Ethics for Planners, Engineers and Lawyers

Ethical Rules and Considerations for Planners, Engineers, and lawyers in everyday practice.

“Impact Fees and Infrastructure Finance: Back to Basics in a Changing World”
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Agenda for Session

- Introduction
- State and Local Ethics Regulations
- AICP Code of Ethics and Professional Conduct
- Ethical Rules for Lawyers
- News Issues and Common Problems
- Hypotheticals
- Questions?
Ethical Rules for APA, AICP Planners, and Planning Officials
Public Ethics Laws for Government Officials and Employees

State
Sources of State Law Authority
Florida Constitution
Florida Statutes
Florida Gift Ban Statutes
Use of Government Vehicles, Aircraft

Local
Internal Policies of Local Governments or Agencies
Internal Policies or Procedures of Decision-Making Boards (Planning & Zoning Board)
Florida Constitution, Article II, Section 8
SECTION 8. “Ethics in government”

Florida Statutes, Chapter 112
“Code of Ethics for Public Officers and Employees”

Other Local Ethics Requirements and Policies
- City, County Internal Rules or Policies
- Agency or Departmental Administrative Rules or Policies
- Internal Rules or Bylaws of Decision-Making Boards, such as Planning & Zoning Boards
Florida Constitution
Article II, Section 8
SECTION 8. Ethics in government.-- A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:

... 
(c) Any public officer or employee who breaches the public trust for private gain and any person or entity inducing such breach shall be liable to the state for all financial benefits obtained by such actions. The manner of recovery and additional damages may be provided by law.

(d) Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law.

... 
(g) A code of ethics for all state employees and nonjudicial officers prohibiting conflict between public duty and private interests shall be prescribed by law.

...
State and Local Ethics Law in Florida

Florida Statutes, Chapter 112
“Code of Ethics for Public Officers and Employees”

112.311 Legislative intent and declaration of policy.—
(1) It is essential to the proper conduct and operation of government that public officials be independent and impartial and that public office not be used for private gain other than the remuneration provided by law. The public interest, therefore, requires that the law protect against any conflict of interest and establish standards for the conduct of elected officials and government employees in situations where conflicts may exist.
112.311 Legislative intent and declaration of policy.—
(5) It is hereby declared to be the policy of the state that no officer or employee of a state agency or of a county, city, or other political subdivision of the state, and no member of the Legislature or legislative employee, shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his or her duties in the public interest. To implement this policy and strengthen the faith and confidence of the people of the state in their government, there is enacted a code of ethics setting forth standards of conduct required of state, county, and city officers and employees, and of officers and employees of other political subdivisions of the state, in the performance of their official duties. It is the intent of the Legislature that this code shall serve not only as a guide for the official conduct of public servants in this state, but also as a basis for discipline of those who violate the provisions of this part.
Florida Statutes, Chapter 112
“Code of Ethics for Public Officers and Employees”

112.311 Legislative intent and declaration of policy.—
(6) It is declared to be the policy of the state that public officers and employees, state and local, are agents of the people and hold their positions for the benefit of the public. They are bound to uphold the Constitution of the United States and the State Constitution and to perform efficiently and faithfully their duties under the laws of the federal, state, and local governments. Such officers and employees are bound to observe, in their official acts, the highest standards of ethics consistent with this code and the advisory opinions rendered with respect hereto regardless of personal considerations, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concern.
Prohibition on Gifts

- Public officers, employees, local government attorneys, and candidates: nothing of value, such as a gift, loan, reward, promise of future employment, favor, or service, that is based on an understanding that their vote, official action, or judgment would be influenced by such gift. [Sec. 112.313(2), Fla. Stat.]

- Public officers or employees, local government attorneys, and their spouses and minor children: no compensation, payment, or thing of value when they know, or with the exercise of reasonable care should know, that it is given to influence a vote or other official action. [Sec. 112.313(4), Fla. Stat.]
Prohibition on Gifts

- Public officers and employees, and local government attorneys are prohibited from corruptly using or attempting to use their official positions or the resources thereof to obtain a special privilege or benefit for themselves or others. [Sec. 112.313(6), Fla. Stat.]

- Public officers and employees and local government attorneys are prohibited from disclosing or using information not available to the public and obtained by reason of their public position for the personal benefit of themselves or others. [Sec. 112.313(8), Fla. Stat.]

- Reporting persons and procurement employees, special rules, nothing above $100 and reporting requirements of most gifts.
Penalties for Violation of the Sunshine Amendment and the Code of Ethics

There are no criminal penalties for violation of the Sunshine Amendment and the Code of Ethics.

HOWEVER, Penalties for violation of these laws may include:

• impeachment,
• removal from office or employment, suspension,
• public censure, reprimand,
• demotion,
• reduction in salary level,
• forfeiture of no more than one-third salary per month for no more than twelve months,
• a civil penalty not to exceed $10,000, and restitution of any pecuniary benefits received, and triple the value of a gift from a political committee.
State and Local Ethics Law in Florida

Use of Government Vehicles and Aircraft
Florida Statute 287.17 “Limitation on use of motor vehicles and aircraft. -
Florida Statute 287.17 “Limitation on use of motor vehicles and aircraft. -

(1) The aircraft and motor vehicles owned, leased, or operated by any state agency, as defined in s. 287.012, shall be available for official state business only as authorized by agency heads, as defined in s. 287.012.

(2) The following criteria shall be considered in determining appropriate uses of motor vehicles and aircraft:
   (a) Whether the use of a motor vehicle or aircraft is necessary to carry out state official or employee job assignments.
   (b) Whether the use of a motor vehicle or aircraft is for transporting an employee, state official, or other person authorized by the agency head for purposes of conducting official state business or for purposes of performing services for the state.
   (c) Whether the Department of Law Enforcement has been directed by the agency head to provide security or transportation pursuant to s. 943.68.
   (d) Whether an emergency exists requiring the use of a motor vehicle or aircraft for the protection of life or property.

(3)(a) The term “official state business” may not be construed to permit the use of a motor vehicle or aircraft for commuting purposes, unless special assignment of a motor vehicle is authorized as a perquisite by the Department of Management Services, required by an employee after normal duty hours to perform duties of the position to which assigned, or authorized for an employee whose home is the official base of operation.

Other Ethics Requirements and Rules

• City, County Internal Rules or Policies

• Agency or Departmental Administrative Rules or Policies

• Internal Rules or Bylaws of Decision-Making Boards, such as Planning & Zoning Boards
AICP v. Other Professional Organizations

AIA

ASLA

NSPE
Four Sections to AICP Code:
A. Aspirational Principles and Ideals (21)
B. Rules of Conduct (26)
C. Procedures (17)
D. Rules for Planners Convicted of Serious Crimes

https://www.planning.org/ethics/ethicscode/
Primary obligation: serve the public interest - §A.1

“Our primary obligation is to serve the public interest and we, therefore, owe our allegiance to a conscientiously attained concept of the public interest that is formulated through continuous and open debate.”
Responsibilities to clients/employers -§A.2

“We owe diligent, creative, and competent performance of the work we do in pursuit of our client or employer’s interest. Such performance, however, shall always be consistent with our faithful service to the public interest.”
Responsibility to the profession - §A.3
– Fairly Comment on the work of other professionals
– Voluntary professional activities

“We shall contribute to the development of, and respect for, our profession by improving knowledge and techniques, making work relevant to solutions of community problems, and increasing public understanding of planning activities.”
Subject to investigation, enforcement procedures

Possibility of sanctions, loss of license

eth·ics

/ˈeθɪks/

noun

1. moral principles that govern a person’s behavior or the conducting of an activity.
   "medical ethics also enter into the question"
   synonyms: moral code, morals, morality, values, rights and wrongs, principles, ideals, standards
   (of behavior), value system, virtues, dictates of conscience
   "your so-called newspaper is clearly not burdened by a sense of ethics"

2. the branch of knowledge that deals with moral principles.
Conflicts of Interest - § B.6

“We shall avoid a conflict of interest or even the appearance of a conflict of interest in accepting assignments from clients or employers.”

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§A.2(c)
Rules of Conduct (26)

Misrepresentation - § B.10

“We shall neither deliberately, nor with reckless indifference, misrepresent the qualifications, views and findings of other professionals.”
Code Procedures (17), §C

• How to obtain a formal or informal advisory Ruling
• How charges are filed, investigated, prosecuted, adjudicated
• Complaint or request for guidance must be sent by phone or mail
Code Procedures (17), §C

• Most recently added section
• Four Procedural Provisions:
  – “Serious Crime” = Automatic Suspension
  – “Serious Crime” = Notify Ethics Officer
  – Petition for Reinstatement
  – Publication of Conviction for Serious Crime

41 Federal Capital Offenses
Ethics Officer =
Executive Director of APA/AICP

- Only ED Can Give Formal Advice
- Formal v. Informal:
  - Informal
    No investigation or report
    No determination based on evidence.
  - Formal
    Findings within 21 days
    Goes to ethics committee

James M. Drinan, J.D.
Important Considerations

- Rules for Citizen Planners v. Rules for Commissioners/Board Members
- Responsibility to Clients and Profession
Common Mistakes by Planners, Commissioners/Board Members

Conflicts of Interest:
– Board member worked for applicant years ago
– Board member (lawyer) does closings
– Board member (lawyer) went to firm that represents applicant
– Land ownership conflict
Common Mistakes by Planners, Commissioners/Board Members, Cont.

Confidentiality/Communications:
– Do not use confidential info to personal advantage
– No private discussions in the planning process –
Be careful with e-mail and social media!
Common Mistakes by Planners, Commissioners/Board Members, Cont.

- Bylaws should address said requirements, especially concerning clarification of quorum, authority of Chair to make motions, participate in discussion and vote, or only to break ties; etc.

- Check statutes in your State
Common Mistakes by Planners, Commissioners/Board Members, Cont.

• Pro Bono – Take on only what you can do
• Bias/Prejudice
What To Do If You’re Unsure

• Consult with Boss/ Supervisor
• Request informal guidance from Ethics Officer
• Consult AICP Ethics Committee’s Advisory Rulings
• Use Common Sense
Ethical Rules For Lawyers
Distinct Areas of Law/Regulation

• Common-law privilege of confidentiality

• Common-law (then codified) work product doctrine

• Attorney codes of conduct and professionalism

• State public ethics laws
Attorney-Client Privilege

- Applies, where legal advice of any kind is sought...
  - from a professional legal adviser in his/her capacity as such,
  - to the communication relating to that purpose, – made in confidence.
Work Product Doctrine

- Documents, notes, mental impressions of attorney in anticipation of litigation
- Protects the interests of the attorney and the client
ABA Model Rules of Professional Conduct

- Info about Legal Services
  - Communication
  - Advertising
  - Misrepresentation

- Maintaining the Integrity of the Profession
Provisions Parallel To AICP

- Duties to the Profession
- Misrepresentation
- Conflicts of Interest
- Ex Parte Communications
Important Points on Model Rules

• Responsibility to Clients and Profession
  – Confidentiality
  – Pro Bono

• “Shock the Conscious” Standard
Common Mistakes Made by Lawyers

- Conflicts of Interest
- Client Confidences
  - Confidentiality
  - Pro Bono
- What to Do if Unsure:
  - Report to Supervisor
  - Meet with Ethics Partner
  - Document!

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Key Issue: Identifying the Client

• The board?

• The council or other legislative body?

• The chief elected official?

• The manager?

• The planner?

• Every citizen in town?
Social Networking: An Issue for Planners and Lawyers

- How is it used in land use?

- Advantages
  - Transparency
  - Public participation

- Disadvantages
  - Truthfulness and accuracy
  - Sources and copyright
  - What about non-users?
  - Ruins confidentiality, ACP
Ethical Considerations for Planners:

- Unintentional Discrimination
- Soliciting prospective clients
- Misleading info
- Private communication
- Open meetings and public records laws
Social Networking: An Issue for Planners and Lawyers, Cont.

- Ethical Considerations for Lawyers:
  - Inadvertently creating attorney-client relationship, *MR 1.18*
  - Candor, *MR 3.3*
  - Misleading communication/advertising, *MR 7.1-7.2*
Social Networking: An Issue for Planners and Lawyers, Cont.

• Ethical Considerations for Courts:
  – Maintaining impartiality
  – Creating a “public record”
  – E-Discovery
Planners Who Are Lawyers

- Avoid conflict among competing codes

- Dual Role
  - County attorney advocated against an application while advising the board. *Davenport Pastures* (Kan. 2010)
• Caruso v. Meriden Zoning Bd. of Appeals (Conn. Super. Ct. 2012)

– A close business, personal, and social relationship with applicant’s attorney requires disqualification of a zoning board member.
• *Kane Properties, LLC v. City of Hoboken* (N.J. 2013)
  – To determine a municipal attorney’s alleged conflict, *the appearance of impropriety standard* applies.
  – This standard may apply in your state.
• United States v. Plowman (7th Cir. 2012)

– Land use agency member cannot accept money to “lobby” on behalf of applicant seeking zoning approval for strip club
Hypotheticals
Hypothetical # 1

• You work for city’s planning dep’t and are on the city committee on comprehensive plan...
• Your BFF is a strong contender...
• He calls to plan your birthday dinner...
Hypothetical # 2

- You head long-range planning in a small city...
- You were asked to examine computerizing the zoning code...
- You prepare a RFP...
- You want to quit your job and set up a consulting firm to do it...
Hypothetical # 3

- You are the Planning Director preparing a report about housing opportunities...
- There is a lack of affordable housing...
- Planning commission fears public’s negative reaction...
Hypothetical # 4

- You are a local land use lawyer...
- Your client was just denied a permit...
- ZBA affirmed the denial...
- Your case goes to the superior court...
- Opposing party wants to “friend” you!
Hypothetical # 5

• You are a local land use lawyer...
• Your client is seeking an approval recommendation from the city plan board for a PUD...
• Your brother – in – law is the Chair of the plan board...
• Christmas is only 3 weeks away...
Thank You!

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