Ethics Cases of the Year: 2017-18

Ethics for Planners
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Created by the Ethics Committee, American Institute of Certified Planners
Adapted by APA Hawaii Chapter Fellows for HCPO 2017
Advice on Ethical Conduct

• These “Cases of the Year” have been created by AICP’s Ethics Committee to provide continuing education materials regarding the AICP Code of Ethics and Professional Conduct.

• Although these scenarios—and any associated questions-and-answers—are an important part of understanding aspects of the ethics code, please note that only the Ethics Committee is authorized to give a “formal advisory opinion” on the propriety of a planner’s proposed conduct (Section C.3, Ethics Code).

• Please direct any queries or suggestions regarding these “Cases of the Year” to AICP’s Ethics Officer, at ethics@planning.org.
Agenda

- Quick Refresher on Ethics Code
- Ethical Scenarios
  1. Special Advantages
  2. Supplemental Salary
  3. Social Media
  4. Plagiarism
  5. Incomplete Information
  6. Charitable Gifts
  7. Conference Attendance
Ethical Principles and Rules

(Please turn on your cell phones: planning.org/ethics)

• “Principles to Which We Aspire”
  (Section A, AICP Code of Ethics and Professional Conduct)

• “Our Rules of Conduct”
  (Section B, AICP Code of Ethics and Professional Conduct)

• “Ethical Principles of Planning”
  (For those involved in the planning process)
Dealing with Ethical Issues

- **Seek Informal Advice from the Ethics Officer**
  Via a phone call (nonbinding and not in writing)

- **Seek an Advisory Opinion from Ethics Committee**
  Provided in writing (but only on selected, unresolved issues)

- **File a Complaint of Ethical Misconduct**
  Can be filed by anyone—but only against an AICP member—for having allegedly violated a “Rule of Conduct”
Ethics Topics (Cases and Inquiries – 2016)

- Conflicts of Interest (Rules 3, 5, 6): 31
- Honest and Fair Dealing (Rules 11, 17, 18, 19, 20): 24
- Respect for Confidentiality (Rule 7): 24
- Legal and Ethical Conduct (Rules 2, 25): 22
- Quality of Practice (Rules 1, 15, 16): 19
- Abuse of Position (Rules 13, 14): 16
- Loyalty to Employer (Rules 4, 5): 16
- False, Deceptive, or Unsubstantiated Statements (Rules 10, 11, 12, 18): 11
- Private Communication with Decision Makers (Rules 8, 9): 11
- Misuse of AICP Credential: 6
- Lack of Cooperation with Ethics Compliance (Rules 21, 22, 23, 24, 26): 4
These are True Stories

• All “cases” are based on real situations that took place in communities in the United States during 2016-17.
• The scenarios were derived from informal inquiries or actual cases of ethical misconduct.
Cast of Characters

Small Town Planner  Catherine, AICP
Large City Planner  Dan, AICP
Plan Commissioner  Harland
Regional Planner  Patrick, AICP
Planning Consultant  Jane, AICP
Scenario 1

Special Advantages

- Catherine, AICP, is zoning staff for Wurster. A homeowner requests a special-use permit to repair cars in his garage, located in an area of single-family houses.
- Despite opposition, Catherine approves the permit, with limits on the number of cars on the premises and on nearby streets.
Scenario 1

- Shortly thereafter, Catherine asks the garage owner if she can store an antique car she owns in the garage.
- Catherine agrees to pay the operator a monthly storage fee.
Scenario 1

Question

Q: Has Catherine, AICP, violated any ethical principles or rules?
Scenario 1

Ethical Issues

• Has Catherine received a “special advantage,” despite having paid the garage owner?
• Would the following Principles or Rules apply? Any others?

Principle #1c: “We shall pay special attention to the interrelatedness of decisions.”

Rule of Conduct #5: “We shall not, as public officials or employees, accept from anyone other than our public employer any compensation, commission, rebate, or other advantage that may be perceived as related to our public office or employment.”

Rule of Conduct #14: “We shall not use the power of any office to seek or obtain a special advantage that is not a matter of public knowledge or is not in the public interest.”

Q. Any other ethical questions?
Scenario 2
Supplemental Salary

• Catherine, AICP, has applied for a planning director’s job with a rural county.
• In order to supplement the small salary, the county supervisor has offered Catherine an additional position—as the county’s building inspector.
Scenario 2

- The building inspector job currently is contracted out to a consultant.
- The pay for the inspector job is based on the amount of fees generated by building permits.
Scenario 2

Questions

Q: Should Catherine, AICP, have any concerns about this arrangement?

Q: If so, what response should she give to the county supervisor?
Scenario 2

**Ethical Issues**

- Catherine’s actions as county planner (e.g., rezonings) could result in more building permits—and, consequently, a higher salary. Does such a compensation arrangement conflict with any provisions of the ethics code?

- Would any possible conflict be removed if Catherine was instead paid a set salary for the building inspector’s job?

*(For Code excerpts, see next slide)*
Scenario 2

- Would the following Principles or Rules apply? Any others?

**Principle #1c**: “We shall pay special attention to the interrelatedness of decisions.”

**Principle #2a**: “We shall exercise independent professional judgment on behalf of our clients and employers.”

**Rule of Conduct #25**: “We shall neither deliberately, nor with reckless indifference, commit any wrongful act, whether or not specified in the Rules of Conduct, that reflects adversely on our professional fitness.”

*(See next slide for another Ethical Issue)*
Scenario 2

**Ethical Issue**

- Assuming Catherine does not already have experience as a building inspector, is it ethical for her to agree to begin that job before she has received sufficient training?
- Would the following Principle or Rule apply? Any others?

**Rule of Conduct #15:** “We shall not accept work beyond our professional competence unless the client or employer understands and agrees that such work will be performed by another professional competent to perform the work and acceptable to the client or employer.”

**Q. Any other ethical questions?**
Scenario 3

Social Media

- Harland, a realtor, is one of five members of the Hudson Plan Commission.
- After a Commission meeting, he posts an item on his Facebook page about a development proposal.
- He hopes to get some reactions from Facebook “friends” in Hudson.
Scenario 3

• Included in the long thread of comments on Harland’s Facebook page are some from two of his fellow Commission members.
• Harland replies to these comments and a back-and-forth exchange ensues.
• Dan, AICP, the planning director of Hudson, sees the Facebook posts.
Scenario 3

Questions

Q: Are there any ethical concerns that Dan should have?

Q: What should Dan, AICP, say to Harland, even though he is not a planner?
Scenario 3

**Ethical Issues**

- Dan may want to brief Harland—and his fellow Commission members—about citizen participation issues. Would this be appropriate?
- Would the following Principles or Rules apply? Any others?

**Ethical Principles for Planning** *(for planning process participants)*: “Strive to give citizens (including those who lack formal organization or influence) full, clear, and accurate information on planning issues.”

**Principle #1e:** “Participation should be broad enough to include those who lack formal organization or influence.”

**Principle #1h:** “We shall deal fairly with all participants in the planning process.”

*(Continued next slide)*
Scenario 3

- Dan should check state and local “Open Meetings” laws, since three Commission members, including himself, were commenting about a project outside of a public meeting.

(See next slide for an additional questions)
Scenario 3

Questions

Q. Is Facebook an adequate and appropriate forum for public engagement?

Q. Are there any potential problems—and advantages?

Q. Any other ethical questions?
Scenario 4

Plagiarism

• Patrick, AICP, is senior planner with a regional planning agency. One of his duties is to review draft comp plans.
• After reviewing a draft plan for Geddesville, he sees that large portions of the text also appear—verbatim, including typos—in another community’s adopted plan.
Scenario 4

- Patrick phones Jane, AICP, the consultant who prepared the draft plan. After discussing the plan’s review process, Patrick asks Jane about the copied text.
- Jane defends this as “acceptable practice,” noting that she has listed the other community’s plan—prepared by a different consulting firm—in her bibliography.
Scenario 4

Questions

Q: Is this “acceptable” practice by Jane, AICP?

Q: If not, what—if anything—should Patrick, AICP, do to comply with ethics requirements?
Scenario 4

**Ethical Issues**

- If Jane does not agree to change the document, would it be appropriate for Patrick to file an ethical misconduct charge?
- Would the following Principle or Rule apply? Any others?

*Rule of Conduct #17*: “We shall not use the product of others’ efforts to seek professional recognition or acclaim intended for producers of original work.”

(“Ethical Issues” continued next slide)
Scenario 4

- If Jane does not agree to change the document, should Patrick inform the community so it can amend the draft plan?
- Would the following Principles or Rules apply? Any others?

*Principle #3a:* “We shall protect and enhance the integrity of our profession.”
*Principle #3c:* “We shall describe and comment on the work and views of other professionals in a fair and professional manner.”

(*Ethical Questions* continued next slide)
Scenario 4

Questions

Q: If Jane copied from another plan—but one she had prepared—would that be more acceptable?

Q: Any other ethical questions?
Scenario 5
Incomplete Information

- Dan, AICP, prepares staff reports for the Zoning Board of Appeals. Following a meeting, the ZBA’s chair tells the city manager (Dan’s boss) he wants to see more “streamlined” staff reports.
- The chair, an attorney, wants to eliminate references to a parcel’s history (i.e., previous denials, etc.), as well as any percentage figures for zoning variances.
Scenario 5

• The city manager, who is not a planner, tells Dan to simplify the reports. Dan, who cosigns the reports, is concerned these changes will “sugarcoat” the application process for zoning variances.

• Dan believes less information will make it easier for the ZBA to approve zoning variances, since the public won’t be able to discern the relative scale of these changes for building heights and setbacks.
Scenario 5

**Question**

Q: What, if anything, should Dan, AICP, do?
Scenario 5

**Ethical Issues**

- Should Dan talk to his supervisor about his concerns? He then could follow up with a memo, noting his ethical concerns—as an AICP member—about providing less-accurate information.
- And/or, should Dan propose to the city manager that he (Dan) not cosign the staff reports?
- And/or, should Dan also propose a more “streamlined” memo, but with an addendum containing additional details?

*(see Code excerpts on next slide)*
Scenario 5

- Would the following Principles or Rules apply? Any others?

**Ethical Principles in Planning** (for participants in the planning process): “Strive to give citizens . . . full, clear, and accurate information on planning issues . . .”

**Principle #1d:** “We shall provide timely, adequate, clear, and accurate information on planning issues to all affected persons and to governmental decision makers”

**Principle #2b:** “We shall accept the decisions of our client or employer concerning the objectives and nature of the professional services we perform unless the course of action is illegal or plainly inconsistent with our primary obligation to the public interest.”

**Rule of Conduct #1:** “We shall not deliberately or with reckless indifference fail to provide adequate, timely, clear, and accurate information on planning issues.”

*(See additions question on next slide)*
Scenario 5

Questions

Q. What if the city manager was an AICP planner?

Q. Would that alter his or Dan’s response?
Scenario 5

**Ethical Issue**

- By submitting “less information,” has the city manager directed Dan to make analyses or reach findings not supported by available evidence?

- Would the following Principle or Rule apply? Any others?

*Rule of Conduct #18*: “We shall not direct or coerce other professionals to make analyses or reach findings not supported by available evidence.”

**Q: Any other ethical questions?**
Scenario 6
Charitable Gifts

- Following a Plan Commission meeting, a land-use attorney tells Dan, the city’s planning director, that he has made a cash donation—in Dan’s name—to a charity.
- The attorney knows holiday gifts are not allowed by local ethics rules, so he chose a charity in a different city—with no affiliation to Dan.
Scenario 6

- Dan, AICP, asks the City Attorney for an opinion. After checking with the state ethics board, the City Attorney says there are no ethics violations.

- The City Attorney recommends that Dan simply thank the land use attorney for his generous charitable donation.
Scenario 6

Question

Q: Is this an acceptable solution for Dan?
Scenario 6

**Ethical Issues**

- Should Dan thank the land use attorney, but also ask that his name not be identified with the donation?
- Should Dan also request the attorney not make any future donations on behalf of the department or its employees?
- Would the following Principle or Rule apply? Any others?

*Rule of Conduct #5:* “We shall not, as public officials or employees, accept from anyone other than our public employer any compensation . . . or other advantage that may be perceived as related to our public office or employment.”

**Q: Any other ethical questions?**
Scenario 7

Conference Attendance

• While attending an APA chapter session on ethics, Jane notes the planner in front of her spending the entire time on his cell phone, responding to emails and checking his Pinterest site.

• Jane also sees several planners leaving the ethics session well before its conclusion.
Scenario 7

Questions

Q: If these planners include the session on their CM credit logs, are they violating the Ethics Code?

Q: What, if anything, should Jane do?
Scenario 7

**Ethical Issues**

- Would an “absent” planner who includes this session on his/her CM log be violating an ethical rule of conduct?

- Would the following Principles or Rules apply? Any others?

*Rule of Conduct #12:* “We shall not misstate our education, experience, training, or any other facts which are relevant to our professional qualifications.”

*Rule of Conduct #25:* “We shall neither deliberately, nor with reckless indifference, commit any wrongful act, whether or not specified in the Rules of Conduct, that reflects adversely on our professional fitness.”

*(Continued next slide)*
Scenario 7

- Should Jane inform the AICP Ethics Officer so this can become a scenario for next year’s “Ethics Cases of the Year”?

Q: Any other ethical questions?
Any other questions or ethical dilemmas that we should discuss?
Final Note

• For informal advice regarding ethical conduct, contact APA/AICP’s Ethics Officer, Jim Peters, FAICP, at 312-786-6360 or ethics@planning.org.

• For more information, visit planning.org/ethics.

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