



# Ethics, Laws and Regulations by Gordon Rees Scully Mansukhani

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***Presented by:***

**Angela M. Richie, Esq.**

**Ben Patrick, Esq.**



# Polling Question

- Requirement to earn PDH credits
- Two questions will be asked during the duration of today's presentation
- The question will appear within the polling section of your GoToWebinar Control Panel to respond



# Learning Objectives

- Ethical duties established in regulations and codes published by various professional societies
- Contract clauses impacting the engineer's obligations
- The standard of care applied in evaluating claims against engineers
- Specific application of issues pertinent to the steel industry



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**In partnership with Gordon Rees Scully Mansukhani, the Steel Joist Institute brings you engineering ethics. This webinar will explore a professional engineer's ethical and contractual obligations. It will also review the legal issues that may arise if one fails to act in accordance with those obligations.**

**The presentation will focus on issues pertinent to the steel industry and will include real-world examples of where an engineer's ethical or contractual duties took center stage in a legal dispute.**

# Agenda

- **Ethical Obligations of Professional Engineers**
  - **Overview of professional ethics**
  - **Genesis of modern ethical obligations**
  - **Source of ethical obligations**
  - **Overview of canons and rules**
- **Case Studies**
  - **Common ethical issues**
  - **Review of selected ethical opinions**
  - **Hypothetical variations of selected opinions**
- **Relationship between ethical obligations and the law**
  - **Nexus of legal and ethical obligations**
  - **Standard of Care**
- **Q & A**



# Disclaimer

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# Ethical Obligations of Professional Engineers

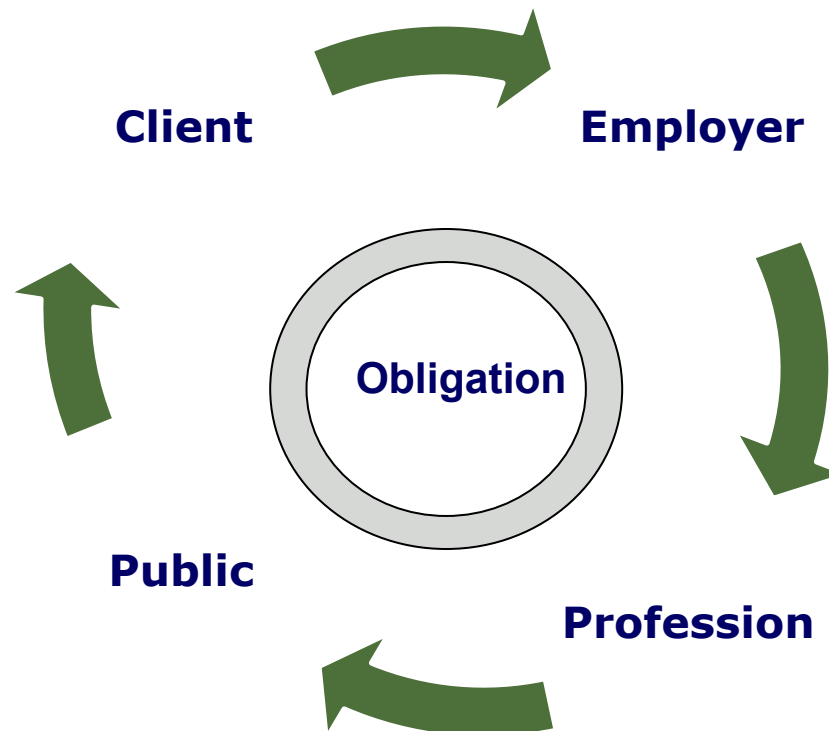
- **Overview of professional ethics**
- **Genesis of modern ethical obligations**
- **Source of ethical obligations**
- **Overview of canons and rules**





# What is Professional Ethics?

- Moral or Ethical?
- Right or Wrong?
- Personal or Professional?



# “What’s Past is Prologue”

## **Ashtabula River Railroad Bridge collapse of 1876**

- **Bridge over Ashtabula River in Northern Ohio collapsed in 1876**
- **Engineer/President of Railroad Company designed bridge**
- **Adapted wooden bridge design for an iron bridge**
- **Draftsmen hired resigned after determining certain members were of the design were inadequate**
- **Engineer in charge ignored draftsmen and deferred to president of Rail Road**
- **Suggested that cost was motivating factor in selection of materials and refusal to change/study inadequacies raised by draftsman**
- **Result: 92 train passengers killed**



# “What’s Past is Prologue”

## Quebec Bridge collapse of 1907:

- Bridge constructed over the St. Lawrence River (Levis to Quebec City) collapsed in 1907
- Several engineers worked on calculations at different times
- Later engineers relied on calculations of prior engineers
- Some engineers had no experience with this type of bridge
- Authority/responsibility was unclear for noticed distortions (lines of communications unclear)
- Communications were delayed/failed to give adequate notice
- Result: 75 workers killed



# Historical Development

## Pre-Mid/Late 1800's:

- Tension between engineering as profession v. employment
- Ethical obligations viewed to stem from personal actions (duty to act reasonable) rather than as a profession (duty to act as other professionals)

## 1900's:

- Licensing of engineers in the U.S. emerges after series of man-made disasters
- Professional societies who had taken the view that engineering should be conducted as a profession (as opposed to industrial or technical organizations) coalesced and promulgated rules of professional conduct

## Today:

- Professional organizations have promulgated canons/rules/codes which address the ethical standards of engineers
- Most states have adopted some form of ethical standards for engineers



# Source of Ethical Standards

- **State Codes of Professional Practice and Conduct**
- **Professional Societies**
  - **ASCE**
  - **NSPE**
  - **ACEC**



# Professional Society Codes of Ethics

- **Following several disasters of the late 1800's and early 1900's, professional organizations developed codes of ethics:**
  - **American Society of Civil Engineers (ASCE) Code of Ethics (adopted 1914)**
  - **National Society of Professional Engineers (NSPE) Code of Ethics (adopted in 1946)**
  - **American Council of Engineering Companies (ACEC) Professional and Ethical Conduct Guidelines (1980)**



# State Regulation of the Practice of Engineering

- **1<sup>st</sup> state law regulating the practice of engineering passed in 1907**
- **1920 - 10 states had adopted engineering licensure laws**
- **1930-model licensure law developed by the precursor to the National Counsel of Examiners for Engineering and Surveying**
- **1947- all states had enacted engineering licensure laws**



# Common State Laws & Regulations

- **All states have laws or regulations which govern the practice of engineering**
  - **NCEC has established model rules and regulations to promote uniformity.**
- **Define the practice of engineering**
- **Establish rules of professional conduct**
- **Disciplinary procedures**

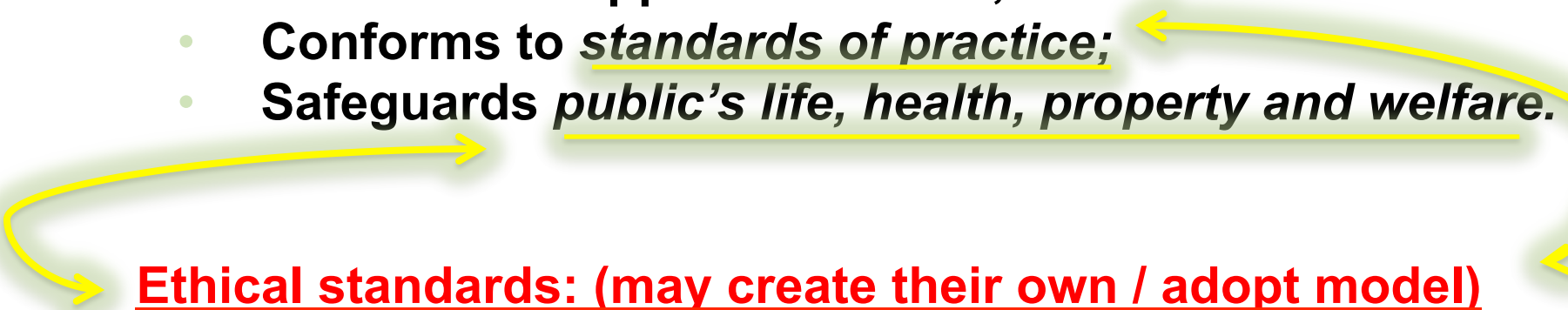




# Common State Rules Relating to Engineering

- Define the practice of engineering:
  - *The practice of the profession of engineering is defined as performing professional service such as consultation, investigation, evaluation, planning, design or supervision of construction or operation in connection with any utilities, structures, buildings, machines, equipment, processes, works, or projects wherein the safeguarding of life, health and property is concerned, when such service or work requires the application of engineering principles and data.*
  - New York: Educ. Art. 145 Sect. 7201
- Restrict practice of engineering:
  - Licensed “professional engineers.”
    - *“Professional engineer” means a person, who, by reason of the person’s knowledge of mathematics, the physical sciences, and the principles of engineering, acquired by professional education or practical experience, is qualified to engage in the practice of engineering.*
  - Iowa: Adm. Code, Sect. 193C—1.2 (542B)
  - Education / Experience / Age / Citizenship\* / CLE’s / Fees

# Common State Rules Relating to Engineering

- Professional Engineers required to “Seal” documents:
    - What: Plans / specs / reports
    - Why: **Engineer’s certification:**
      - Engineer takes professional responsibility for the work;
      - The document is accurate;
      - Conforms to applicable codes;
      - Conforms to standards of practice;
      - Safeguards *public’s life, health, property and welfare.*
- Ethical standards: (may create their own / adopt model)**
- 
- Two yellow arrows originate from the text 'standards of practice;' and 'Safeguards public’s life, health, property and welfare.' and point towards the text 'Ethical standards: (may create their own / adopt model)' at the bottom of the slide.



# Professional Society Model Codes

- ***ASCE CODE OF ETHICS***
  - **Fundamental Principles**
  - **Fundamental Canons**
  - **Guidelines to Practice Under the Fundamental Canons of Ethics**
- ***NSPE CODE OF ETHICS***
  - **Fundamental Canons**
  - **Rules of Practice**
  - **Professional Obligations**
- ***ACEC Professional and Ethical Conduct Guidelines***
  - **Fundamental Canons**
  - **Rules of Practice**

# Interpreting Model Codes

- **Canons v. Rules**
  - **What is a “Canon”?**
    - **“overarching principles of professional ethics that all professionals must observe.”**
    - **Must be interpreted in light of other existing rules and canons, historical practices and expectations, and common sense.**
  - **What is a “Rule”?**
    - **Rules provide application of canons, the violation of which is punishable.**
    - **Interpreted more literally and applied more strictly to facts, especially where the facts presented are contemplated by the rule.**
- **Effect of Codes written as “Canons” followed by “Rules”**
  - **Canons extent beyond specific circumstances contemplated by rules**
  - **Rules strictly applied and used as examples of application of canon**

# Codes: NSPE v. ACEC

- Generally the same—ACEC a little more wordy (825 v. 742)
- NSPE emphasizes two additional Rules:
  - NSPE R. 1(e) (added in July 2002):
    - *“Engineers shall not aid or abet the unlawful practice of engineering by a person or firm.”*
    - **Compare: ACEC R. 1(d) and NSPE R. 1(d) (restricting engineers association with fraudsters or dishonest businesses)**
  - NSPE R. 4(c):
    - *“Engineers shall not solicit or accept financial or other valuable consideration, directly or indirectly, from outside agents in connection with the work for which they are responsible.”*
    - **Compare: ACEC R. 4(b) and NSPE R. 4(b) (preventing engineers from receiving compensation from more than one party for services on the same project)**



# NSPE: Professional Obligations

- **What are the professional obligations? More Canons? Rules?**
  - **Adopted in June 1957 to supplement the rules and canons.**
  - **Effectively, section III, Professional Obligations, is used as further application of the canons, i.e., yes, basically more rules.**

# Common Model Rules

## Safety, Health and Welfare of Public

- **ASCE Canon 1**
  - “Engineers shall hold paramount the safety, health and welfare of the public ....”
- **NSPE Fundamental Canon 1**
  - “Hold paramount the safety, health, and welfare of the public.”
- **ACEC Fundamental Canon 1**
  - “Hold paramount the safety, health and welfare of the public in the performance of their professional duties.”

# Public Safety

- **Rule: Notify if professional judgment is overruled:**
  - ***“If engineers' judgment is overruled under circumstances that endanger life or property, they shall notify their employer or client and such other authority as may be appropriate.”***
- **Duty to public outweighs desire to please client, your boss, or yourself**
- **Report violations of the ethical code**





# Polling Question

**I have an ethical obligation to report an unsafe condition that I observe at a construction site.**

- A) Yes, if I observe it and know it might cause harm to others.**
- B) No**

# Common Model Rules

## **Perform services only in areas of their competence**

- **ASCE Canon 2**
  - **“Engineers shall perform services only in areas of their competence.”**
- **NSPE Fundamental Canon 2**
  - **“Perform services only in areas of their competence.”**
- **ACEC Fundamental Canon 2**
  - **“Perform services only in areas of their competence”**

# Competence

- **Rule: Perform work *ONLY* in your areas of competence**
  - ***“Engineers shall undertake assignments only when qualified by education or experience in the specific technical fields involved.”***
- **Rule: DO NOT seal documents not prepared under your direct supervision**
  - ***“Engineers shall not affix their signatures to any plans or documents . . . not prepared under their direction and control.”***
- **Responsible control – state regulations vary**
  - **NO RUBBER STAMPING**

# Common Model Rules

## **Issue public statements only in an objective and truthful manner**

- **ASCE Canon 3**
  - “Engineers shall issue public statements only in an objective and truthful manner.”
- **NSPE Fundamental Canon 3**
  - “Issue public statements only in an objective and truthful manner.”
- **ACEC Fundamental Canon 3**
  - “Issue public statements only in an objective and truthful manner.”

# Public Statements

- **Rule: Technical opinions expressed in public must be based on knowledge of facts and competence in subject matter**
  - ***“Engineers shall be objective and truthful in professional reports, statements, or testimony. They shall include all relevant and pertinent information in such reports, statements, or testimony, which should bear the date indicating when it was current.”***
  - ***“Engineers may express publicly technical opinions that are founded upon knowledge of the facts and competence in the subject matter.”***
- **Expert testimony**
- **Must be based on factual investigation**

# Common Model Rules

## Faithful agents and trustees

- **ASCE Canon 4**
  - **“Engineers shall act in professional matters for each employer or client as faithful agents or trustees, and shall avoid conflicts of interest.”**
- **NSPE Fundamental Canon 4**
  - **“Act for each employer or client as faithful agents or trustees.”**
- **ACEC Fundamental Canon 4**
  - **“Act in professional matters for each client as faithful agents or trustees.”**

# Faithful Agent or Trustee

- **Rule: Disclose all potential conflicts of interest could even appear to influence judgment**
  - ***“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.”***
- **Rule: No compensation from more than 1 party for services on same project without full disclosure**
  - ***“Engineers shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.”***
- **Potentially problematic circumstances:**
  - **Design/build projects**
  - **Prior relationships with contractors**
  - **Claim review**

# Conflicting Interests

- ***“Engineers shall not be influenced in their professional duties by conflicting interests.”***
  - Professional duties must not even appear to be influenced by conflict of interest—**appearance of self-dealing**
  - Temptations:
    - Free designs from material suppliers;
    - Commissions from contractor working for client;
    - Accepting free design services without disclosure (BER Case 64-11); or
    - Accepting indemnification (without disclosure) from a material supplier or manufacturer (BER Case 91-7).



# Confidentiality

- ***“Engineers shall not disclose, without consent, confidential information concerning the business affairs or technical processes of any present or former client or employer, or public body on which they serve.”***
  - Engineers are *trustees* of information
  - ***Trustee:*** A fiduciary legally bound to act in its beneficiaries best interests—without any self-dealing; one of the highest duties imposed by law

# Common Model Rules

## Avoid deceptive acts

- **ASCE Canon 5**
  - “Engineers shall build their professional reputation on the merit of their services and shall not compete unfairly with others.”
- **NSPE Fundamental Canon 5**
  - “Avoid deceptive acts.”
- **ACEC Fundamental Canon 5**
  - “Avoid improper solicitation of professional assignments.”

# Avoid Deceptive Acts (Marketing)

- **Rule: Advertise truthfully; do not misrepresent qualifications of firm**
  - **“Engineers shall not falsify their qualifications or permit misrepresentation of their or their associates' qualifications. They shall not misrepresent or exaggerate their responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint venturers, or past accomplishments.”**



# Avoid Deceptive Acts (Soliciting/Negotiating)

- **Rule: May not bribe or give commissions to others for securing work**
  - ***“Engineers shall not offer, give, solicit, or receive, either directly or indirectly, any contribution to influence the award of a contract by public authority, or which may be reasonably construed by the public as having the effect or intent of influencing the awarding of a contract. They shall not offer any gift or other valuable consideration in order to secure work. They shall not pay a commission, percentage, or brokerage fee in order to secure work, except to a bona fide employee or bona fide established commercial or marketing agencies retained by them.”***
  - ***\*Generally violation Federal and state anti-bribery laws to give or receive something of value in return for an official to take some act or omit to act. E.g., 18 U.S.C. § 201, et seq.***
  - ***\*\*Likewise violation of Federal law to pay or promise to pay foreign official to influence an act in violation of their duties or to obtain or retain business. 15 U.S.C. § 78dd-1, et seq.***

# Common Model Rules

## Act honorable and lawful

- **ASCE Canon 6**
  - “Engineers shall act in such a manner as to uphold and enhance the honor, integrity, and dignity of the engineering profession and shall act with zero tolerance for bribery, fraud, and corruption.”
- **NSPE Fundamental Canon 6**
  - “Conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.”
- **ACEC Rules of Practice 5(b)**
  - “...shall not offer, give, solicit or receive, either directly or indirectly, any political contribution in an amount intended to influence the award of a contract by public authority, or which may be reasonably construed by the public of having the effect or intent to influence the award of the contract. ...”

# Honesty & Integrity

- ***“Engineers shall be guided in all their relations by the highest standards of honesty and integrity”***
  - **Acknowledge errors** and do not distort the facts
- ***“Engineers shall at all times strive to serve the public interest.”***
  - **Notify proper authority and withdraw if you are asked to sign documents that do not comply with standards**
- ***“Engineers shall avoid all conduct or practice that deceives the public”***
  - **Do not withhold material facts and give credit for others for their work**

# Accept Responsibility for Work

- ***“Engineers shall **accept personal responsibility for their professional activities**, provided, however, that engineers may seek indemnification for services arising out of their practice for other than gross negligence, where the engineer's interests cannot otherwise be protected.”***
  - **Limitation of liability? No indemnification for gross negligence**
- **But See BER 91-7 which pointed out obtaining indemnity from a manufacturer was a conflict of interest that required full disclosure**



# Impugning Other's Work

- ***“Engineers shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other engineers. Engineers who believe others are guilty of unethical or illegal practice shall present such information to the proper authority for action.”***
  - **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—notify the other engineer**
  - **Taking over work of another engineer—decisions from NSPE indicate consent of prior engineer is likely required. BER 64-7.**





# Competitive Bidding for Professional Services

- **ASCE & NSPE ethical rules formerly prohibited engineers from engaging in competitive bidding.**
- **In a series of US Supreme Court cases the court held this prohibition violated the Sherman Antitrust Act.**
- **National organizations are not allowed to prohibit competitive bidding, however, they are free to advocate legislation for professional selection and negotiation.**
- **Individual engineers can refuse to submit competitive bids—but they cannot collude.**

# Case Studies





# Review of Selected Ethical Opinions

- **Conflict of Interest**
  - **Review of design/build partner's work**
  - **Inspection of Engineer's own work where design is in question**
  - **Claim review services**
  - **Accepting compensation or indemnity from manufacturer**
- **Expert Testimony**



# Conflict of Interest: Review of Former Design/Build Partner's Work\*

1

- **Facts:**
  - **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.**
- **Issue:**
  - **Is it unethical for engineer to review contractor's work after having participated in a joint venture with contractor for the same private client?**



# Conflict of Interest: Review of Former Design/Build Partner's Work\*

1

- **Rules:**
  - **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)**



# Conflict of Interest: Review of Former Design/Build Partner's Work\*



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



# The Outcome



- **Assuming full disclosure by Engineer, it would be ethical to review contractor's work after participating in joint venture.**
- **It is ultimately the client's decision to determine if they want to proceed.**



# Conflict of Interest

## Slight Change of Facts



- **Changed Fact:**
  - **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.**
- **Issue:**
  - **Would it be ethical for the Engineer to provide the inspection services?**





# Conflict of Interest

## Slight Change of Facts



- **Analysis / Result changes:**
  - **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.**

# Conflict of Interest: Engineer Inspecting Own Work

2

- **Facts:**
  - **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.**
- **Issue:**
  - **Was it ethically permissible for the Engr. to inspect his own work or should an independent engineer perform the review?**



# Conflict of Interest: Engineer Inspecting Own Work

2

- **Rules:**
  - **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)**



# Conflict of Interest: Engineer Inspecting Own Work

2

- **Analysis:**
  - **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.**

# Conflict of Interest: Slight Change of Facts



- **Changed 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.
- **Issue:**
  - Would it be ethical for the engineer to review the claim and make a recommendation to the owner?
    - Probably not. As the BER noted in 04-09, the issue presents an inherent issue of conflicts of interest where the engineer is called to judge the adequacy his own design.
  - Should the engineer refuse to review the claim and recommend an independent third party?
    - Probably yes.
- **Variation:**
  - What if the engineer involves its insurance carrier who then assisted in responding to the claim?
    - A third-party consulting expert is probably best course of action



# Conflict of Interest Claim Review Services

3

- **Facts:**
  - **Engr. retained by contractor to perform tests/ inspections as required by owner.**
  - **During the project, the contractor sought additional compensation from the owner claiming there was excessive testing due to changes.**
  - **The owner later filed suit against the contractor and owner retains the engineer to provide assistance in developing the claim.**
- **Issue:**
  - **Is it ethical for the engineer to provide claim review services to the city?**



# Conflict of Interest Claim Review Services

3

- **Rules/Analysis:**
  - 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:**
  - 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.

# Conflict of Interest

## Accepting Compensation or Indemnity

4

- **Facts**
  - **Manufacturer provides Engineer indemnification if product does not perform according to the client's expectations, the manufacturer will indemnify and hold harmless the Engineer. Engineer specifies that product.**
- **Issue:**
  - **Does the Engineer have any ethical obligations?**



# Conflict of Interest

## Accepting Compensation or Indemnity

4

- Rules
  - Engineers **shall not accept compensation**, financial or otherwise, from **more than one party** for services on the same project . . . Unless the circumstances are **fully disclosed to, and agreed to** by all interested parties. (II.4.b)
  - Engineers shall not solicit or **accept financial** or other valuable consideration . . . In connection with work for employers or clients for which they are responsible. (II.4.c)
  - **Engineers shall not accept** financial or other consideration, including **free engineering designs**, from material or equipment suppliers for specifying their product. (III.5.a)

# Conflict of Interest

## Accepting Compensation or Indemnity

4

- **Analysis**
  - **Accepting indemnity from the manufacturer would create a conflict of interest between the engineer's obligation to specify products in the client's best interest v. the engineer's self interest.**
  - **The indemnification is a form of financial consideration and its acceptance would be in violation of the Rules.**
  - **Full disclosure must be made to the client and the engineer should recommend the client explore the possibility of the client's indemnification with the manufacturer.**

# Expert Testimony

5

- **Facts:**
  - **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.**
- **Issue:**
  - **Is it unethical for the engineer to provide expert testimony under these circumstances?**



# Expert Testimony

5

- **Legal Analysis:**
  - **State laws vary as to whether providing expert testimony constitutes the “practice of engineering”**
  - **If yes, the engineer would be violating state law by providing expert testimony without a license.**
  - **If no, 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.**

# Expert Testimony

5

- **Ethical Analysis:**
  - Assuming the engineer is not violating 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.



# Expert Testimony

## 2016 Del. LEXIS 133

- **Facts**
  - **Engineer was not licensed to practice engineering in Delaware.**
  - **Delaware provides an exemption to allow an unlicensed engineer to offer expert testimony in an action or proceeding in the courts of this State.**
  - **Engineer claimed he was retained to provide an expert opinion for an insurance company.**
    - **Engineer claimed that experts may need to inspect property before the commencement of litigation.**
    - **But Engineer did not provide proof that services were intended for an action or proceeding in Delaware.**
- **Holding: Engineer engaged in the unauthorized practice of engineering.**

# 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?



# 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!**





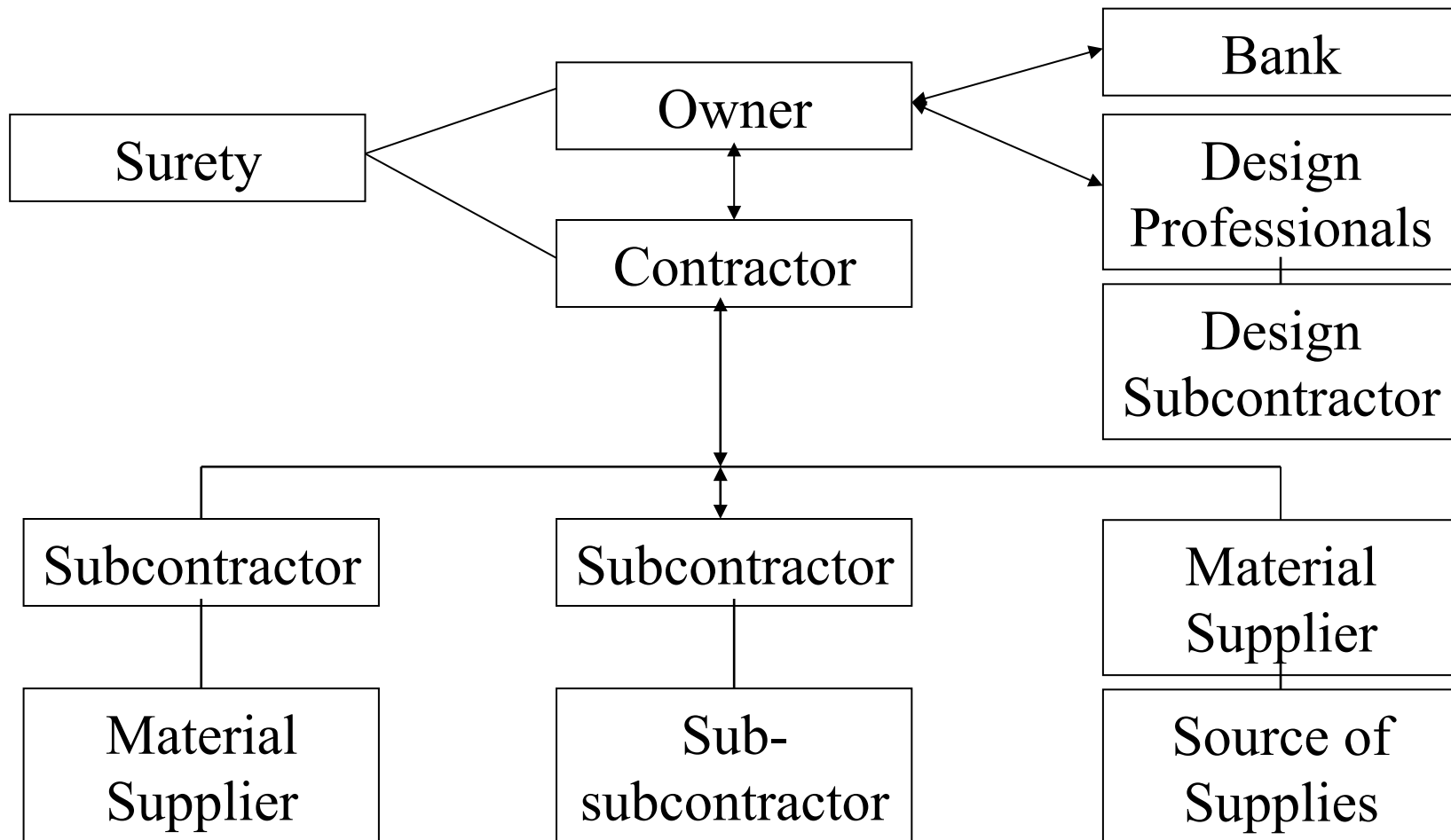
# Information Resources

- **State Licensure Boards**
- **National Society for Engineering Ethics**  
([www.niee.org](http://www.niee.org))
- **National Society of Professional Engineers**  
([www.nspe.org](http://www.nspe.org))
- **American Society of Civil Engineers** ([www.asce.org](http://www.asce.org))
- **Council of American Structural Engineers**  
([www.acec.org/case](http://www.acec.org/case))

# Where Do Law and Ethics Collide?

- **Administrative/Regulatory violations**
  - Licensure issues (discipline/revocation)
  - Fines
  - Probation
  - Training
- **Civil liability for negligence**
  - Ethical violations do not *per se* result in civil liability.
  - BUT . . . may be used to establish violation of standard of care
    - “A violation of [the ASCE] professional ethical standards is some evidence of negligence.” *John T. Jones Constr. Co. v. Hoot Gen. Constr.*, 543 F. Supp. 2d 982, 1010 (S.D. Iowa 2008)(emphasis added).
- **Criminal liability (varies by state/jurisdiction)**

# Project Participants



# Potential Liability

- **Contract (liability to counter-parties)**
  - **Breach**
    - **Scope/Standard of Care**
  - **Indemnity**
  - **Defenses**
    - **Lim. of Liab., Std of Care, Scope, Statutes of Repose/ Limitations**
- **Tort (liability to third parties)**
  - **Professional Negligence**
  - **Negligent misrepresentation**
  - **Breach of Fiduciary Duty**
  - **Defenses**
    - **Economic Loss Rule, Gist of Action (contractual defense), Statutes of Repose/Limitations**

# The 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.**
  - **Some states limit to geographical area as well**
- **What might be okay yesterday might not be okay today—  
living, breathing duty**



- **Higher standard of care may be imposed by Contract.**
  - **Key provision to review before you execute the contract!**



## 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**

# Ethical Violation = Legal Liability?

- **Oftentimes EV=LL**
- **Stamping plans prepared by others**
- **Conflict of interest – evaluating contractor claims involving design defects**
- **Fiduciary duties**
- **Copyright violations – using designs prepared by another as your own**
  - **Reviewing the work of others and then producing substantially similar work could support a claim for infringement! Litigating an infringement claim is tremendously expensive—and plaintiffs know it!**



# Contractual Standard of Care

- **Contracts may require a design professional to adhere to a higher standard of care**
  - **Always review & strike these attempts**
- **AVOID clauses containing words like “highest” or “best” or “elevated” or “excellent”**
- **BUT REMEMBER – you cannot contract away your ethical obligations**



# “Green” Standard of Care

- **2007 NSPE Code of Ethics**
- **Engineers are encouraged to adhere to the principles of sustainable development in order to protect the environment for future generations.**
- **Sustainable development is the challenge of meeting human needs for natural resources, industrial products, energy, food, transportation, shelter, and effective waste management while conserving and protecting environmental quality and the natural resource base essential for future development.**

# “Green” Standard of Care

- **For actions against design professionals for professional negligence, one must show A/E did not meet the required standard of care . . .**
- **Under these new ethical codes, has the standard of care for a design professionals been raised with respect to sustainable design?**
  - **LEED-AP**
  - **“Best”**



# **URS Corp v. Transpo Group, Inc. 2015 U.S. Dist. LEXIS 80123**

- **URS contracted with Transpo to provide professional services for signage for a highway Project.**
- **URS sued Transpo under several theories.**
- **The Owner required signage to be “forward compatible.”**
  - **Although Addendum #16 was posted to SharePoint, URS failed to specifically advise Transpo of this fact.**
  - **The court found it was impractical and inefficient for each subconsultant to individually review every addendum.”**



# URS Corp v. Transpo Group, Inc. 2015 U.S. Dist. LEXIS 80123

- **Good Engineering Practice**
  - **“it is standard engineering practice and a good engineering practice . . . To verify the accuracy of information before utilizing it . . . URS failed to perform this good engineering practice.”**
  - **“Good engineering practice required URS to verify that the offset information it maintained satisfied all RFP requirements. URS failed to perform that good engineering practice.”**
  - **“Transpo had a right to rely and did rely on the accuracy and completeness of URS-provided cross sections in estimating sign structure lengths and elevations.”**
  - **Transpo wins**



# Pointe at Westport Harbor Homeowner's Ass'n v. Eng'rs Nw., Inc.

- **Tort Liability -**
  - **Engineer had duty to prevent safety risks to persons or property**
  - **Design did not comply with the building code**
- **“When an engineer’s design services ultimately result in the construction of an unsound structure, the engineer has breached the duty of reasonable care”**
- **Engineer owed an independent duty to their clients and the public to act with reasonable care to design a building that did not present safety risks**

# Standard of Care

- **The best defense is a good offense**
- **Clearly identify the standard of care that you are adhering to**
- **AIA B101 provides a standard of care**
  - **1st time ever for AIA Architect Contract**
  - **BUT does not address sustainable design**

# Questions?

**Ben Patrick**

[Bpatrick@gordonrees.com](mailto:Bpatrick@gordonrees.com)

&

**Angela Richie**

[arichie@grsm.com](mailto:arichie@grsm.com)





# Polling Question

**I can be held personally liable for engineering work that I perform as part of my employment. True or False:**

- A) True**
- B) False**



# Polling Question Answers

**I have an ethical obligation to report an unsafe condition that I observe at a construction site.**

- A) Yes, if I observe it and know it might cause harm to others.**
- B) No**

**I can be held personally liable for engineering work that I perform as part of my employment.  
True or False:**

- A) True**
- B) False**



THANK YOU

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