ETHICS: WHERE DOES YOUR RESPONSIBILITY END?

Understanding the relationship between professional ethics and legal liability

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OVERVIEW

- Ethical obligations
- Relationship between ethical obligations and the law
- Case Studies
What is Professional Ethics?

- Morals? Right or Wrong? Personal v. Professional?
Source of Ethical Standards

- State Codes of Professional Practice and Conduct
  - Kentucky Code of Professional Practice and Conduct (201 KAR 18:142)

- Professional Societies
  - ASCE
  - NSPE
  - ACEC
NSPE CODE OF ETHICS

- The Fundamental Canons
- Rules of Practice
- Professional Obligations
NSPE CODE OF ETHICS
The Fundamental Canons

1) Hold paramount the safety, health, and welfare of the public.
2) Perform services only in your area of competence.
3) Issue public statements in an objective and truthful manner.
4) Act for each employer or client as faithful agents or trustees.
5) Avoid deceptive acts.
6) Conduct yourself honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.
RULES OF PRACTICE
PUBLIC SAFETY

- Notification if someone overrules your judgment and it endangers public safety
  - The $$$$ v. public safety

- Report violations of the ethical code
  - Your job v. public safety
RULES OF PRACTICE

COMPETENCE

- Perform work ONLY in your areas of competence
- DO NOT seal documents not prepared under your direct supervision
  - Responsible control – state regulations vary
  - NO RUBBER STAMPING
RULES OF PRACTICE

PUBLIC STATEMENTS

- Technical opinions expressed in public must be based on knowledge of facts and competence in subject matter
  - Expert witness testimony
  - Must be based on factual investigation
RULES OF PRACTICE

FAITHFUL AGENT OR TRUSTEE

- Disclose all known or potential conflicts of interest that “could” or “appear” to influence judgment
  - Design/build
  - Prior relationships with contractors
  - Claim review

- No compensation from more than 1 party for services on same project without full disclosure
  - Do not serve 2 masters
RULES OF PRACTICE

AVOID DECEPTIVE ACTS

- Truthful advertising - do not falsify qualifications or misrepresent qualifications of firm
- No monetary contributions to influence award of public contracts
- No gifts with intent to solicit work
- No commissions to others for securing work
PROFESSIONAL OBLIGATIONS

- Highest standards of honesty & integrity
  - Acknowledge errors and do not distort the facts
- Strive to serve the public interest
  - Withdraw if you are asked to sign documents that do not comply with standards
- Avoid conduct that deceives the public
PROFESSIONAL OBLIGATIONS

- Do not disclose confidential information without client consent
- Do not represent an adversary interest in connection with project where engineer gained knowledge on behalf of former client
- Do not allow professional duties to be influenced by conflict of interest
  - No free designs from material suppliers
  - Do not accept commissions or allowances from contractor working for client
PROFESSIONAL OBLIGATIONS

- Engineers in private practice SHALL NOT review the work of another engineer for the same client EXCEPT with the knowledge of the other engineer unless relationship terminated
  - Independent reviews?
  - Taking over work of another engineer?

- Accept personal responsibility for professional activities
  - Limitation of liability? No indemnification for gross negligence

- Give credit to other engineers for their work
Where do law and ethics collide?

- Penalties for violation of state regulations
  - Revocation of license
  - Fines
  - Probation
  - Training

- Civil liability
  - Ethical violations do not per se result in civil liability.
  - BUT . . . may be used to establish violation of standard of care

- Criminal liability
Professional Standard of Care

- Design professionals must exercise that degree of care, skill and diligence as would be exercised by other design professionals in a similar situation.
- What might be okay yesterday might not be okay today.
- Higher standard of care may be imposed by Contract.
- Structural v. Geotechnical
ESTABLISHED BY:

- Experts (what other design professionals say the standard is)
- Building codes
- Industry standards
- Textbooks
- Manuals
- Ethical Codes
ETHICAL CODES

- Ethical codes DO NOT establish a legal standard of care.
- BUT . . . ethical codes may be used by experts (and lawyers) to define the standard of care.
CASE STUDIES

- Conflict of Interest
  - Review of design/build partner’s work
  - Inspection of Engineer’s own work where design is in question
  - Claim review services
- Expert Testimony
Conflict of Interest: Review of former design/build partner’s work*

- Engineer provides design services as part of a design/build joint venture with Contractor for private client. Later, the private client retains engineer on another unrelated design-bid-build project to review the contractor’s submissions and construction work.

- Would it be ethical for engineer to review contractor’s work after having participated in a joint venture with contractor for the same private client?

*Based on NSPE Board of Ethical Review Case 05-10
Conflict of Interest: Review of former design/build partner’s work

- Engineers shall act for each employer as faithful agents or trustees (Sec. II.4)

- Engineers shall disclose all known or potential conflicts of interest that could influence or appear to influence their judgment or quality of services. (Sec. II.4.a)

*Based on NSPE Board of Ethical Review Case 05-10*
Conflict of Interest: Review of former design/build partner’s work

- “Appearance” of a conflict of interest
- Relationship could effect:
  - (1) engineer’s professional or business judgment, and
  - (2) an employer’s client interests.

*Based on NSPE Board of Ethical Review Case 05-10
THE OUTCOME

- Assuming full disclosure by Engineer, it would not be unethical to review contractor’s work after participating in joint venture.

- It is ultimately the client’s decision to determine if they want to proceed.

*Based on NSPE Board of Ethical Review Case 05-10
Assume that the Engineer was part of an ongoing design/build joint venture and was asked by an owner to inspect its partner’s work on an unrelated project.

Would it be ethical for the Engineer to provide the inspection services?

*Based on NSPE Board of Ethical Review Case 02-6*
CONFLICT OF INTEREST
Slight Change of Facts

- Full disclosure may not always be sufficient where an Engineer has an active ongoing relationship with a contractor.
- At a minimum, full disclosure of existing relationship is required, but it would likely be unethical for the Engineer to provide inspection services.

*Based on NSPE Board of Ethical Review Case 02-6*
Conflict of Interest: Engineer Inspecting Own Work

- Engr. in private practice designs house foundation for development contractor.
- A local building inspector observes cracks in the foundation and requires the contractor to have a professional engineer perform an inspection.
- Engr., at contractor’s request, inspects the foundation and submits a sealed letter to the building inspector indicating the foundation was structurally safe.
- Was it ethically permissible for the Engr. to inspect his own work or should an independent engineer perform the review?

*Based on NSPE Board of Ethical Review Case 04-9*
Conflicts of Interest: Engineer Inspecting Own Work

- Engineers shall disclose all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services. (Sec. II.4.a)
- Engineers in public service as . . . advisors . . . of a governmental . . . body . . . shall not participate in decisions with respect to services solicited or provided by them or their organizations in private or public engineering practice. (Sec. II.4.d)

*Based on NSPE Board of Ethical Review Case 04-9*
Conflict of Interest: Engineer Inspecting Own Work

- Raises basic questions of objectivity and impartiality.
- BUT – engineers often provide construction inspection services as part of their services to an owner.
- An independent review may be necessary to resolve issues raised by public officials charged with approving work on site.

RESULT: It was unethical for the Engineer to inspect his own work where the sufficiency of the design was called into question by a public official. An independent third party should have performed the review.

*Based on NSPE Board of Ethical Review Case 04-9
Conflict of Interest: Slight of Change of Facts

- Assume this situation occurred on a private project, and instead of an issue raised by a public official, the Engineer is asked to evaluate a claim submitted by the contractor concerning adequacy of the design.
- Would be unethical for the engineer to review the claim and make a recommendation to the owner?
- Should the engineer refuse to review the claim and recommend an independent third party?
- What if the engineer involves its insurance carrier who then assisted in responding to the claim?
Engr. retained by contractor to make field compaction tests as required by owner.

During the project, the contractor sought additional compensation from the owner claiming there was excessive testing and that soil borings were not accurate.

The owner later filed suit against the contractor and asked the engineer to provide assistance in developing the claim.

Is it ethical for the engineer to provide claim review services to the city?
It is unethical for an engineer, without the consent of all interested parties, to participate in or represent an adversary interest in connection with a specific project or proceeding in which the engineer has gained particular knowledge on behalf of a former client.

RESULT: Based on these facts, it was unethical for the engineer to assist the city because neither a sufficient amount of time had passed nor had the circumstances been altered to dilute the ethical obligations owed by the engineer to the former contractor client.
Expert Testimony

- An engineer, who is licensed in three different states, is asked to serve as an expert witness in a state where he is not licensed. The engineer is otherwise competent in this field of engineering.

- Is it unethical for the engineer to provide expert testimony under these circumstances?

*Based on NSPE Board of Ethical Review Case 90-3*
Expert Testimony

Are the expert’s actions legal?

- State laws vary as to whether providing expert testimony constitutes the “practice of engineering”
- If so, the engineer would be violating state law by providing expert testimony without a license.
- If not, the engineer’s actions wouldn’t be illegal.
- The court, if raised by the adverse party, would ultimately determine whether the engineer is qualified to serve as an expert witness.

*Based on NSPE Board of Ethical Review Case 90-3
Are the expert’s actions ethical?

Assuming the engineer is not violating local state law and is competent in the field, it would likely be ethical to serve as an expert in light of the fact that he or she is licensed in 3 other states.

BUT... the engineer’s credibility could be attacked because he or she is not licensed in the state where the incident occurred.
What to do when you confront an ethical dilemma?

PLUS* (ASCE’s Ethical Decision Making Guidelines)

- **P = POLICIES**
  - Is the action in the best interest of the public and the client?
  - Is the action consistent with the code of ethics and your employer’s policies?

- **L = LEGAL**
  - Does the action comply with applicable laws and regulations?

- **U = UNIVERSAL**
  - Does it conform to the universal principles and values that the profession and your employer have adopted?

- **S = SELF**
  - Does it satisfy your own personal definition of right, good, and just?

*ASCE, Ethical Guidelines for Professional Conduct for Civil Engineers*
What to do when you confront an ethical dilemma?

- Conflicts of Interest
  - when in doubt – disclose and seek consent
- Get a 2nd Opinion from colleagues, professional organizations, state licensure boards, friends, family, etc.
- If it feels wrong . . . it probably is wrong!
Information Resources

- State Licensure Boards (http://kyboels.ky.gov/)
- National Society for Engineering Ethics (www.niee.org)
- National Society of Professional Engineers (www.nspe.org)
- American Society of Civil Engineers (www.asce.org)
- Council of American Structural Engineers (www.acec.org/case)
QUESTIONS?

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