
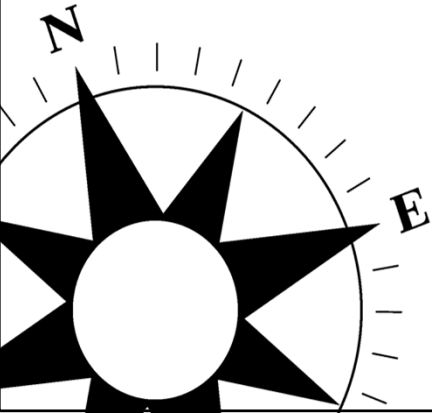


Making the right decision for the right reason



It's a Matter of Ethics

Randy Lewis, CPCU
Vice President, XL Catlin
SAME May 2018

Our Agenda



- 1 Review of the cannons
- 2 Relationship between cannons and rules
- 3 Issues faced and decisions made
- 4 Steps to making the right call

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Participation Matters



Your Role

- Interactive program
- Engage, share your perspective and experience
- Opportunity to learn from each other



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Does any of this sounds familiar?

1. My client asked me to do something that did not seem “right” to me
2. While working on a project I saw something that caused me concern
3. I was uncomfortable with actions taken by the building department or site officials
4. Only non-engineers saw the situation differently than I did
5. It is pro bono work, so some things don't apply



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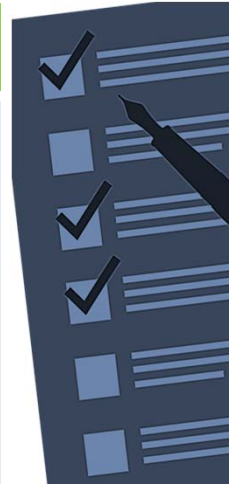


Know Your Cannons?



What Are They

- ___ 1. Public HSW
- ___ 2. Competent in service offering
- ___ 3. Public statements; objective & truthful
- ___ 4. Faithful agent of employer or client
- ___ 5. Avoid deceptive acts
- ___ 6. Conduct that enhances profession



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Board of Ethical Review Complaints



Select five most common

- | | |
|-------------------------|-------------------------|
| 1. Liability | 6. Employment related |
| 2. Advertising | 7. Expert witness |
| 3. Conflict of interest | 8. Promotional efforts |
| 4. Fees | 9. Value engineering |
| 5. Public criticism | 10. HSW & public safety |



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Most Common Complaints



1. Conflict of interest (90)
2. Advertising (43)
3. Employment related (28)
4. Expert witness (26)
5. HSW & public safety (22)



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Know Your Code?



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Public Safety



**What is your obligation
if you know of a code
violation?**



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Health Safety & Welfare



**Engineers shall not
reveal facts, data, or
information without
consent of the client or
employer**



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Truthful Public Statements



Engineers shall not make statements, criticisms or arguments on technical matters that are paid for by interested parties



Technical Competence



Engineers shall not seal and sign the engineering documents for an entire project unless they are technically competent for each segment



Guided by High Standards



As an engineer you have the responsibility to advise your client or employer that a project will not be successful



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Guided by Integrity



Engineers shall acknowledge their errors and not distort the facts



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Employment



Engineers in a salaried position, shall not accept part time engineering work



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Personal Responsibility



The code has its greatest application when you work for an organization providing engineering services



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Board of Ethical Review



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Public Health Safety & Welfare



- City engineer conducts a comprehensive traffic study that results in a public works improvement program
- Recommends the purchase of ROW to expand lane size from 11 to 12 feet, the current standard
- City council directs the engineer to retain the current lane configuration

What are the engineer's ethical obligations?



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The Issues at Hand



- ✓ Public safety
- ✓ Engineer's professional judgment
- ✓ Conformity with applicable standards
- ✓ Objective and truthful
- ✓ Faithful agents of employer
- ✓ Seal plans that are in conformity with applicable standards



The Decision



- The engineer is obligated to advise city leaders that the failure to follow the recommendations place the public health and safety at risk
- Placed the city at risk of non-compliance with federal and state standards

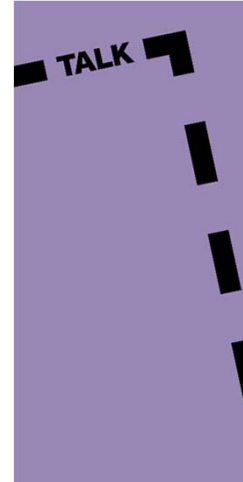


Expert Witness-Discovery of New Data



- Engineer is engaged to perform forensic testing and identification of the cause of a mechanical failure for pending litigation.
- After submitting report, and during settlement negotiations, engineer discovers conclusions are inaccurate

What are the engineer's ethical obligations?



The Issues at Hand



- ✓ Objective & truthful in reports, statements
- ✓ May express public opinions based upon facts
- ✓ Shall acknowledge their errors
- ✓ Shall advise their clients when they believe the project will not be successful
- ✓ Avoid misrepresentation



The Decision



- The engineer has an immediate obligation to advise their client of this new information regardless of the outcome



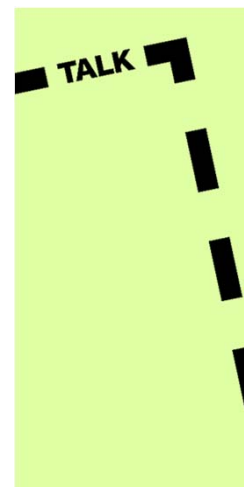
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Employment-Assignment to Another Location



- Engineer owner decides to reassign some of its staff to an out of state branch office (200mi)
- Company has policy not to terminate without 90 days notice
- Engineer employee is given 1 week to decide on move, otherwise the non-acceptance will be considered resignation of their position

Was it unethical for the owner to “reassign” the employee without 90 days notice as per company policy?



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The Issues at Hand



- ✓ Engineer shall issue public statement in an objective and truthful manner
- ✓ Engineers shall act for each employer as faithful agents



The Decision



- It was not unethical for the firm owner to unilaterally reassign the engineer without 90 days notice



Obligation to Former Employer



- Engineer, working in private sector, conducts a water rights analysis, seals final documents
- Engineer resigns from firm after submission to court and goes to work for the State, an objector to the analysis
- Engineer believes he should support his prior work. Current role has him isolated from the matter

What are the engineer ethical obligations under the circumstances?



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The Issues at Hand



- ✓ Act as faithful agents for clients and employers
- ✓ Disclose all known or potential conflicts that could influence their service
- ✓ Shall not disclose confidential information of client or employer
- ✓ Shall not, without consent, represent an adversary interest where the engineer has gained specialized knowledge



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The Decision



- Engineer has an ongoing duty to both former and current employer
- The engineer should be assigned other duties, isolated from the State's water rights case
- The State should respect the engineers ethical obligations in this matter



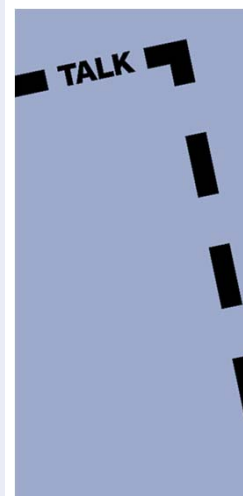
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Expert Witness



- Engineer contacted by phone to explore if she could assist in pending litigation
- No liability theory discussed
- Engineer sends fee schedule, engagement letter and retainer to be paid
- 14 months later a different attorney contacts the engineer, same matter, and she accepts the engagement from 2nd attorney
- Original attorney contacts engineer, and she explains current status. Attorney angrily argues prior engagement exists & threatens disqualification

Was it unethical for the engineer to accept engagement from 2nd attorney?



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The Issues at Hand



- ✓ Shall disclose all known or potential conflicts
- ✓ Shall not accept compensation from more than one party on the same project, unless disclosed
- ✓ Shall not disclose confidential information
- ✓ Shall not promote or arrange for new employment after obtaining specialized knowledge
- ✓ Shall not represent an adversary in connection with a specific project



The Decision



- It was not unethical for the engineer to accept the engagement from the second attorney
- An acknowledgement that the engineer should have contacted the first attorney before agreeing to the engagement
- No decision if the engineer had an obligation to do so



Effective decision making



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Roadmap for Resolving Issues



Process

- Identify the issue(s)
- Gather the facts
- Reference the code
- Outside support
- Document your path
- Make a decision



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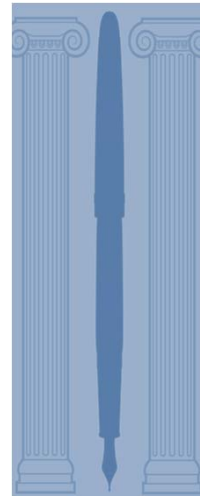
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Public Responsibility Provision



Your Contract

- Acknowledgement of your public responsibility
- Client will not make contrary requests
- Client will act in a timely manner
- You retain your professional judgment
- Client waives action against you

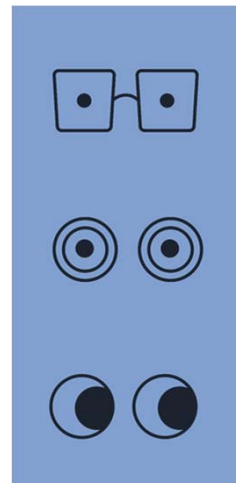


A Question of Ethics



What did we cover?

1. Rules and Cannons
2. Common complaints, cases & decisions
3. Proposed roadmap



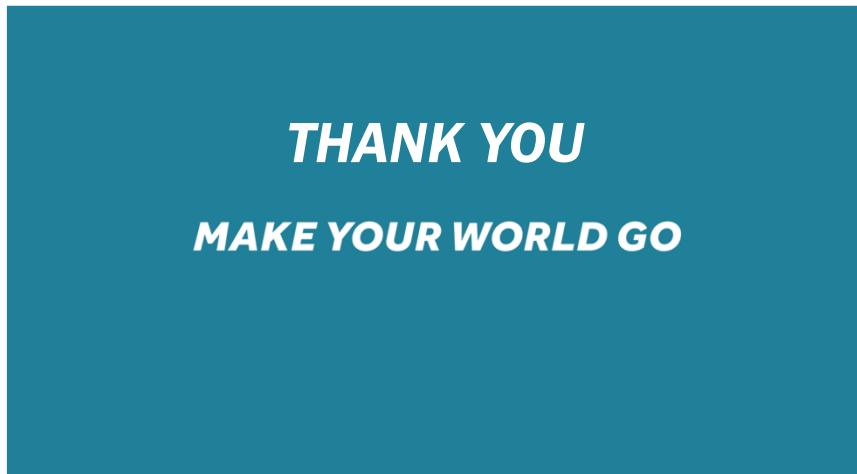


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