

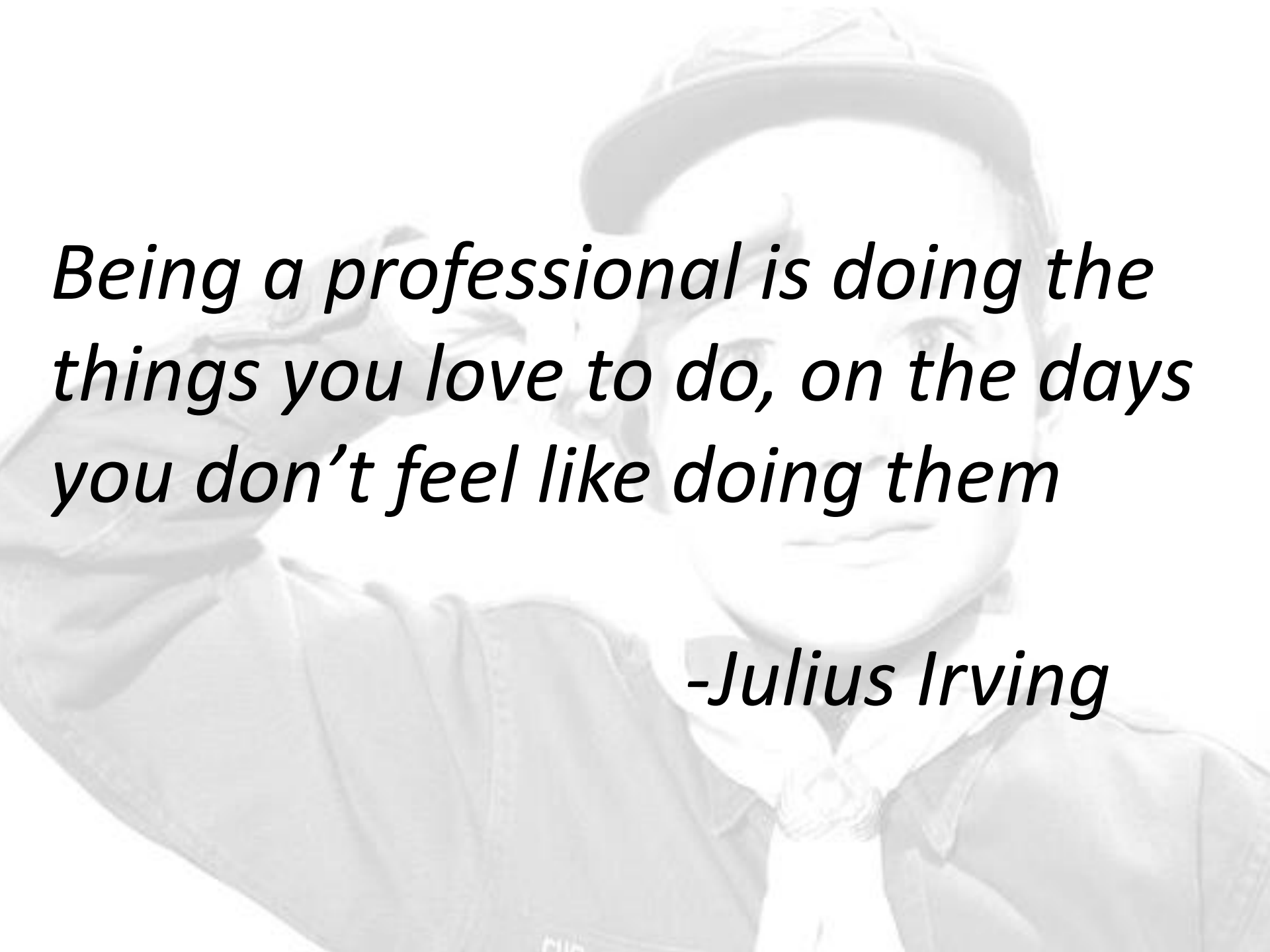
*Ethics is knowing the difference
between what you have a right to
do and what is right to do.*

-Potter Stewart



Grubb first, then ethics

-Bertolt Brecht



Being a professional is doing the things you love to do, on the days you don't feel like doing them

-Julius Irving



*I respect my profession. In return,
I will gain honor and respect as a
professional.*

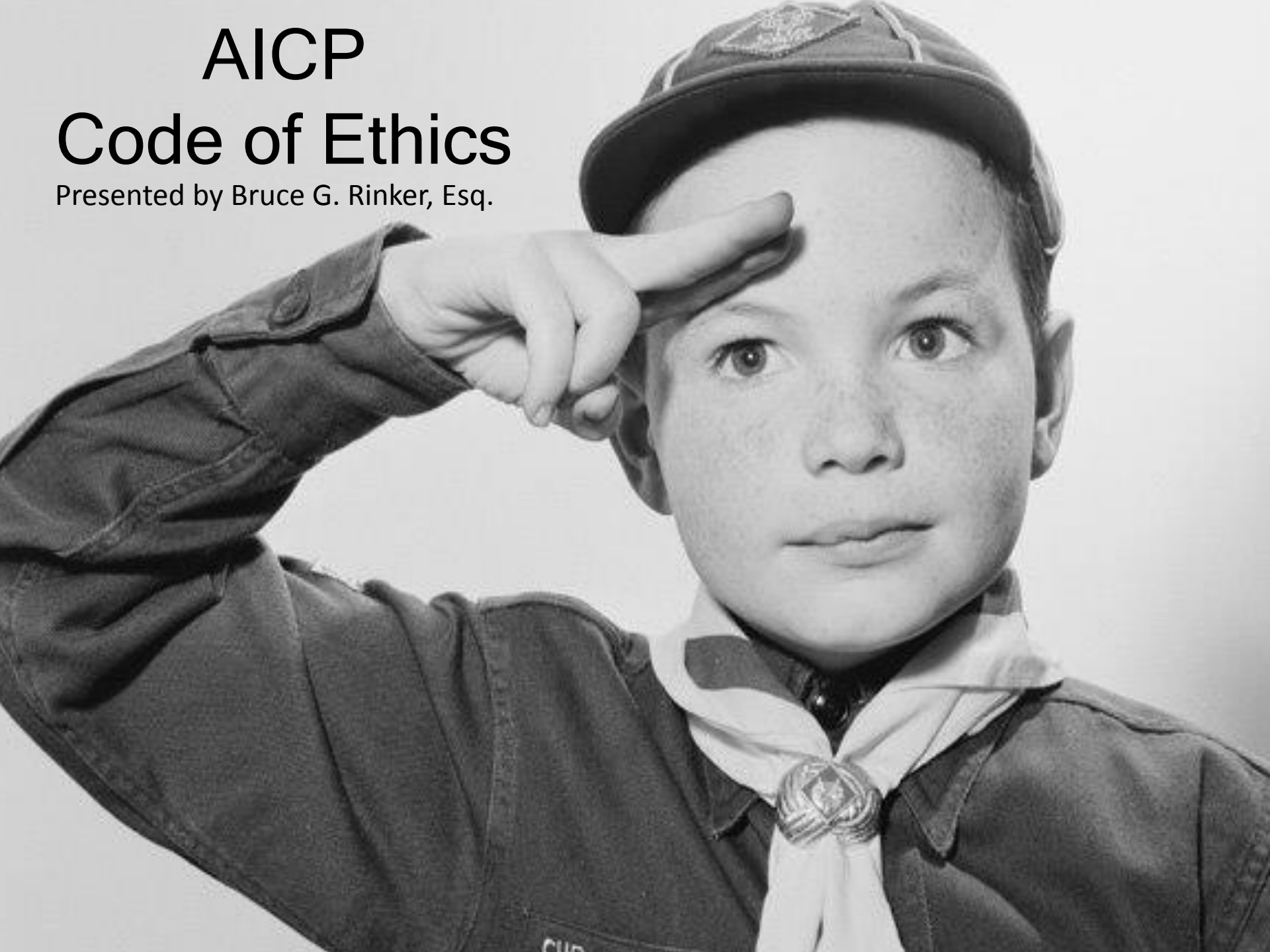
-Anonymous



AICP

Code of Ethics

Presented by Bruce G. Rinker, Esq.



Aspirational Principles

3- Aspirational Principles

3 - Aspirational Principles Rules of Conduct

3 - Aspirational Principles

26 - Rules of Conduct

3 - Aspirational Principles

26 - Rules of Conduct

Procedures

3 - Aspirational Principles

26 - Rules of Conduct

16 Step Procedure

3 - Aspirational Principles
26 - Rules of Conduct
16 Step Procedure
Serious Crimes

Analogy

Ethics Code | Zoning Code

CHAPTER 1126
R-T Transitional Residential District

- 1126.01** Purpose.
- 1126.02** Uses.
- 1126.03** Lot requirements.
- 1126.04** Yard requirements.
- 1126.05** Maximum building height.
- 1126.06** Maximum density.
- 1126.07** Plat approval required.

CROSS REFERENCES

- Supplementary regulations - see P. & Z. Ch. **1151**
- Conditional zoning certificates - see P. & Z. Ch. **1153**
- Parking and loading requirements - see P. & Z. Ch. **1155**
- Nonconforming uses - see P. & Z. Ch. **1157**
- Sign regulations - see P. & Z. Ch. **1159**

1126.01 PURPOSE.

The purpose of the R-T (Transitional Residential District) is to accommodate single-family residential use along existing and new streets while transitioning from the more intense R-1 residential to the less intense R-R residential within the City. These areas are serviced by municipal water and sanitary sewer.
(Ord. 2004-183. Passed 11-22-04.)

1126.02 USES.

(a) **Principal Uses.** Upon compliance with these regulations, the Zoning Inspector shall issue a zoning certificate for the following use:

- (1) Single-family dwelling, detached.

(b) **Conditional Uses.** Subject to Chapter **1153** and these regulations, the Planning and Zoning Commission may issue a conditional zoning permit for the following uses:

- (1) Church and other buildings for the purpose of religious worship.
- (2) Publicly or privately owned and/or operated outdoor recreational facilities generally used intensively, including picnic areas, parks, playgrounds, ballfields, swimming facilities, tennis clubs, golf courses, riding academies and country clubs.
- (3) Publicly or privately owned and/or operated outdoor recreational facilities containing extensive open space and preserving natural features of the area, including recreation areas, day camps, private parks, group facilities excluding any overnight uses.

- (4) Public and parochial schools.

- (5) Home occupations.

(6) Public utility services and pertinent structures including utility substations and transformers, but excluding office buildings and storage and distribution facilities.

(c) **Accessory Uses.** Upon compliance with these regulations, the Zoning Inspector shall issue a zoning certificate for the following accessory uses:

- (1) Accessory buildings and uses incidental to the principal use which do not include any activity conducted as a business.

- (2) Signs as regulated by Chapter **1159** of this Zoning Ordinance.

(Ord. 2004-183. Passed 11-22-04.)

1126.03 LOT REQUIREMENTS.

- (a) The minimum lot area per dwelling unit along an existing street shall be 38,000 square feet.
- (b) The minimum lot width at the building setback line shall be 110 feet.
- (c) The minimum lot frontage shall be 50 feet.

(Ord. 2004-183. Passed 11-22-04.)

1126.04 YARD REQUIREMENTS.

Note see Sections **1151.30** and **1151.31** for wetland and riparian setbacks.

- (a) The minimum front yard setback shall be 80 feet.
- (b) The minimum rear yard setback shall be 80 feet.
- (c) The minimum side yard setback shall be 12 feet.

(Ord. 2004-183. Passed 11-22-04.)

1126.05 MAXIMUM BUILDING HEIGHT.

The maximum building height shall be 34 feet.

(Ord. 2004-183. Passed 11-22-04.)

1126.06 MAXIMUM DENSITY.

The maximum residential density (total units per development site) shall be "net developable area" multiplied by 1.20 dwelling units per acre.

(Ord. 2004-183. Passed 11-22-04.)

1126.07 PLAT APPROVAL REQUIRED.

Residential developments, except for single-family dwellings built along an existing street as a Minor Subdivision, shall be subject to Plat Review (Chapter **1177**) by the Planning and Zoning Commission to insure compliance with applicable standards. Non-residential developments or uses may also be subject to Site Plan Review, see Chapter **1152**.

Ethics Code

Zoning Code

A. Principles to which we
aspire

§1126.01

Purpose

B. Rules of Conduct

§1126.02

Uses

§1126.03

Lot Requirements

§1126.04

Yard Requirements

§1126.05

Max Bldg. Height

§1126.06

Max Density

C. Procedures

§1126.07

Plat Approval

(See also Admin Provisions)

D. Serious Crimes

Penalties/Sanctions

Aspirational Principles

Principles to which we aspire:

Our Overall Responsibility to the...

1. Public
2. Clients and Employers
3. Our Profession and Colleagues

Our Responsibility to the Public

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

Our primary obligation is to serve the public interest and we, therefore, owe our allegiance to a consensually attained concept of the public interest that is formulated through continuous and open debate

What is Public Interest?

We shall achieve high standards of professional
integrity, proficiency, and knowledge

To comply with our obligation to the public, we
aspire to the following principles:

Notably:

We shall always be conscious of the rights of others

We shall have special concern for the long-range consequences of present actions

We shall provide timely, adequate, clear, and accurate information on planning issues to all affected persons and to governmental decision makers

We shall deal fairly with all participants in the planning process. Those of us who are public officials or employees shall also deal even-handedly with all planning process participants

Our Responsibility to Our Clients And Employers

We owe diligent, creative, and competent performance of the work we do in pursuit of our client's or employer's interest

Such performance, however, shall always be consistent with our faithful service to the public interest

There are 3 Principles...

We shall exercise independent,
professional judgment on behalf of our
clients and employers

We shall accept the decisions of our client or employer...unless the course of action is illegal or plainly inconsistent with our primary obligation to the public interest

We shall avoid a conflict of interest, or event the appearance of a conflict of interest in accepting assignments from clients or employers

Our Responsibility to Our Profession And Colleagues

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

10

Goals/Responsibilities to Profession and Colleagues

We shall protect and enhance the integrity
of our profession

We shall educate the public about planning issues and their relevance to our everyday lives

We shall describe and comment on the work and views of other professionals in a fair and professional manner

We shall examine the applicability of planning theories, methods, research and practice and standards to the facts and analysis of each particular situation and shall not accept the applicability of a customary solution without first establishing its appropriateness to the situation

Rules of Conduct

1. Due Diligence

We shall not deliberately or with reckless indifference fail to provide adequate, timely, clear and accurate information on planning issues

2. Unprofessional

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

3. Three-year Grace Period

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 within the past three years unless...

- We determine in good faith after consultation with other qualified professionals that our change of position will not cause present detriment to our previous client or employer, *and*

- We make full written disclosure of the conflict to our current client or employer and receive written permission to proceed with the assignment

4. Conflict: Two Masters = Full Disclosure

We shall not, as salaried employees, undertake other employment in planning or a related profession, whether or not for pay, without having made full written disclosure to the employer who furnishes our salary and having received subsequent written permission to undertake additional employment, unless our employer has a written policy which expressly dispenses with a need to obtain such consent

5. Bribes

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

6. Conflict: Personal Gain

We shall not perform work on a project for a client or employer if, in addition to the agreed upon compensation from our client or employer, there is a possibility for direct personal or financial gain to us, our family members, or persons living in our household, unless our client or employer, after full written disclosure from us, consents in writing to the arrangement

7. Confidential

We shall not use to our advantage, nor that of a subsequent client or employer, information gained in a professional relationship that the client or employer has requested be held inviolate or that we should recognize as confidential because its disclosure could result in embarrassment or other detriment to the client or employer.

Nor shall we disclose such confidential information except when...

Nor shall we disclose such confidential information except when...

1. Required by process of law, *or*
2. Required to prevent a clear violation of law,
or
3. Request to prevent a substantial injury to the public

Disclosure pursuant to (2) and (3) shall not be made until after we have verified the facts and issues involved and, when practicable, exhausted efforts to obtain reconsideration of the matter and have sought separate opinions on the issue from other qualified professionals employed by our client or employer

8. Insider Information

We shall not, as public officials or employees, engage in private communications with planning process participants if the discussions relate to a matter over which we have authority to make a binding, final determination if such private communications are prohibited by law or by agency rules, procedures, or custom.

9. Back Room Dealing

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 custom

10. Slander

We shall neither deliberately, nor with reckless indifference, misrepresent the qualifications, views and findings of other professionals

11. Cheating

We shall not solicit prospective clients or employment through use of false or misleading claims, harassment, or duress

12. Puffing

We shall not misstate our education, experience, training, or any other facts which are relevant to our professional qualifications

13. Prostitution

We shall not sell, or offer to sell, services by stating or implying an ability to influence decisions by improper means

14. Insider Trading

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

15. Peter Principle

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

16. Dependability

We shall not accept work for a fee, or pro bono, that we know cannot be performed with the promptness required by the prospective client, or that is required by the circumstances of the assignment

17. Plagiarizing

We shall not use the product of others' efforts to seek professional recognition or acclaim intended for producers of original work

18. Evidence Rules - 702-705

We shall not direct or coerce other professionals to make analyses or reach findings not supported by available evidence

19. Public Disclosure

We shall not fail to disclose the interests of our client or employer when participating in the planning process. Nor shall we participate in an effort to conceal the true interests of our client or employer

20. Bias/Discrimination

**We shall not unlawfully discriminate
against another person**

21. Cooperate with Investigation

We shall not withhold cooperation or information from the AICP Ethics Officer or the AICP Ethics Committee if a charge of ethical misconduct has been filed against us

22. Retaliation

We shall not retaliate or threaten retaliation against a person who has filed a charge of ethical misconduct against us or another planner, or who is cooperating in the Ethics Officer's investigation of an ethics charge

23. Extortion

We shall not use the threat of filing an ethics charge in order to gain, or attempt to gain, an advantage in dealings with another planner

24. Civil Rule 11

We shall not file a frivolous charge of ethical misconduct against another planner

25. Crime

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

26. Honor System

We shall not fail to immediately notify the Ethics Officer by both receipted Certified and Regular First Class Mail if we are convicted of a “serious crime” as defined in Section D of the Code; nor immediately following such conviction shall we represent ourselves as Certified Planners or Members of AICP until our membership is reinstated by the AICP Ethics Committee pursuant to the procedures in Section D of the Code

Code Procedures

- 16 step process
- Non-public investigation and formal adjudication
- Can result in expulsion
- Ethics officer
- Ethics Commission
- Publication of Determination

The 16 Steps...

1. Informal Advice: from Ethics officer - *Oral*
2. Formal Advice: from Ethics officer - *Written*
3. Published formal advisory ruling
4. Filing a charge of a misconduct
5. Receipt of charge by Ethics officer
6. Right of counsel
7. Preliminary response to charge
8. Conducting an investigation

9. Dismissal of charge or issuance of complaint
10. Appeal of dismissal (to Ethics committee)
11. Answering the Complaint
12. Conducting a hearing
13. Deciding the case
14. Settlement of charges
15. Resignation/Lapses of membership
16. Annual Report of Ethics Officer

Serious Crimes

Four Parts:

1. Automatic Suspension
2. Duty to Notify
3. Petition for Reinstatement
4. Publication of Conviction

Applicable Ohio Statutes

R.C. §1.03 - Anything of value defined

- 9 categories listed
- Includes: money, goods, property, debts...
- (h) “Any promise of future employment”
- (i) “Every other thing of value”

R.C. §149.43 Public Records

- “Availability of public records for inspection and copying
- Liberally inclusive
- Conservatively exclusive

Section B identifies nine (9) steps of the process for production notably...

1. Upon request and subject to division (B)(8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours

2. To facilitate broader access to public records, a public office or the person responsible for public records shall organize and maintain public records in a manner that they can be made available for inspection or copying in accordance with division (B) of this section

3. If a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied

R.C. §102 - Public Officers - Ethics

§102.03 - Ranges of 1-2 years

Prohibition in private sector work following public sector work

§102.06 - Powers/Duties of Ohio Ethics Commission

Independent and overlaps AICP Code

Ohio Title 29

Crimes - Procedure

R.C. §2921.01

Offenses against justice and public
administration

General definitions

R.C. §2921.01

(A): “Public Official” means any elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and includes, but is not limited to, legislators, judges, and law enforcement officers. Public official does not include an employee, officer, or governor-appointed member of the board of directors of the non-profit corporation under §187.01 of the Revised Code

R.C. §2921.01

(B): “Public Servant” means any of the following:

- (1) Any public official;
- (2) Any person performing ad hoc a governmental function, including, but not limited to, a juror, member of a temporary commission, master, arbitrator, advisor, or consultant

R.C. §2921.42

Having an unlawful interest in a public contract

- Either M1 or F4

R.C. §2921.43

Soliciting or accepting improper compensation

- M1

Ohio Rules of Evidence

Article VI - Witnesses

Evid. R. 607 - Impeachment

(A) Who May Impeach

The credibility of a witness may be attacked by any party except that the credibility of a witness may be attacked by the party calling the witness by means of a prior inconsistent statement only upon a showing of surprise and affirmative change

Article VI - Witnesses

Evid. R. 612 - Writing used to refresh memory

- What you write
- What you say in meeting minutes
- Court will compel production

Article VI - Witnesses

Evid. R. 613 - Impeachment by Self-Contradiction

(A) Examining witness concerning prior statement - *See Evid. R. 612!*

Article VI - Witnesses

Evid. R. 616 - Methods of Impeachment

In addition to other methods, a witness may be impeached by any of the following methods...

Article VI - Witnesses

Evid. R. 616 - Methods of Impeachment

(A) **Bias**

Bias, prejudice, interest, or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by extrinsic evidence

Article VI - Witnesses

Evid. R. 616 - Methods of Impeachment

B. Sensory or mental defect

A defect of capacity, ability, or opportunity to observe, remember, or relate may be shown to impeach the witness either by examination of the witness or by extrinsic evidence

Article VI - Witnesses

Evid. R. 616 - Methods of Impeachment

C. Specific contradiction

Facts contradicting a witness's testimony may be shown for the purpose of impeaching the witness's testimony

Article VII - Opinions and Expert Testimony

Evid. R. 702 - Testimony by Experts

A witness may testify as an expert if all of the following apply:

- (A) The witness' testimony either relates to matters beyond the knowledge or experience possessed by lay persons or dispels a misconception common among lay persons
- (B) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony

- (C) The witness' testimony is based on reliable scientific, technical, or other specialized information. To the extent that the testimony reports the result of a procedure, test, or experiment, the testimony is reliable only if all of the following apply:
1. The theory upon which the procedure, test, or experiment is based is objectively verifiable or is validly derived from widely accepted knowledge, facts, or principles;
 2. The design of the procedure, test, or experiment reliably implements the theory;
 3. The particular procedure, test, or experience was conducted in a way that will yield an accurate result

Article VII - Opinions and Expert Testimony

Evid. R. 703 - Bases of opinion testimony by experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by the expert or admitted in evidence at the hearing

Article VII - Opinions and Expert Testimony

Evid. R. 705 - Disclosure of facts or data underlying expert opinion

The expert may testify in terms of opinion or inference and give the expert's reasons therefor after disclosure of the underlying facts or data. The disclosure may be in response to a hypothetical question or otherwise

Article VIII - Hearsay

“Hearsay” - a statement, other than made by the declarant while testifying at the trial hearing, offered in evidence to prove the truth of the matter asserted

Article VIII - Hearsay

Some Notable Exceptions:

- Recorded Recollection
- Public records and reports
- Property records
- Statements reflecting and property interest

Article IX- Authentication and Identification

Evid. R. 902 - Self-Authentication

- Public Documents
- Public Records
- Official Publications

Ethical Scenarios

SCENARIO #1

A municipal planner knows that a study undertaken by his department has objectively and favorably evaluated a proposed private development project. He believes that the project will be politically unpopular and dreads facing vocal opposition at the Planning Commission if he were to present this as the departmental report.

He attends the meeting, brings the report along with him but keeps it tucked away. Sure enough, neighborhood opposition is nasty. When the Commission calls upon him to present the Staff's recommendation, he does not produce the report but lamely states that the staff's position is neutral. He does not dispute the public's rejection of the project.

The Commission turns the project down.

1. Clearly Ethical
2. Probably Ethical
3. Not Sure
4. Probably Unethical
5. Clearly Unethical

Same Scenario but...

- a. when called upon the planner simply says no comment

Same Scenario but...

- b. applicant asks in advance of the meeting if the Planning Department has any reports, memos or any other documentation relative to the proposed project. The planner avoids responding

Same Scenario but...

- c. planner denies there is a report and does not furnish one

Same Scenario but...

- d. applicant makes the request formally, through a public records request served upon the department. The planner stalls long enough to avoid providing anything in advance of the meeting.

Same Scenario but...

- e. after the Commission's no-vote, the applicant appeals to the municipality's Board of Zoning Appeals, following Code procedures, and renews the previous request for any and all reports, etc. The planner simply ignores the request

Same Scenario but...

- f. following the BZA's affirmation of the no-vote, the applicant appeals to court. Per court rules, clerical staff of the municipality are called upon to assemble all records related to the application. As part of this clerical process, the planner is called upon to produce what the department has relating to the rejected application

What should he do?

- g. When called upon to produce records, the planner obliges by turning over every last scrap of paper—except the study, which he has kept hidden away under lock and key in his own desk

What should he do?

- h. The planner walks into work one day and finds a formal court subpoena ordering him to appear at court to testify and to bring all his departmental papers relating to the application with him, to answer questions under oath.

What can he expect will happen?

SCENARIO #2

A municipal planner has knowledge of scientific data and other technical information relating to an environmentally-sensitive tract of land owned by the municipality. The municipality wishes to develop this site for economic reasons beneficial to the community and has issued an RFP soliciting bids from area development teams that include prominent architectural/engineering companies to compete for the bid process.



- The planner knows that a former co-worker was hired by the one of these firms eight months previously. He highly respects and places great confidence in the co-worker's ability to deliver a quality project.
- He secretly knows that the co-worker gained critical insight about the municipality's technical database during his former employment, of which the other competing firms are ignorant. He is convinced that such insight will work to the new employer's advantage.

The municipal planner is ultimately called upon

The municipal planner is ultimately called upon to provide consultation for the Blue Ribbon Panel that has been appointed by municipal officials to review and decide upon the submittals.



- a) Does the municipal planner have a duty to disclose any thing to the Blue Ribbon Panel? To disclose to anyone? If so, to whom?

b) What about the fact the former co-worker left only eight months previously?

c) Or that the former co-worker had “insider information?”



- d) Even if the municipal planner says nothing to the panel, what about the responsibility of his former planning co-worker for these same issues?

e) Should the former co-worker inform his new employer?



- f) What if the municipal planner ultimately has a change of heart, recognizes that the former co-worker did not come clean and now decides to get religion himself and reports to the ethics officer of the situation?

g) What should happen to the municipal co-worker?

h) What should happen to the former co-worker?

SCENARIO #3

As a variation of Scenario #2, assume this time that the municipal planner has obtained confidential information subsequent to the co-worker's exit.

The municipal planner concludes this information is crucial to the success of the municipal project.

He decides to give this information solely to his old friend, with the reasonable expectation that the special insight will ensure the project will be awarded to that team.

a) Should he recuse himself from any further involvement in the process?

b) Even if he recuses, does he have a duty to disclose anything?

SCENARIO #4

Basically the same scenario; however, this time:

- the municipal planner despises the project being put out to bid
- He has been charged with the responsibility of analyzing the proposed project objectively and to provide his professional critique to the Blue Ribbon Panel. His responsibility is to educate the panel and identify the material criteria to be included in the RFP.
- He prepares a comprehensive report but decides to omit critical information. He knows this omission will result in torpedoing the project. He earnestly believes that this will avert environmental and social economic damage that he as an experienced planner concludes would result were the project to go forward

SCENARIO #5

In her annual State of the City Address she delivers every January, the Mayor announces that her administration has been planning a high-density residential project to be built on City land, promising jobs, housing and overall increased revenues to the City's coffers.

Council is prepared to issue debt.

Groundbreaking is targeted for June 1st.

Two alternative City properties have been identified for two very different projects, only one of which will be funded. Selection will be made in the course of Council's Budget hearings in the ensuing weeks.

Meanwhile, a debate has been brewing within the administration as to which of the two competing plans should be adopted.

- The first, favored by the Planning and Human Services Departments offers a housing mix featuring 40% low-income units, with a balance of units equally split between mid and high-end users.
- The other, favored by the Finance and Economic Development Departments is exclusively made up of luxury apartments and amenity retail that effectively creates an enclave. It will also yield substantially greater tax revenues to the City.

The time for elected officials' adoption of one of the projects is approaching. The Planning Department has yet to weigh in on the final report concerning environmental due diligence evaluation of the two alternative City properties.

Our municipal planner has been a vocal supporter of the first project and an equally vocal opponent of the luxury apartment project. The departmental evaluation of the two sites by all objective measure favors neither one over the other in terms of relevant environmental criteria.

But our planner hatches a plan:

Conversing with his Facebook friends, he wonders aloud about his “concern” that the property on which the luxury complex is to be built “may” be the site of an ancient Hopewell Indian fortress, long since buried below. In the ensuing chatter, he adds some color and otherwise encourages speculation and rumors to grow.

Pretty quickly, the topic goes viral, attracting the attention of amateur and professional enthusiasts around the world.

Sure enough, by the time Council calls the vote, the administration and Council have been bombarded by earnest appeals to halt any groundbreaking on the site for fear of despoiling artifacts, etc., etc...

On June 1st, groundbreaking takes place for the first project. The Planning and Human Services' staff are treated to a celebration at the local watering hole by the project's private-sector contractor who won the bid from Council.

The luxury complex contractor sues the City.

- Any ethical issues?
- Is the planner's personal Facebook account "public record"