dealing with the public, a forester must clearly identify him or herself, the client, and any other person whose interests the forester is representing.

2. Public Comment

A forester must base public comment on forestry matters on accurate knowledge and must not distort or withhold pertinent information to substantiate a point of view.

3. Ethics First

A forester must uphold this Code of Ethics above the demands of employment.

4. Comply with Laws

A forester must at all times in the performance of forestry services abide by federal and state laws and municipal ordinances involving forestry and timber harvesting, land use, agriculture, natural resource management and protection, environmental protection and the handling of client funds.

5. Advertising

A forester must only advertise in a dignified and truthful manner, stating the services the forester is qualified and prepared to perform. Such advertisements may include references to fees charged, but may not include references to past clients served without their prior written consent.

6. Supervision of Unlicensed Individuals

A forester must comply with all provisions of the Forester Licensing law and the rules of the Board in connection with the supervision of the work of an individual not licensed by the Board.

5. Obligations to Other Foresters

1. Recommendation

Information submitted by a forester about a candidate for a license from this Board, or in connection with a prospective client referral to another forester or professional, must be accurate, factual and objective.

2. Duties of Sponsor

A forester must perform all duties and obligations imposed on the forester by the Forester Licensing law and the rules of the Board when acting as a sponsor of an intern forester.

STATUTORY AUTHORITY: 32 M.R.S. § 5506(3)

EFFECTIVE DATE:

Redline Demonstrating Changes from Rule as Proposed in May 2023

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

333 BOARD OF LICENSURE OF FORESTERS

Chapter 100: CODE OF ETHICS

Summary: This chapter defines unprofessional practice as failure to comply with the Code of Ethics adopted by the board in this chapter.

1. Code of Ethics; Unprofessional Practice

The following Code of Ethics defines the conduct of foresters in their relations with clients, employers, other professionals, and the public. Unprofessional practice includes but is not limited to any failure to comply with the Code of Ethics.

2. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings:

1. Client. “Client” means person or entity who has entered into an agreement for services with a forester or the forester’s employer.
2. Conflict of interest. “Conflict of interest” means a situation when a forester has a duty to more than one person or entity but cannot equally represent the actual or potential adverse interests of both parties. This includes when a forester’s personal interests or concerns are inconsistent with the best interests of a client.
3. Fiduciary responsibility. “Fiduciary responsibility” means the obligation to act in the best interests of the client within accepted forestry practice.
4. Forester. “Forester” means a person who holds a license from the Board as a forester or an intern forester.—~~The roles in which a forester may provide services include but are not limited to the following:~~
 - A.—~~Procurement, which means purchasing forest products that have commercial value;~~

- ~~B. Consulting, which means providing services through private practice or employed by an entity whose services are available to the general public;~~
- ~~C. Public services, which means providing services to a government entity; or~~
- ~~D. Landowner or management assistance, which means providing services to a wood buying entity which may offer or perform forestry services.~~

5. Management. “Management” means the planning and implementation in accordance with landowner objectives and professional standards of proven and accepted scientific forestry methods; appropriate to ~~the~~ specific forest conditions, to achieve a desired or improved result compared to current conditions. Foresters have an obligation to advise landowners of the consequences of deviating from such standards.
6. Stumpage. “Stumpage” means the value of standing trees.
7. Supplier. “Supplier” means a landowner or other entity selling stumpage or severed forest products.
8. Timber appraisal. “Timber appraisal” means the process or methodology of developing an opinion or estimate of value of stumpage or timber value. ~~Timber appraisal is not an offer of a purchase price by a prospective buyer or a published history of past payment for similar property but may be partially based on such history.~~

3. Obligations to Clients, Suppliers and Employers

A forester bears the following obligations to clients, suppliers and employers, except that subsections 4, 6, 7 and 9 below do not apply to foresters performing management services on land or timber owned, leased, or controlled by the employer of the forester or an agent or affiliate of the employer. Notwithstanding the foregoing, subsections 4, 6, 7 and 9 do apply to foresters performing services in connection with stumpage purchase agreements associated with one-time or intermittent harvesting.

1. General Duty

A forester must act towards the client, supplier, and employer in all professional matters with loyalty, fidelity, and integrity in word and deed.

2. Prior to providing services, a forester must disclose to a client or supplier:

- A. To whom the forester owes a fiduciary duty with respect to the agreement;
- B. Whether the forester is procuring or soliciting forest products that have a commercial value; and
- C. Any financial or purchase interest the forester ~~of~~for the forester's employer has in the land or timber including the forester's or forester's employer's interest in the stumpage or timber to be harvested and the relationship to the services to be provided by the forester; and.
- ~~D. Any contracts to sell forest products exclusively to a particular market, mill, or purchaser.~~

3. Confidentiality

A forester must not disclose information concerning the forester's current or former client or employer without the client's or employer's express permission, except as required by law.

4. Conflicts of Interest

- A. Generally. A forester must avoid a conflict of interest, or the appearance of a conflict of interest. If a conflict of interest a conflict is discovered, the forester must
 - (1) Promptly and fully disclose the conflict to the client or employer in writing; and
 - (2) Either act immediately to resolve the conflict or obtain written consent from the client or employer.
- B. Disclosure. The disclosure required by subparagraph (A)(1) above must include, but not be limited to:
 - (1) The nature of the conflict;
 - (2) The role in which the forester proposes to provide the services ~~(~~e.g., procuring, consulting, providing landowner assistance or management assistance, providing services as an employee of a consulting firm, or providing services on behalf of a government entity;

(3) The person or entity paying for the services and how payments are to be made; and

(4) A description of any confidential client information that may be disclosed to the person or entity paying for the services.

C. ~~Arising from timber appraisals.~~ In the event that a conflict of interest arises as a result of a timber appraisal, the forester must disclose the conflict to the former client or employer and secure permission to share the appraisal information.

5. Truthful Reporting

A forester must provide truthful reports of forest conditions, health and quality based on current accepted forestry standards and knowledge.

6. Requirements Regarding Written Agreements

Written client agreements minimize the potential for disagreement or misunderstanding.

A. A forester must offer to provide written confirmation to the client of the duties to be performed by the forester for the client or supplier prior to commencing work on a project unless the project is to be completed within seven (7) days of the forester's acceptance of the assignment.

B. A forester must develop a signed written agreement with each client before:

(1) Administering or overseeing a timber harvest; ~~or~~

(2) Undertaking a client engagement that is expected to result _____ in physical alteration of a parcel;

(3) Acting as the client's agent; or

(3)(4) Accepting or disbursing clients' funds on behalf of the client.

Notwithstanding the foregoing, where a written agreement is required under this section, an exception may exist for minor, urgent or unforeseen circumstances.

C. If a written agreement is requested or required under this chapter, it must include the following provisions:

(1) Disclosures as described in this chapter as applicable, specifically:

(a) To whom the forester owes a fiduciary duty with respect to the agreement;

(b) The forester's role, such as procuring forest products of commercial value, consulting, providing landowner assistance or management assistance, providing services as an employee of a consulting firm, or providing services on behalf of a government entity;

(c) Any financial or purchase interest the forester ~~or~~for the forester's employer has in the land or timber, including the forester's or forester's employer's interest in the stumpage or timber to be harvested ~~and the relationship to the services to be provided by the forester;~~;

~~(d) Any contracts to sell forest products exclusively to a particular market, mill, or purchaser;~~

~~(e)~~(d) _____ The extent of work, setting forth with reasonable certainty the scope of the project;

~~(f)~~(e) _____ The specific location of the land upon which the work is to be completed;

~~(g)~~(f) _____ The estimated cost consistent with the provisions of subsection 8 below; and

~~(h)~~(g) _____ An estimated completion schedule.

7. Fee Disclosure

Prior to providing services, a forester must disclose all direct and indirect costs or obligations of the services to be provided. This disclosure must include the rates, commissions and methods by which compensation must be calculated and any estimate of the overall cost of the services to be provided. If circumstances cause the fee estimate to become significantly inaccurate, the forester must consult the client and convey a revised estimate to the client as soon as practicable thereafter.

8. Fees

Fees may be negotiated on any mutually agreeable basis. No fee may be established upon a predetermined result or value. With respect to timber appraisals, a forester may not accept a fee based upon the value of the timber being appraised, nor may a forester have any legal or equitable interest in the property being appraised.

9. Client Funds

A forester who has custody of client funds must maintain said funds in separate trust accounts, which are not commingled with the forester's assets, but which may be commingled with other client funds. Such forester must retain records that accurately reflect the receipt of and debiting of client funds to the forester.

10. Due Care

A forester must strive to deliver all work on time and in a complete, accurate and competent manner, giving fair notice of any delays or deficiencies in the work.

11. Client Objectives

A forester must obtain a clear understanding of the client's objectives in connection with providing any services to the client.

12. Qualified

A forester must perform only those services for which the forester is qualified by education or experience.

13. Other Experts

A forester must advise the client or employer to engage other experts and specialists in forestry or related fields whenever the interest of the client or employer would be best served by such action, and the forester will work cooperatively with other professionals.

14. Endorsement of Document

A forester must only sign or seal those plans, reports, prescriptions, maps and specifications personally prepared by the forester or produced under the direct supervision or review of the forester. Any maps or property descriptions prepared for public record by a forester must clearly disclose “not a legal survey.”

15. Professional Standards

If a forester is asked to participate in forestry operations which would deviate from accepted forestry practices that could cause harm to the client, supplier, employer or forest, the forester must advise the client or employer in advance of the consequences of such deviation. In no event ~~must~~shall a forester participate in or condone any violation of any laws or rules.

4. Obligations to the Public

1. Disclosure of Role

A forester must clearly state on whose behalf the forester provides any opinions or makes any professional statements. In dealing with the public, a forester must clearly identify him or herself, the client, and any other person whose interests the forester is representing.

2. Public Comment

A forester must base public comment on forestry matters on accurate knowledge and must not distort or withhold pertinent information to substantiate a point of view.

3. Ethics First

A forester must uphold this Code of Ethics above the demands of employment.

~~4. Comply with Laws~~

~~A forester must at all times in the performance of forestry services abide by federal and state laws and municipal ordinances involving forestry and timber harvesting, land use, agriculture, natural resource management and protection, environmental protection and the handling of client funds.~~

~~5.~~ Advertising

A forester must only advertise in a dignified and truthful manner, stating the services the forester is qualified and prepared to perform. Such advertisements may include references to fees charged, but they may not include references to past clients served without their prior written consent.

~~65.~~ Supervision of Unlicensed Individuals

A forester must comply with all provisions of the Forester Licensing law and the rules of the Board in connection with the supervision of the work of an individual not licensed by the Board.

5. Obligations to Other Foresters

1. Recommendation

Information submitted by a forester about a candidate for a license from this Board, or in connection with a prospective client referral to another forester or professional, must be accurate, factual and objective.

2. Duties of Sponsor

A forester must perform all duties and obligations imposed on the forester by the Forester Licensing law and the rules of the Board when acting as a sponsor of an intern forester.

STATUTORY AUTHORITY: 32 M.R.S. § 5506(3)

EFFECTIVE DATE:

Clean Version of Current Proposed Rule

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

333 BOARD OF LICENSURE OF FORESTERS

Chapter 100: CODE OF ETHICS

Summary: This chapter defines unprofessional practice as failure to comply with the Code of Ethics adopted by the board in this chapter.

1. Code of Ethics; Unprofessional Practice

The following Code of Ethics defines the conduct of foresters in their relations with clients, employers, other professionals, and the public. Unprofessional practice includes but is not limited to any failure to comply with the Code of Ethics.

2. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings:

1. Client. “Client” means person or entity who has entered into an agreement for services with a forester or the forester’s employer.
2. Conflict of interest. “Conflict of interest” means a situation when a forester has a duty to more than one person or entity but cannot equally represent the actual or potential adverse interests of both parties. This includes when a forester’s personal interests or concerns are inconsistent with the best interests of a client.
3. Fiduciary responsibility. “Fiduciary responsibility” means the obligation to act in the best interests of the client within accepted forestry practice.
4. Forester. “Forester” means a person who holds a license from the Board as a forester or an intern forester.
5. Management. “Management” means the planning and implementation in accordance with landowner objectives and professional standards of proven and accepted scientific forestry methods appropriate to specific forest conditions, to achieve a desired or improved result compared to current

conditions. Foresters have an obligation to advise landowners of the consequences of deviating from such standards.

6. Stumpage. "Stumpage" means the value of standing trees.
7. Supplier. "Supplier" means a landowner or other entity selling stumpage or severed forest products.
8. Timber appraisal. "Timber appraisal" means the process or methodology of developing an opinion or estimate of value of stumpage or timber value.

3. Obligations to Clients, Suppliers and Employers

A forester bears the following obligations to clients, suppliers and employers, except that subsections 4, 6, 7 and 9 below do not apply to foresters performing management services on land or timber owned, leased, or controlled by the employer of the forester or an agent or affiliate of the employer. Notwithstanding the foregoing, subsections 4, 6, 7 and 9 do apply to foresters performing services in connection with stumpage purchase agreements associated with one-time or intermittent harvesting.

1. General Duty

A forester must act towards the client, supplier, and employer in all professional matters with loyalty, fidelity, and integrity in word and deed.

2. Prior to providing services, a forester must disclose to a client or supplier:
 - A. To whom the forester owes a fiduciary duty with respect to the agreement;
 - B. Whether the forester is procuring or soliciting forest products that have a commercial value; and
 - C. Any financial or purchase interest the forester or the forester's employer has in the land or timber including the forester's or forester's employer's interest in the stumpage or timber to be harvested and the relationship to the services to be provided by the forester.

3. Confidentiality

A forester must not disclose information concerning the forester's current or former client or employer without the client's or employer's express permission, except as required by law.

4. Conflicts of Interest

A. Generally. A forester must avoid a conflict of interest, or the appearance of a conflict of interest. If a conflict of interest a conflict is discovered, the forester must

- (1) Promptly and fully disclose the conflict to the client or employer in writing; and
- (2) Either act immediately to resolve the conflict or obtain written consent from the client or employer.

B. Disclosure. The disclosure required by subparagraph (A)(1) above must include, but not be limited to:

- (1) The nature of the conflict;
- (2) The role in which the forester proposes to provide the services, *e.g.*, procuring, consulting, providing landowner assistance or management assistance, providing services as an employee of a consulting firm, or providing services on behalf of a government entity;
- (3) The person or entity paying for the services and how payments are to be made; and
- (4) A description of any confidential client information that may be disclosed to the person or entity paying for the services.

C. In the event that a conflict of interest arises as a result of a timber appraisal, the forester must disclose the conflict to the former client or employer and secure permission to share the appraisal information.

5. Truthful Reporting

A forester must provide truthful reports of forest conditions, health and quality based on current accepted forestry standards and knowledge.

6. Requirements Regarding Written Agreements

Written client agreements minimize the potential for disagreement or misunderstanding.

A. A forester must offer to provide written confirmation to the client of the duties to be performed by the forester for the client or supplier prior to commencing work on a project unless the project is to be completed within seven (7) days of the forester's acceptance of the assignment.

B. A forester must develop a signed written agreement with each client before:

- (1) Administering or overseeing a timber harvest;
- (2) Undertaking a client engagement that is expected to result in physical alteration of a parcel;
- (3) Acting as the client's agent; or
- (4) Accepting or disbursing clients' funds on behalf of the client.

Notwithstanding the foregoing, where a written agreement is required under this section, an exception may exist for minor, urgent or unforeseen circumstances.

C. If a written agreement is requested or required under this chapter, it must include the following provisions:

- (1) Disclosures as described in this chapter as applicable, specifically:
 - (a) To whom the forester owes a fiduciary duty with respect to the agreement;
 - (b) The forester's role, such as procuring forest products of commercial value, consulting, providing landowner assistance

or management assistance, providing services as an employee of a consulting firm, or providing services on behalf of a government entity;

- (c) Any financial or purchase interest the forester or the forester's employer has in the land or timber, including the forester's or forester's employer's interest in the stumpage or timber to be harvested;
- (d) The extent of work, setting forth with reasonable certainty the scope of the project;
- (e) The specific location of the land upon which the work is to be completed;
- (f) The estimated cost consistent with the provisions of subsection 8 below; and
- (g) An estimated completion schedule.

7. Fee Disclosure

Prior to providing services, a forester must disclose all direct and indirect costs or obligations of the services to be provided. This disclosure must include the rates, commissions and methods by which compensation must be calculated and any estimate of the overall cost of the services to be provided. If circumstances cause the fee estimate to become significantly inaccurate, the forester must consult the client and convey a revised estimate to the client as soon as practicable thereafter.

8. Fees

Fees may be negotiated on any mutually agreeable basis. No fee may be established upon a predetermined result or value. With respect to timber appraisals, a forester may not accept a fee based upon the value of the timber being appraised, nor may a forester have any legal or equitable interest in the property being appraised.

9. Client Funds

A forester who has custody of client funds must maintain said funds in separate trust accounts, which are not commingled with the forester's assets, but which may be commingled with other client funds. Such forester must retain records that accurately reflect the receipt of and debiting of client funds to the forester.

10. Due Care

A forester must strive to deliver all work on time and in a complete, accurate and competent manner, giving fair notice of any delays or deficiencies in the work.

11. Client Objectives

A forester must obtain a clear understanding of the client's objectives in connection with providing any services to the client.

12. Qualified

A forester must perform only those services for which the forester is qualified by education or experience.

13. Other Experts

A forester must advise the client or employer to engage other experts and specialists in forestry or related fields whenever the interest of the client or employer would be best served by such action, and the forester will work cooperatively with other professionals.

14. Endorsement of Document

A forester must only sign or seal those plans, reports, prescriptions, maps and specifications personally prepared by the forester or produced under the direct supervision or review of the forester. Any maps or property descriptions prepared for public record by a forester must clearly disclose "not a legal survey."

15. Professional Standards

If a forester is asked to participate in forestry operations which would deviate from accepted forestry practices that could cause harm to the client, supplier, employer or forest, the forester must advise the client or employer in advance

of the consequences of such deviation. In no event shall a forester participate in or condone any violation of any laws or rules.

4. Obligations to the Public

1. Disclosure of Role

A forester must clearly state on whose behalf the forester provides any opinions or makes any professional statements. In dealing with the public, a forester must clearly identify him or herself, the client, and any other person whose interests the forester is representing.

2. Public Comment

A forester must base public comment on forestry matters on accurate knowledge and must not distort or withhold pertinent information to substantiate a point of view.

3. Ethics First

A forester must uphold this Code of Ethics above the demands of employment.

4. Advertising

A forester must only advertise in a dignified and truthful manner, stating the services the forester is qualified and prepared to perform. Such advertisements may include references to fees charged, but they may not include references to past clients served without their prior written consent.

5. Supervision of Unlicensed Individuals

A forester must comply with all provisions of the Forester Licensing law and the rules of the Board in connection with the supervision of the work of an individual not licensed by the Board.

5. Obligations to Other Foresters

1. Recommendation

Information submitted by a forester about a candidate for a license from this Board, or in connection with a prospective client referral to another forester or professional, must be accurate, factual and objective.

2. Duties of Sponsor

A forester must perform all duties and obligations imposed on the forester by the Forester Licensing law and the rules of the Board when acting as a sponsor of an intern forester.

STATUTORY AUTHORITY: 32 M.R.S. § 5506(3)

EFFECTIVE DATE: