

THE IMPORTANCE OF ETHICS IN CIVIL ENGINEERING

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Disclaimer: Nothing in this presentation should be construed as legal advice. Any legal questions should be directed to your designated legal counsel.

Agenda

Introduction

Professional Conduct under Wis. Admin. Code

NSPE Code of Ethics

Conflicts of Interest

Honesty

Legal Consequences

Best Practices

WHAT IS ETHICS?





What is Ethics?

Professional Ethics is a set of standards defined by the professional community which provides a guide for behavior that is expected from the professional.



Wisconsin Department of Safety and Professional Services

Wisconsin Administrative Code A-E

**Examining Board of Architects,
Landscape Architects, Professional
Engineers, Designers, Professional
Land Surveyors, and Registered
Interior Designers (A-E)**

Wisconsin Administrative Code

A-E 8

Professional Conduct Obligations Under Chapter A-E 8

1. Honesty (A-E 8.04)
2. Avoid Conflicts of Interest (A-E 8.05)
3. Competence and Scope of Practice (A-E 8.06)
4. Unauthorized Practice (A-E 8.07)
5. Professional Responsibility and Reporting Violations to the Board (A-E 8.08)
6. Adhere to Statutes and Codes (A-E 8.09)





NSPE CODE OF ETHICS

The NSPE Code of Ethics is the fundamental document guiding engineering practice. The ethical standards in the code address which services engineers should provide, how engineers should interact with the public and employers, the ways in which personal conduct reflects on the profession, and more.



Fundamental Canons of Ethics (NSPE Code of Ethics)

NSPE Creed (2021) "As a Professional Engineer, I dedicate my professional knowledge to the advancement and betterment of public health, safety, and welfare."

Wis. Stat. s. 443.06 defines professional engineering as a professional service requiring the application of engineering principles in which the public welfare or the safeguarding of life, health or property is concerned and involved.

Wis. Admin. Code A-E 8.06 states a professional engineer may not enter into an agreement that provides a person not legally actually qualified to perform professional services has control over the licensee's judgment as related to public health, safety or welfare.

NSPE (NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS)

SECTION I, FUNDAMENTAL CANONS.

Engineers, in the fulfillment of their professional duties, shall:

- 1. Hold paramount the safety, health, and welfare of the public.**
- 2. Perform services only in areas of their competence.**
- 3. Issue public statements only in an objective and truthful manner.**
- 4. Act for each employer or client as faithful agents or trustees.**
- 5. Avoid deceptive acts.**
- 6. Conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.**

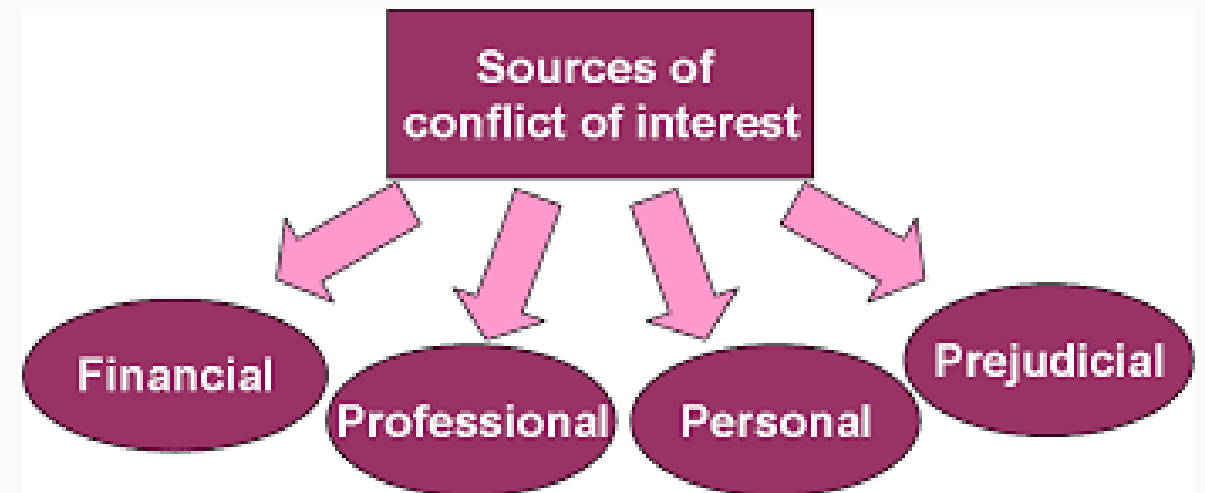
Key Ethical Obligations

1. Protect Public Health, Safety, and Welfare
2. Honesty and Truthfulness
3. Competence and Scope of Practice
4. Confidentiality
5. Avoid Conflicts of Interest
6. Adhere to Statutes and Codes
7. Professional Responsibility



Conflicts of Interest

Generally defined as situations where a professional's personal or financial interests could compromise their professional judgment, integrity, or responsibility.



Wis. Adm. Code A-E 8.05

(1) An architect, landscape architect, professional engineer, designer, professional land surveyor, or registered interior designer:

(a) Shall avoid conflicts of interest. If an unavoidable conflict of interest arises, the registrant or licensee shall immediately inform the client or employer of all the circumstances which may interfere with or impair the registrant's or licensee's obligation to provide professional services. Under these circumstances a registrant or licensee may not proceed to provide professional services without the full approval and consent of the client or employer.

(b) Shall notify the employer or client and withdraw from employment at any time if it becomes apparent that it is not possible to faithfully discharge the responsibilities and duties owed to the client or employer.

(c) May not agree to perform professional services for a client or employer if the registrant or licensee has a significant financial or other interest which would impair or interfere with the registrant's or licensee's responsibility to faithfully discharge professional services on behalf of the client or employer.

Wis. Adm. Code A-E 8.05

(1) An architect, landscape architect, professional engineer, designer, professional land surveyor, or registered interior designer:

(d) May not accept payment from any party other than a client or employer for a particular project or may not have any direct or indirect financial interest in a service or phase of a service to be provided as part of a project unless the employer or client approves.

(e) May not solicit or accept anything of value from material or equipment suppliers in return for specifying or endorsing a product.

(f) May not violate the confidences of a client or employer, except as otherwise required by rules in this chapter.

(g) May not perform services for a client or employer while a full-time employee of another employer without notifying all parties concerned.

CONFLICTS OF INTEREST CONTINUED

II. Rules of Practice, NSPE Code of Ethics

III. Professional Obligations, NSPE Code of Ethics

II. Rules of Practice, Sec. 4, NSPE

4. Engineers shall act for each employer or client as faithful agents or trustees.

a. 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.

b. 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.

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.

d. Engineers in public service as members, advisors, or employees of a governmental or quasi-governmental body or department shall not participate in decisions with respect to services solicited or provided by them or their organizations in private or public engineering practice.

e. Engineers shall not solicit or accept a contract from a governmental body on which a principal or officer of their organization serves as a member.

II. Rules of Practice, Sec. 4, NSPE

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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.

d. Engineers in public service as members, advisors, or employees of a governmental or quasi-governmental body or department shall not participate in decisions with respect to services solicited or provided by them or their organizations in private or public engineering practice.

e. Engineers shall not solicit or accept a contract from a governmental body on which a principal or officer of their organization serves as a member.

III. Professional Obligations, Sec. 5, NSPE

5. Engineers shall not be influenced in their professional duties by conflicting interests.

a. Engineers shall not accept financial or other considerations, including free engineering designs, from material or equipment suppliers for specifying their product.

b. Engineers shall not accept commissions or allowances, directly or indirectly, from contractors or other parties dealing with clients or employers of the engineer in connection with work for which the engineer is responsible.

Conflict of Interest Violations

BER Case 97-4 (January 1, 1997)

In BER Case 97-4, Engineers A and B were in a joint venture in an engineering and construction management practice that provides civil and municipal engineering and construction management services for clients in a number of townships in the state. The joint venture was hired by a developer to design a 90-lot subdivision in Township A. Engineer A provided the engineering design and Engineer B provided construction management services for the project. During a review by officials in Township A, it was determined by the officials that a second road would be needed to access the subdivision. However, the second road exited into Township B, which was adjacent to Township A. Engineer A and B's joint venture owned undeveloped property in Township B, and their joint venture also served as municipal engineer in Township B. It was clear that the property owned by Engineers A and B would be positively affected by the construction of the new road. As municipal engineer for Township B, the joint venture of Engineers A and B disclosed its relationship with regard to Township A with the developer to Township B, but did not disclose its ownership of the property in Township B. On this basis, Township B did not object to Engineers A and B making a recommendation regarding the feasibility of the construction of the proposed road. Thereafter, as municipal engineer for Township B, Engineer A's and B's joint venture recommended that Township B approve construction of the proposed road.

1. Would it be ethical for Engineers A and B to serve as the engineers for the Developer and also serve as municipal engineer for Township B under the circumstances described?

2. Was it ethical for Engineers A and B to recommend approval of the road under the circumstances described?

Questions Presented

Conclusions

1. It was not ethical for Engineers A and B to serve as the engineers for the Developer and also serve as municipal engineer for Township B, because there was only partial disclosure and no disclosure of the engineers' ownership of undeveloped property in Township B.

2. It was not ethical for Engineers A and B to recommend approval of the road because, as employees or advisors in public service to Township B, the engineers could not participate in decisions involving professional services provided by them in their private practice

HONESTY

Wis. Admin. Code A-E

II. Rules of Practice, NSPE Code of Ethics

III. Professional Obligations, NSPE Code of Ethics



Wis. Adm. Code A-E 8.04

When offering to perform professional services, an architect, landscape architect, professional engineer, designer, professional land surveyor, or registered interior designer:

- (1) Shall accurately and truthfully represent to a prospective client or employer the capabilities and qualifications which the registrant or licensee has to perform the services to be rendered.
- (2) Shall represent the costs and completion times of a proposed project to a client or prospective client as accurately and truthfully as is reasonably possible.
- (3) May not offer to perform, nor perform, services which the registrant or licensee is not qualified to perform by education or experience without retaining the services of another who is qualified.
- (4) May not use advertising or publicity which is fraudulent or deceptive.
- (5) May not misrepresent the extent to which the performance of services will involve a partnership or association with another registrant or licensee or misrepresent the identity of a registrant or licensee with whom a partnership or association will be engaged in for the performance of services.
- (6) May not collect a fee for recommending the services of another unless written notice is first given to all parties concerned.
- (7) May not practice under a firm name that misrepresents the identity of those practicing in the firm or misrepresents the type of services which the individuals, firm or partnership is authorized and qualified to perform.

Rule 3, Section II Rules of Practice, NSPE

3. Engineers shall issue public statements in only an objective and truthful manner.

a. Engineers shall be objective and truthful in professional reports, statements, or testimony, which should bear the date indicating when it was current.

b. Engineers may express publicly technical opinions that are founded upon knowledge of the facts and competence in the subject matter.

c. Engineers shall issue no statements, criticisms, or arguments on technical matters that are inspired or paid for by interested parties, unless they have prefaced their comments by explicitly identifying the interested parties on whose behalf they are speaking, and by revealing the existence of any interest the engineers may have in the matters.

Rule 5, Section II Rules of Practice, NSPE

5. Engineers shall avoid deceptive acts.

a. 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.

b. 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.

Rule 1, Section III Professional Obligations, NSPE

1. Engineers shall be guided in all their relations by the highest standards of honesty and integrity.
 - a. Engineers shall acknowledge their errors and shall not distort or alter the facts.
 - b. Engineers shall advise their clients or employers when they believe a project will not be successful.
 - c. Engineers shall not accept outside employment to the detriment of their regular work or interest. Before accepting any outside engineering employment, they will notify their employers.
 - d. Engineers shall not attempt to attract an engineer from another employer by false or misleading pretenses.
 - e. Engineers shall not promote their own interest at the expense of the dignity and integrity of the profession.
 - f. Engineers shall treat all persons with dignity, respect, fairness and without discrimination.

Rule 3, Section III Professional Obligations, NSPE

3. Engineers shall avoid all conduct or practice that deceives the public.

a. Engineers shall avoid the use of statements containing a material misrepresentation of fact or omitting a material fact.

Honesty Violations

Case 16-8 (January 1, 2016)

Engineer A is contacted by Client B, seeking Engineer A's services as part of the design of a new facility for Client B. Following discussions with Client B regarding the scope of work to be performed by Engineer A and after Engineer A's preliminary investigation and inspection of the site, the preparation of a preliminary estimate of the amount of time it would take to complete the assignment, Engineer A advises Client B that the work could be completed within 150 hours under a "best-case scenario." At the time of these discussions, Engineer A knew that a similar nearby facility in which Engineer A was involved in for another client, Client C, encountered unanticipated site conditions that resulted in significant additional time for Engineer A to complete the final design. The previously encountered site conditions ultimately resulted in Engineer A significantly exceeding his original estimate and, as a result, additional costs to Client C. Engineer A did not disclose to Client B the circumstances involved in the unanticipated site conditions that resulted in significant additional time for Engineer A to complete the final design for Client C.

Was it unethical for Engineer A to fail to disclose to Client B the unanticipated site conditions that resulted in significant additional time for Engineer A to complete the final design for Client C?



Question Presented

Case 16-8 Continued

“Under the facts in the present case and based on the Board’s reasoning in BER Case Nos. 79-6 and 83-1, it is this Board’s view that Engineer A’s failure to disclose what can best be characterized as “relevant and highly significant” facts that Engineer B clearly had within his possession was unethical. While this Board cannot know what Client B’s reaction or response would have been to Engineer A’s full disclosure of the unanticipated site conditions that resulted in significant additional time for Engineer A to complete the final design for Client C, it is clear that such information would be important to Client B in making a decision. Client B may have decided to simply proceed with the project with appropriate budget adjustments, modify the scope of services, seek the services of another professional engineer, or pursue some other alternative course of action. However, it was Engineer A’s responsibility to place all of the relevant and highly significant facts before Client B in order for Client B to make an informed decision. In addition, the fact that Engineer A couched his response with the phrase under a “best-case scenario” does not constitute sufficient notice to Client B regarding the possibility that the 150-hour projection would be exceeded. In fact, that statement may have been intended as a means of providing “cover” to Engineer A if the project encountered unanticipated site conditions—particularly considering that Engineer A was fully aware of a similar situation with Client C. Engineer A’s failure to share that information with Client B suggests an intent to withhold information that would have benefitted Client B.”

Conclusion

Conclusion: It was unethical for Engineer A to fail to disclose to Client B the previously encountered site conditions that resulted in significant additional time for Engineer A to complete the final design for Client C.



Legal Considerations of Unethical Behavior

Wis. Stat. s. 443.11: Disciplinary proceedings against architects, landscape architects, engineers, and registered interior designers.

Wis. Stat. s. 443.18: Penalties; law enforcement.

Consequences Can Include:

1. Suspension or revocation of license
2. Fines and penalties
3. Lawsuits and civil liability
4. Criminal Penalties.





How to Uphold Ethical Standards

1. Transparency in communication
 - a. Clear, honest communication
 - b. Disclosure of conflicts of interest
2. Accountability in professional practice
3. Utilize legal advisors
4. Professional development and ethics training
5. Promote ethics in the workplace
6. Adhere to Code of Ethics

THANK YOU

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