Ethics Cases of the Year: 2019

Created by the Ethics Committee, American Institute of Certified Planners, April 2019
Agenda

Refresher on Planning Ethics

Ethical Scenarios
1. Taking Credit
2. Inadequate Information
3. Workplace Harassment
4. Professional Comments
5. Expert Witness Testimony
6. Discrimination
7. Political Donations
8. Gifts
Disclaimer

This session has been created to provide general education regarding the AICP Code of Ethics.

Although ethical scenarios and question-and-answer sessions are an important part of illustrating the application of the Code’s provisions, all certified planners should be aware that only the AICP Ethics Committee is authorized to give formal advice on the propriety of a planner’s proposed conduct (see Section C3 of the AICP Code of Ethics).

If you have a specific question regarding a situation arising in your professional practice, you are encouraged to seek an informal opinion from the AICP Ethics Officer (phone: 312-786-6360; email: ethics@planning.org).
AICP’s Ethics Code


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

A. Aspirational Principles
   Responsibility to Public, Clients/Employees, and Profession/Colleagues

B. Rules of Conduct
   Twenty-Six Rules to Which AICP Members Are Held Accountable

C. Advisory Opinions
   Informal Advice, Formal Advisory Opinions, Annual Report

D. Complaints of Misconduct
   Filings, Preliminary Charge/Dismissal, Settlement, Decision, Appeal

E. Discipline of Members
   Confidential Letter of Admonition, Public Censure, Suspension, Revocation
APA’s Ethical Principles of Planning

Guidelines for those who participate in the process of planning as advisors, advocates, and decision makers

1. Serve the public interest
   - Provide accurate information, provide opportunity for all, protect natural and built environment, pay attention to long-range consequences of action, etc.

2. Maintain high standards of integrity/proficiency
   - Provide independent judgment, disclose personal interests, seek no gifts or favors, avoid conflicts of interest, don’t disclose confidential information, don’t misrepresent facts, respect rights of all persons, etc.

3. Improve planning competence
   - Provide high level of professionalism, commit no wrongful acts, contribute time for groups lacking planning resources, treat other professionals fairly, etc.
Ethical Misconduct Cases in 2018

Five Cases Dismissed
(no preliminary charge filed)

Three Cases Dismissed
(after a preliminary charge is filed)

Seven Cases Settled
(all AICP credential misuses)

No Disciplinary Actions
Ethics Topics

Derived from misconduct cases and informal inquiries in 2018

- Honest and Fair Dealing: 40
- Conflicts of Interest: 35
- False/Deceptive Statements: 35
- Respect for Confidentiality: 27
- Abuse of Position: 25
- Quality of Practice: 25
- Legal and Ethical Conduct: 23
- Misuse of AICP Credential: 21
- Loyalty to Employer: 17
- Private Communication: 15
- Lack of Cooperation: 13

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The following ethical scenarios are based on real situations from 2018 and early 2019—although the names and locations are all fictional.

The case scenarios were derived from informal inquiries or misconduct complaints reviewed by the AICP Ethics Officer and the AICP Ethics Committee.
Cast of Characters

- Consultant Jane, AICP
- County Planner Dan, AICP
- Town Planner Catherine, AICP
- Consultant Marion, AICP
- City Planner Ian, AICP
Scenario 1

Taking Credit

Jane, AICP, who runs a small consulting firm, worked on a new comprehensive plan for Hudson County, as a sub-consultant to a larger firm, GarGan.

The comp plan recently won an APA award and GarGan has been actively promoting the project at national and state planning conferences.
Meanwhile, GarGan’s chief planner, Marion, AICP, has told the firm’s subcontractors on the plan, including Jane, that they are not permitted to mention the plan in their own marketing materials.

Marion says that, since the contract was GarGan’s, the only credit should go to GarGan, not its subs.
Scenario 1

Questions

Q:
Is this appropriate behavior on the part of Marion and GarGan?

Q:
Could Marion be the subject of a potential ethics misconduct complaint?
Scenario 1

Additional Question

Q: What if the client, Hudson County’s planning director, Dan, AICP, told GarGan the same thing: It should not promote its work on the plan since it was the County who paid for—and adopted—the plan?

Is this an ethically appropriate action on the part of Dan?
Scenario 1

**Ethical Issues**

*AICP Ethics Code—Principles*

#3c: “We shall describe and comment on the work and views of other professionals in a fair and professional manner.”

*AICP Ethics Code—Rules of Conduct*

#10: “We shall neither deliberately, nor with reckless indifference, misrepresent the qualifications, views, and findings of other professionals.”

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

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

#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.”

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**Inadequate Information**

Catherine is a newly-hired planner with the Town of Wurster, having recently graduated from Bauer State with a master’s degree in planning.

One of her jobs is to respond to FOIA requests from the media and the public.

She receives a FOIA request from an advocacy group, seeking data from an affordable housing study the Town recently completed.
Scenario 2

Catherine’s supervisor (a non-AICP planner) tells her not to comply with the FOIA request, despite a recent state court ruling requiring local communities to disclose this type of information.

In addition, Catherine knows that her supervisor recently deleted much of the affordable housing study data from the department’s computers in order to make it inaccessible to the public.
Scenario 2

Questions

Q: What should Catherine tell her boss?

Q: Should she provide the remaining data to the advocacy group?
Scenario 2

Ethical Issues

**APA's Ethical Principles in Planning**

*A2*: Strive to give citizens...full, clear, and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programs.

*A5*: Ensure that reports, records, and any other non-confidential information which is, or will be, available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision.”

**AICP Ethics Code – Principles**

#1f: “We shall seek social justice by working to expand choice and opportunity for all persons....We shall urge the alteration of policies, institutions, and decisions that oppose such needs.”

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

#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.”

*More Code excerpts, see next slide*
Scenario 2

**AICP Ethics Code—Rules of Conduct**

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

#2: “We shall not accept an assignment from a client or employer when the services to be performed involve conduct that we know to be illegal or in violation of these rules.”

#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.”
Scenario 3

Workplace Harassment

Marion, AICP, a planning consultant, is approached by two staff planners.

They tell her that Dan, AICP, the planning director of Hudson County, has made unwanted sexual comments to each of them at APA chapter events.

Dan also is an APA chapter officer.
Scenario 3

Questions

Q: Does Marion have *any* obligations under the *AICP Ethics Code*?

Q: Should she talk directly to Dan?

Q: Should she talk to someone else, such as the Chapter President?
Scenario 3

**Ethical Issues**

*AICP Ethics Code—Principles*  
#3a: “We shall protect and enhance the integrity of our profession.”

*AICP Ethics Code—Rules 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.”
Scenario 4

Professional Comments

Catherine, AICP, a planner with the Town of Wurster, has been telling developers not to hire Jane, AICP, a local planning consultant.

Catherine has been saying that Jane’s performance on previous projects has been unsatisfactory.
Scenario 4

Questions

Q:
Are Catherine’s negative comments about Jane a potential ethics violation?

Q:
How else could Catherine have handled this situation?
Scenario 4

*Ethical Issues*

**AICP Ethics Code—Principles**

#3c: “We shall describe the work and views of other professionals in a fair and professional manner.”

**AICP Ethics Code—Rules of Conduct**

#10: “We shall neither deliberately, nor with reckless indifference, misrepresent the qualifications, views, and findings of other professionals.”
Scenario 5

Discrimination

Davis, AICP, is a planner with Clydebank. One of the projects she manages is scheduled to go to the City Council next month for approval.

It is a project that requires data analysis to determine whether a property should be inside an empowerment zone or not. She has done this several times before.

However, Davis’ boss, Ian, AICP, decides that Patrick, a non-AICP planner who Davis supervises, should present the application to the City Council.
A few weeks later, Davis is passed over for a promotion, despite her excellent performance reviews and years of experience. Instead, Patrick is given the job.

A month before the City Council meeting (where Davis was taken off the project), she began her gender transition and asked people to use the pronouns “she, her, hers” when referring to her. In the past, she had always dressed gender neutral, but now she occasionally wears a skirt to work.

Soon after Patrick’s promotion, Davis decides to quit.
Scenario 5

Questions

Q:
Does Davis have any recourse under the AICP Ethics Code?

Q:
Are there any grounds for a misconduct case against her former boss, Ian, AICP, on the basis of “unlawful discrimination?”
Scenario 5

**Ethical Issues**

**AICP Ethics Code—Principles**

**#1a:** “We shall always be conscious of the rights of others.”

**#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.”

**AICP Ethics Code—Rules of Conduct**

**#20:** “We shall not unlawfully discriminate against another person.”

**#25:** “We shall neither deliberately, nor with reckless indifference, commit any wrongful act...that reflects adversely on our professional fitness.”
Scenario 6

Political Donations

GarGan, a consulting firm, has had several planning contracts with Hudson County over the last few years, including one current project.

Several County Board members are up for reelection and GarGan has made campaign contributions to them.

Marion, AICP, a GarGan principal, also has made donations to the candidates, after confirming there are no violations of state or local laws.
Scenario 6

Questions

Q:
Does the *AICP Ethics Code* permit these campaign contributions—either by Marion or other principals of GarGan who are AICP members?

Q:
Should these campaign contributions preclude GarGan from bidding on any future projects with Hudson County?

*NOTE TO PRESENTERS: After participants answer, see Additional Question (next slide)*
Scenario 6

Additional Question

Q:
What if campaign contributions were being made by Dan, AICP, Hudson County’s planning director?
Is that permissible, according to the AICP Ethics Code?
Scenario 6

Ethical Issues

**AICP Ethics Code—Principle**

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

**AICP Ethics Code—Rules of Conduct**

#9: “We shall not engage in private discussions with decision makers in the planning process in any manner prohibited by law or by agency rules, procedures, or customs.”

#11: “We shall not solicit prospective clients or employment through use of false or misleading claims, harassment, or duress.”
Scenario 7

**Gifts**

Bollards R Us (BRU), which sells street furniture, is sponsoring an exhibit booth at the state planning conference.

BRU also is hosting an evening reception at the conference, featuring free food and cocktails. However, BRU has only invited municipal planners (i.e., their potential clients) to the reception.
Scenario 7

Questions

Q:
Is this a potential violation of the AICP Ethics Code—either for BRU or for any AICP public planners who attend the reception?

Q:
If so, what should the conference organizers do?
Scenario 7

**Ethical Issues**

**AICP Ethics Code—Principles**

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

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

**AICP Ethics Code—Rules 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.”
Scenario 8

Public to Private Sector

Jane, AICP, retired six months ago as a planner with the City of Jacobsville.

A developer, whose projects Jane formerly reviewed as a city planner, asks her to work for him on a proposed mixed use project in Jacobsville.

Jane checks with the city attorney, who says there are no laws restricting the employment of former employees.
Scenario 8

Questions

Q: Should Jane accept the job offer?

Q: If so, what—if any—concerns should she have under the AICP Ethics Code?
Scenario 8

**Ethical Issues**

Unless there are local or state laws prohibiting such employment, Jane should consider accepting the job. But she should be careful of any potential conflicts of interest or other concerns.

**AICP Ethics Code—Principle**

#2c: “We shall avoid a conflict of interest or even the appearance of a conflict of interest in accepting assignments from clients or employers.”

*(For more Code excerpts, see next slide)*
Scenario 8

**AICP Ethics Code—Rules of Conduct**

**#3:** “We shall not accept an assignment from a client or employer to publicly advocate a position on a planning issue that is indistinguishably adverse to a position we publicly advocated for a previous client or employer information within the past three years unless...it will not cause present detriment to our previous client or employer and we make full written disclosure of the conflict...”

**#7:** “We shall not use to our personal advantage, nor that of a subsequent client or employer, information gained...that we should recognize as confidential because its disclosure could result in embarrassment or other detriment to the client or employer...”
Final Note

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

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

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