

REVISITING ETHICS FOR THE DESIGN PROFESSIONAL

Loss Prevention Education from XL Group's Design Professional team



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Questions related to specific materials, methods, and services will be addressed at the conclusion of this presentation.

Learning Objectives & Agenda



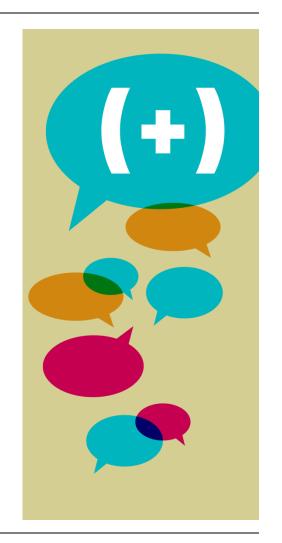
- Examine the current state of business ethics
- Consider the implications of the current trends on your business
- Review the ethical canons of design professionals
- Case study exercise of actual complaints and decisions
- Outline the key elements to support an ethical culture



Discussion Question

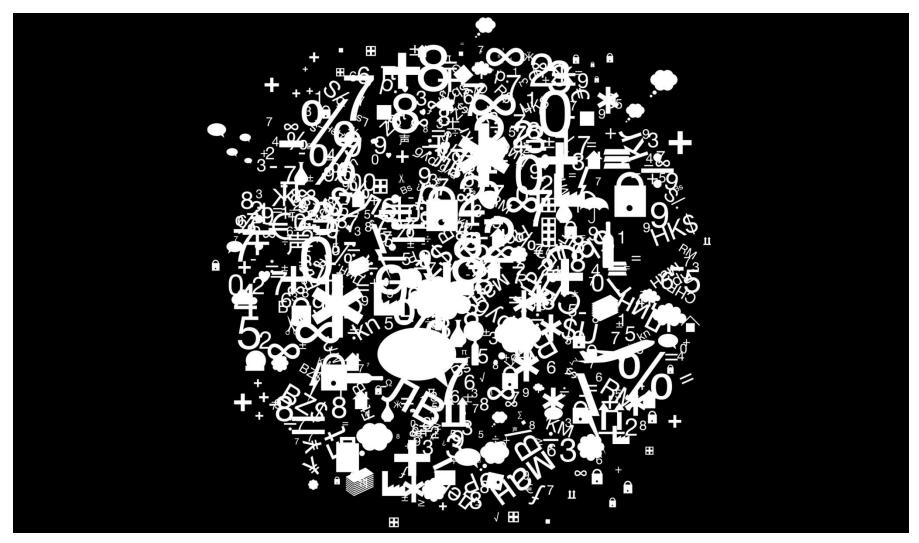


How would you characterize the "ethics climate" in today's business environment?



Ethical Research Center National Business Ethics Survey

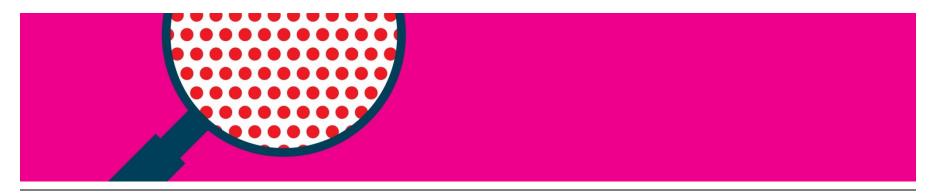




Survey Background



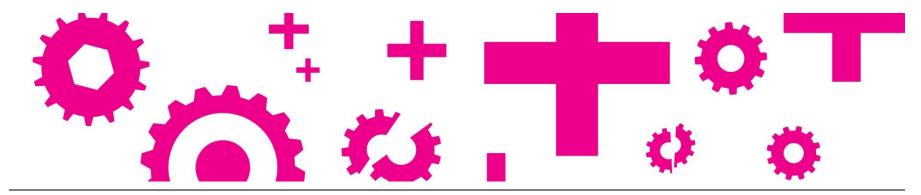
- Over 4,600 respondents
- Private for-profit business
- Respondents are over 18 years of age and work at least 20 hours per week
- Respondent company employs at least 2 people



Good News and Bad News



- Seeing less misconduct
- Reporting bad behavior at a new high
- Retaliation against whistleblowers grew
- Pressure to compromise standards has increased
- Companies with weak ethics culture have increased



Some Context





There are more than 138 million Americans

in the workforce over the age of 18



45%

of U.S workers observed misconduct or 62 million Americans



of those who witnessed wrong doing

reported misconduct

which comes out to nearly

41 million Americans



And of those who reported,

said they experienced some kind of retaliation;

that's almost

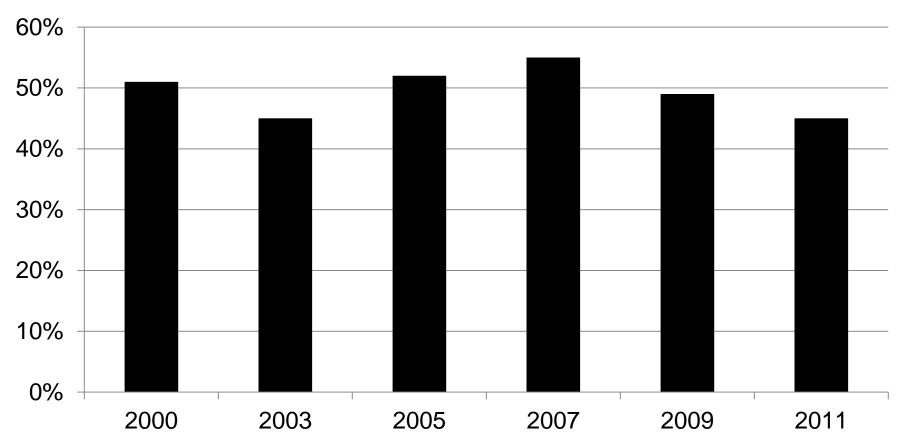
9 million Americans

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Employees Still Doing Right Thing...for Now

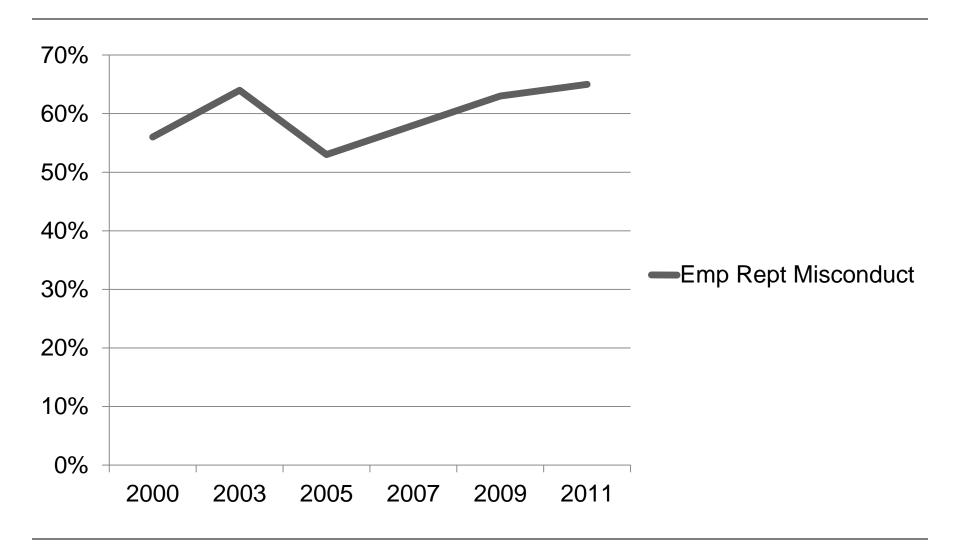


Rate of misconduct observed



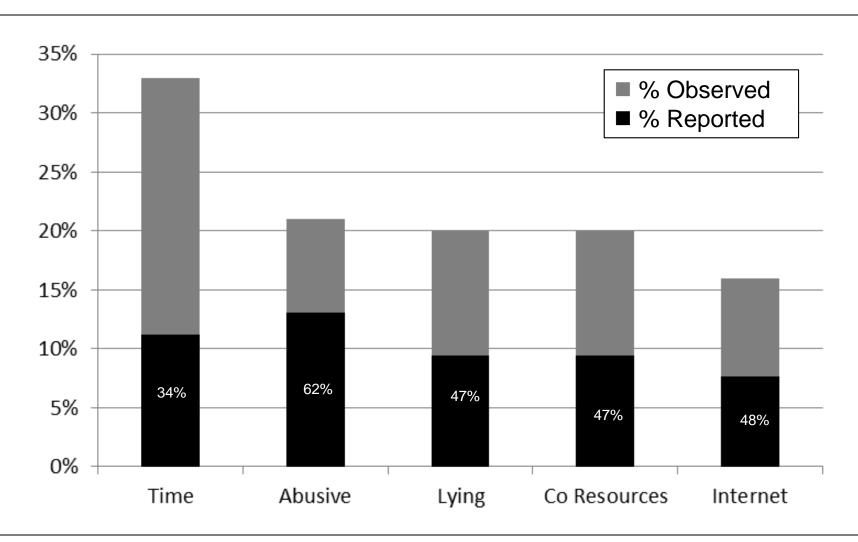
Employee Choosing to Report Misconduct





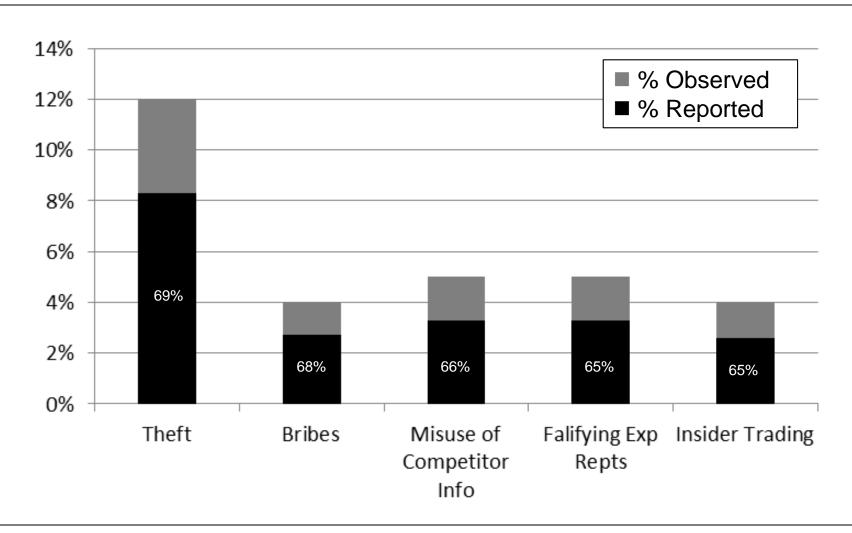
Most Frequent Types of Observed Misconduct





Most Frequently Reported Types of Misconduct

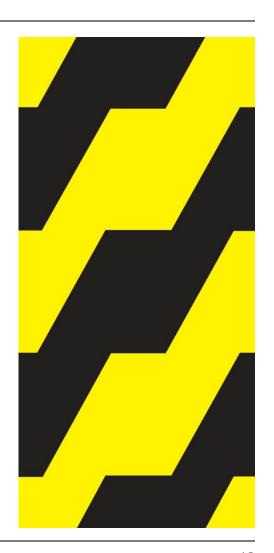




Areas of Misconduct on the Rise

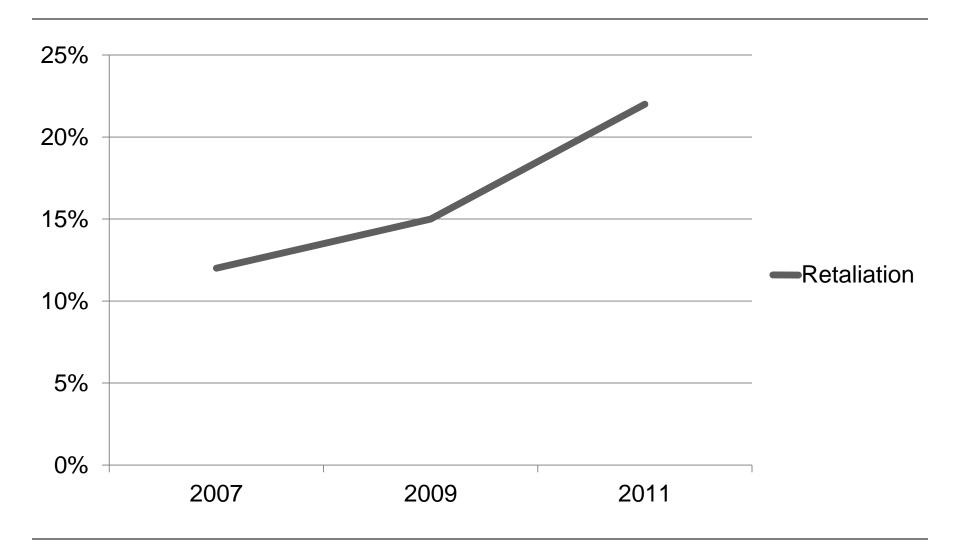


- Environmental violations
- Improper contracts
- Contract violations
- Health/safety violations
- Anti-competitive practices
- Sexual harassment



Retaliation on the Rise





Types of Retaliation

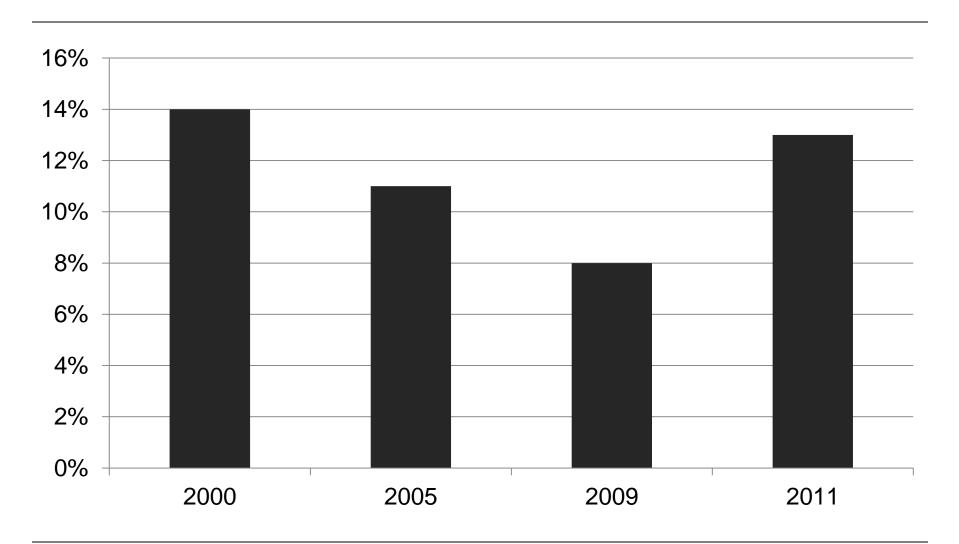


- Exclusion by supervisor
- Cold shoulder by co-workers
- Verbal abuse
- Job loss



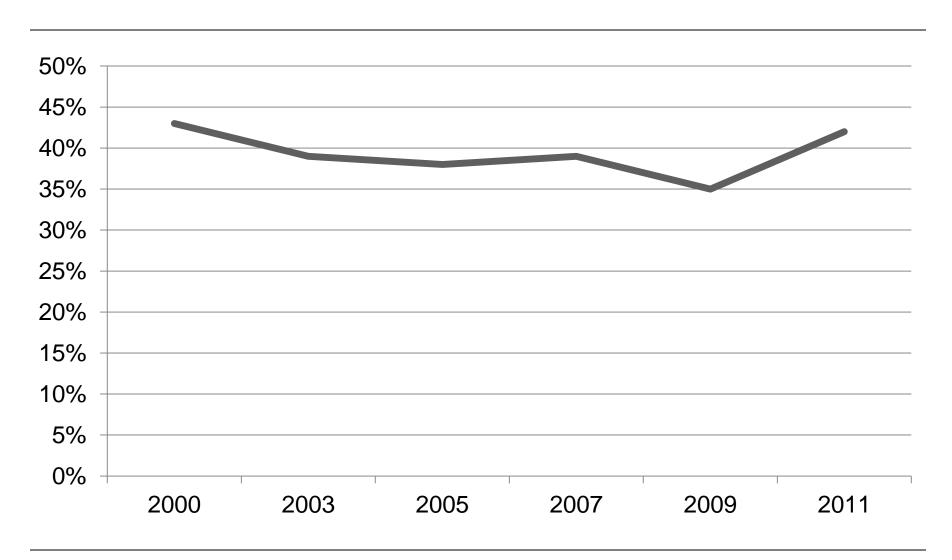
Pressure to Compromise





Weak or Weak-Leaning Culture





Firm Culture



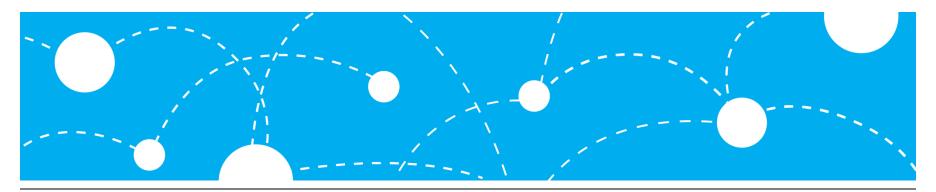
- Ethics culture declined in 2011
- Tone at the top
- Supervisor reinforcement
- Peer commitment
- Leads to misconduct
- Weakens ability of staff to respond



Active Social Networkers: Demographics



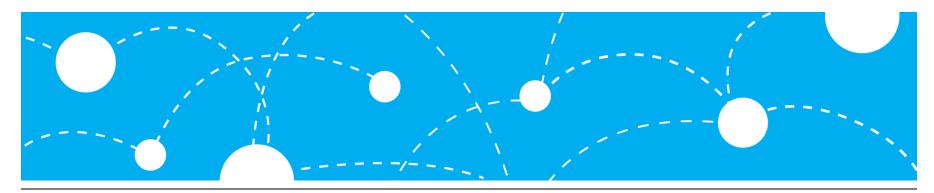
- 11% of those who engage in social networking are "active"
- Spend 30% of the workday on social networking activities
- Predominantly male
- 18 to 44 years old
- Managers
- At the company 3-5 years



Active Social Networkers: Highlighting Differences in Workplace Ethics



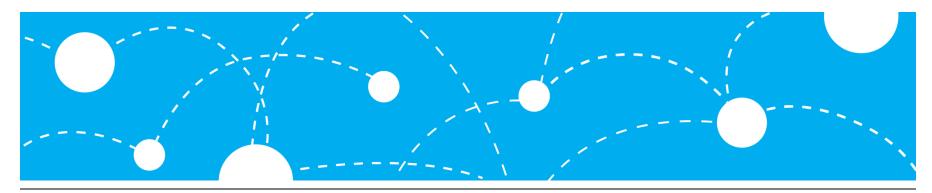
- Under more pressure to compromise standards
- More likely to observe misconduct—and more likely to report it
- Experience higher levels of retaliation for reporting misconduct
- Somewhat more likely to make positive comments than negative ones
- Express greater tolerance of questionable behaviors



Active Social Networkers: Tolerate Questionable Behaviors



- Blog or tweet negatively about company or colleagues
 42% vs. 6%
- Do less work to compensate for cuts in benefits or pay
 51% vs.10%
- Keep a copy of confidential work for your next job 50% vs. 15%
- Take a copy of work software home for personal computer usage
 46% vs.7%



Generational Differences: Younger Workers



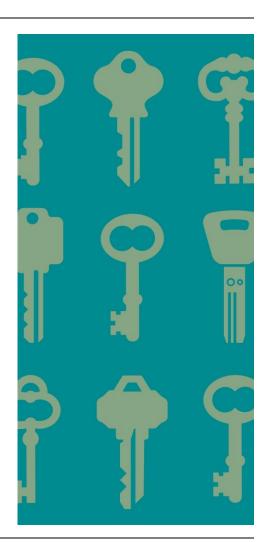
- Millennials feel more pressure to break the rules
- Like social networkers, more open to questionable behavior
- More likely to let the ends justify the means
- More likely to observe misconduct in all but one area
- Rise in reporting rates brings them in line with older colleagues
- With increased reporting there is often an increase in retaliation



Summary of Key Measures



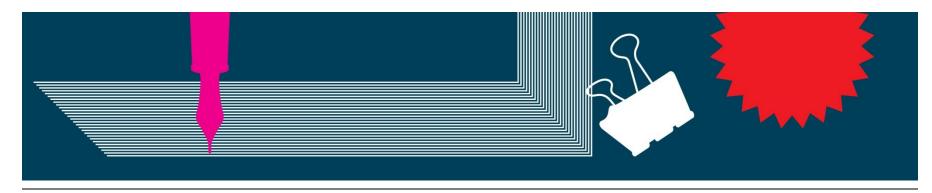
- Observed misconduct is down
- Reporting of misconduct is up
- Pressure to compromise is up
- Retaliation for those that report is up
- Weakened cultures are increasing
- Social networkers are impacting ethical behavior



A Call to Action

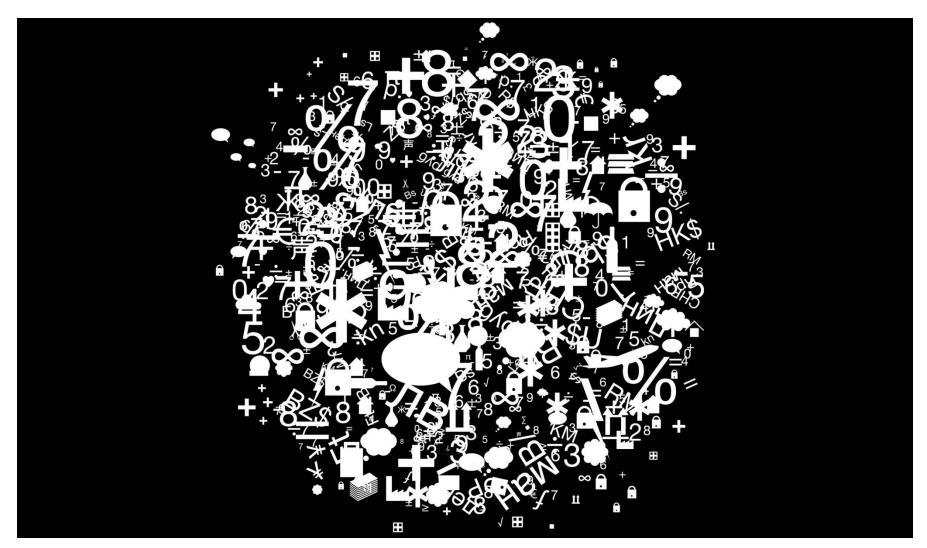


- Does your firm have a well-implemented ethics program?
- How does your culture support ethical behavior?
- Are your leaders "setting the example"?
- Certain areas of misconduct on the rise—are you prepared to respond to it?
- What about your clients? Subconsultants?



Ethical Canons for Design Professionals





Ethical Canons for Design Professionals



- Promote public safety, health and welfare
- Be competent in professional services
- Use objectivity/truthfulness in public statements
- Act as trusted advisor to clients/employer
- Refrain from improper/deceptive/fraudulent acts
- Support environment/sustainability (AIA)
- Foster professional development of self & staff (ASCE)
- Enhance the reputation/usefulness of the profession (NPSE)

Discipline Selection

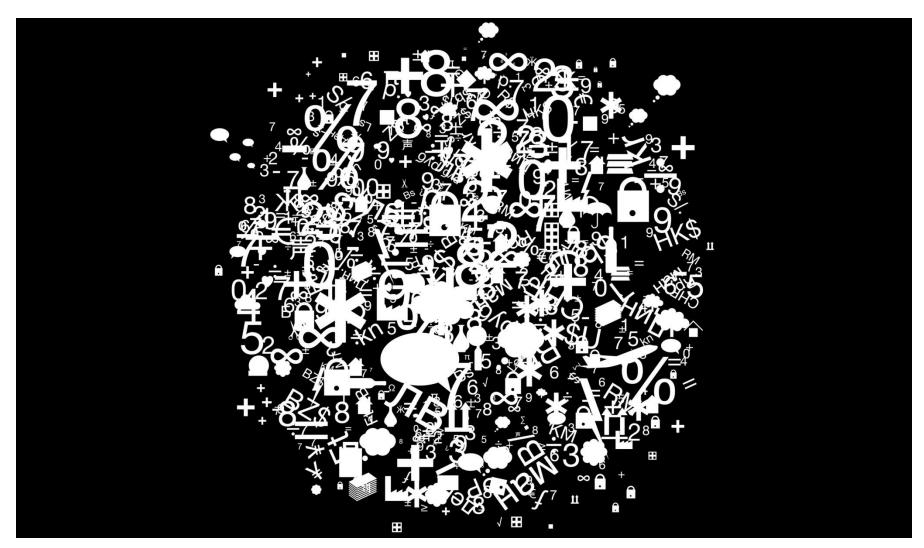


Architects

Engineers

Case Examples from the AIA's National Ethics Council (NEC)





About the AIA's NEC



The NEC may impose four penalties

- a) Admonition
- b) Censure
- Suspension of Membership for a specific period of time
- d) Termination of membership

In all cases, except those where the penalty is admonition, when an accused member has been found in violation of the Code of Ethics by final action of the NEC, the Executive Committee or the Board, a notice of discipline is published in a periodical publication of the Institute which is distributed to AIA members.

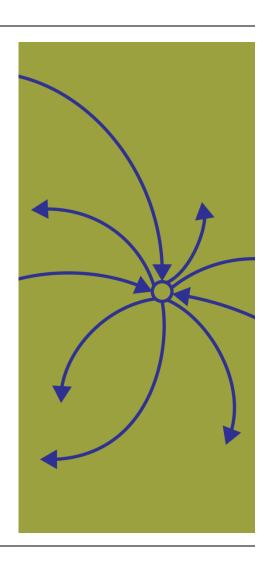


CASE #1 - 88-14

Interpretation of Zoning / Misleading the Client



- Architect engaged to design an addition to a SFH
- Created schematic with owner's approval for survey
- Surveyor advised architect that the setback lines were not correctly drawn but could not cite zoning code
- Architect consulted with other architects and owner's attorney; still no clear answer
- Architect contacted township, attempted meeting, wrote letter asking for clarification, which went unanswered
- Discussed situation with client and prepared full drawings
- Submitted plan with permit application
- Application denied due to failure to conform with setback requirements
- Owner sued for fees after delays—and won



CASE #1 - 88-14

Questions Before the NEC



- Was the architect incompetent?
- Did the architect fail to take into account zoning regulations?
- Did the architect recklessly mislead the client?
- Should the architect be penalized?



CASE #1 – 88-14 Applicable Rules



Code of Ethics and Professional Conduct	Rule
Cannon I, General Obligations Rule 1.101	In practicing architecture, members shall demonstrate a consistent pattern of reasonable care and competence, and shall apply the technical knowledge and skill which is ordinarily applied by architects of good standing practicing in the same locality.
Cannon III, Obligations to the Client Rule 3.101	In performing professional services, members shall take into account applicable laws and regulations. Members may rely on the advice of other qualified persons as to the intent and meaning of such regulations.
Rule 3.301	Members shall not intentionally or recklessly mislead existing or prospective clients about the results that can be achieved through the use of the members' services, nor shall the members state that they can achieve results by means that violate applicable law or this Code.

CASE #1 – 88-14 Applicable Rules – Decisions



Code of Ethics and Professional Conduct	Decision
Cannon I, General Obligations Rule 1.101 MAJORITY VOTE: NOT VIOLATED	Rule focuses on maintaining a "consistent pattern of reasonable care and competence." The member should not have prepared working drawings without a clear answer to the zoning question, but it was an isolated departure from the standard of care.
Cannon III, Obligations to the Client Rule 3.101	In performing professional services, members shall take into account applicable laws and regulations. Members may rely on the advice of other qualified persons as to the intent and meaning of such regulations.
Rule 3.301	Members shall not intentionally or recklessly mislead existing or prospective clients about the results that can be achieved through the use of the members' services, nor shall the members state that they can achieve results by means that violate applicable law or this Code.

CASE #1 – 88-14 Applicable Rules – Decisions



Code of Ethics and Professional Conduct	Decision
Cannon I, General Obligations Rule 1.101 MAJORITY VOTE: NOT VIOLATED	Rule focuses on maintaining a "consistent pattern of reasonable care and competence." The member should not have prepared working drawings without a clear answer to the zoning question, but it was an isolated departure from the standard of care.
Cannon III, Obligations to the Client Rule 3.101 EVENLY DIVIDED	The issue turns on whether the conduct was reckless or only negligent. It was wrong to prepare full working drawings for the permit application, when the zoning setback restrictions had not been ascertained. The member did not purposely or intentionally mislead the client.
Rule 3.301 EVENLY DIVIDED	The dividing point is whether the member acted recklessly. A finding of recklessness is explicitly required under Rule 3.301.

CASE #1

NEC Decision 88-14



- Member did not act with reasonable care, but he had a long record of competent service to clients
- All agreed that it was wrong to proceed to working drawings when the setback was not ascertained: negligent not reckless
- Dismissed on an even vote



CASE #4 – 96-15

Admitted Violation of Licensing Law



- Architect engaged to design a residence
- Owner/architect relationship broke down during design
- Architect terminates relationship after delivering CDs to contractor chosen by owner
- Project completed at greater cost and difficulty than owner anticipated
- Owner filed complaint with state licensing board for malpractice
- Licensing board found the architect prepared incomplete and deficient plans
- While the architect believed the charge was untrue, consented to a finding of a violation



CASE #4 – 96-15

Questions Before the NEC



- Did the Architect fail to take into account applicable laws and regulations?
- Did the Architect violate the Code of Ethics?
- Should the Architect be sanctioned?



CASE #4 – 96-15 Applicable Rule



Code of Ethics and Professional Conduct	Rule
Cannon III, Obligations to the Client Rule 3.101	In performing professional services, Members shall take into account applicable laws and regulations. Members may rely on the advice of other qualified persons as to the intent and meaning of such regulations.

CASE #4 – 96-15 Applicable Rule – Decision



Code of Ethics and Professional Conduct	Decision
Cannon III, Obligations to the Client Rule 3.101 VIOLATED	While the Architect faced a difficult choice when presented with a settlement offer from the licensing board, she voluntarily chose to admit to the charges to terminate the proceeding. There is no evidence that the Architect was deceived or misunderstood the content of the Consent Order, which states facts that establish a violation of the Code of Ethics.

CASE #4

NEC Decision 96-15



- By consenting to a finding of violation and accepting discipline imposed by the state licensing board, the Architect also violated the Code of Ethics
- Imposed the penalty of admonition



Workshop Navigation

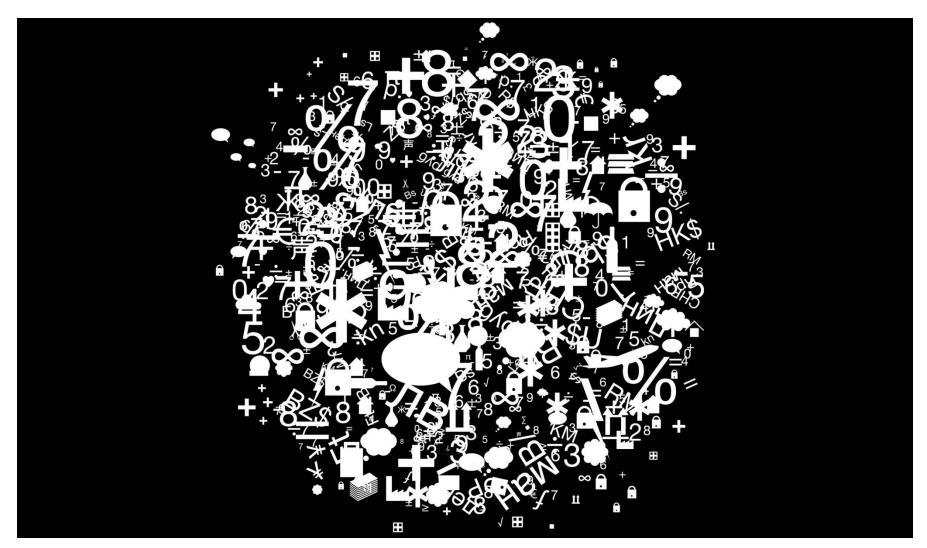


Continue to Last Section

Go to Engineers Cases

Case Examples from the NSPE's Board of Ethical Review (BER)

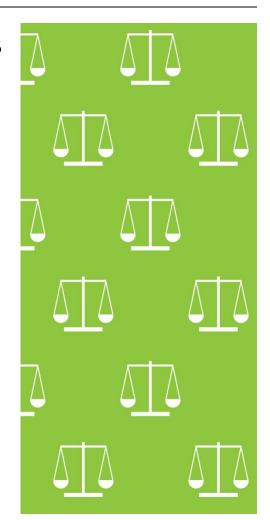




About the NSPE's BER



- Panel of engineering ethics experts that has served as the profession's guide through ethical dilemmas
- Seven licensed members who are appointed by the NSPE president
- The purpose of the BER is to render impartial opinions pertaining to the interpretation of the NSPE Code of Ethics, develop materials and conduct studies relating to ethics of the engineering profession

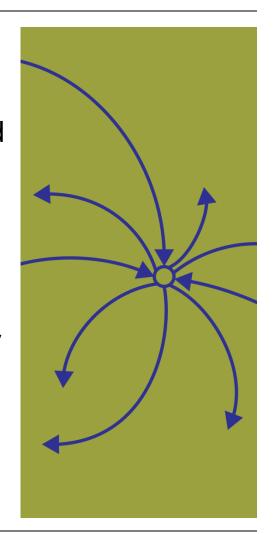


CASE #1 – 11-3

Engineer's Noncompliance with Licensure



- U.S. engineer reviewed plans prepared and sealed by Canadian engineer
- Plan met requirements, <u>but</u> not signed or sealed by engineer licensed in the state
- Engineer learned Canadian firm not registered in said state and had been working in the state for several years without registration
- The Canadian firm's engineers were all properly licensed in their province
- U.S. engineer advised state engineering board of the Canadian firm's unlicensed practice
- Ethics complaint filed by Canadian engineer



CASE #1 – 11-3

Question Before the BER



 Was it ethical for the U.S. engineer to advise the state licensing board in writing of the unlicensed practice by the Canadian firm?



CASE #1 – 11-3 Applicable Rules



NSPE Code of Ethics	Rule
Section I.6.	Engineers in the fulfillment of their professional duties shall conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.
Section II.1.e.	Engineers shall not aid or abet the unlawful practice of engineering by a person or firm.
Section II.1.f.	Engineers having knowledge of any alleged violation of this Code shall report thereon to appropriate professional bodies and, when relevant, also to public authorities, and cooperate with the proper authorities in furnishing such information or assistance as may be required.
Section III.7.	Engineers shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other engineers. Engineers who believe others are guilty of unethical or illegal practice shall present such information to the proper authority for action.

CASE #1 – 11-3

Applicable Rules – Decisions



NSPE Code of Ethics	Decision
Section I.6.	The U.S. engineer had an ethical obligation to take action in connection with the Canadian firm's apparent violation of the state engineering licensure requirements.
Section II.1.e.	Under the circumstances, the U.S. engineer should have
Section II.1.f.	first advised the Canadian firm of the action he planned to take and provide an explanation for taking the action (e.g., his obligation to report under the state engineering licensing law or the Code of Ethics) and also encourage the firm to self-report.
Section III.7.	

CASE #1

BER Decision 11-3



- U.S. engineer had an ethical obligation to take action
- Should have considered advising the Canadian firm
- Allow for self-reporting and correction

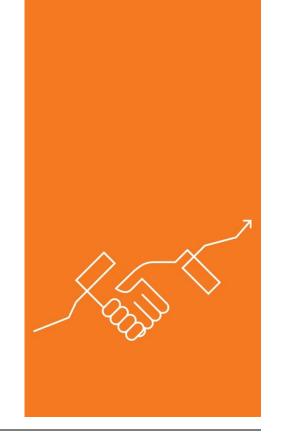


CASE #2 – 07-7

Employment Arrangements Between Firms



- Engineering firm buys a division of another firm
- The owner of the firm selling the division asks the buyer not to hire any staff from selling firm in the future as part of the deal
- The owner of the firm buying the division agrees to the provision in the sales contract



CASE #2 - 07-7

Questions Before the BER



- Was it ethical for the seller to include this prohibition in the sales agreement?
- Was it ethical for the buyer to agree not to hire employees of the seller in the future?



CASE #2 – 07-7 Applicable Rules



NSPE Code of Ethics	Rule
Section I.6.	Engineers in the fulfillment of their professional duties shall conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.
Section III.3.b.	Consistent with the foregoing, engineers may advertise for recruitment of personnel.
Section III.7.	Engineers shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other engineers. Engineers who believe others are guilty of unethical or illegal practice shall present such information to the proper authority for action.

CASE #2 – 07-7



Applicable Rules – Decisions

NSPE Code of Ethics	Decision
Section I.6.	The BER reviewed the facts of the case, the Code, and previous similar cases and referred to NSPE Professional Policy 19, "Employment Practices – Freedom of Employment" in reaching its decision.
Section III.3.b.	The terms of the agreement between the engineering firms were designed to limit the prospects of engineers employed at the selling firm (FGH). The subject contract provision is clearly questionable since it seeks to
Section III.7.	advance the interests of FGH at the expense of the prospects of its employees. It is reasonable to assume that in initially hiring employees, at least a part of FGH's recruitment approach involved express or implicit appeals to prospective employees regarding opportunities to grow and gain experience for future opportunities elsewhere. This contract provision flies in the face of such an appeal.

CASE #2

BER Decision 07-7

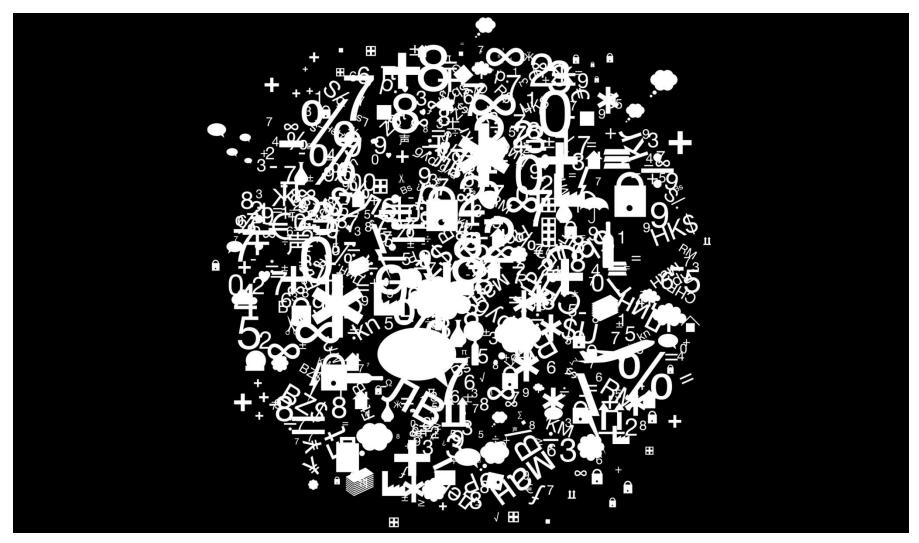


- It was unethical for the selling firm (FGH) to include in its agreement a provision whereby the buyer (IJK) agree not to hire any of the employees of FGH in the indefinite future
- It was unethical for IJK to agree not to hire any of the employees of FGH in the indefinite future.



Setting and Promoting Ethical Standards





Key Elements to Reduce Ethics Risks in Your Firm



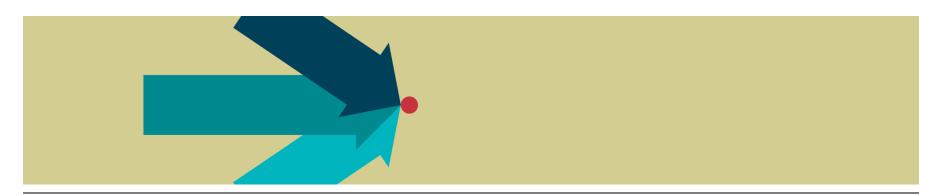
- A formal, well-implemented ethics program that incorporates your profession's Code of Ethics
- Training on Code and company standards
- A mechanism for seeking ethics-related advice
- A clear provision for reporting misconduct
- Making ethical conduct part of the employee performance process
- Disciplining those who violate the standards



Tying It All Together



- This is not easy
- Trends are signaling potential challenges
- Make ethics a staple on your training agenda
- Leverage your association resources





Questions?

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