

League of Wisconsin Municipalities


Hidden Traps in Codes of Ethics
Joshua B. Levy
Husch Blackwell Construction Academy
Friday, October 25, 2019
Green Bay, WI

HUSCH BLACKWELL

1

WI Chapter A-E8 Professional Conduct

2



UNIVERSITY of
WISCONSIN
LAW SCHOOL

Legal Studies Research Paper Series Paper No. 1357

The Development of Contracts: Law in Action

Stewart Macaulay
William Whitford

This paper can be downloaded without charge from the
Social Science Research Network Electronic Paper Collection at:
<http://ssrn.com/abstract=2625756>

3

A-E 8.03 Definitions

(1) “Gross negligence in the practice of professional engineering means the performance of services which does not comply with an acceptable standard of practice...”

4

...that has a significant
relationship to the protection of
health, safety or public welfare
and is...

5

... performed in a manner
indicating that the professional
knew or should have known, but
acted with indifference to or
disregard of, the accepted
standard of practice.

6

- (2)** “Incompetency in the practice of professional engineering means conduct which demonstrates any of the following:
- (a) Lack of ability or fitness to discharge the duty owed
 - (b) Lack of knowledge of the fundamental principles or an inability to apply fundamental principles of the profession
 - (c) Failure to maintain competency in the current practices and methods applicable to the profession

7

A-E 8.04 Offers to perform services shall be truthful.

When offering to perform services an engineer...

- (1) Shall accurately and truthfully represent the capabilities and qualifications to perform the services to be rendered.

8

(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

9

(3) May not offer to perform, nor perform, services which the licensee is not qualified to perform

10

(4) May not use advertising or publicity which is fraudulent or deceptive.

11

A-E 8.06 Professional obligations.

An engineer...

- (1) Shall use reasonable care and competence in providing professional services.
- (2) May not evade the professional or contractual responsibility which the licensee has to a client or employer.

12

A-E 8.10 Plan stamping.

(1) No engineer may sign, seal or stamp any documents or reports which are not prepared by the registrant or under his or her personal direction or control.

13

Consider these standards in light of forensic engineering and expert services.

14

Have a contract and seek
indemnification.

15

Indemnification

Notwithstanding any other term of this Agreement, Company shall indemnify, defend and hold harmless Consultant against any claim, liability, cost, damage, deficiency, loss, expense or obligation of any kind or nature incurred by or imposed upon the Consultant in connection with any claims, suits, actions, demands or judgments arising out of this Agreement.

16

Develop a specific scope of work
and a detailed protocol that is
based on recognized standards.

17

Codes of ethics beyond
licensure.

18

Imagine being cross examined in
relation to statements by your
professional organizations



19

Foreword

Professionalism and ethics are twins,
inseparably bound together in the concept
that professional status and recognition
must be based upon public service under a
higher duty than mere compliance with
the letter if the law.

20

The voluntary assumption of a higher duty imposed by individual conscience is the root principle of ethics.

21

How will you disagree with this?

22

It is the engineer's duty to practice according to these Canons of Ethics.

23

I. Fundamental Canons

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

- Perform services only in areas of their competence
- Issue public statements only in an objective and truthful manner

24

Engineers shall accept personal responsibility for their professional activities, provided, that engineers may seek indemnification for other than gross negligence

25

ASCE Example

26

Refusal to testify.

DETROIT (Bloomberg) -- A Takata Corp. engineer involved in testing the company's airbags invoked his constitutional right against self-incrimination in declining to testify in a lawsuit brought by a woman left paralyzed in a 2014 accident.

27

Public records trolls

28

Public Records Act trolls are making a business out of catching private companies who deal with any state or local governmental agency unaware and collecting fees as a result.

A broad range of interaction with a state or local government agency can make your company subject to the Public Records Act; for example:

- contracting with or providing services to government
- responding to requests for proposals or invitations to negotiate (sealed bids are only temporarily exempt)

29

Questions

30