Ethics for Planners
Professional and Statutory
(1.5 AICP CM)

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2015 Nevada Chapter of the American Planning Association Annual Conference
September 15, 2015
Ethics for Planners

- What are “Ethics”?  

- Three Codes:  
  - Nevada’s Code of Ethical Conduct  
  - The American Institute of Certified Planners Code of Ethics  
  - American Planning Association Principles in Planning  

- Exercise: Friendly Advice or Quid Pro Quo?
Ethics for Planners

Why are we Reviewing Three Codes?

– AICP Members require 1.5 hours of ethics training every 2 years.

– Many appointed bodies adopt or use APA Ethical Principles in Planning – good to be familiar with it as staff to these bodies or as a member of a planning body.

– Nevada’s Code of Administrative Ethics applies to all public officials including staff.
Ethics for Planners

Session Purpose:

– To help you develop reasoning and reflection skills that you can apply in everyday situations.

– This session is *not* about communicating a set of rules that must be memorized and adhered to.
What are “Ethics”?
What Ethics Is

“…ethics may be understood as the study of moral conduct and moral status. Ethics and morality are often used interchangeably, but here I will distinguish them.

Morality assumes some accepted modes of behavior that are given by a religious tradition, a culture (including an organizational culture), a social class, a community, or a family. It involves expected courses of conduct that are rooted in both formal rules and informal norms.

Ethics, then, is one step removed from action. It involves the examination and analysis of the logic, values, beliefs, and principles that are used to justify morality in its various forms.”
What Ethics Is

“Ethics considers what is meant by *principles such as justice, veracity, or the public interest*; their implications for conduct in particular situations; and how one might argue for one principle over another as determinative in a particular decision.

Ethics takes what is given or prescribed and *asks what is meant and why*.

Ethics also *deals with the moral status of entities* such as families, organizations, communities, and societies.”
What Ethics Is

An analytical tool to help us determine what course of action to take when we are confronted with two or more equally good or two or more equally bad choices when we are forced to choose.
What Ethics Isn’t
Building an Ethical Decision Making Model

Levels of Ethical Reflection:

– The Expressive Level: “You should know better!”

– The Moral Rules Level: “Always be a good team player.”

– The Ethical Analysis Level: “Always tell the truth unless innocent third parties are harmed.”

– The Postethical Level: “Why should I be moral?”
Six Steps to Ethical Decision Making

- Define the Problem
- Identify Alternatives
- Evaluate the Alternatives
- Make the Decision
- Implement the Decision
- Evaluate the Decision
Nevada’s Code of Ethical Standards
PUBLIC POLICY: Public office is a public trust for the sole benefit of the people.

Public officers and public employees must avoid conflicts of interest between their private interests and their public duties.
To Whom Does NRS 281A Apply?

- Public officers elected or appointed to a position created by:
  - Constitution
  - State law
  - Ordinance

- And who exercises public power, trust or duty.

- Specifically includes county or city manager, superintendent of schools (2013).

- Applies whether employed, appointed, or under contract with or without compensation and regardless whether acting temporary or interim (2013).
To Whom Does NRS 281A Apply?

- Judges.
- Justices.
- Officers of the court system.
- Members of board, commission, or other body that is advisory.
- Member of the board of a GID or other special district only if duties do not include budget or expenditure approval.
- County Health Officer (NRS 439).
The Ten “DO NOTS”

1. Seek or accept any gift, service, favor, employment, etc. which would tend to improperly influence or cause a departure from faithful and impartial discharge of duties…

2. Use position in government to secure or grant unwarranted privileges for self, business interest in which one has significant pecuniary interest, or person to whom one has a commitment in a private capacity…

3. Participate in negotiation or execution of contract in which one has a significant pecuniary interest…
The Ten “DO NOTS” (cont’d)

4. Accept anything of value from a private party for the performance of public duties…

5. Use non-public information to further pecuniary interest of self, business entity or person…

6. Suppress government report or document because it might affect pecuniary interest of self, business entity or person…
The Ten “DO NOTS” (cont’d)

7. Use governmental time, property or equipment outside of any ‘limited use’ or ‘deminimus’ policy adopted by an entity represented or by whom employed…

8. Attempt to benefit personal or financial interest through the influence of a subordinate.
The Ten “DO NOTS” (cont’d)

9. Seek employment or contracts through use of official position…

10. Represent or counsel, for compensation, any person on issue before his/her entity or for one year after leaving entity on any issue under consideration at the time of leaving…
“Commitment in a private capacity to the interests of another person” means commitment, interest or relationship to a person:

– Spouse or domestic partner
– Member of household
– Related within third degree of consanguinity or affinity
– Employs self, spouse, domestic partner or member of household
– With whom self has a substantial and continuing business relationship
– With whom self has a commitment, interest or relationship substantially similar to above
“Pecuniary Interest” means any beneficial or detrimental interest that consists of or is measured in money, economic value and includes payments for government service and gifts.

“Interested person” means a person who has a substantial interest in the legislative, administrative or political action of a public officer or a candidate if elected. 2. The term includes, without limitation: (a) A lobbyist as defined in NRS 218H.080. (b) A group of interested persons acting in concert, whether or not formally organized. (emphasis added) (SB 307 -2015).
“Educational or informational meeting, event or trip” means any meeting, event or trip undertaken or attended by a public officer or candidate if, in connection with the meeting, event or trip: (a) The public officer or candidate or a member of the public officer’s or candidate’s household receives anything of value to undertake or attend the meeting, event or trip from an interested person; and (b) The public officer or candidate provides or receives any education or information on matters relating to the legislative, administrative or political action of the public officer or the candidate if elected. 2. The term includes, without limitation, any reception, gathering, conference, convention, discussion, forum, roundtable, seminar, symposium, speaking engagement or other similar meeting, event or trip with an educational or informational component. (SB 307 – 2015)
“anything of value” includes, without limitation, any actual expenses for food, beverages, registration fees, travel or lodging provided or given to or paid for the benefit of the public officer or candidate or a member of the public officer’s or candidate’s household or reimbursement for any such actual expenses paid by the public officer or candidate or a member of the public officer’s or candidate’s household, if the expenses are incurred on a day during which the public officer or candidate or a member of the public officer’s or candidate’s household undertakes or attends the meeting, event or trip or during which the public officer or candidate or a member of the public officer’s or candidate’s household travels to or from the meeting, event or trip. (SB 307 – 2015) [EXCLUDED FROM DEFINITION OF GIFT]
Conflict of Interest NRS 281A.420

If the matter under consideration involves:

– A gift or loan to member;

– An economic or money interest of member; or

– The same with regard to a person to whom I have a commitment in a private capacity

DISCLOSE!!  DISCLOSE!!  DISCLOSE!!  DISCLOSE!!
Conflict of Interest (cont’d)

- Disclosure means:
  - Specific identification of conflict; and
  - Specific identification of relationship involved in conflict

- Disclosure must be made when matter considered:
  - If member, publicly to chair and other members
  - If appointed, to supervisor/superior in charge
Voting and Abstaining

- Public policy favors participation and voting...

- Whether one votes, participates or abstains involves consideration of “the independence of judgment of the reasonable man”...

- “Reasonable man” means a consideration of whether a reasonable person would be materially affected by disclosed conflict...
Voting and Abstaining (cont’d)

- After disclosing, conduct “reasonable man” analysis to determine whether to participate and vote or to abstain from matter…

- If not a clear conflict, participate and vote…

- If a clear conflict, abstain…

- If abstaining, leave table for duration of item…

- Caveat…
Voting and Abstaining (cont’d)

- If abstaining, quorum requirement is reduced accordingly… but…

- Quorum not reduced for elected boards.
Violations

Civil Penalties – for *Willful Violations*:

- $5,000 for first violation.
- $10,000 for second violation.
- $25,000 for third violation.
- $5,000 for person interfering with investigation by State Ethics Commission.
- If a financial gain occurred, an additional penalty of up to 2 times the gain.
Opinion Requests

- First Party Advisory:
  - Forms/opinions on Commission website.
  - Confidential unless waived – how waived.
  - Type of request.
  - Effect of request.

- Third Party Complaint:
  - Forms on website.
  - Investigation/hearing/representation.
Opinion Requests (cont’d)

When in doubt…

– Ask entity attorney for opinion…

– As soon as you are aware of potential conflict…

– Preferably in advance of meeting…

– Call for short recess to allow discussion with attorney…

– If you abide by opinion, no willful violation…
Role of the Nevada State Ethics Commission
http://ethics.nv.gov/

- Investigation of alleged violations.
- Imposition of fines for violations.
- Inform the attorney general or district attorney of all cases of noncompliance with the ethics law.
- Conduct hearings on requests for an opinion and render decisions.
- Recommend legislation to strengthen law.
- Publish the state’s ethics law manual.
Role of the Nevada State Ethics Commission
http://ethics.nv.gov/

- Reviews, conducts hearing and makes determination of violation, or no violation.

- May report willful violations for purposes of initiating impeachment proceedings.

- May report willful violations to court for removal from office.

- **Caveat:** violation not willful if obtained legal counsel advice and if not contrary to prior Ethics Commission opinions.
The AICP Code of Ethics and Professional Conduct
AICP Code of Ethics and Professional Conduct


- Updated in 2005 after a four-year public process.

- Very similar to the previous code – not much change of the original language.
AICP Code of Ethics and Professional Conduct

Sections:

A. Aspirational Standard
B. Rules of Conduct
C. Procedures
D. Serious Crimes

* Sections A & B will be Highlighted
Aspirational Standard

“Our primary obligation is to serve the public interest and we, therefore, owe our allegiance to a conscientiously attained concept of the public interest…”
Aspirational Standard

“We shall give people the opportunity to have a meaningful impact on the development of plans and programs that may affect them. Participation should be broad enough to include those who lack formal organization or influence.”

“We shall continue to enhance our professional education and training.”
Rules of Conduct

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

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

“We shall not sell, or offer to sell, services by stating or implying an ability to influence decisions by improper means.”
Application of the AICP Code

- The AICP Code must be adhered to by members of the American Institute of Certified Planners.

- The AICP Code can be used as a guide by non-AICP members.
AICP Code of Ethics and Professional Conduct

- The third section, Section C, provides the procedures for handling code infractions. It provides information about what happens when there is an alleged violation, the rights of the planners accused, and the timetables for action.

- The final section, Planners Convicted of Serious Crimes — Automatic Suspension of Certification (Section D).
Enforcement of the AICP Code

“We adhere to the following Rules of Conduct, and we understand that our Institute will enforce compliance with them. If we fail to adhere to these Rules, we could receive sanctions, the ultimate being the loss of our certification.”

“In brief, our Code Procedures (1) describe the way that one may obtain either a formal or informal advisory ethics ruling, and (2) detail how a charge of misconduct can be filed, and how charges are investigated, prosecuted, and adjudicated.”
AICP Code Procedures

Enforcement:

– Allegation of violation can be filed:
  • By AICP member or any other person
  • With identification of person filing allegation, or anonymously (anonymous filer does not receive results of investigation).

– Process after alleged violation filed:
  • Investigation by Ethics Officer (typically Executive Director).
  • Results provided to person alleged to violate code, Ethics Commission, AICP Commission, and person filing allegation (if not anonymous).
AICP Code Procedures

Consequence of Finding of Violation:

- Private Censure
- Published Censure
- Dismissal from AICP
## Enforcement of the AICP Code

### Summary of Ethics Cases in 2011 and 2012

<table>
<thead>
<tr>
<th></th>
<th>2011</th>
<th>2012</th>
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<tbody>
<tr>
<td>Total Cases:</td>
<td>4 Total Cases:</td>
<td>2 Total Cases:</td>
</tr>
<tr>
<td></td>
<td>– 2 Cases Resolved</td>
<td>– 2 Cases Resolved</td>
</tr>
<tr>
<td></td>
<td>– 2 Cases Dismissed</td>
<td>– 0 Cases Dismissed</td>
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<tr>
<td>Cases Pending:</td>
<td>– 1 Charge Under Review</td>
<td>– 2 Charges Under Review</td>
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<tr>
<td></td>
<td>– 1 Complaint Under Review</td>
<td>– 0 Complaint Under Review</td>
</tr>
<tr>
<td>Ethics Committee Actions:</td>
<td>– No Actions</td>
<td>– No Actions</td>
</tr>
<tr>
<td>Request for Formal Advice:</td>
<td>– No Requests</td>
<td>– No Requests</td>
</tr>
</tbody>
</table>
AICP Code Procedures

- **Formal Advice:**
  - Only the Ethics Officer (AICP Executive Director or Designee)
  - It is Binding
  - Findings within 21 Days

- **Informal Advice:**
  - Ethics Officer (AICP Executive Director or Designee)
  - State Professional Development Officer (PDO)
APA Ethical Principles in Planning

https://www.planning.org/ethics/ethicscode.htm
APA Ethical Principles

- Adopted May 1992

“This statement is a guide to ethical conduct for all who participate in the process of planning as advisors, advocates, and decision makers. It presents a set of principles to be held in common by certified planners, other practicing planners, appointed and elected officials, and others who participate in the process of planning.” [emphasis added]
APA Ethical Principles

- As a guide, the Principles apply to:
  - ALL Planning participants, including:
    - Elected & Appointed officials
    - Planning professionals
    - Participating members of the public
  - APA members who are practicing planners

- The APA Ethical Principles are a mixture of:
  - Aspirational Guides
  - Directives
Aspirational Guides and Directives

Aspirational Guide

- Strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons.

- Pay special attention to the interrelatedness of decisions and the long range consequences of present actions.

Directive

- Participate in continuing professional education.

- Accurately represent the qualifications, views, and findings of colleagues.
APA Ethical Principles

The planning process must continuously pursue and faithfully serve the public interest.

- Recognize the rights of citizens to participate in planning decisions.
- Assist in the clarification of community goals, objectives and policies in plan-making.
- We shall pay special attention to the interrelatedness of decisions.
- 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.
- Pay special attention to the interrelatedness of decisions and the long range consequences of present actions.
APA Ethical Principles

Planning process participants continuously strive to achieve high standards of integrity and proficiency so that public respect for the planning process will be maintained.

- Exercise fair, honest and independent judgment in their roles as decision makers and advisors.

- Make public disclosure of all “personal interests” they may have regarding any decision to be made in the planning process in which they serve, or are requested to serve, as advisor or decision maker.

- Seek no gifts or favors, nor offer any, under circumstances in which it might reasonably be inferred that the gifts or favors were intended or expected to influence a participant’s objectivity as an advisor or decision maker in the planning process.
APA Ethical Principles

APA members who are practicing planners continuously pursue improvement in their planning competence as well as in the development of peers and aspiring planners. They recognize that enhancement of planning as a profession leads to great public interest.

- Strive to achieve high standards of professionalism, including certification, integrity, knowledge, and professional development consistent with the AICP Code of Ethics.
- Accurately represent their qualifications to practice planning as well as their education and affiliations.
- Treat fairly and comment responsibly on the professional views of colleagues and members of other professions.
Enforcement of APA Principles

- No formal enforcement procedures by APA.

- Some appointed recommending/decision-making bodies have incorporated the Principles into procedures and practices adopted by the local body.
  - If Procedures and Practices have enforcement provisions, some of the APA Principles’ directives might be used for taking action against a member.
Exercise: Friendly Advice or Quid Pro Quo?
Exercise

Friendly Advice or Quid Pro Quo?

- First, read the case study in front of you by yourself. Spend **10 minutes** answering the questions at the end of the case study by yourself.

- Second, as a small group, spend **15 minutes** answering the questions together. Come to a consensus on how your group would answer each question.

- Third, we will discuss the results as a large group.
Exercise

Friendly Advice or Quid Pro Quo?

- Is it unethical for a city employee to make recommendations based on his or her experience?

- Would Gary’s actions have been acceptable if he had not engaged in a quid pro quo?

- What action should Wendy take with Gary? With other department employees?

- Is there anything the city manager might do to prohibit this type of behavior?
Thank You.

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