

Does Forensic Engineering Require Licensure?

By Don T. Arkle, P.E.

Introduction

Engineers are often called upon as expert witnesses in court because of our abilities to understand complex technical issues; to identify good or bad design, manufacture, and construction practices; and to diagnose causes of failures. There is a perception by some that forensic engineering or the practice of engineering related to legal proceedings is exempt from the law. This *may or may not be correct* depending on the circumstances. Whether or not a specific testimony is immune is rooted in the type of activity undertaken by the expert witness, as governed by Alabama Code and the applicable Code of Ethics.

What the Law Says

Alabama law requires that no person shall practice or offer to practice engineering unless he or she is licensed, or is exempt from licensure, by the Alabama Board of Licensure for Professional Engineers and Land Surveyors (Code of Alabama 1975, Title 34, Chapter 11, Section 2a).

Alabama Code 34-11-1(7) [paraphrased] defines the practice of engineering as any professional service, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences. It includes activities such as consultation, investigation, evaluation, planning, design and design coordination of engineering works and systems, planning the use of land and water, performing engineering surveys and studies, and the review of construction or other design products for the purpose of monitoring compliance with drawings and specifications insofar as they involve safeguarding life, health, or property.

Application of the Law to Forensic Engineering

First, the practice of engineering includes the offering of expert opinion in any legal proceeding in Alabama regarding work legally required to be performed under an Alabama engineer's license number or seal, which opinion may be given by an engineer licensed in any jurisdiction. This supports the argument that a license is generally required for testimony by a forensic engineer.

Second, the law further provides that in qualifying a witness to offer expert testimony on the practice of engineering, the court shall consider as evidence of his or her expertise whether the proposed witness holds a valid Alabama license for the practice of engineering. Provided, however, such qualification by the court shall not be withheld from an otherwise qualified witness solely on the basis of the failure to hold such valid Alabama license. So this second provision allows testimony by forensic engineers, even though they are not licensed.

So, the act of offering an expert opinion in any legal proceeding in Alabama does not require an Alabama PE license. But this is a limited exception to which there is a major qualification.

An expert who is called upon to only provide a deposition or testimony with regards to engineering would not need to be licensed by the State of Alabama. The is true only as long as the act of offering an expert opinion does not include engineering actions like investigations,

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evaluations, surveys, etc., that may need to be done prior to testifying. If engineering analysis needs to be done at a location in Alabama as part of the expert opinion, then an Alabama PE needs to be in responsible charge of that work.

In other words, any engineering service performed for the preparation of the testimony would require licensure if Alabama law otherwise requires that service to be performed under the responsible charge of an Alabama licensed engineer. So, in most circumstances, forensic engineering performed for a location in Alabama will need to be performed under the responsible charge of an Alabama licensed PE.