

Orbit City: We Have a Problem

2016-2017 Ethics Cases of the Year



The American Planning Association's
Professional Institute



**American Institute
of Certified Planners**

Making Great Communities Happen

By: Ethics Committee
American Institute of Certified Planners



American Planning Association
Making Great Communities Happen

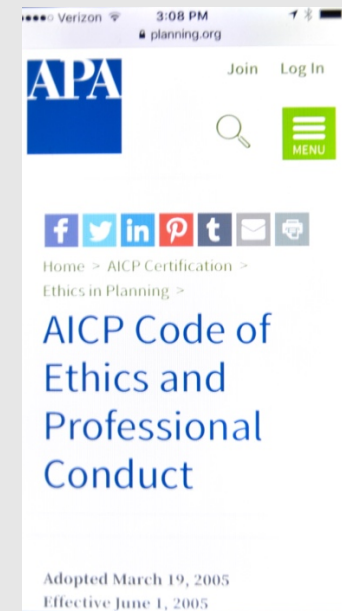
Advice on Conduct

- This “Case of the Year” has been created by AICP’s Ethics Committee in order to provide general education materials regarding the *AICP Code of Ethics and Professional Conduct*.
- Although scenarios, sample problems, and question-and-answer sessions are an important part of identifying various code provisions, please note that only the Ethics Committee is authorized to give a “formal advisory opinion” on the propriety of a planner’s proposed conduct (Ethics Code, Section C.3).
- Please direct any queries or suggestions regarding this “Case of the Year” to AICP’s Ethics Officer, at ethics@planning.org.

Ethical Principles and Rules

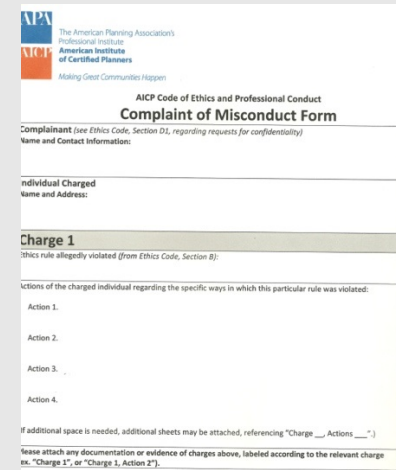
(Please turn "on" your cell phones: www.planning.org/ethics)

- **"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"**
(Ethics web site—for non-professional planners)



Dealing with Ethical Issues

- **Seek Informal Advice from Ethics Officer**
Non-binding 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”



The image shows a sample form titled "AICP Code of Ethics and Professional Conduct Complaint of Misconduct Form". The form is from the American Planning Association's Professional Institute, American Institute of Certified Planners. It includes sections for the complainant, the individual charged, and a section for charges with actions. The form is a standard complaint form for ethical misconduct.

AICP Code of Ethics and Professional Conduct
Complaint of Misconduct Form

Complainant (see Ethics Code, Section D1, regarding requests for confidentiality)
Name and Contact Information:

Individual Charged
Name and Address:

Charge 1
(This rule allegedly violated (from Ethics Code, Section B):

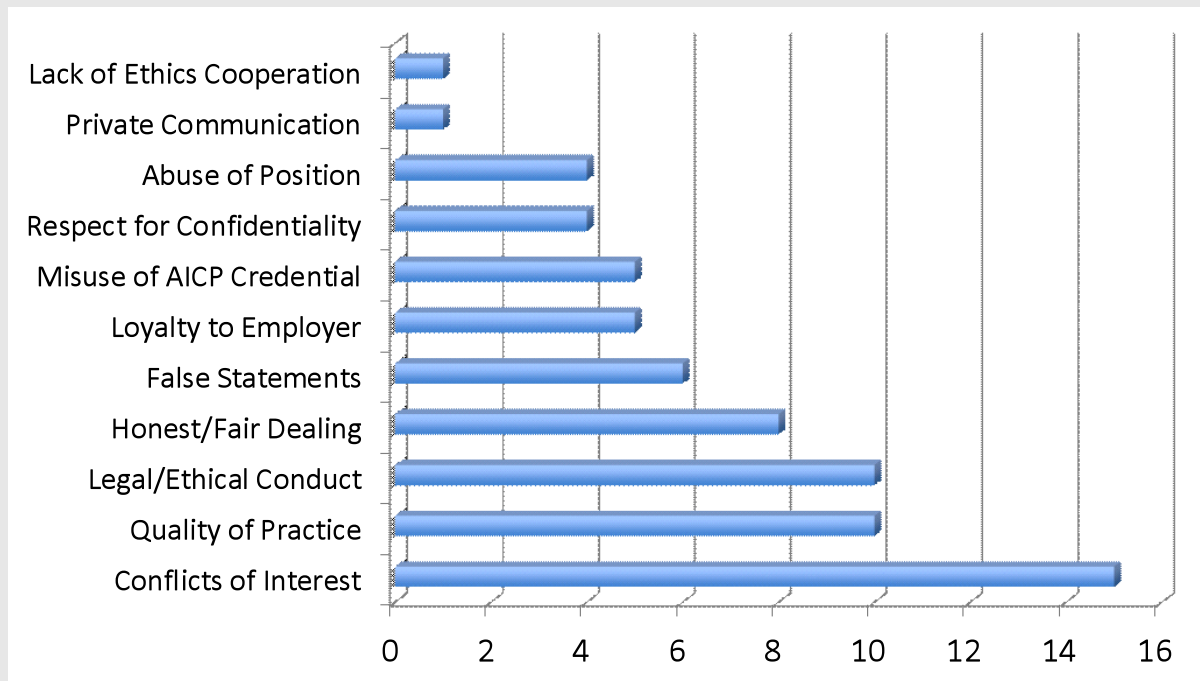
Actions of the charged individual regarding the specific ways in which this particular rule was violated:

Action 1:
Action 2:
Action 3:
Action 4:

If additional space is needed, additional sheets may be attached, referencing "Charge __, Action __."

Please attach any documentation or evidence of charges above, labeled according to the relevant charge as: "Charge 1," or "Charge 1, Action 1."

Ethics Cases and Inquiries



These are True Stories

The events depicted took place in various communities in the United States in 2015-2016.

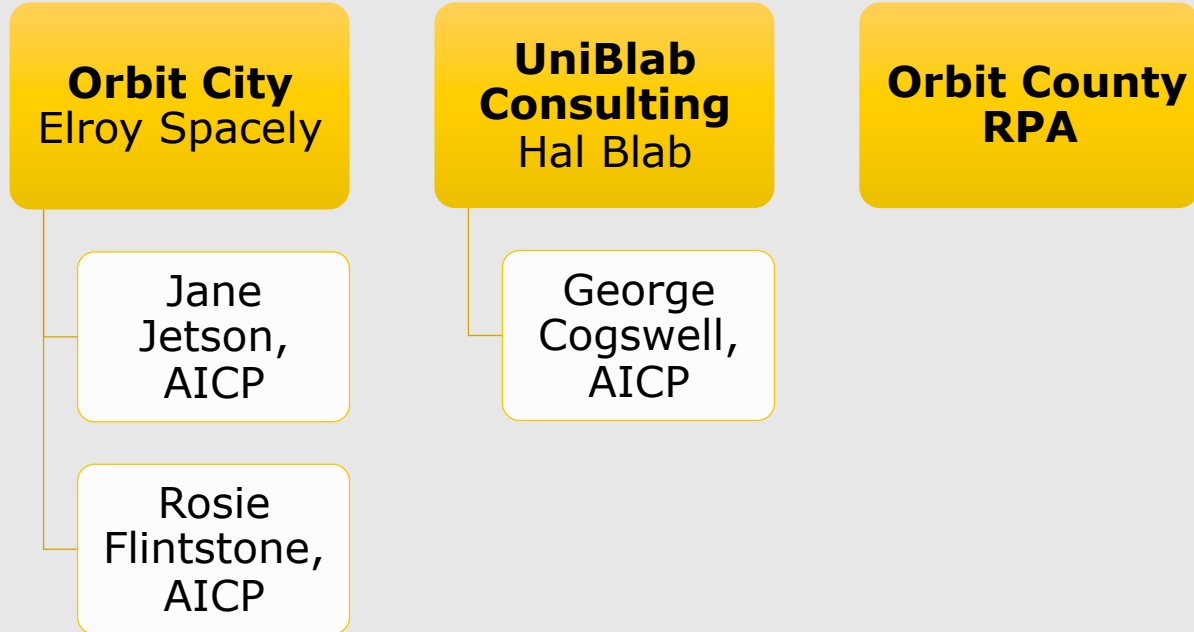
At the request of the survivors, the names have been changed.

Out of respect for those charged, the rest has been told exactly as it occurred.

(Our apologies to the movie, " Fargo", for this preamble.)



Cast of Characters



Meet Jane Jetson, AICP

Jane is the chief planner with Orbit City, where she has worked for a decade.

She works on current and long-range planning and zoning for the city, where she manages a division staff of six planners and zoning code enforcement staff.



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Meet Elroy Spacely

(Jane's supervisor)

Elroy is an architect and city planner.
He is the community development director
who oversees Jane's division.

Mr. Spacely reports directly to the City Manager.

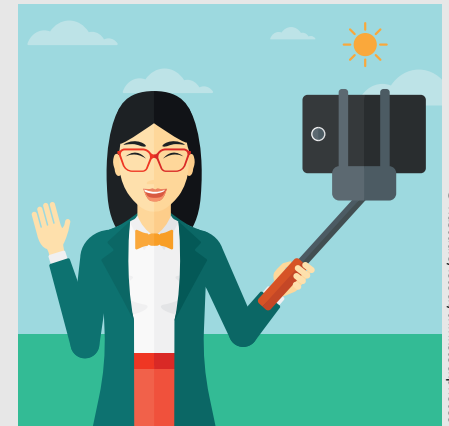


Meet Rosie Flintstone, AICP

(One of Jane's staff planners)

Rosie is on the staff of the Orbit City planning and zoning division. She reports to Jane Jetson.

She is a fairly recent AICP member, having graduated from planning school just a few years ago.



Meet Hal Blab, AICP, AIA

(A private planning consultant)

Hal used to be in a private development practice with Mr. Spacely, before going to work with Orbit City as a planner and project manager.

However, due to recent layoffs, Hal lost his city job. He has since started a new private planning firm: UniBlab Consulting.



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Meet George Cogswell, AICP

(A planner at UniBlab Consulting)

George is a longtime public planning director, who recently retired from another city in Orbit County.

He has been hired by UniBlab, primarily to provide public planning services for small communities that don't have their own staff planners.



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Meet Betty Rubble, AICP

(A regional public planner)

Betty is the chief planner with the Orbit County regional planning association, which serves as the area's Council of Governments (COG) and Municipal Planning Organization (MPO).



Scenario 1

Accurate Information

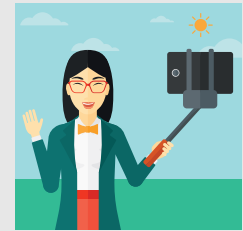
- Rosie is responsible for reviewing site plan submittals. Because Orbit City has numerous lakes within its boundaries, there are growing concerns about stormwater runoff.
- Consequently, one of the items on the site plan application is a question: “Does your project result in any new stormwater runoff or paved surfaces?”



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Scenario 1 (cont'd.)

- Rosie tells Jane (her supervisor) that, based on her review of the site plans, some applicants are incorrectly checking the box, “no new stormwater runoff or paved surfaces,” on their applications.
- Jane approaches her boss, Mr. Spacely, about the matter. He tells Jane to not question the applicants, but to simply accept the applications as they are submitted.



Rosie, AICP



Jane, AICP



Mr. Spacely

Scenario 1

Questions

Q: What are the ethical implications for Rosie?



Scenario 1

Ethical Issues

- Providing inaccurate information—when you know something is wrong

Principle #1g: “We shall....endeavor to conserve and preserve the integrity and heritage of the natural and built environment.”

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

Principle #2b: “We shall accept the decisions of our client or employer....[unless] plainly inconsistent with our primary obligation to the public interest.”

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

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Scenario 1

Questions

Q: What are the ethical implications for Jane?



Scenario 1: Ethical Issues (cont'd.)

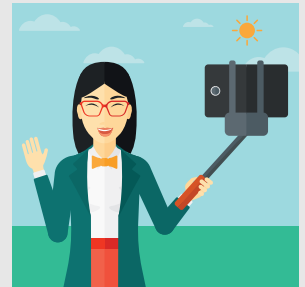
- Jane directs Rosie to ignore evidence

Principle #1g: "We shall....endeavor to conserve and preserve the integrity and heritage of the natural and built environment."

Principle #2b: "We shall accept the decisions of our client or employer.... [unless] plainly inconsistent with our primary obligation to the public interest."

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

Rule #18: "We shall not direct or coerce other professionals to make analyses or reach findings not supported by available evidence."



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Scenario 1

Questions

Q: What are the ethical implications for Mr. Spacely, who is not an AICP member?



Scenario 1: Ethical Issues (cont'd.)

- As a non-professional involved in the planning process Mr. Spacely also has “ethical principles”

Ethical Principles for Planning:

#6: “Strive to protect the integrity of the natural environment”

#11: “Not misrepresent facts or distort information.”



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Scenario 1

Question

Q: Rosie, after failing to convince her supervisors there's a problem, tells a reporter that lake pollution may be increasing due to unregulated stormwater runoff? What are the ethical implications of her actions?



Scenario 1

Ethical Issues

- Disclosure of confidential information

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 #7: "We shall not use to our personal advantage...information gained in a professional relationship...that we should recognize as confidential because its disclosure could result in embarrassment or other detriment to the client or employer... except when (1) required by process of law, or (2) required to prevent a clear violation of law, or (3) required 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."

Scenario 2

AICP Credential

- Orbit City's Plan Commission reports are sent out on the first Friday of the month. However, Mr. Spacely often leaves on Thursday nights for a long weekend at his vacation home.
- Consequently, Mr. Spacely has asked Jane to sign the report's cover memo on his behalf. The first time Jane signs for him, she notes that he has listed "AICP" after his name.



Scenario 2 (cont'd.)

- Although Mr. Spacely passed the AICP exam more than a decade ago, Jane is pretty sure that—due to budget cutbacks for memberships—Mr. Spacely allowed his APA membership to lapse several years ago.
- Jane decides, prior to inserting Mr. Spacely's auto-signature on the report, to remove "AICP" after his name.
- When Mr. Spacely returns and sees the missing AICP credential, he is furious. He tells Jane that, because he passed the exam, he IS still an AICP member and, once the budget improves, he will renew his APA/AICP membership. In the meantime, she should continue to use "AICP" after his name.



Scenario 2

Questions

Q: What are the ethical implications for Jane—and for Mr. Spacely?



Jane, AICP



Mr. Spacely

Scenario 2

Ethical Issues

- Jane may be committing a wrongful act by putting “AICP” after Spacely’s name (if she knows he is not a member)

Rule #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 2: Ethical Issues (cont'd.)

- Dealing with Mr. Spacely's continued misuse of "AICP"
- Jane could give him information on how to be reinstated into AICP.
- If he declines—and continues to use the AICP credential—she could contact the AICP's Ethics Officer, who would send Mr. Spacely a "cease-and-desist" letter, after confirming that he is not a dues-paying AICP member.
- In order to reinstate a lapsed AICP membership, an individual is required to pay all back dues and fulfill all missing continuing education credits. However, after four years of a lapsed membership, an individual must reapply and retake the AICP certification exam (unless granted an appeal).

Scenario 3

Outside Employment

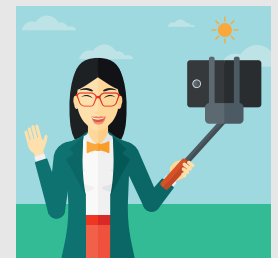
- Jane, who also has an architecture degree, has been doing a few small residential design projects on weekends for private clients, usually in neighboring communities.
- When she first began working for Orbit City, she asked for—and received—written approval from her original boss for her outside (non-planning related) design work.



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Scenario 3 (cont'd.)

- Occasionally, one of Jane's outside design projects is in Orbit City, where building permits are handled by a separate department from the one Jane works in.
- One of her current outside design projects—which is within Orbit City—involves a large mixed-use development project, SkyPad Apartments, which will require a zoning review through Jane's division due to its size.
- To avoid any conflicts of interest, Jane assigns her staff planner, Rosie, to review the project, while telling Rosie of her role in the project. Jane also decides to not participate in any meetings with the developer on the SkyPad project.



Scenario 3

Questions

Q: What are the ethical implications for Jane?



Scenario 3

Ethical Issues

- Jane should obtain a new approval letter from Mr. Spacely

Rule #4: "We shall not...undertake other employment in planning or a related profession...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."

Scenario 3

Ethical Issues

- Jane probably should not do projects in the community where she works

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."

Rule #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 #13: "We shall not sell, or offer to sell, services by stating or implying an ability to influence decisions by improper means."

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Scenario 3: Ethical Issues (cont'd.)

- Jane's assignment of the project to Rosie—whom she supervises—does not avoid appearance of a conflict of interest

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."

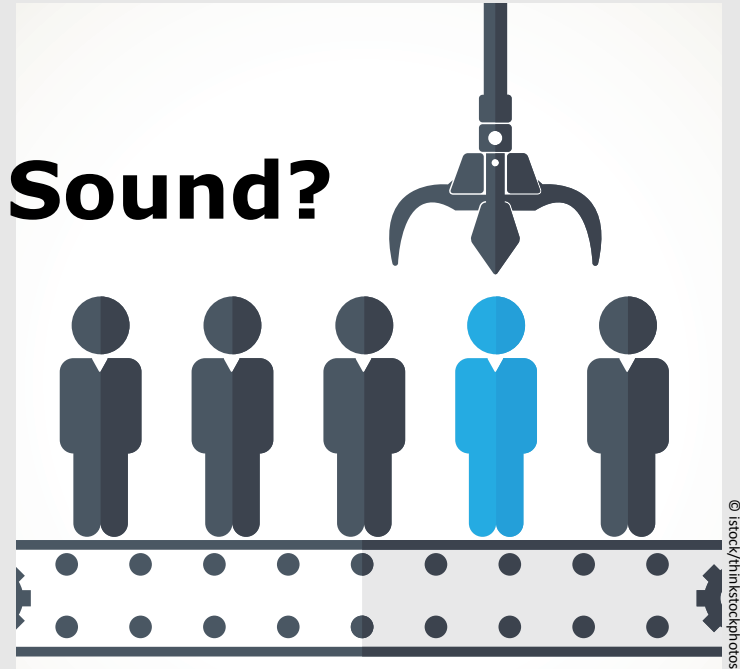
Rule #19: "We shall not fail to disclose the interests of client or employer when participating in the planning process. Nor shall we participate in an effort to conceal the true interests of our client or employer."

Rule #25: "We shall neither deliberately, nor with reckless indifference, commit any wrongful act...that reflects adversely on our professional fitness."

Scenario 4

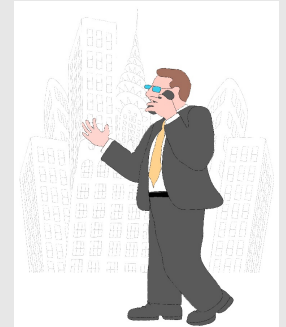
What's That Knocking Sound?

- Rosie, a staff planner at Orbit City, has reviewed several projects that UniBlab Consulting has submitted on behalf of its various clients.
- Hal Blab, the principal at UniBlab, has been impressed by Rosie's technical and presentation skills.
- Following a meeting, he asks Rosie whether she might be interested in applying for a job opening at UniBlab.



Scenario 4 (cont'd.)

- Rosie, who would like to work in the private sector, tells Blab she is interested in the job. But she doesn't want to inform her boss, Jane, until she learns whether she is going to be scheduled for an interview.
- Meanwhile, in order to not bring attention to the matter, she continues to review submittals from UniBlab's clients, feeling she can avoid potential conflicts prior to learning whether she has the job.



Hal Blab, AICP, AIA



Rosie, AICP

Scenario 4

Question

Q: What are Rosie's ethical obligations?



Scenario 4

Ethical Issues

- Avoiding a conflict of interest with a potential employer

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."

Rule #19: "We shall not fail to disclose the interests of our client or employer when participating in the planning process."

- Avoiding future conflicts if she gets the job at UniBlab?

Rule #3: "Shall not accept an assignment...to publicly advocate on a planning issue [adverse] to a position we advocated for a previous employer within past three years."

A Piece of the Action

- UniBlab has been hired by the town of Bedrock to help review development proposals. George Cogswell is UniBlab's lead planner.
- Following a Plan Commission meeting, a developer who knows George from his days as a public planner asks him: "How's life in the private sector?"



Scenario 5 (cont'd.)

- George hands the developer his business card and says that UniBlab would love to work for them as their planning consultant on other projects.
- In addition, George says he would welcome the opportunity to buy a partnership interest in one of the developer's future projects.



George, AICP

Scenario 5

Question

Q: Are George's actions ethically appropriate?



Scenario 5

Ethical Issues

- Loyalty to his employers (UniBlab *and* Bedrock)

Rule #4: "We shall not...undertake other employment....without having made full written disclosure to the employer."

- Role as a consultant and development interests

Rule #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."

- Assumed *quid pro quo* with the developer

Rule #13: "We shall not sell, or offer to sell, services by stating or implying an ability to influence decisions by improper means."

Scenario 6

Gifts and Favors

- After a major project has been approved, the development team expresses its appreciation by dropping off gift bags for City Council members, the City Manager, and two staff members (Jane and Rosie, both AICP). Each gift bag contains a \$50 bottle of wine and two \$25 gift cards.
- The City Manager and the City Council view the gift bags as a positive action by the developer, following a difficult public planning process.



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Scenario 6

Question

Q: What are Jane and Rosie's ethical obligations as AICP members?



Scenario 6

Ethical Issues

- Jane and Rosie should decline the gift; the issue is the potential for a perception of inappropriate favors – not necessarily the gift's monetary amount.

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

Rule #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."

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Scenario 6

Question

Q: Do the City Manager and members of the City Council have any ethical obligations?

Scenario 6

Ethical Issues

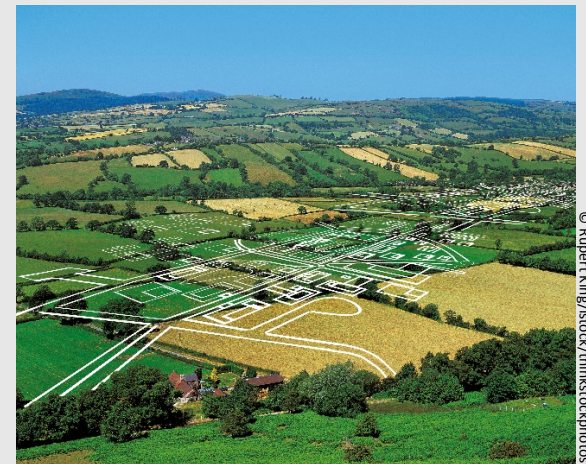
- Check what local and state ethics laws say about gifts.
- The City Manager and Council members also are participants in the “planning process.”

Ethical Principles in Planning (#5): “Seek no gifts or favors...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.”

Scenario 7

Factual Planning Analysis

- Mr. Spacely asks the director of the Regional Planning Agency to reclassify an isolated portion of Orbit City as an “urban growth area.” This classification would allow the city to qualify for federal grants for infrastructure improvements.
- The RPA’s director, an APA (but not AICP) member, asks his senior planner, Betty Rubble, AICP, to extend the growth boundaries to include this area.



Scenario 7 (cont'd.)

- Betty tells her boss the area does not qualify—either now or, based on current growth projections, anytime in the foreseeable future.
- The RPA's director orders Betty to re-classify the area anyway.



Betty, AICP

Scenario 7

Questions

Q: What are Betty's ethical obligations?



Scenario 7

Ethical Issues

- Betty should tell her boss this could be a potential ethical violation on her part

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

Rule #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."

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Scenario 7

Questions

Q: Does Betty's boss have any ethical obligations as an APA—but not an AICP—member?

Scenario 7: Ethical Issues (cont'd.)

- Although not an AICP member, Betty's boss *is* a planner and member of APA

Ethical Principles of Planning #7: "Treat fairly the professional views of colleagues."

Ethical Principles of Planning #11: "Not misrepresent facts or distort information for the purpose of achieving a desired outcome."

Rule #18: "We shall not direct or coerce other professionals to make analyses or reach findings not supported by available evidence."

Scenario 8

Private Communication

- UniBlab Consulting has a client who is proposing a mixed-use project, “Viva Orbit City,” for a long-underutilized site.
- Project partners begin contacting City staff directly, rather than using their consulting firm, UniBlab, in order to save on costs and “speed up the process.”



Scenario 8 (cont'd.)

- Jane's staff fields numerous phone calls from project partners, who are pressuring to get the application before the Planning Commission—prior to full staff review.
- The developer also has submitted visuals of the project to the media—before providing some of them to staff—in order to gain more public support.
- Several elected officials, after being contacted by the developer and seeing the media stories, are upset the application is not being fast-tracked.

Scenario 8

Questions

Q: Does Jane have any specific ethical responsibilities?

Q: Do the elected officials or plan commission members have any ethical responsibilities?



Scenario 8

Ethical Issues

- Private communications

Rules #8 and "9: "We shall not, as public officials or employees, engage in private communications with planning process participants (or decision makers)...if prohibited by law or by agency rules, procedures, or customs."

- The project is still under review

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

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Scenario 8: Ethical Issues (cont'd.)

- Public officials are also part of the planning process

Ethical Principles in Planning: "Planning process must continuously pursue and faithfully serve the public interest."

Final Note

- For informal advice regarding ethical conduct, contact AICP's Ethics Officer, Jim Peters, FAICP, at 312-786-6360.
- For more information, visit www.planning.org/ethics.

AICP Ethics Committee

Denise M. Harris, AICP, Chair

Graham S. Billingsley, FAICP

Stephen C. Butler, FAICP

Philip T. Farrington, AICP

Kimberly C. Porter, AICP



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