

RUTGERS

Edward J. Bloustein School  
of Planning and Public Policy

# AICP Review Course: Ethics for New Jersey Planners

Stuart Meck, FAICP/PP  
Associate Research Professor

*New Jersey Chapter American Planning  
Association*

*New Brunswick, NJ*

*March 12, 2011*

# Order of Presentation

- Five (or less) painless minutes of planning theory
- Why should planners talk about ethics?
- The AICP Code of Ethics and Professional Conduct
- Other ethics codes that affect New Jersey planners
  - New Jersey ethics statute
  - Municipal Land Use Law
  - Rules of Board of Professional Planners
- Discussion of scenarios
- Audience questions and discussion

# What is planning theory?

“[W]hat planners need when they get stuck; another way to formulate a problem, a way to anticipate outcomes, a way of paying attention that provides direction, strategy and coherence”

--John Forester

# Types of theories

- Positive (or empirical or descriptive)
- Normative

# Positive theories

- Attempt to explain the relationship between two or more variables in order to generate predictions about phenomena not yet observed
- Once hypotheses have been tested, theories may be verified, refuted, or modified
- Basis of scientific investigation

# Normative theories

- Prescribe the relationships between the variables in question in order to produce results that are deemed desirable

# Comparison

- Positive theories—*how* things operate
- Normative theories—how they *should operate*
  - Ethics codes are normative theories

# What professionals have ethics codes?

- Attorneys
- Engineers
- Architects
- Landscape Architects
- Social Workers
- Accountants
- City Managers

# Why should planners talk about ethics?

- Planning involves decisions on public resources and planners interact with the public sector
- Citizens expect integrity in those decisions
- Planners operate with the consent of society

# Why should planners talk about ethics?

- Planning involves decisions about who will benefit and who will be harmed
- Ethics calls on planners to evaluate alternatives and consequences before making those decisions
- Ethical situations are rarely cut and dry--talking about them identifies nuances
- Written ethics codes and the consequences for violating them offer protection to planners and others (in theory)
- AICP requires that we do

# The AICP Code

- Aspirational principles
- Rules of conduct
- Procedures

# Aspirational principles

- Responsibility to:
  - the public
  - clients and employers
  - profession and colleagues

# Aspirational principles--examples

- Primary obligation to the public interest

*Question: What is the public interest and how do you determine it?*

- Special attention to the interrelatedness of decisions
- Seek social justice
- Exercise independent judgment

## Aspirational principles--examples

- Protect and enhance the integrity of our profession
- Systematically and critically analyze ethical issues in the practice of planning

Question: Are "aspirational principles" binding?  
Should they be?  
Which ones are really important?

# Rules of conduct

- Contains 26 separate rules
- Failing to adhere to rules could result in sanctions

## Rules of conduct--examples

1. We shall not deliberately or with reckless indifference fail to provide adequate, timely, clear and accurate information on planning issues.
6. 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.

## Rules of conduct--examples

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

Questions: How do you determine what is "reckless"?  
How do you determine what a "custom" is?

# Rules of conduct--examples

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

Question: What might be some examples of this?

## Rules of conduct--examples

18. We shall not direct or coerce other professionals to make analyses or reach findings not supported by available evidence.
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.
26. 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.

# Procedures

- Informal advice
- Formal advice
- Published Formal Advisory Rulings
- Filing a Charge of Misconduct
- Investigation
- Hearing
- Settlement
- Annual report

## Some questions on procedure

- Will AICP support, with legal representation, a planner who follows the Ethics Code but is disciplined by his or her employer as a consequence?
- If an AICP planner knows another AICP planner has violated the Code of Ethics, is the planner obligated to report the violation?

## Some questions on procedure

- How many formal advisory ethics opinions has AICP published under the current Code?
- Can a chapter professional development officer provide an opinion on ethical conduct?

# Local Government Ethics Statute

- NJSA 40A:9-22.1 et. seq.
  - Conflicts of Interest
  - Using office for personal benefit
- Criminal
  - Bribes
  - Gifts
  - Favors

## Ethics Statute--Conflicts

- No local government officer or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest.

# Ethics Statute—Unwarranted Privileges

- No local government officer shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others.

## Ethics Statute--Objectivity

- No local government officer shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

Question: Is this stronger/weaker than AICP Ethics Code Rules of Conduct?

# Ethics Statute—Independent Judgment

- No local government officer shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties.

## MLUL—Conflict of interest

- “No member of a planning board shall be permitted to act on any matter in which he has, either directly or indirectly, any personal or financial interest.” MLUL § 23b
- Same for ZBA. MLUL § 69
- Similar conflict language in Ethics Statute

# N.J. Professional Planner Rules

## *N.J.A.C. 13:41-2.1 Enumeration of prohibited acts*

- Fraudulent advertising
- Charging for work not done
- Kickbacks
- Accepting payment from more than one interested party for the same work, unless agreed to by clients
- Conflict of interest

## N.J. Professional Planner Rules

- Disregarding the safety, health and welfare of the public in the performance of the licensee's professional duties, such as preparing or signing and sealing documents which are not in conformity with accepted standards. . .

Question: Can you think of any examples of this?  
Is this stronger than the AICP Ethics Code?

# Ethics Scenarios

- Identify the applicable rule(s) of conduct in the Ethics Code
- Identify additional information you would need, if necessary
- Identify and evaluate alternative courses of action
- Select the best alternative

## Ethics scenario—No. 1

A staff planner, who is an AICP member, prepares a confidential report on the siting of a new stadium, recommending against the only proposed site. Her supervisor, the planning director, also an AICP member, tells the municipal legislative body in a public hearing, “the planning staff supports the location of the stadium at the proposed site.”

## Ethics scenario—No. 2

A professional planner in New Jersey, an AICP member, has prepared a redevelopment plan for a township. In order to identify an “area in need of redevelopment,” the planner conducts a “windshield survey” of the area, but does not conduct inspections of the property. On the basis of the windshield survey, the planner concludes that the area can be designated for redevelopment, and eminent domain can be used where necessary to eliminate blight.

## Ethics scenario—No. 3

A professional planner provides staff support for a municipal governing body and manages a revolving loan fund for business. A recipient of monies from the revolving loan fund, who is rehabilitating a historic residence as a bed and breakfast, offers a used plaster ceiling molding to the planner that is being removed from the building. The ornament would otherwise be disposed of. The planner collects architectural artifacts as a hobby.

## Ethics scenario—No. 4

A planning consultant has been hired to prepare a city's comprehensive plan. The state enabling legislation mandates several elements, including a housing element that requires the identification of the need for affordable housing and suitable sites for such housing. The legislation establishes a deadline for the adoption of the plan, which is two years away. The planning director tells the consulting planner that she is to prepare all mandatory plan elements except the housing element.

## Ethics scenario—No. 5

You are a planning director in a rural county in Pennsylvania. A large national corporation wants to expand an existing landfill, which serves your county and accepts interstate waste from New Jersey. The citizens are outraged. The landfill is a permissible use under the current plan and existing zoning regulations. The county manager directs you to stop the project, at least for the next six months, until the next election is over.

## Ethics scenario—No. 6

You are a young graduate of the Rutgers urban planning program and you are looking for a job. The job market is tight. You interview with a well-known and well-connected planning director of a big city, who holds an FAICP. The interview is going well. However, near the interview's end, the planning director says, "What church or temple do you belong to? You don't have to answer that, but I just like to know the religion of my staff. I have a very diverse staff."

## Ethics scenario—No. 7

A professional planner in New Jersey who is an AICP member is asked to make a recommendation to the zoning board on whether or not to grant a (d) or “use” variance for a landscape architect to operate a business out of her home. The business would employ one or two other landscape architects. The planner is a colleague, but not a close friend, of the landscape architect.

## Ethics scenario—No. 8

An AICP member, with anger management problems, has a tempestuous marriage and frequently throws dishes at her husband during arguments, who refuses to hit back. One night she cracks him over the head with a wine bottle, and he starts to bleed. The police are called to quell the domestic disturbance and the woman is cited on a misdemeanor charge.

## Ethics scenario—No. 9

While working for a municipality an AICP member develops a innovative land development code called “Performance Urbanism” that combines performance zoning and New Urbanist principles. The municipality adopts the new code. The planner presents the code at professional conferences and, on the basis of this, is asked to provide private consulting services to other communities in adapting the new code while he is still employed at the municipality. The consulting services would be provided on his own time.

## Personal reflection and anecdotes

- What is the most difficult ethical decision you have faced as a planner and how did you approach it?

Thank you for listening

Stuart Meck, email:  
[stumeck@rci.rutgers.edu](mailto:stumeck@rci.rutgers.edu)