



# TOOLKIT

## Ethics in Planning: A Toolkit for Conducting Ethics Sessions



American Planning Association

Making Great Communities Happen

## **Preface**

The American Planning Association (APA) prepared this toolkit to assist local chapters and members in conducting ethics training sessions in their own communities.

The following subject matter experts provided content and review:

**W. Paul Farmer, FAICP**; American Planning Association  
**Michael P. Davolio, AICP**; Triway Enterprises, Olympia, Washington  
**William M. Harris Sr., FAICP**; Massachusetts Institute of Technology (retired)

Should you have questions or concerns regarding ethics sessions, please contact:

**Monica Groh**

Manager of Professional Development and AICP  
American Planning Association  
1030 15th St., NW, Suite 750 West  
Washington, DC 20005  
Phone: 202-349-1027  
Fax: 202-872-0643  
mgroh@planning.org

**John C. Reinhardt**

Professional Development Program Associate  
American Planning Association  
1030 15th St., NW, Suite 750 West  
Washington, DC 20005  
Phone: 202-349-1017  
Fax: 202-872-0643  
jreinhardt@planning.org

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## 1.0 - Introduction

On April 29, 2008, more than 1,000 American Planning Association (APA) members attended a session entitled *Ethics in Planning* at the National Planning Conference in Las Vegas. During the session, a panel of three planning professionals and AICP Code of Ethics experts shared personal experiences, discussed scenarios and answered audience questions. In the weeks that followed, APA staff received numerous requests for information on how local chapters could conduct similar sessions at their meetings and conferences.

In response to the demand for ethics training and inquiries regarding the content and delivery of such training, APA professional development staff prepared this toolkit to assist local chapters and organizations. This toolkit focuses on planning ethics sessions that are eligible for AICP Certification Maintenance credits. Such sessions must go beyond an introduction of the code, its provisions, and its rationale. While an introductory session may prove useful for planners who are not yet certified (and often are included in sessions designed to prepare planners for the AICP Exam), they are not eligible for CM credit. Appendices include a transcript of *Ethics for Planners* - the ethics session from the 2008 national conference, and a copy of the AICP Code of Ethics and Professional Conduct.

APA professional development staff recognize that each chapter or organization is different; session organizers should use this toolkit as a reference to craft a training that best meets the size, goals and learning styles of their audience.

## 2.0 - Qualifying for Certification Maintenance (CM) Ethics Credit

Activities seeking CM ethics credit must focus on training planners on the standards of ethical behavior according to the AICP Code of Ethics and Professional Conduct. While general ethics courses, local ethics laws, and ethics codes from other professions can introduce relevant issues as well, the AICP Code focuses on a system of moral principles specific to professional planners. This may be accomplished using a variety of formats and techniques, including those presented in this toolkit.

As a rule of thumb, ethics sessions should elicit self reflection from participants and prompt them to consider how they might react to a situation or scenario. Ethics scenarios are rarely “cut and dry,” and the most effective ethics sessions challenge participants to view a situation from a variety of perspectives, taking into consideration several variables. Appendix A provides a transcript of the 2008 Ethics session, which shows how presenters continually modified the facts of a scenario in order to determine how the ethical considerations changed. Such a model has proven successful in the past.

The American Institute of Certified Planners Code of Ethics and Professional Conduct can be accessed at <http://www.planning.org/ethics/ethicscode.htm> and is included in this toolkit as Appendix B.

## 3.0 - Session Formats

*There are no hard rules governing the format of an ethics session. Several formats can be used, each with their own benefits and drawbacks. However, depending on the size and experience level of the audience, some formats may prove more successful. The following information can help you choose a format or combination of formats to best fit your needs.*

### 3.1 - Formats

#### Lecture:

A lecture is a prepared speech delivered before an audience for instruction on a specified topic. At least one presenter with subject matter expertise is required, but it is not uncommon for two or more lecturers to each present a topic during the course of a lecture session.

Lectures work well for large groups; by using sound or video equipment, one lecturer can address a very large audience. However, the format of lectures often limits audience participation – especially in large groups. As such, lectures can be appropriate for those with little knowledge of the subject matter to be presented at a certain level of expertise prior to attending the session.

While every lecturer develops their own presentation style and content, sharing anecdotes, discussing scenarios, and fielding a limited number of audience questions have proven successful lecture techniques.

#### Moderated Discussion:

A moderated discussion, sometimes called a panel discussion, is successful when focusing on a topic with several different viewpoints. A moderator, usually a subject matter expert, guides the discussion of a panel of experts. The panel may share personal experiences, discuss scenarios, respond to audience inquiries, or even debate a topic presented by the moderator.

This type of discussion allows the moderator to demonstrate the nuances important to ethical behavior. By posing a scenario, eliciting a response from panel members, then changing the facts slightly before posing the scenario again, the moderator can demonstrate that ethics scenarios are rarely black and white, and are often dependent on a wide number of variables.

Much like a lecture, moderated discussions work well for small or large audiences. However, the opportunity for audience interaction may be greater, especially if the moderator chooses to field audience questions.

#### Facilitated Breakout Sessions:

Facilitated breakout sessions allow for informal, intensive discussion among smaller groups of people who share ideas or have situations in common. The sessions are not formal presentations, and most often occur as part of a larger session or training.

Facilitated breakout sessions work well when the goal is extensive audience interaction. The members of the breakout group become participants rather than a passive audience – therefore, some experience with or knowledge of the subject is often beneficial. Within the group, participants can share experiences, debate their response to scenarios, brainstorm, or roleplay. Often, groups choose a spokesperson to report back to the larger group in a plenary session.

To receive CM ethics credit, each breakout group should be facilitated by a subject matter expert who is prepared to guide the group and speak authoritatively on the topic of ethics. Group size should remain relatively small, and therefore, facilitated breakout sessions may be difficult to conduct in very large groups.

**Plenary Sessions:**

In plenary sessions, audience members summarize information and findings from facilitated breakout sessions in front of the entire audience. As such, this format is more often held as part of a larger program.

The sessions function much like lectures. However, instead of subject matter experts addressing the audience, spokespersons chosen during breakout groups address the audience of their peers to share lessons learned during the breakout. There is more audience interaction than in a lecture, and the success of the session is contingent on a spokesperson who can speak authoritatively and hold the audience attention.

**3.2 - Choosing a Format**

When choosing a format for your ethics session, consider the following variables:

- How large of an audience do I expect?
- How many subject matter experts are available to lecture/facilitate?
- How familiar is the audience with the topic?
- How much audience interaction should be provided?
- What are the lecturer’s/facilitator’s strengths regarding content delivery?

The following chart provides information to help select the most appropriate format for your ethics session:

	Maximum Audience Size			Subject Matter Experts		Audience Expertise Required		Audience Interaction			Delivery Techniques			
	Small	Medium	Large	Few	Several	Basic	Beyond Basic	Minimal	Medium	Extensive	Anecdotes	Scenarios	Roleplay	Q & A
Lecture			■	■		■		■			■	■		■
Moderated Discussion			■		■	■			■		■	■		■
Facilitated Breakout Session	■				■		■			■	■	■		
Plenary Session		■		■			■		■		■			

Figure 1: Characteristics of Session Formats

## 4.0 - Sample Session Schedules

*Although session schedules may be modified to meet the needs of different providers, the following provides a reference when developing a schedule of session activities.*

### 4.1 - Schedule 1: *Ethics in Planning*, 2008 National Conference

The following outlines *Ethics in Planning*, a CM-credit-eligible ethics session presented at the 2008 National Planning Conference in Las Vegas. A full transcript of the session is found in Appendix A.

#### 1.0 Introduction (10 minutes)

- 1.1. Speaker introductions
- 1.2. Why talk about ethics?
- 1.3. Overview of the AICP Code of Ethics

#### 2.0 Scenarios and Situations (50 minutes)

- 2.1. Personal anecdotes
- 2.2. Scenario discussions, with varying fact situations

#### 3.0 Audience Questions - *submitted as written questions* (25 minutes)

- 3.1. Closing (5 minutes)

#### 4.0 Contact and follow-up information

### 4.2 - Schedule 2: Session with facilitated breakout groups

Local chapters may want to incorporate breakout and plenary sessions into their ethics program to increase audience interaction. The following outline incorporates these additional sessions.

#### 1.0 Introduction (10 minutes)

- 1.1. Speaker introductions
- 1.2. Why talk about ethics?
- 1.3. Overview of the AICP Code of Ethics

#### 2.0 Scenarios and Situations (10 minutes)

- 2.1. Personal anecdotes
- 2.2. Scenario discussions

#### 3.0 Facilitated Breakout Session (30 minutes)

- 3.1. Discuss prepared scenarios in small groups
- 3.2. Roleplay

#### 4.0 Plenary Session (20 minutes)

- 4.1. Spokespersons provide three lessons learned

#### 5.0 Audience Questions (15 minutes)

#### 6.0 Closing (5 minutes)

- 6.1. Contact and follow-up information

## 5.0 - Materials

*Ethics sessions may be executed with minimum technology and materials. However, some extra items that you may consider include:*

### **Computer Presentation Materials**

- PowerPoint Presentation Slides
- Projector
- Laptop
- Laser Pointer

### **Facilitated Breakout Session Materials**

- Easel Pads
- Markers
- Index Cards/Printouts with scenarios or roleplays

### **Logistics**

- Microphones/Sound Equipment
- Video equipment for recording/broadcasting the session
- Refreshments

### **Reference Materials**

- Copies of the AICP Code of Ethics and Professional Conduct
- Copies of relevant local/agency codes or standards
- Copies of Questions & Answers (*see page 15*)

## 6.0 Talking Points

*Although each constituency may have its own characteristics and areas of specific concern, certain talking points are applicable to all ethics training that is geared toward practicing planners.*

### Why talk about ethics?

- Most planners at some point in their career will either work in the public sector or come into close contact with the public sector. Citizens have a right to expect that their planners will help elevate governance, not fall to its more base level.
- AICP planners belong to the American Institute of Certified Planners, and must practice in accordance with standards of practice, including the AICP's Code of Ethics and Professional Conduct. The current code became effective June 1, 2005 but is a successor code to those that have been in place for professional planners since 1959. Planners have a long history and experience with respect to ethics.
- As planners, we are guided by both existing local, and sometimes state, ethics provisions. But frequently none exist, and we must exercise common sense, especially given what we may be guided by in our own aspirational principles.
- Ethics scenarios are rarely "cut and dry" and often contain a high level of nuance. Ethics sessions should help develop reasoning and reflection skills that can be applied in every day situations, as opposed to exclusively communicating a set of rules that must be memorized and adhered to.

### Overview of the AICP Code of Ethics

- The AICP Code of Ethics offer codes, rulings, and procedures to help certified planners (identified as members of the American Institute of Certified Planners) negotiate the ethical and moral dilemmas they sometimes face.
- A code sets standards. A code embodies values, and those values define both a profession and the behavior of those who embrace it.
- The first section of the code (Section A, see page B-1) includes "aspirational" values and ideals. AICP cannot enforce actions against a planner for violation of the aspirations of the Code, but it should not be ignored.
- The second section of the code (Section B, see page B-3) is a list of rules. AICP can and does take enforcement actions against planners who have violated these rules of conduct.
- The final section (Section C, see page B-5) 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.

### Addressing Ethics Concerns with AICP and APA

- All communications regarding specific situations should occur either in a letter or phone conversation with the APA Executive Director (currently Paul Farmer, FAICP) in his or her capacity as the ethics officer. Because of issues of reliability and confidentiality, e-mail communication is not to be used.
- AICP encourages PDOs to engage in conversations about the Code, but if there is an actual ethics issue that a planner wants to discuss, PDOs are not authorized to give guidance. In such situations, planners are encouraged to contact the APA Executive Director in his or her capacity as ethics officer.

## Sample Scenarios

*The following scenarios may be discussed during lectures, moderated discussions, or facilitated breakout sessions. The scenarios and their responses were adapted from Ethics for Planners, a session from the 2008 National Planning Conference in Las Vegas. The scenarios and their responses should be edited to reflect local characteristics or ethics laws.*

**1. You are a planner for a jurisdiction home to a popular college football team. The university offers several members of the planning staff hard to get tickets to a sold out game. Recognizing the conflict, your boss and colleagues decide to pay for their tickets outright, thus absolving the question of whether or not the tickets were a gift. Is there still an ethical conflict?**

As a planner, you are likely to get requests for transportation, security or development issues regarding the stadium or university. You do not want to be beholden or have the University think you should be beholden for something as simple as -- well, for anything, but certainly not for a ticket in a box seat.

Ideally, the planner would want to ethically keep things at arm's length or longer. In doing so, this is not so much the issue as who pays for the ticket or who reimburses for the ticket, but who is in an atmosphere or a context that may allow certain conversations to occur that would not be privy to those who may have other views on university issues.

**2. Two planners work together at a private developer for several years before both joining the planning department in a large city. After two years at the department, one of the planners returns to private sector development. How does this change the personal and professional relationship of the two planners? Does the scenario change if the planners are working in a city with a small, resource-strapped planning department?**

The recommended course of action often varies based on situational variables, such as the size of an office or department. It is important to reflect and consider how these circumstances influence the outcome.

If it is a larger department, there is usually more than one person who handles permits and applications. It would be best to explain to the friend that if they are going to keep the friendship, that they cannot expect to continue a business relationship as well. They would need to trust that they trained additional staff to effectively review plans.

In a small, resource-strapped planning department, it may be necessary to make arrangements with a neighboring jurisdiction or hire an outside consultant to perform reviews.

**3. You are a planner with responsibility for code enforcement. You own a home in a planned unit development (PUD) and notice that several of your neighbors have**

**erected fences that extend their backyard into the shared greenway – essentially privatizing public land. How would you handle this situation? Do conflicts arise between your roles as property owner, neighbor, and public servant?**

Planners must often negotiate several roles simultaneously – in this case, their role as property owner, neighbor, and public servant. It often helps to clearly identify ethical obligations of each role, as well as personal interests of each. This practice of reflection helps separate competing interests that a planner may experience, and assist them in making ethical decisions.

In a similar situation, a planner handled the situation as such: They went to the city manager and explained the violations, disclosing that they owned property. The planner discussed the facts of the situation and questioned whether the city manager wanted the planner to handle the case, or have it reassigned. After the city manager confirmed that we would like the planner to take enforcement action per the job description, the two confirmed this in writing. Enforcement actions would clearly convey no benefit to the planner.

The planner then called the property owners in with their attorneys and talked about the violations. In that meeting, they disclosed that they were a property owner in that same planned unit development, and were paying fees to the same condo association. And so the situation was handled through clear and open communication and disclosure.

**5. You are a public sector planner working with a consulting firm in your community on a redevelopment plan. After several weeks, based on the quality of your work, the head of the firm offers you a position within the firm. Are there ethical considerations that would prevent you from accepting this position?**

Responses to this scenario will vary based on the assumptions that are made. On the assumption that the planner will not be working in both positions, the discussion comes back to disclosure. It is important for the planner to talk to the current employer and let them know their intentions and ensure them that they will not work on their plan.

If the planner chooses to continue with their public sector work, but privately consult on the project on the side, there may be ethical considerations to consider.

If the planner chooses to accept the position, effective immediately, another set of concerns is raised. The Code of Ethics says that the planner's primary focus is to serve the public interest. If a planner is resigning in the middle of a major project to take the other position, they need to ensure that it will be a transition that will not adversely affect the community.

**6. A developer asks you, as a public sector planner, to help him select the team of lawyers and architects that you would recommend, since you are familiar with who is good in your community. How do you respond? If you decide that giving advice on a team is not ethical, are there other ways you can assist?**

You simply cannot do it. You certainly would not want to get into such a specific recommendation. There are some communities that maintain lists of consultants that they

have worked with in the past. It may be acceptable to simply hand a copy of that list to the developer. It is also acceptable to discuss multiple consultants that are familiar with the community and its plan, regulations, and opportunities.

**7. You are working for a consulting firm that completes a master plan for a new community airport. After the master plan is completed, the community releases an RFP for engineering services based on recommendations from the plan. Do you foresee any conflicts?**

This is often the lifeblood of many consulting firms. There are many planning and engineering firms that perform these services for communities. However, as a planner, you must be careful to ensure that you do not write the master plan to include recommendations that are so narrowly defined that your firm is particularly well suited for the work.

Such a project requires the planner to continually reflect on their motives behind the recommendation. Are they in the public interest, or simply to garner more work?

## Sample Questions and Answers

*The questions in this section were posed by audience members at the Ethics in Planning session. Due to the limited time schedule, not all questions were addressed by the panel of experts. Following the session, the experts took the time to respond to each question. Answers appear below.*

*This material can be used by presenters to prepare themselves for the type of questions they may receive from participants; the questions may be adapted into scenarios for facilitated breakout sessions; or the questions and answers can be photocopied and distributed to participants.*

**1. What is the most common ethical issue for planners? Discuss the “my boss told me to do it” scenario and techniques/responses planners should know in dealing with these situations. Sometimes situations might be complex and resignation is not always the best option – especially considering the job market.**

There are many common ethical issues confronting professional planners. However, the most immediate may be conflict of interest. “Following orders” is not an acceptable rationalization if the orders violate the Code of Professional Ethics. When one feels orders are at difference with the standards of our Code, the first step is to advise the supervisor of the conflict and discuss the consequences of such an action. In a non-threatening manner, discuss alternatives and resources available at APA/AICP, with both the supervisor and other professionals.

**2. I work in an organization in which the Director of Planning and several other directors and assistant directors of departments are over 70. Like judges, should planning directors be held to a retirement age of 70? In my opinion, this raises the ethical issue of putting the greater planning community before one’s personal need to remain in power. Should Planning Directors who have held positions for 40-50 years be told they should retire so that new blood can move into these positions? Is it selfish to hold on to power with white knuckles and not groom the next generation?**

There does not appear an ethical violation of our Code. We should not discriminate upon age (nor race, class, gender, etc.) What appears to be needed is a formal mentoring program that will ensure professional growth and transfer of leadership. It may prove productive to present a mentoring program (objectives, activities, schedule, and evaluation) to the group and advocate for its implementation.

**3. Through the course of your duties you form a friendship with a local landowner who periodically calls with questions about planning and zoning. He invites you to eat lunch and he buys—is this okay?**

You have not suggested that an actual application over which you have some control is pending. If that were the case, the answer would be “no.” It is always best to keep such

relationships at arms-length. Take great care to not permit public or private perception of favored action. If you meet, each should pay for the meal ordered. Equally, care must be taken to not discuss matters that are better suited for office/agency conversations.

**4. How about “limits” on buying lunch? Can the planner let the developer buy lunch if it is less than a certain amount?**

The simplest and safest answer is “no.” The issue is not the amount; it is the potential for perceived inappropriate favors. It is important to note, however, that there is not a “no lunch” rule. Planners must use judgment to determine when there will be a perceived or real conflict of interest.

**5. I am a planning consultant for community “x”. I want to invest in rental properties in community “x”. Am I prohibited by the AICP Code from doing this?**

As a consultant, you are guided by the Code to give a full effort for your contract with community ‘x’. Ethically, you should declare your role as a consultant, your intent to invest in the community, and potential consequences of your action to invest. In sum, be open and honest.

**6. There was a rush of invitations for me join organizations outside of work such as the Kiwanis Club, Toastmasters, Chamber of Commerce, etc. upon being promoted to planning manager. Is there a balance of work and leisure clubs that does not violate the code of ethics? Isn’t the power of these social networks also important to our work as planners?**

Participation in these community service organizations is an excellent opportunity to enhance the place in which you live and work. The appropriate step is to clearly, and repeatedly articulate, a separation of work and community service. Do not engage in business-related activities, including “private” business-related discussions. Make every effort to ensure above board openness in your community service activities.

**7. In our small city (66,000), the holiday season always results in candy, cookies, cheese and crackers, etc. being given to the planning and building staff. We accept these and share with all staff. They are never accepted by individuals. To reject them would be awkward as we are trying to heal past wounds with the community from bad planning and decision practices. From an ethical perspective, is this OK? I have always been somewhat concerned about this practice.**

The practice of sharing the goodies with the entire staff is appropriate. Equally, it should be made clear to the kind community people that “gifts” to individuals are *not* acceptable; however, the goodies are welcomed as a holiday event and will not impact decisions of the staff. Unreasonably lavish gift, even when shared among staff, would be inappropriate.

**8. The mayor owns a skybox at the hockey arena from his prior career in the private sector. He invites you and your wife to a game. Accept or not? The stadium is partially financed by the city. You are the city planning director appointed by the mayor.**

Enjoy the game. Make it clear to the mayor that your professional Code is sensitive to any perception of favoritism as a result of this type of social setting. It may also be helpful to encourage the mayor to invite other staff (planners and non-planners) so that the perceptual reality of favoritism could be minimized.

**9. A planner in private practice also sits on City Board of Zoning Adjustment. The principal in her firm has case before BZA. Does she have to recuse herself?**

Yes, since the planner serves the principal in her firm, it would not be possible for her to sit in judgment over a project of her firm.

**10. The State Land Commissioner provides funds from the sale of State land as compensation for master planning services. The funds that the planner receives are substantial—as a sort of “write down” to provide an incentive for development—not commensurate to professional services. Is this an improper gift? Does it violate responsibilities to the public?**

If the funds were given to an individual, there appears to be an ethical violation. However, if the funds were provided to the planning department to enhance efforts to expand development, then the support appears to be acceptable. In addition, the funds perhaps should not be used as salary enhancements. Support for research, equipment and supplies, and public education would be advised.

**11. What can a planning commissioner do if they suspect that their planning director is requiring their staff to make decisions in violation of AICP ethics?**

The first step is to communicate the concern with the director. Possibly have a local official discuss the concerns with the director. If this were to fail, contact the AICP Ethics Officer for advice. Filing a formal complaint is always advisable.

**12. What do you (as a planner) do with a planning commissioner who wants to politicize her position on a board?**

Avoid any engagement that may indicate favoritism on your part. It is not your concern about the commissioner's individual efforts to secure power or influence. If attempts are made to involve you in the power play, discuss your limitations conditioned by the Code to avoid such actions. Inform your director or local official; also, perhaps involve other planners.

**13. What do you do if there needs to be an immediate decision that is contrary to the Code? There is no time to call anyone—the boss needs it in 30 seconds.**

Do *not* violate the Code. Take the heat of being late. Expediency is *not* an acceptable rationale for unethical behavior.

**14. An AICP planner feels he/she has been “ordered to follow orders” and do something that violates the AICP Code of ethics. The planner calls AICP for advice – the determination that “following the orders” is an AICP violation. The AICP planner informs his/her supervisor and refuses to do as ordered. Because of the refusal, the AICP planner is fired. Will AICP provide legal support to get the AICP planner the job back, get a settlement, or find a comparable position with a new employer?**

No. If an ethical violation were found against the firing agency or director, then the planner may have grounds for private legal redress.

**15. How does *B. Our Rules of Conduct, 5* apply to private sector planners? (i.e., “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.”)**

There are several possible examples. A planner must not receive favorable mortgage terms not available to the typical customer if a bank is expanding with several locations requiring approval from the planner’s agency, for example; a planner could not have a country club initiation fee waived should its board include developers, architects, and attorneys with business interests requiring approvals of the planner’s employer.

**16. Has AICP considered providing legal representation for an AICP planner in a situation involving disciplinary action by an employer where the planner was directed to make a decision/recommendation that would violate the Code?**

No. Legal representation is not provided by APA/AICP for its members.

**17. I am a County Planning Director who has been asked to sit on an interview team for a new City Community Development Director. I was asked and consented to serve, months before, as a reference for a Senior Planner at the city who applied for the job. I disclosed this at the first meeting to review the applications with the City Manager and City Human Resources Director. They felt there was not a conflict. I still feel that there is a conflict. Please advise.**

Having already provided a reference, you might have asked the Senior Planner if they were still a candidate when you were asked to be on the interview team. If they were still a candidate, appearance of a conflict is there. Basic fairness suggests you should decline to be on the team.

**18. Is it unethical, as a regulatory planner, to socialize with your paid consultants as peers? They may buy drinks or dinner, but I will also sometime buy. Is the perception bad? On a related topic, what if a planner is at a conference with several of the consultants that he/she works with and is invited to go to dinner? One of the consultants picks up the tab. Another pays for cabs. A third picks up drinks after dinner. Is there any conflict?**

If possible, each should pay for their share of the cost. Sometimes, it may be impractical – try to keep track of whose turn it may be the next chance you get. Be aware of both circumstances and perceptions. If you are actively interviewing consultants for contract, avoid the situations you have referred to at least until all decisions have been finalized. Following other best practices could also assist in creating fair treatment. For example, you might consider answering consultants' question about an RFP you have issues by establishing a requirement that all questions be submitted in writing by a specific date, and distribute all of the questions and answers to all consultants who responded to the RFP.

**19. As a member of a professional committee, I am invited to tour a private sector facility, all expenses paid, during a conference. The intent is to expose professionals to the industry. No particular projects or activities are involved or anticipated. Is acceptance ethical? (Actual examples: tour of a pipeline facility with meals provided. A short, light rail tour for a day, complete with a box lunch. A tour of a labor union run navigation facility, with transportation and meals provided—this was a training simulator for ship navigation personnel.)**

Always check with state/local ethics laws and guidelines. In some states, you could probably not accept the tours/meals without you or your agency proving the estimated value. The AICP code would not prevent acceptance of work-related tours or day trips of nominal value as you have described.

**20. Economic developers meetings often occur with developers at conferences or off business hours. In such a case, it is appropriate to allow the developer to pay for a meal or meeting?**

Be careful about the nature of the meeting, its location, participants and discussions. Contact among attendees at a conference would typically not present a problem while a golf outing would present a problem for the planner.

**21. Related to the gift issue: many of us work with people who become friends. Someone changes jobs. Taken at face value, is it true that you can/should no longer can/should accept the wedding gift, baby shower gift, dinner invite, etc.?**

Exchanges of the type described occur frequently among friends. But a wedding gift of unusual value would raise concerns. A dinner invitation the week before a critical decision of your agency over which you have influence should be politely declined and perhaps rescheduled. Friends should understand that all parties should not put someone in untenable positions.

**22. Should a planner attend the annual Christmas party hosted by a local engineering firm for the community—city officials, customers, and people they work with will all be in attendance.**

Parties of this type typically have a rather broad invitation list and no one is attempting to hide their attendance. Usually, there would not be a problem. However, if the firm is competing, for example, for a large contract, and you are on the interview team, skip the party this year.

**23. As a private consultant and an AICP planner, is it unethical for me to invite a potential client (a public sector AICP planner) to dinner to discuss potential contracts/future work?**

It is not unethical to discuss contracts generally, your firm's interests, or your capabilities. If you are actively backing a specific contract, it would not be appropriate.

**24. The retired Director of city planning for a large municipality is offered consulting position with a planning firm. Their first job is to craft a response to an RFP on a project from her old office. Is there a conflict?**

Did the retired director have anything to do with the preparation of the RFP? Will the project require action by a body such as the Planning Commission that the planner served? Did the private firm hire the planning director due to their "inside track" on RFP's such as this one? What was the period of separation? Often, the fact situation will be the determining factor when judging behavior under the code.

**25. Should planning directors/managers have to post their calendars of who they meet with and what was discussed? Does it matter with if they meet with a neighborhood resident versus a registered lobbyist?**

This is an issue of State law or local procedures. Adherence could be an issue under the code but nothing in the code directly governs such things or posting of calendars. Planners should certainly be aware that calendars often must be provided under the Freedom of Information laws.

**26. How do you approach a person who uses AICP but is not certified? We had an architect who was hired as the county planning director and signed correspondence with AICP. Who should approach this person or the employer?**

Typically, the infraction is referred to the APA/AICP Executive Director and the manner is satisfactorily resolved.

**27. I was involved in an RFP process where, after deliberations and interviews, I was instructed to "fudge" my original numbers so that we could statistically show that the consultant we all wanted scored highest. While I was instructed to do so under the guise that the Counsel and Contracts Manager approved, I fear my boss**

**has asked me to something unethical. In addition, I fear that my municipality would rather encourage a tweaking of numbers than defend making a choice where the numbers did not add up.**

First, there are questions about the process. Were people instructed to use a numerical scoring system or table that is simple to tabulate in order to determine ranking? Were the scores advisory only? Why would you “all want” a consultant that didn’t score well on your own ranking system? Your basic problem seems to begin with a poor consultant evaluation and selection process. Without knowing more facts, it is not possible to judge the ethics of this situation.

**28. Does the AICP Ethics Officer suggest that an AICP planner should resign from her job if required by a supervisor or official to act unethically?**

In rare cases, yes. Of course, long before resignation, a planner typically has other options: seeking advice of a superior or seeking advice of a city/county attorney. Some may feel that approaching a trusted member of the media “off the record” will apply pressure. Each has potential benefits, some entail risks.

**29. Are PDOs still allowed to offer ethical guidance? If not, why not?**

No. In fact, they have never been allowed to offer such guidance. They can certainly have conversations about ethics with planners who are encouraged to do so if they feel equipped. The Code is clear: Actual ethics issues must be brought to the AICP Ethics Officer.

**30. Would it be an ethical violation for a planner to attend and participate in a ground breaking ceremony for a project for which he provided a recommendation? Specifically, an expansion of a local non-profit hospital - several local politicians and city staff members were encouraged to attend by the city manager.**

No. By the time the ground-breaking occurs, the approval of the project is a settled matter. There is no ethical violation for the planner to attend or participate.

**31. A member of the planning board lives adjacent to a site proposed for subdivision. A new road will be close to member’s property. She recuses herself from participation in the planning board review process but then puts on her property owner “hat” and takes strong position in public opposing the subdivision. Is that acceptable? Must a resident refrain from taking any public position?**

This answer assumes that the Planning Board member holds the AICP credential. Item B(14) of the Code of Ethics states that “We shall not use the power of any office to seek or obtain a special advantage that is not ... in the public interest.” In addition, the Code of Ethics at B(5) restricts public officials from accepting any advantage that may be perceived to be related to the official’s office. Even if the Board member recuses herself from participation, her position as a Board member testifying against an application before the Board is a use of the power of her office that could result in a benefit to the Board

member. However, the Code would not prevent her from publicly opposing the project in other settings as long as she did not claim that her membership on the Planning Board should accord her view greater weight.

**32. A new park or existing park has a private/public partnership. Could you attend a charity gala as a guest of (a) a private individual who is supporting park's capital campaign or operating funds; (b) the city's table purchased by an employee; (c) a "free" city table**

Unless the private individual is an applicant with a proposal before the city, there is no ethical violation in attending the event.

**33. Someone I know from church is asking me to provide help or guidance and even a favorable decision on a re-zoning case. How can I help without violating pure objectivity?**

It is completely appropriate to provide guidance to an applicant regarding the procedural and submittal requirements for an application. It is also appropriate to explain that you can't pre-judge or promise any favorable action. If the planner believes that his or her objectivity is compromised, then the decision on the application should be delegated to another, if possible.

**34. A planning director's own mayor owns a mountain cabin and offers it to a director for a weekend, rent free. Is this a legal conflict? Ethical conflict?**

Unless there are other related issues (such as the Mayor being an applicant with a project before the city), then there does not appear to be an ethical conflict per the AICP Code of Ethics. However, local or state statutes may apply. Otherwise, go. Enjoy the weekend.

**35. Our agency has a dollar amount limitation for gifts - anything under \$70 is accepted by my employer. What if a situation happens that is not consistent with the Code of Ethics, but perfectly under the \$70 cap?**

Planners need to be mindful that they are governed by more than the AICP Code of Ethics. Local jurisdictions and states will often have regulations governing the ethical conduct of public employees. Planners need to comply with both. Depending on additional facts (e.g. pending applications, position of the donor, etc.) a \$68 gift might be OK while a \$15 gift would not be appropriate.

**36. My office is "bombarded" by seasonal "gifts" of appreciation in the form of food, i.e., pastries, catered food - with no implication of future favors or special treatment. Can we enjoy these gifts?**

Many jurisdictions resolve this ethical dilemma by making the gifts available to the public, as well as the staff. Others simply say “no” are employees are obligated to return gifts and advise developers to cease giving gifts.

**37. A meeting is being held at the state capitol between 2 of the local elected officials, the planning director (AICP), a developer team, and the governor for possible funding of a major infrastructure project to support a new development. Prior to meeting, developer would like to review agenda with the governor over coffee and lunch. Do you accept?**

Given the facts of this situation, this would appear to be a political judgment call rather than an ethics issue. Rule 9 provides guidance.

**38. A consultant is working for a public agency. The consulting firm’s accounting system is set up to charge a maximum of 40 hours per week. The project consistently takes the consultant 60 hours a week. Therefore, the consultant is basically donating (giving) that public agency 20 hours per week of time on their project. Is this fully ethical? Does this give the consultant an advantage in the future over other in the selection process?**

Section A(2)(j) of the Code of Ethics states: “ We shall contribute time and effort to groups lacking in adequate planning resources and to voluntary professional activities. A consultant ‘donating’ time to a public agency is not only ethical, it is encouraged. And yes, the good will generated by the extra work may result in the consultant being seen in a favorable light in the future.

**39. On the issue of protecting the public trust: what is the responsibility of an AICP planner if he/she is aware that a developer/applicant is meeting with planning commissioners or council members, but neither are disclosing it publicly?**

There are areas of the country where this is standard practice. It may be bad practice, but it remains standard practice. One of our aspirational principles states that, “We shall protect and enhance the integrity of our profession.” I would strongly urge a planner facing such a situation to discuss the matter with their immediate superior, stressing the importance of maintaining the public trust.

**40. If an AICP planner knows another AICP planner has violated the Code of Ethics, are they obligated to report the violation?**

As noted in the previous question, “We shall protect and enhance the integrity of our profession.” We would hope that a planner would follow this principle and, although it is aspirational and not binding, report the violation.

**41. First, learning is 2 things: it is cumulative, and it is self correcting. Second, the way we learn is through research. Question – What do we do if we have changed our professional opinion due to research and experience, but our previous client**

**won't sign off from the planning recommendations we provided them within the last 3 years?**

The governing section of the Code of Ethics is section B(3): "3. 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 (1) 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 (2) we make full written disclosure of the conflict to our current client or employer and receive written permission to proceed with the assignment. Simply put, the options are to continue to seek the written permission of the previous client, or to wait for the three-year period to expire.

**42. Is it ethical to do a master plan and also engineering? For example, an airport master plan and engineering on MP recommendations.**

Section B(15) of the Code: "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." If you or a member of your firm is competent to perform the engineering, and such an arrangement is acceptable to the client, then no ethical violation occurs.

**43. A private planner is part of a firm being considered to do a long range plan in a portion of the county. The plan requires significant public outreach. The private planner's major role will be community outreach.**

- **The private planner is running for election as a commissioner in that portion of the county.**
- **What does the staff planner do in the recruiting process?**
- **Is it the staff planner's obligation under the Code to restrict the private planner's involvement?**
- **What happens if the selection committee still proceeds with the recruitment and does not exclude the private planner in the role of community outreach?**

If the private planner is a member of AICP, then section B(6) of the Code of Ethics would apply: "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 – unless our client or employer, after full written disclosure from us, consents in writing to the arrangement. Given the opportunity for consent after disclosure, the staff planner's obligation is limited to ensuring that the selection committee is aware of the situation.

**44. A community hires a consulting firm to do a comprehensive plan and zoning code. One year (plus or minus) after the project is complete, another partner in the consulting firm is retained by a developer to process a zone change. What disclosure is required?**

The question here is more properly related to how the consulting firm was hired by the developer. Two sections of the Code of Ethics address this issue. "B(11): We shall not solicit prospective clients or employment through use of false or misleading claims ... and B(13): We shall not sell, or offer to sell, services by stating or implying an ability to influence decisions by improper means. A consultant who solicits work by suggesting that previous work for a public agency results in a relationship that makes likely a positive result, is in violation of the Code of Ethics.

## Appendix A: Transcript of the 2008 Ethics Session

AMERICAN PLANNING ASSOCIATION  
*Ethics in Planning*  
 Unedited Transcript  
 Las Vegas, 2008

**Farmer:** Thank you very much for joining us here today for this session on ethics. We have done sessions of this type for the last several years, and with the CM program and the requirement for ethics, we probably have a somewhat larger crowd than we normally had, although every year, we've had a very good crowd, as the chapters do when they have sessions on ethics. And that to me is good news right there. Planners seem to want to have conversations about ethics, and one of the things I'll suggest you do in your life when you go back to your firm or your agency, make sure you have ethics discussions. They may be brown-bag discussions. You may bring in a local attorney who works with a state ethics board. That's the best way, I think, for us to use the ethics code. It's to be thoughtful about what we do. And so today's discussion hopefully will be part of that.

I'm Paul Farmer. I'm the Executive Director of APA, and one of my roles as executive director is to serve AICP's Commission as its Ethics Officer. We have two gentlemen here today who have both extensive planning practice backgrounds as well as extensive ethics experience. Bill Harris, to my far right, is a long-time member of the Ethics Committee, and I've had a great privilege to work with Bill through some ethics issues and ethics cases over the years. Mike Davolio is a current member of the AICP Commission and serves as the Chair and has for the last several years chaired that committee, and again, it's a privilege to work with Mike not only on ethics, but on all of the other matters of AICP and professional practice.

So let me start this off by just kind of giving you a few little thoughts here. A local government planner serving as an elected official in another county accepts a golf outing from a developer. Another local planner is approached by a private consulting firm about taking a new job. A private sector planner who is under contract with a hospital to work on the

hospital's expansion plans in a neighborhood would like to respond to the city's request -- their RFP -- for a neighborhood plan update for that very same neighborhood. A city manager directs the city planning director to change his professional recommendation on a rezoning application. A planning commissioner refuses to recuse herself when considering a developer's application, even though the applicant's attorney is a partner in her spouse's firm.

Now these hypothetical scenarios could easily be real and be happening together in any community in the country. Ethical? Unethical? Legal? Illegal? Of course, each scenario would be far more complex than I've just described, as each would have many facts that one would have to consider when determining whether behavior would be ethical or unethical. And so, can we find guidance? And the answer is, yes. And can planners be held accountable? The answer again is yes.

For those of us in the room who have earned the AICP credential and belong to the American Institute of Certified Planners, we must practice in accordance with standards of practice that are promulgated by AICP, including its Code of Ethics and Professional Conduct. And the current code became effective June 1, 2005. But it's a successor code to those that have been in place for professional planners since 1959. So we have a long history and there is a long experience resume with respect to ethics.

And why was the Ethics Code changed? It was really predicated by another question -- why have an ethics code? Of course, all professions have codes and practitioners are expected to adhere to these codes. But why do we really have a code? Yes, a code provides guidance. A code sets standards. A code embodies values, and those values define both a profession and the behavior of those who embrace it.

And the planning profession is one in which most planners in some point of their careers will either work in the public sector or come into close contact with the public sector. That's equally true for transportation planners and environmental planners, those who work in small towns, big cities. And citizens have a right to expect of their planners that the planners will help elevate governance, not fall to its more

base level. Even for planners who spend their entire careers in the private sector, the quality of governance in communities matters to us all, and planners should seek to elevate it.

Now I grew up in Louisiana, and Louisiana has never had the reputation of being one of the places where progressive governance is practiced. And my dad had grown up in Louisiana, and his dad and a couple of generations before that. So when I found out in the eleventh grade of high school about planning and excitedly told my parents about planning and the fact that I wanted to go into it, my dad looked at me and said, "Now if you do this planning thing, won't you have to work with politicians?" And I smiled -- I was probably 16 years old -- and looked back and said, "Well, of course!" And I still remember my father's glare and his words -- "Don't do it." (laughter) But I was a teenager. I ignored my dad and off I went and became a planner. It's been a great career.

Now I will say that in that career of practice -- and I taught for ten years, practiced for twenty and now have been doing this with APA for seven years -- in those years of practice, I did in fact work with some politicians that later were either subject to plea bargaining or in a couple of cases they actually were serving time in the federal penitentiary. So I guess my dad today could today look back at me and say, "Well, I told you so." But I don't think so actually. I think that my dad would look back and say, "Good job," because I think that there are enough people, and the vast majority of the politicians that I've worked with -- and I kid about politicians -- the vast majority are decent, hard working, principled people that I've been proud to be associated with. But again, it's part of our practice and our code that lead us to the point where we can be proud, and where we can give guidance not only to ourselves and our colleagues, but even to those elected officials with whom we worked.

I think when we explain some things about ethics, as I've had to do with some city council members sometimes -- I had one council member pull me into his office complaining about the pace of review of a development project -- none of you have ever had that before -- (laughter) -- and he said, "You know, you --" and he used a four letter word "--planners just seem to fight development all the time." And I

assured him that what we were trying to do was to facilitate responsible development. And he shot back -- "That's the problem with you planners. You're always talking about responsibility." (laughter) But I think it does come with the turf and I think that's part of what we bring to our communities.

So let me talk then about the Code. Yes, the Code is there to enforce standards, and yes, we do have violations and we have to deal with those violations. But I think more than anything it's there so that we can have conversations so that we can do the right thing. The vast majority of my time spent on the Code is spent counseling planners on the phone who have a tough situation -- sometimes not even a very tough situation. They want some guidance. They want to have a conversation. They want someone that they can talk to, to just think through the facts, the issues, the options. And so the vast majority of my time is spent counseling people who want to make sure they're doing the right thing. Luckily, only a smaller percentage of my time on ethics is spent having to deal with complaints and see those through. But we're going to talk about some scenarios here.

What I'm going to do quickly is just remind you of the way that the Code is currently arranged. We are not going to give you a tutorial on the Code. It's online. I suspect most of you know it pretty well. The new Code, as I said, was revised. It's much clearer in my mind, and that has really helped people understand the Code. It has helped me administer this Code. The first section, we put everything that is so-called "aspirational" in that first section. We cannot enforce actions against a planner for violation of the aspirations of the Code. Should we then just ignore that? Well, of course not. They're there for a reason, and it really speaks to the values and the ideals. So please read that, converse with others about it and take it very seriously, even though we cannot use it in enforcement actions.

The next code is the list that has the rules. And indeed we can and do take enforcement actions against planners who have violated these rules of conduct. And so again, have conversations about them. We're going to talk about several of them today. We're not going to try to go through all of them all one by one. But

there are several of them where I do get a lot of phone calls about those rules, so we're going to talk about those today.

Section C simply gives the procedures. What happens when there is an alleged violation and what are the rights of the planners accused and what are the timetables? Again, we're not going to talk about those at all today. They're on the Web and they're pretty easy to understand.

Again, the aspirational principles are broken into a set of responsibilities -- obviously a responsibility to the public. And again, that's what our profession is all about, is actions in the public interest while we often serve private clients. So we have a responsibility to our clients and to our employers, and finally, yes, we have a responsibility to ourselves, our profession collectively and to each of our colleagues.

Okay, let's jump right in then to some discussions of several of the rules of conduct. And I think this is the longest one in the Code. It's an interesting one because many times I'll get a phone call saying, I'm going to switch jobs, for example, and I thought there was a one-year separation rule. I'm trying to quit my job in either the private sector or the public sector and I'm going to go the other way. Isn't there a one-year separation rule? The answer is no. The Commission debated that long and hard -- should there be that kind of a separation rule? -- and for a variety of reasons, felt it was not necessary and it would probably be particularly harmful to planners operating in small communities, as an example.

They did want to give guidance, however. And so this is a rule of guidance. We often take positions, whether those positions are for or against a certain action or looking at a code we're rewriting or dealing with interpretations about filling a wetland -- all the kinds of things you deal with. And you have to take a position. Then let's say within a period of time you do switch jobs. So perhaps you have gone from a public sector job where your interpretation regarding a wetland that you reached with your best professional judgment, relying on the facts at hand, would lead you to say that filling of that wetland was not appropriate under the laws and under the rules. Eighteen months later, you find yourself working for a developer, and lo and

behold, in that same community, the developer is seeking to fill a wetland. To what extent are you able to give your professional advice in your new job that differs from the advice that you had previously given? This rule suggests how you go about that. It doesn't say you can't do that. It does say that you can't just act as a hired gun. You know, gave advice that one client wanted to hear, gave advice the other client wants to hear. It's very clear, you can't do that.

If let's say eighteen months later, you discover some new science. You discover new facts. You've talked with additional professionals perhaps in some related professions. You truly come to a conclusion that you believe you can back up that would lead you to go against your former opinion. You then need to go to your former employer, express the fact that you have come to the conclusion that you can honestly and ethically and professionally present a differing opinion. And that opinion -- filling a wetland -- would presumably adverse to the community you used to serve. People were relying on your judgment that you couldn't fill the wetland. Then the former employer has to sign off and all of this had to be done in writing. So those are the kind of conditions that you get into.

So let me go on to the next one. This one gets into the issue of what you can accept. And this one, I'll tell you a quick story of when I was in a prior job. I had started with my new public agency and called my staff together and we had a conversation about ethics. And one of the things I talked about was gifts. And the simplest rule is just, don't accept them. There's more nuance than that. But I had a conversation, and one of my planners came up to me afterwards and said, "Paul, this is a waste of time. I've been here for seven years. Nobody has even bought me a cup of coffee." (laughter) "So this was a waste of time." A few days later he came into my office and said, "Paul, you know that conversation we had the other day?" And I said, "Yes." And he said, "Well, that conversation caused me to tell my wife that she had to return the vacuum cleaner." And I said, "Pardon me?" And he said after never having had a cup of coffee bought, he had been in a meeting with a developer, and in the small talk before the meeting began, he had mentioned the fact that he had to do some hunting because their vacuum cleaner had broken down and his wife was going to be mad at him if he didn't buy a

new vacuum cleaner. That very night he got home. His wife was overjoyed. The vacuum cleaner had arrived. And unfortunately, the planner had to say, "We have to return it."

Now that was kind of an interesting story. That was a real life story. And so we face those kinds of questions all the time. Can you accept a meal? Can you accept tickets to a ball game? Various communities have different local rules, and so that -- we're going to get into that in a moment.

I'm going to give you one quick scenario here, and then I'm going to ask the panelists to offer advice on this one. I'll give you a personal one from my own planning life. I was in a community and my wife and I had bought a lot in a planned development -- a PUD. It was adjacent to a river and the city had a policy of trails along the river. And this development had dedicated the land along the river. And I was serving in that community in basically a deputy mayor position where there were a number of departments that reported to me, including planning and development and all the permit services. So the enforcement fell to me also.

I learned that three of the owners in the community that I had bought into had extended their backyards into the greenway, some in a minimal way, some in an extensive way, and then put up their fences -- basically privatizing public land. As I said, I had bought a lot in that same community. I was not on the river. I was several blocks inland. So I went to the city manager, explained the situation that it had come to my attention that there were these violations. I wanted to let him know that I owned property and did he want me to handle it, or did he want to reassign it. We talked about the facts of the situation. I did not have property anywhere adjacent to these properties. I was not on the river. And he said that my job was to take enforcement action and he wanted me to do that. We confirmed that in writing. I called the property owners in with their attorneys and talked about the violations. Also in that meeting, disclosed that I was a property owner in that same planned unit development, therefore I was paying fees to the same condo association and the like. And so that's the way we went about that.

Now let me just change the facts here. What if indeed my lot had been on the river, as were their lots? And should the city manager and I still have agreed that I would take enforcement actions? What if another fact situation -- let me change it -- as the enforcer in this situation, when the violations were called to my attention, what if I had simply ignored them? What if I had said, "Oh, these were de minimus. There is no problem. We don't want to go through the hassle of requiring somebody to invest in removal and reconstruction of fences." And under what rules? There are some zoning ordinances that will talk about violations of under 5%, you can sort of handle administratively. I don't particularly like those kinds of ordinances, but I've seen many of them. And so if I had a similarly situated lot where I in fact could have benefited by maybe kind of having my contractor forget where the property line was, what would the situation have been? Does Bill or Mike want to have comments about that fact situation, or how one might go about getting guidance if you had a city manager who just said, "Oh, this is silly. You do what you want to do and I don't want to write a memo"?

**Davolio:** Well, in my experience, one of the rules that I go by all the time is that when in doubt, disclose. And I think that's really critical, if there is ever a situation where you perceive that there might be a conflict or that someone else might perceive a conflict, you have to make that disclosure. And I think it's pretty clear from the Code that that disclosure and the response to it needs to be in writing. I don't think you can let your city manager off the hook that way. I think he needs to do that.

Also I think it's clear that if you own property on the river, it makes it more complex because you then have more direct access to that public way and the value of your property is impacted by your action. So I think that that's something. I don't think that you need to step away from it if it's been disclosed and everyone agrees. I think one of the property owners' attorneys might make an issue of it, but I don't think it's something that you would need to lose sleep over.

**Farmer:** And Bill?

**Harris:** I think the disclosure is important for the reasons that both Paul and Michael offer.

But appearance is also critically important, and we as planners must be aware and sensitive that even if the case is not crystal in many instances that the public may in fact hold us accountable through what appears to be the case. And so appearance is important, much sometimes as a clear and crystal violation of the ethical rule.

**Farmer:** And one of the things that I would add to that -- and I would agree with those statements -- is that I advise people that if the city manager, for example, says, "Oh, I'm too busy to write the memo" or a few days go by, if you simply write a confirming memo yourself. You can simply say, "Here is the conversation we had. It was my understanding that the agreement was such and such." Then again it's on the record so that if it should become an issue at some point, it demonstrates the conversation that was held. So have conversations. Things should be open and transparent in that regard. So I would agree with that.

**Harris:** But it would be better if you got the city manager to sign that.

**Farmer:** Yes, yes, right -- absolutely. Try to get the city manager to sign it, but if you don't get it, go ahead and provide that memo yourself at least.

Now there is a related issue here. This is a current situation going on. It does not involve any AICP planner, so I'm going to talk about it because we have no enforcement authority. But it's come to my attention that in a city, the planning director, the head of a kind of super-agency, had ordered some permits to be issued for billboards, and in one situation, it's alleged that three billboards were allowed to go into an area where the rules prohibited the billboards. And in another, the director ordered a permit be issued for one of these massive new digital billboards that cost multi-millions to build in exchange for the company taking down three obsolete billboards. This is a favorite ploy of the billboard industry. They want to get credit for something that is functionally obsolete in their industry, and so they make these kinds of trades. In this situation, it is alleged that the planning director had no authority to authorize such a trade.

That was sort of the tip of the iceberg. What then has come out is that the planner and his wife had routinely accepted gifts, dinners, liquor from the billboard industry and the planner's wife was the Mayor's Chief of Staff. She was instantaneously required to resign and the planning director had been placed under administrative leave while he is investigated by the state ethics board.

So that gets into a situation where, yes, there are planners out there that are not subject to the code. And also, all of us who are subject to the code still have to worry about our knowledge of our state's code and any local codes. Now places I've worked, the city has adopted local ethics guidance standards or something of that nature while also having state ethics codes.

So I'd like Bill and Mike perhaps to talk a little bit about the issues of these kinds of codes and your experiences and what do planners need to know in light of those.

**Harris:** Thank you, Paul. I want to share with you a case where the local codes were not very explicit at all. I was chair of an economic development committee for a small Southern city. And we had gathered the committee of five to make a loan to a client. Well, the client lawyer called me one day and said, "Mr. Chairman, we would like to make the final signings --" this was a Southern city -- in Las Vegas." I said, "Well, my, that's pretty impressive." If it were not that he scared the hell out of me in making the offer, I probably would have accepted.

Now here's the rub. The city had no requirement, legal or otherwise, that the economic development committee would not or should not participate in such an exercise -- to get a free ride to Las Vegas simply for a signing of ten minutes. So what happens for us planners? The answer again, I think as Michael pointed out in his previous comment -- we have to be very careful to disclose it all such that the community and members of the community would not think that there had been an under-the-table kind of exercise. And I'll tell you, in this particular city, that would have been the result. So in fact, I think we planners are guided by both existing local, and sometimes state, ethics provisions. But frequently none exist, and we must exercise common sense, especially given

what we may be guided by in our own aspirational principles.

**Davolio:** Paul, I suspect that in the scenario that you suggested that whether the planning director of AICP is probably going to be the least of his worries. (laughter) But having said that, I'd like to add to that scenario. Suppose that in the chain of command of issuing those permits that were improperly issued that there was an AICP planner on his staff that was part of the process of issuing those permits. What would be his responsibility in terms of disclosure and what would be his responsibility, and what would be the consequences to him of essentially obeying his boss' order?

**Farmer:** That's a very good point, Mike. And obviously, if there is an AICP planner in that chain of command, simply "My boss made me do it" is never an acceptable answer in this situation. And so there are situations where -- and I get these phone calls also -- "I feel that my boss, my city manager --" I started out by giving you one situation of saying a city manager orders a planning director to issue a permit. Well, what if a planning director orders a planner to issue a permit? I do get phone calls like that. And we talk about, what are the options that you have? Who can you go to? And is there a whistle-blower option within your community where employees can go to raise these kinds of issues without being in immediate fear of their job?

But I think also the other problem is that folks do need to realize that in times, they're going to be put in situations that maybe aren't tenable and that resignation may be an option. Obviously that's not the first option, and perhaps also if one does the right thing and then there's retribution later that comes, most communities have some way of addressing those kinds of situations. But talking through those situations, whether it's through me or through someone else, is critical for a planner feeling that they're doing the right thing. And over the last couple of years, I've had several conversations of exactly that type, Mike, where planners were being put in a position which felt was in violation -- if they did what they were being told to do, they would be violating the Code. So there are people available, whether it's me or someone else, to have those conversations, and I would encourage those.

**Davolio:** The excuse that "My boss made me do it" didn't work at Nuremberg, and it shouldn't work here.

**Farmer:** Exactly, exactly. One of the things we're doing, by the way -- we had 3 x 5 cards available as you walked in. You either have them or they're on chairs near the aisle. If you have questions or brief scenarios, write those down. Staff will walk up through the aisle. We'll collect those. We do this because we find that there are often a number of questions that are the same or related. So we'll cluster them and then try to answer as many of those questions and deal with some other scenarios along the way.

And let me, before I go to the next rule, just mention a couple of things. For those of you who are in the room who are not AICP and you may be a planning commissioner, one of the things that I would suggest is you look at APA's Ethical Principles. The Ethical Principles are not enforceable against anyone. They are pure guidance. But what I did when I was in Minneapolis, I had a fantastic planning commission with very good operating bylaws. We embedded those ethical principles into our bylaws, and we would do commissioner training before a commissioner who was appointed was allowed to sit and deliberate and vote. And an ethics discussion around those ethical principles was part of every commissioner's orientation. So they are there for your use. I would very much suggest that you think seriously about actually having your commission adopt them. And you may obviously craft the ones to your liking. You may find some things in the AICP Code that you would also want to put in there. But that's the recommendation I would make. Mike?

**Davolio:** Paul, could we get a show of hands to see how many commissioners are here? How many commissioners?

**Farmer:** How many planning commissioners are in the room? Okay, so we've got about a dozen -- maybe more.

**Davolio:** Paul, can I take one minute to make a sales pitch to these folks? Let them know that sessions like these are one of the best reasons why you should hire AICP planners. (laughter)

**Farmer:** That didn't even take one minute, Mike. (applause) And I see Collette Morris with a big smile on her face. So your fellow commissioners on the AICP Commission obviously applaud that statement as well.

So we'll go back to a couple of scenarios. I'll give you another scenario. Let me put in here this other rule of conduct. This is the last one I'm going to put on the screen. As I said, you need to go and you need to look at all of the, but we wanted to talk about several of them.

So this one here even relates to that scenario of the lots on the river. But it speaks to a situation where there are frequently benefits that might accrue to a planner. And how do you evaluate those? Sometimes it benefits directly to a planner or someone else. I know an elected official once, for example, that considered herself to be extremely ethical. And all of the council members in that city had seasons tickets close to the front row in the local hockey arena with an NHL team. And the city, of course, provided the arena and frequently was asked to renegotiate the terms of the agreement, and the entire city council was given season tickets. And the rationale was, well, it's the city's arena. I thought that was a strange one. That one to me was an obvious one and if a planner ever got close to that, again, you'd be in serious trouble if you were accepting a gift of that nature.

I think that quite frankly -- I'll give you another scenario here. You're a planner in a community and you work closely with the assets of your community. A major asset of many, many communities is a university. As a matter of fact, universities today have conferences where they pull together and talk about how they now view themselves as assets. And as a planner talking about assets -- New Orleans, for example -- one of the reasons that New Orleans is coming back to the extent that it is is because of Tulane and Xavier and UNO and Dillard.

So let's say in working with the university, you routinely deal with panels on economic development. You invite the president of the university to address companies that are looking at your city as a possible location. So you have that type of relationship as the planning director. And now you're invited by the president of that university to watch the rivalry -- the main football rivalry game that occurs once a year from his

personal box at the university-owned stadium. The city doesn't own it -- just the university. You're being invited along with a whole series of other officials to simply join to watch the game. Gentlemen?

**Davolio:** Who's playing? (laughter)

**Farmer:** The offer has been from the university -- you know -- just come on and have a good time.

**Davolio:** I think one of the realities of being a planner is that on a day-to-day basis, you're dealing with situations that have consequences. And you're surrounded by people that don't have to deal with those consequences. You do. And I think in a situation like this, as painful as it might seem, you're going to have to watch the game on TV.

**Farmer:** Bill?

**Harris:** Yeah, I certainly agree. I think the case is even more clear to me that I would not participate. Look, I spent some time at a university that was in a relatively small town in a very large state. But on a Saturday afternoon, this football stadium made it the largest city in that state. Now you don't have to be very bright to know that in time you're going to as a planner get requests for transportation issues. You're going to get requests for security issues and the like that you will have to speak to. You don't want to be beholden or have them think you should be beholden for something as simple as - well, for anything, but certainly not for a ticket in a box seat.

**Farmer:** What if the city manager said we do this routinely and what we do is we simply send a check to cover the tickets, so we are buying the space, we're buying the seat. But for the larger relationships, we would like you, the planning director, to be there.

**Harris:** I think, Paul, that's still a problem because the planner would want to ethically keep things at arm's length or longer. And in doing so, this isn't so much the issue as who pays for the ticket or who reimburses for the ticket, but who is in an atmosphere or a context that may allow certain conversations to occur that would not be privy to those who may be in opposition.

**Davolio:** I'm inclined to agree that you need to be able to keep an arm's length relationship with these folks if you're going to be doing business with them.

**Farmer:** Does it matter if you look at the situation of whether there is any immediate project or plan or discussion going on with that university, or if you're in a sort of period of dormancy? Does that matter?

**Davolio:** Nope.

**Harris:** It wouldn't to me, Paul. I think the more immediate the issue, the longer my arm would become, but I don't think it really is a function of time.

**Farmer:** So all you Ohio State planning directors out there, take this to heart. I think what we're trying to suggest here is that, as was said, you've got to be very careful about perception. You've got to be very careful about the kind of access that you allow someone to have to you, and you've got to anticipate how you're going to be thinking in the future when you have to make a hard decision. And one of the tests I would give to you is when you are facing something like this, is think about down the road if I am now making a hard decision, how might this have entered into my thinking. And kind of force yourself to think through that.

I'll give you another situation --

**Davolio:** -- Paul, I just want to add one thing. For those of you who live and work in the State of Washington, you know that this situation is even more clear-cut because of the Appearance of Fairness doctrine that we all live and work under there. It makes it real obvious that these kinds of situations are to be avoided.

**Farmer:** And Mike's points are very good. Again, when people call me, I always in the phone call tell them to check with the state and local laws and regulations and the like. I don't know all 50. So let me give you another example of a situation which I was in. I was in a state that had a very, very tough ethics law, tougher than any I had been in before. And it, for example, said that you cannot accept a meal -- any meal. I had been in other situations where it was sort of, as long as it's a modest meal and not a lavish dinner and if you're in the

public sector and you have a relationship with a private consultant, for example, as long as sometimes you pick up the tab and sometimes they pick up the tab -- those have been the kinds of actual law interpretations in some communities. This other community I was in said something like, "No meal." And I was in the role of the planning director. There was a separate development director. And when the two of us would go and meet, say, at an architecture firm to talk about, whether it was a project or whether it was simply to talk about their interest in offering pro bono charrette services, whatever it may be, to extend the day you'd frequently do it over lunch. And so it was very clear to us that we could not accept that lunch. But it was clear the way the city said to handle that was that the department would pay. And so you had to pay the value of that lunch.

Now could you have a cup of coffee? My own interpretation -- and I checked with my city attorney -- was, of course you can have a cup of coffee. The development director would make a big deal -- when the cup of coffee came, she would plop down 75 cents. And I thought that was kind of silly, and so I would match her with my 75 cents. We would joke about it and I would say -- well, whatever.

Interesting enough, after I had left the city some years and it came up that the development director was under state ethics board investigation because she had been the principle party that engineered a \$40 million city subsidy to a development project. And within less than a year of her departure from her job as development director, she was working with the company that she had shepherded the \$40 million to. But didn't want to accept a cup of coffee. What was amazing to me, having worked in that environment, was that the ethics board investigated and said, no problem -- she didn't do anything wrong. She was not an AICP planner. I can't imagine under our AICP Code of Ethics we would have reached that same conclusion. So sometimes you're going to find that our Code is probably stronger than your local or state laws. Sometimes you're probably going to find they're stronger, and that's yet another reason. And I don't know if the 75 cent coffee vs. the \$40 million grant -- if the two of you have any thoughts on that.

**Harris:** Well, Paul, I once worked at a university that had a professional code of ethics, at least for students -- no lying, cheating or stealing. Stealing five cents was as severe as stealing \$5,000. I think however in the real world, as you have pointed out, there is an opportunity for common sense. And if you are going to whore yourself out for a 75 cents cup of coffee, you're probably in the wrong job anyway. (laughter) So I tend to support your decision on that one, Paul, although probably the strongest ethicist would say you must not exercise any amount of payola potential at all. But I think in this instance, no good professional is going to sell out for 75 percent -- I mean, 75 cents. I would for 75%. (laughter) But 75 cents --.

And the other issue is that sometimes that cup of coffee may bring up an alliance or a relationship that grows into something far, far more important.

**Davolio:** I recall a time early in my career, but before I was AICP, I was planning director in a city in Massachusetts, and there was a gentleman that came in with a proposal to subdivide a piece of land into about 20 lots, as I recall. And this gentleman was a fairly recent immigrant from Italy, so I understood his culture a little bit. But as we were walking the property one day, he invited me to pick out my lot. (laughter) And I thanked him and I explained to him that considering the culture that he was brought up in, that I appreciated the intent to which the offer was given, because that sort of thing is done apparently in Italy. But I explained to him that it's not done here, at least not for a lot.

But Paul, in terms of the question you raised, I guess we've established that somewhere between 75 cents and \$40 million, there is a line to be drawn. (laughter) And I guess what gets sticky is where that place is.

**Farmer:** Well, let's try to bring it down from \$40 million then. We've already gone through the season tickets to front row seats in a basketball arena or a hockey arena. And we've obviously said that that doesn't pass the Smell Test or the AICP Ethics Code test, I would say. But let's say that you have a relationship with -- you're a public planner. You have a long-standing relationship with someone who has left the public sector, gone into the private sector doing

traffic engineering. It's a firm that occasionally the city hires, occasionally the city hires others. They don't get the contracts. And that firm has tickets to a ball game. Not a box -- just normal tickets out in rightfield. Are you allowed to go to that game with your friend paying?

**Davolio:** I was going to make a snide comment about rightfield, but I think I'll pass on that. But it can get really complicated because -- well, let's throw out -- suppose that this person is a childhood friend of yours and you and he had been exchanging Christmas gifts for the last 20 years before either of you got into your positions. How does that work? I mean, there are all sorts of potential for mischief here. And I guess what I go back to is what I live under in Washington, which is the Appearance of Fairness Doctrine -- what would a member of the public think of you going to that game with your friend? Are they going to think that it's just because you're friends or are they going to think that there is a business relationship there that one or both of you are going to benefit from?

**Harris:** Immanuel Kant would have said, "Look, any abuse of an ethical rule is a violation." So if one were a purist, then you would not go. The issue that arises however is that most of us don't live in a pure environment, but to some degree, if not gray, somewhat shaded. And I think here -- and maybe I'm speaking here as a Southerner -- what one has to rely upon is the goodwill and the common sense intentions of a person who desires and plans to do the right thing for the right reasons. So I'm not so certain that that line can be drawn absolutely clear unless one were to take the more pure and absolute position that any -- any cohabitation with someone with whom you may do business even now or in the future is unacceptable. I don't think we as planners -- I keep teaching my students that planning is a political exercise. Well, darn, I don't see how you're going to operate in a political environment without some tension for the positive, and hold that the purist of the pure would be a reasonable way to carry forth planning business. I just don't think that it's likely to going to occur and be profitable.

**Davolio:** If we go back a step to the scenario where all of the city council was at the same game -- I guess one of the more obvious questions that would come up again in

Washington and probably in a lot of other states too is that if you go to a forum with the city council, is that a meeting?

**Farmer:** Interesting. And again, your local codes, your local laws would get -- and the Sunshine Laws vary greatly around the country in terms of the nature of a gathering and would that gathering of the council at a basketball game be seen as illegal? A gathering of that same council at a backyard barbecue, a fundraiser during election time be seen -- and on and on and on.

Let me probe a little bit more on the gift issue. And you raised a point on this kind of friendship we were talking about. What about the other situation where you've got four people who all met in college and you've got two couples that have long gone on vacations together, let's say - - that's simply a tradition between the two couples. And now one finds one in a situation where, let's say, one is a planner and one is a developer. And so what changes need to be made in behavior -- changes from a long-standing behavior in that situation? And obviously I'm not giving you any facts in terms of what the nature of what the developer does or the nature of the planners position, but just in general, what are your thoughts on that.

**Davolio:** I had a boss once who would always - - when a situation would come up, would say, "How would your mother react if she saw it on the front page of the paper?" So I guess I would ask that if there was a reporter from a local newspaper down in Cancun at the same time that these two friends were there and that reporter had a camera with them -- certainly you could explain it and you could explain the relationship, but it certainly makes your job a lot more difficult.

**Harris:** I think I'm more divided on this one. It seems to me again, long-term trusted relationships, people could come to an agreement that business would not be discussed during the outing or the exercise. Certainly one would not expect these people to dissolve a long-term relationship, but rather that they would agree to not discuss business aspects of their activities.

**Farmer:** I'm going to ask that the cards be brought forward. I think we have staff that have

been putting those together. If they are in the back, we've got a couple more scenarios to give you, and then we'll see questions that you have raised along the way.

So let me give you then another scenario here. Let us say that there is a personal relationship among two planners -- both of these are planners. And that one of them worked in the same private firm for a period of years and they've worked in the same public firm for a number of years. And then one leaves, so you're in this public/private relationship. Let's say the planning director says, again, no, you're the person I want handling these development applications because you've got the kind of expertise for this type of development being done. Is that appropriate? Is that something that simply shouldn't happen? What guidance would we give?

**Harris:** Well, again, I think in this instance, Paul, the better part of valor and common sense would be that the parties would to the best of their abilities divorce themselves from any further interaction.

**Davolio:** In most of the planning departments that I've worked in, if it's a larger department, there is more than one person who handles those kinds of applications and there is some mechanism for determining whose turn it is. And I think that I guess I would just explain to my friend that if we're going to keep the relationship as friends, that we can't encroach on each other as the business part of it, and so they would just have to trust that we trained the rest of our staff to be as good at reviewing plans as we are.

**Farmer:** And Mike, I agree -- you're raising the issue of size of staff, and I think that's a critical issue. And again, when I get phone calls -- and by the way, the way I get the phone call, just to let you know how this works -- so that we don't end up playing phone tag, what I would ask that you do is if you call my office, either D.C. or Chicago, Carolyn Turek is my assistant -- Carolyn will put a half-hour phone call on my calendar. And you give the number if you want it to be a private cell number, if you want to pick a time when you're going to be out of your cubicle at the office -- however you want to handle that, you can arrange that. And usually a half an hour is enough. Sometimes we'll have a

conversation and then somebody will want a follow-up conversation -- again, I'm available for that. That's part of what we do. So I encourage you to think about doing that.

Mike raises the issue of size, and this is one of the issues that comes up in the phone calls I get. I totally agree -- if the department is large enough where there is the horsepower, let's just avoid the appearance. And so assign it to someone who does not have that kind of relationship and ask the director who is making the assignment to please respect your ethical obligations to make that kind of a reassignment.

However, there are times when the department simply isn't large enough. There are times when the planning director is the department, and there are some of you in this room I'm sure that have that. And so you can't get away from that. Again, you go back to the issue of transparency and disclosure. I think that when one is doing that, one needs to make sure that supervisors note what it is you're doing.

I think you need to also be cognizant of public perception at public meetings and things of that nature. And when recusal occurs in some fashion at a public meeting -- and this is really important for commissioners -- very important for commissioners, but the planning directors and planners need to think about this, too -- recusal isn't just sitting around the decision-making table and saying, "Let the record show that I am taking no part in this deliberation." That's not recusal. Recusal is leaving the room and staying outside of the room until the matter is fully resolve and then somebody comes and gets you. You don't want to be sitting there, whether you are making contact or using hand signals or being accused of making eye contact or using hand signals. Your business is not to sit there where you are in a conflict situation, where you are eyeballing your colleagues on the commission and kind of watching the nature of the way they question your friend or your spouse.

I once had a planning commissioner -- I've generally had really, really good commissions -- I really have -- but not always. And I had one commissioner that would privately buttonhole her colleagues on behalf of her husband, who is an architect, to see that her husband's projects

got soft glove treatment, and then at the meeting she would make a big deal about blustering and saying, "Let the record show, I am recusing myself." Well, she had lined up the votes before she ever got to the meeting. (laughter) Again, that's simply unacceptable. I go back to the issue of elevating governance. That kind of deal-making, that type of personal influence has no place in governance, in my mind. We know it goes on, but we need to do everything we can to see that it doesn't go on in our communities.

**Davolio:** Paul, I can tell you of at least one case I know of in Washington where a development services director was accused of having an interest in a development to the extent that even though he could delegate to his staff, the fact is that his staff still worked for him. And what they ended up doing is having a development application reviewed with a staff report prepared by a neighboring jurisdiction.

**Farmer:** Yes, and that's a very good point, Mike, and I'm glad you mentioned that. I would suggest that you do that. When you're in situations where you may find conflicts or you may know you're going to get some conflicts, if you have the ability to reach out either to a neighborhood jurisdiction staff or you have a firm outside your community on call, whatever it may be, they are good sort of ways of doing that. And when I was out in Oregon, because we by state law had to charge full fee for every permit, but we could not charge the permit for anything else we did, such as give all the free advice and the like. And therefore to handle the ups and downs of the economy, we had one level of staffing, but then during a peak, because we wanted to meet our targets in terms of development review time, we had a couple of firms in California that we would farm work out to. And even -- this was some time ago -- even then, electronically all the files could be processed, all the drawings and the like. So we found no problem at all in doing that. So remember that there are those mechanisms out there that you ought to think about so that you insulate yourself from these kinds of situations. Thanks for making that point, Mike.

Let me go back to one of the ones I asked you before, because this was a real live situation where I gave some counsel. A planner called me and she was troubled because she was a planner working on a hospital expansion. It was

a major hospital and a major master plan expansion for that hospital. And in the process of working on that, a whole series of issues had been raised and the city had come to realize, you know, we really can't answer these questions very well because we don't have any up-to-date plan for that neighborhood. And so they put out an RFP for a well-funded overall neighborhood plan. She called me and she said, "My boss is putting pressure on me because he's been told by the city that we sort of have the inside track to get the overall neighborhood plan, and so he's ordered me to respond to the request for proposals." And she said, "He's really being demanding. What should I do?"

**Harris:** Well, Paul, I think again, there are certain instances where universities respond to RFPs. They're invited by federal agencies and the like to actually come prior to the RFPs to submit ideas as to what would be methods for strengthening certain programs and activities. I think again as long as it is kept with clarity and transparency, I would not find a great deal of problem with someone close to that situation having an opportunity to respond to the RFP.

**Davolio:** Again, it gets back to the issue of disclosure. I think that as long as the relationships between all the parties are known and made public, I don't see a particular problem.

**Farmer:** So I'm the tougher of us on that one.

**Davolio:** We've got to let you be the tougher one some time.

**Farmer:** My advice on this one was that since the scenario that she was presenting to me was one where they were actively under contract to the hospital for expansion, that I did not see how there could be any ethical way in which she could serve two masters. Having worked on lots of institutional planning projects, I could not see a situation where there would not be some significant issues where a neighborhood interest might be on one side, the hospital on the other. What we talked about was the fact that I thought timing was an issue here. Had the firm finished, completed the hospital expansion work, as an example, and were they no longer under contract, even though they might get some future contract, I felt in that situation they could

appropriately respond to the city's RFP. And my guidance to her that time was that should you be successful in getting the city's contract, then you would not during that process be able to reengage with the hospital. That was my feeling.

Now the other issue I've raised here of course is wired contracts. What do you think? Wired contracts -- the other thing I threw in there -- I mean, I didn't throw it in. She raised the issue when she called me was that the city -- and I don't know if there were AICP planners in the city or not -- but she was troubled because she was an AICP planner. They were basically being told, we put this out for an open bid, but in all probability, you're getting it.

**Davolio:** That never happened to me when I was a consultant. I always hoped that it would, but it never did. (laughter) I guess from my perspective, the idea of a wired contract is never in the public interest. I think it's always best if you're going to go out to the public and ask the public to submit proposals, number one, if you're going to have any credibility in the long run and you're going to be going out in the future and asking people to submit proposals, one of the long-term consequences of a wired contract is that nobody's going to submit proposals any more because they're going to assume that somebody else already has the job. So in the long run, you're going to get less and less quality in the proposals that you get because the well-qualified people aren't going to waste their time. So I think it's really critical that if you're going to create an open process that you make it meaningfully an open process.

**Harris:** Yes, I think that's an easy one. A wired contract simply doesn't work in anyone's interest, including the successful bidder. In the long term, I do think what happens is that there is not only a loss of confidence in the issuer of the contract, but also in the quality of the work that is going to eventually come down the pike.

**Farmer:** And what I would add to that is that I think that, rather than wiring contracts -- and I agree that they're not in the public interest and that they're probably not in the long-term interest of the consultants -- I think what you do is you learn how to write really good RFQs and RFPs. AICP recommends -- it's not required, but recommends -- that one go through a two-step

process of an RFQ followed by an RFP. So the more open invitation is the RFP. And then on the basis of an evaluation of whether a firm is legitimately likely to be able to provide the services, you then can invite a smaller list in an RFP.

We have a service on the Web -- this is a little bit of a plug -- for those of you who are directors, you can post all of your RFQs and RFPs for free on the Web. We really, really, really encourage you to do that. We hear from members when that's done, the posting agency says they get more responses and more qualified responses when they do that. Consultants then, those that have consulting calling cards, we do a push e-mail to those consultants, and so they see your RFP. So we really encourage you to do that.

But let me just mention a couple of things about the way I think that you can ethically do those RFPs. One of them is to always post in the RFP what the value of the contract is. I quite frankly think you can go either way and you ought to have a local conversation about that, why you would go one way or the other. Often what we would do in my practice, we would note the nature of the services. We would note the fee. We would then say, if you cannot provide the services for this fee, then submit which of the services you can do for that fee. We would also say, which additional fee would you need to provide these services? So it gives more flexibility. But you need to make sure sort of contract-wise you could even do that with your community. You may not be able to. But that's one technique that we used to use.

Another one that I would just use in general always is, write a far, far more extensive RFP than you issue. And the reason you do that is, in writing a far more extensive RFP, it forces you to really think about what you want. Don't go fishing. Don't just throw out a badly thought-out RFP and then hope that professional planners will spend their time and money helping you think of what you should have thought of before. You have a responsibility to do that yourself. There is another reason for doing it, and that is if you put out a very, very thorough RFP, it's a lot easier for firms that aren't qualified to pare it back to you what you're asking for. It's harder to differentiate. If you have a very thorough RFP and then you have that. You keep it. It is not disclosed, and then you pare it back, then when

you issue the RFP, it's my experience that the kind of cream rises to the top. So that's just another technique.

But spend time thinking of that RFP/RFQ process because if you issue them, it's just unfair for you to issue them to get free consulting services. So spend some time. We typically will have a session at the conference on RFPs and RFQs. I don't know if we did this year or not, but we can do that.

Let me get in some of your questions quickly then.

**Davolio:** Paul, just one other follow-up, and that is that those of you who are consultants, you know and it's no surprise that the way that you survive in the long-term is to build relationships with clients. And I think that's a differentiation between a wired process, if you will, in that if you're sending a proposal to someone that you've done work for before, obviously that client knows your capabilities, and so you do have a benefit that way. And that's, I think, more helpful.

But one thing, for those of you who are in the public sector, I would ask you, please never, never, ever -- ever -- ask a consultant to write your RFP for you. It just raises a whole level of complexity --

**Farmer:** -- I've never even heard of that one, quite frankly, in all honesty.

**Davolio:** It happens a lot.

**Farmer:** Folks in the Northwest might want to rethink that.

**Davolio:** And consultants are frequently -- they will volunteer to do it because they believe that it will give them a leg up on the competition, which it usually does because you write the RFP to suit your qualifications and your capabilities. Don't go that way.

**Farmer:** Here's a question from the audience -- is it ethical to do a master plan and also then follow up with the engineering? The example they give is an airport master plan followed by engineering on some of the recommendations.

**Davolio:** I guess I don't know enough to answer. Is it a separate RFP that you're answering?

**Farmer:** Yeah, my reaction to this is that's the lifeblood of what a lot of consulting firms do. I don't see a problem at all with that. I think that you need to be careful somehow that you are not writing the master plan so you can then be accused of having written some recommendations that are so narrowly defined that sort of, you and you alone -- "Oh, guess what! I'm the firm to do it!" I think you need to be careful about that sort of thing. But there are a lot of planning and engineering firms that I think this is done and communities where I know it's done. Bill, do you see a problem with this?

**Harris:** (off-mike) No, I agree with you.

**Farmer:** You need to be careful about the way you do it, but I don't see that there is a bright line that says, no, you can't do that.

Here's another one -- wait, there was a good one in here. What is the responsibility of an AICP planner if he or she is aware that a developer applicant is meeting with planning commissioners or council members, but neither are disclosing it publicly?

**Davolio:** Well, um -- assuming that you have proof, I don't think there is a choice other than disclosure. And then get your resume prepared ahead of time. (laughter)

**Harris:** Well, I think disclosure, but also, again, a more practical or an equally practical exercise may be to professionally, politely go to the council people and suggest that this would not be appropriate behavior and it endangers your AICP status as a planner.

**Farmer:** And in addition to ethics, we're also talking about communications, and since this person put in big letter, "PICK ME" on this card, I'm going to do that. (laughter) It worked. (laughter) "I'm working with a consultant in my community on a redevelopment plan. Is it unethical to accept a planning position with that firm if I don't work on that plan?" So working with the consultant sounds like this is a public sector plan or there is a consultant working on a redevelopment plan. They like the work the

planner is doing so well, they now want to hire her. So is it unethical?

**Davolio:** On the assumption that you're going to quit your day job to do this and you're not going to be doing both, again, it gets back to disclosure. You have to talk to your current employer and let them know what your intentions are and make sure that they understand that you would not be working on their plan.

**Farmer:** Yeah, you simply can't stop work on the project and then move over onto the consultant side and work on the same project. You're right, that's a no. If you make it very clear to everyone that you would not be working on that project and the firm then still wants you, then you go through the transparency and the disclosure. But I don't see any problem with making that transition.

**Davolio:** With one caveat, Paul, and that is that the Code of Ethics says that the planner's primary focus is to serve the public interest. If you're resigning your job in the middle of a major project to take this other position, there is going to be some transition there that is not going to adversely affect your community.

**Farmer:** And we're giving short answers now to these, but again, I would have a little bit more of a conversation on most of these items.

"Should planning directors or managers have to post their calendars of who they met with and what was discussed publicly? Does it matter, discussed with neighbors vs. discussion with a registered lobbyist?" it says. It talks about a couple types of meetings.

**Harris:** My response to that would be, I don't see a need for that level of scrutiny. I think in fact if there were an interest on the part of the community or others, then the Freedom of Information Act in most states would permit access to what would have gone on in those conversations.

**Davolio:** Generally, I agree with that, with the admonition that in most states, I believe that your calendar is probably subject to subpoena.

**Farmer:** Yeah, I think that all of us are becoming increasingly aware of, again, what the

access laws are. And so you need to be very careful about the way you use electronic devices because most of them are subject to public records requests. And we hear from planners more and more that they're getting that sort of thing. So be careful about that.

There are a couple here on billing, one talking about the fact that a firm bills for 40 hours -- that's the way their system is set up -- but they consistently demand that their staff spend 60 hours, thereby donating an extra 20, essentially, to their clients and sort of underpricing their competition and taking it out of the hide of their employees. Thoughts about this?

**Davolio:** This is not a place I would want to work. (laughter)

**Farmer:** That is an interesting situation here. I hear from a lot of planners that the expectations of their employer is that they work well beyond the hours that they are allowed to bill for and that they're basically told they have to eat it. I think as professionals -- I guess I never saw myself working a 35 hour job or a 40 hour job, public sector or private sector. But at the same time, I don't think one can expect a sort of 60 hour work week consistently out of a hide of a planner when they're being paid 40. And yeah, I think you want to leave. But I do get concerned about the ethics of a firm that uses this to underbid consistently others. So I think there are some ethical issues that the firm needs to start thinking about in terms of its actions as well as just their own employee relations. I don't know why you'd be able to attract good people if that were routinely the case. If you're routinely asking somebody to work 45 hours and bill 40, I think that's so common that I don't see a problem with that. I mean, you get into that business about, "I cleaned my desk. Who do I bill it to?" sort of thing. So use your judgment on those things.

A retired director of city planning is offered a consulting position with a private firm, and the first job is an RFP proposal and a project from her old office. Is there a conflict?

**Harris:** I think that would not be a conflict if there were, one, transparency and disclosure early on.

**Farmer:** And the other thing I would add there is if this person was just the immediately retired planning director, you'd need to make sure that she did not in any way kind of set up the work program and set up the budget and everything like that for this project that now, six weeks later, she is applying for. So the timing issue there is important. If she is retired for three years and then decides to come back and do a project, or even if she is not retired for three years and had nothing to do with the establishment of this project, I think legitimately she could bid on it.

**Davolio:** And this also gets back into the kinds of communities you're working in, too. If you're in a small community where if you don't get work from this community, you don't work for the next six months, obviously there has got to be recognition of that kind of reality.

**Farmer:** Here's one where a developer asked you as a public sector planner to advise him on the team of lawyers and architects that you would recommend, since you're familiar with who's good in your community.

**Harris:** I think on that one, Paul, the answer is again more crystal, and that is you simply can't do it. There may be some public services available that you could refer a person to, but you certainly wouldn't want to get into that -- specifically into that kind of recommendation.

**Davolio:** There are some communities that maintain lists of consultants that they've worked with in the past. And if you were to simply hand a copy of that list to the developer, I think you would be okay.

**Farmer:** And I would agree with that.

A community hires a consulting team to do a comp plan or a zoning code, and a year after the project is complete, another partner in the consulting firm is retained by the developer to process a zoning change. What type of disclosure is necessary?

**Davolio:** I think the Code is pretty clear that it's got to be a written disclosure.

**Farmer:** Yeah, there has got to be a disclosure of that. I don't see any conflict as long as there is disclosure.

What do you do if there needs to be an immediate decision that is contrary to the Code? No time to call anyone. The boss needs it in 30 seconds. (laughter)

**Davolio:** Well, I guess the flip answer is, if you want a fast answer, it's no.

**Farmer:** Yeah, the answer is no. The answer is, well, boss, it'll take me more than 30 seconds to write my resignation letter.

Are PDOs still allowed to offer ethical guidance? If not, why not? PDOs have never been allowed to give ethical guidance. I would encourage PDOs to engage in conversations about the Code, but if there is an actual ethics issue that somebody wants to talk about, PDOs are not authorized to give guidance that could be relied upon.

**Davolio:** All you PDOs ought to have Paul's number on your speed dial.

**Farmer:** Right. But again, conversations are very much encouraged and sessions, brownbag lunches, whatever it may be, sessions at your conference -- those are all the things that we do encourage PDOs to work on. But if somebody is calling and actually asking for guidance where they are concerned that later on they may need to rely on that, they do need to get that from the national office.

**Davolio:** And Paul, you may want to elaborate on how that gives them at least a little bit of a level of protection in the event that there is a future ethics complaint.

**Farmer:** Right. When we talk about -- when I have these conversations and people ask if they can rely on it, we're having conversations. I'm taking notes. I'm noting the guidance I'm giving and the facts that I'm being given by the planner, and I also note the nature of whether there is going to be follow up. And sometimes people do have follow up. They'll go back and they'll talk to their planning director or city manager or city attorney and then call me back, and we'll have another exchange on that.

There are processes for formal opinions. Those are rare -- very rare. And so that formal opinion is a more elongated process that results in written opinions that are then advertised and

the like. But the kind of advice I generally give is simply over the phone. I will also ask occasionally, do you want to follow up with a letter? Often I'm asking the individual to follow up with letters within their community, again, on the disclosure issue.

We'll do a couple more here, and I see people headed out for lunch or the next session. We've got a minute or two left. The issue of what do we do if we change our professional opinion? In this scenario we've given the Code, but the previous client won't sign off, as they are required to do. And the answer is, you can't issue a new opinion. The point again is to protect your previous client who is relying on your advice, your professional judgment, and you can't pull the rug out from under them. And so you simply cannot offer new advice. You have to tell your new client you are ethically bound to simply stay silent. You can either reaffirm your previous advice, which your client is not going to want to hear, or you can stay silent on the matter, but you cannot simply say, well, I couldn't get the previous client to say it's not going to harm them, but I'm going to issue the advice anyway. So that's very clear -- you can't do that.

I'm looking for some short ones here -- is Mr. Farmer suggesting that an AICP planner should resign her job if required by a supervisor to act unethically? I'll let the two of you answer, and then I'll answer.

**Davolio:** I don't know if that would be my first option, but it certainly ought to be on the table. It may get to that point. But one of the things that planners need to be good at is communicating. And if you've got a problem like that with your boss, you need to be able to sit down with your boss and communicate the problem and try to lay out some options that would not result in your needing to either resign or, worst case, be fired. So I guess talk to your boss.

**Harris:** Yeah, I agree with Michael. And I would also urge, in addition to avoid perhaps knocking heads with your boss, also try to find a third party to intercede or be supportive or be a broker, one of the roles of good planners, to work out the differences.

**Farmer:** And that's what I would say. And the conversations I have -- there was a planning director years ago that used to tell everyone -- I heard him say this many times at APA conferences -- if you don't have six months of money in the bank, you can't be a planning director because you've got to be ready for a situation. Again, resignation is not what we suggest. We hope it rarely happens. We know that it does happen. And what was being talked about here is what I would say. You try first to have a relationship where it would never come to that. You try to have multiple relationships so there are other parties that you can go to and you can rely on.

I always ask questions of, you know, what has your relationship been? What is this person like? And do you have a city attorney, for example, or an HR person that one can go through? Is your community set up that way? And so there are a variety of things you explore before you get to the point of having to say no. But in the end, if you believe that you're being asked to do something unethically, you simply can't do that. A demand, a requirement, a request by a superior for you to do something that is unethical, according to the code -- you simply can't do it. That's why the Code is there. We work very hard to make sure it doesn't come down to that situation where a resignation is the only thing left. And I think if the Code is taken seriously by communities and planners -- and this is where the PDOs can be very, very helpful -- if the Code is a part of an ongoing conversation in communities across America and in planning departments across America, I think you're going to find that fewer and fewer planners would ever be faced with that situation. Bill, Mike, do you have any closing comments?

**Harris:** Just one -- the thing that Paul has emphasized here time and again, I think, is very cogent advice. And that is, we planners need to discuss and discuss in great detail whether at the coffee machine or in divisional workshops or the like, these issues, including scenarios, are a best planning practice, and keeping ourselves on the side of doing the right thing for the right reason.

**Farmer:** I tell you what I think I'm going to do. We have a lot of really, really good questions here. And I'm going to see if we have the feasibility for those of you who want to do this, to

join in a few weeks an audioconference where Bill and Mike and I would very carefully kind of categorize these, look through them and then invite you for free to join a conference call where we can try to get through the many other questions. There are lots of good questions here. So contact us in a few weeks, and we'll see if we can -- we'll put that out via Interact, okay? I think we can probably do it. We'll pick a time. Thank you all.

(END OF SESSION)

## Appendix B: AICP Code of Ethics and Professional Conduct

**Adopted March 19, 2005**  
**Effective June 1, 2005**

*The Executive Director of APA/AICP is the Ethics Officer as referenced in the following.*

We, professional planners, who are members of the American Institute of Certified Planners, subscribe to our Institute's Code of Ethics and Professional Conduct. Our Code is divided into three sections:

Section A contains a statement of aspirational principles that constitute the ideals to which we are committed. We shall strive to act in accordance with our stated principles. However, an allegation that we failed to achieve our aspirational principles cannot be the subject of a misconduct charge or be a cause for disciplinary action.

Section B contains rules of conduct to which we are held accountable. If we violate any of these rules, we can be the object of a charge of misconduct and shall have the responsibility of responding to and cooperating with the investigation and enforcement procedures. If we are found to be blameworthy by the AICP Ethics Committee, we shall be subject to the imposition of sanctions that may include loss of our certification.

Section C contains the procedural provisions of the Code. It (1) describes the way that one may obtain either a formal or informal advisory ruling, and (2) details how a charge of misconduct can be filed, and how charges are investigated, prosecuted, and adjudicated.

The principles to which we subscribe in Sections A and B of the Code derive from the special responsibility of our profession to serve the public interest with compassion for the welfare of all people and, as professionals, to our obligation to act with high integrity.

As the basic values of society can come into competition with each other, so can the aspirational principles we espouse under this Code. An ethical judgment often requires a conscientious balancing, based on the facts and context of a particular situation and on the precepts of the entire Code.

As Certified Planners, all of us are also members of the American Planning Association and share in the goal of building better, more inclusive communities. We want the public to be aware of the principles by which we practice our profession in the quest of that goal. We sincerely hope that the public will respect the commitments we make to our employers and clients, our fellow professionals, and all other persons whose interests we affect.

### A. Principles to Which We Aspire

#### 1. Our Overall 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. 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:

- a) We shall always be conscious of the rights of others.
- b) We shall have special concern for the long-range consequences of present actions.

- c) We shall pay special attention to the interrelatedness of decisions.
- d) We shall provide timely, adequate, clear, and accurate information on planning issues to all affected persons and to governmental decision makers.
- e) 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.
- f) We shall seek social justice by working to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of the disadvantaged and to promote racial and economic integration. We shall urge the alteration of policies, institutions, and decisions that oppose such needs.
- g) We shall promote excellence of design and endeavor to conserve and preserve the integrity and heritage of the natural and built environment.
- h) We shall deal fairly with all participants in the planning process. Those of us who are public officials or employees shall also deal evenhandedly with all planning process participants.

## **2. Our Responsibility to Our Clients and Employers**

We owe diligent, creative, and competent performance of the work we do in pursuit of our client or employer's interest. Such performance, however, shall always be consistent with our faithful service to the public interest.

- a) We shall exercise independent professional judgment on behalf of our clients and employers.
- b) 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.
- c) We shall avoid a conflict of interest or even the appearance of a conflict of interest in accepting assignments from clients or employers.

## **3. 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.

- a) We shall protect and enhance the integrity of our profession.
- b) We shall educate the public about planning issues and their relevance to our everyday lives.
- c) We shall describe and comment on the work and views of other professionals in a fair and professional manner.
- d) We shall share the results of experience and research that contribute to the body of planning knowledge.
- e) 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.
- f) We shall contribute time and resources to the professional development of students, interns, beginning professionals, and other colleagues.
- g) We shall increase the opportunities for members of underrepresented groups to become professional planners and help them advance in the profession.

- h) We shall continue to enhance our professional education and training.
- i) We shall systematically and critically analyze ethical issues in the practice of planning.
- j) We shall contribute time and effort to groups lacking in adequate planning resources and to voluntary professional activities.

## **B. Our Rules of Conduct**

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:

1. We shall not deliberately or with reckless indifference fail to provide adequate, timely, clear and accurate information on planning issues.
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.
3. 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 (1) 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 (2) we make full written disclosure of the conflict to our current client or employer and receive written permission to proceed with the assignment.
4. 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. 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. 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. We shall not use to our personal 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 (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.
8. 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. 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. We shall neither deliberately, nor with reckless indifference, misrepresent the qualifications, views and findings of other professionals.
11. We shall not solicit prospective clients or employment through use of false or misleading claims, harassment, or duress.
12. We shall not misstate our education, experience, training, or any other facts which are relevant to our professional qualifications.
13. We shall not sell, or offer to sell, services by stating or implying an ability to influence decisions by improper means.
14. 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. 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. 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. We shall not use the product of others' efforts to seek professional recognition or acclaim intended for producers of original work.
18. We shall not direct or coerce other professionals to make analyses or reach findings not supported by available evidence.
19. 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. We shall not unlawfully discriminate against another person.
21. 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. 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. 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. We shall not file a frivolous charge of ethical misconduct against another planner.
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.

## **C. Our Code Procedures**

### **1. Introduction**

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.

## **2. Informal Advice**

All of us are encouraged to seek informal ethics advice from the Ethics Officer. Informal advice is not given in writing and is not binding on AICP, but the AICP Ethics Committee shall take it into consideration in the event a charge of misconduct is later filed against us concerning the conduct in question. If we ask the Ethics Officer for informal advice and do not receive a response within 21 calendar days of our request, we should notify the Chair of the Ethics Committee that we are awaiting a response.

## **3. Formal Advice**

Only the Ethics Officer is authorized to give formal advice on the propriety of a planner's proposed conduct. Formal advice is binding on AICP and any of us who can demonstrate that we followed such advice shall have a defense to any charge of misconduct. The advice will be issued to us in writing signed by the Ethics Officer. The written advice shall not include names or places without the written consent of all persons to be named. Requests for formal advice must be in writing and must contain sufficient details, real or hypothetical, to permit a definitive opinion. The Ethics Officer has the discretion to issue or not issue formal advice. The Ethics Officer will not issue formal advice if he or she determines that the request deals with past conduct that should be the subject of a charge of misconduct. The Ethics Officer will respond to requests for formal advice within 21 days of receipt and will docket the requests in a log that will be distributed on a quarterly basis to the Chair of the AICP Ethics Committee. If the Ethics Officer fails to furnish us with a timely response we should notify the Chair of the AICP Ethics Committee that we are awaiting a response.

## **4. Published Formal Advisory Rulings**

The Ethics Officer shall transmit a copy of all formal advice to the AICP Ethics Committee. The Committee, from time to time, will determine if the formal advice provides guidance to the interpretation of the Code and should be published as a formal advisory ruling. Also, the Ethics Committee has the authority to draft and publish formal advisory rulings when it determines that guidance to interpretation of the Code is needed or desirable.

## **5. Filing a Charge of Misconduct**

Any person, whether or not an AICP member, may file a charge of misconduct against a Certified Planner. A charge of misconduct shall be made in a letter sent to the AICP Ethics Officer. The letter may be signed or it may be anonymous. The person filing the charge is urged to maintain confidentiality to the extent practicable. The person filing the charge should not send a copy of the charge to the Certified Planner identified in the letter or to any other person. The letter shall accurately identify the Certified Planner against whom the charge is being made and describe the conduct that allegedly violated the provisions of the Rules of Conduct. The person filing a charge should also cite all provisions of the Rules of Conduct that have allegedly been violated. However, a charge will not be dismissed if the Ethics Officer is able to determine from the facts stated in the letter that certain Rules of Conduct may have been violated. The letter reciting the charge should be accompanied by all relevant documentation available to the person filing the charge. While anonymously filed charges are permitted, anonymous filers will not receive notification of the disposition of the charge. Anonymous filers may furnish a postal address in the event the Ethics Officer needs to reach them for an inquiry.

## **6. Receipt of Charge by Ethics Officer**

The Ethics Officer shall maintain a log of all letters containing charges of misconduct filed against Certified Planners upon their receipt and shall transmit a quarterly report of such correspondence to the Chair of the Ethics Committee. Within two weeks of receipt of a charge, the Ethics Officer shall

prepare a cover letter and transmit the charge and all attached documentation to the named Certified Planner, who shall be now referred to as "the Respondent." The Ethics Officer's cover letter shall indicate whether the Ethics Officer expects the Respondent to file a "preliminary response" or whether the Ethics Officer is summarily dismissing the charge because it is clearly without merit. A copy of the cover letter will also be sent to the Charging Party, if identified. If the cover letter summarily dismisses the charge, it shall be sent to an identifiable Charging Party by receipted Certified Mail. The Charging Party will have the right to appeal the summary dismissal as provided in Section 11. After the Ethics Officer has received a charge, the Charging Party may withdraw it only with the permission of the Ethics Officer. After receiving a charge, the Ethics Officer shall have a duty to keep an identified Charging Party informed of its status. If an identified Charging Party has not received a status report from the Ethics Officer for 60 calendar days, the Charging Party should notify the Chair of the AICP Ethics Committee of the lapse.

### **7. Right of Counsel**

A planner who receives a charge of misconduct under a cover letter requesting a preliminary response should understand that if he or she desires legal representation, it would be advisable to obtain such representation at the earliest point in the procedure. However, a planner who elects to proceed at first without legal representation will not be precluded from engaging such representation at any later point in the procedure.

### **8. Preliminary Responses to a Charge of Misconduct**

If the Ethics Officer requests a preliminary response, the Respondent shall be allowed 30 calendar days from receipt of the Ethics Officer's letter to send the response to the Ethics Officer. The Ethics Officer will grant an extension of time, not to exceed 15 calendar days, if the request for the extension is made within the 30 day period. Failure to make a timely preliminary response constitutes a failure to cooperate with the Ethics Officer's investigation of the charge. A preliminary response should include documentation, the names, addresses and telephone numbers of witnesses, and all of the facts and arguments that counter the charge. Because the motivation of the person who filed the charge is irrelevant, the Respondent should not discuss it. The Ethics Officer will send a copy of the preliminary response to the Charging Party, if identified, and allow the Charging Party 15 calendar days from the date of receipt to respond.

### **9. Conducting an Investigation**

After review of the preliminary response from the Respondent and any counter to that response furnished by an identified Charging Party, or if no timely preliminary response is received, the Ethics Officer shall decide whether an investigation is appropriate. If the Ethics Officer determines that an investigation should be conducted, he or she may designate a member of the AICP staff or AICP counsel to conduct the investigation. The Respondent must cooperate in the investigation and encourage others with relevant information, whether favorable or unfavorable, to cooperate. Neither the Ethics Officer, nor designee, will make credibility findings to resolve differing witness versions of facts in dispute.

### **10. Dismissal of Charge or Issuance of Complaint**

If, with or without an investigation, the charge appears to be without merit, the Ethics Officer shall dismiss it in a letter, giving a full explanation of the reasons. The dismissal letter shall be sent to the Respondent and the Charging Party by receipted Certified Mail. If, however, the Ethics Officer's investigation indicates that a Complaint is warranted, the Ethics Officer shall draft a Complaint and send it to the Respondent by receipted Certified Mail, with a copy to the Charging Party. The Complaint shall consist of numbered paragraphs containing recitations of alleged facts. Following the fact paragraphs, there shall be numbered paragraphs of alleged violations, which shall cite provisions of the Rules of Conduct that the Ethics Officer believes are implicated. The allegations in the Complaint shall be based on the results of the Ethics Officer's investigation of the charge and may be additional to, or different from, those allegations initially relied upon by the Charging Party.

The Ethics Officer shall maintain a log of all dismissals and shall transmit the log on a quarterly basis to the Chair of the Ethics Committee.

### **11. Appeal of Dismissal of Charge**

Identified Charging Parties who are notified of the dismissal of their ethics charges shall have 30 calendar days from the date of the receipt of their dismissal letters to file an appeal with the Ethics Committee. The appeal shall be sent to the Ethics Officer who shall record it in a log and transmit it within 21 calendar days to the Ethics Committee. The Ethics Committee shall either affirm or reverse the dismissal. If the dismissal is reversed, the Ethics Committee shall either direct the Ethics Officer to conduct a further investigation and review the charge again, or issue a Complaint based on the materials before the Committee. The Ethics Officer shall notify the Charging Party and the Respondent of the Ethics Committee's determination..

### **12. Answering a Complaint**

The Respondent shall have 30 calendar days from receipt of a Complaint in which to file an Answer. An extension not to exceed 15 calendar days will be granted if the request is made within the 30 day period. In furnishing an Answer, the Respondent is expected to cooperate in good faith. General denials are unacceptable. The Answer must specifically admit or deny each of the fact allegations in the Complaint. It is acceptable to deny a fact allegation on the ground that the planner is unable to verify its correctness, but that explanation should be stated as the reason for denial. The failure of a Respondent to make a timely denial of any fact alleged in the Complaint shall be deemed an admission of such fact. The Ethics Officer may amend a Complaint to delete any disputed fact, whether or not material to the issues. The Ethics Officer also may amend a Complaint to restate fact allegations by verifying and adopting the Respondent's version of what occurred. The Ethics Officer shall send the Complaint or Amended Complaint and the Respondent's Answer to the Ethics Committee with a copy to an identified Charging Party. The Ethics Officer shall also inform the Ethics Committee if there are any disputed material facts based on a comparison of the documents.

### **13. Conducting a Hearing**

- a) If the Ethics Officer notifies the Ethics Committee that material facts are in dispute or if the Ethics Committee, on its own, finds that to be the case, the Chair of the Committee shall designate a "Hearing Official" from among the membership of the Committee. At this point in the process, the Ethics Officer, either personally or through a designated AICP staff member or AICP counsel, shall continue to serve as both Investigator-Prosecutor and as the Clerk serving the Ethics Committee, the Hearing Official and the Respondent. In carrying out clerical functions, the Ethics Officer, or designee, may discuss with the Ethics Committee and the Hearing Official the procedural arrangements for the hearing. Until the Ethics Committee decides the case, however, the Ethics Officer or designee shall not discuss the merits of the case with any member of the Committee unless the Respondent is present or is afforded an equal opportunity to address the Committee member.
- b) The Ethics Officer shall transmit a "Notice of Hearing" to the Respondent, the Hearing Official and an identified Charging Party. The hearing shall normally be conducted in the vicinity where the alleged misconduct occurred. The Notice will contain a list of all disputed material facts that need to be resolved. The hearing will be confined to resolution of those facts. There shall be no requirement that formal rules of evidence be observed.
- c) The Ethics Officer will have the burden of proving, by a preponderance of the evidence, that misconduct occurred. The Ethics Officer may present witness testimony and any other evidence relevant to demonstrating the existence of each disputed material fact. The Respondent will then be given the opportunity to present witness testimony and any other evidence relevant to controvert the testimony and other evidence submitted by the Ethics Officer. The Ethics Officer may then be given an opportunity to present additional witness testimony and other evidence in rebuttal. All

witnesses who testify for the Ethics Officer or the Respondent shall be subject to cross-examination by the other party. The Hearing Official shall make an electronic recording of the hearing and shall make copies of the recording available to the Ethics Officer and the Respondent.

d) At least 30 calendar days before the hearing, the Ethics Officer and the Respondent shall exchange lists of proposed witnesses who will testify, and copies of all exhibits that will be introduced, at the hearing. There shall be no other discovery and no pre-hearing motions. All witnesses must testify in person at the hearing unless arrangements can be made by agreement between the Respondent and the Ethics Officer prior to the hearing, or by ruling of the Hearing Official during the hearing, to have an unavailable witness's testimony submitted in a video recording that permits the Hearing Official to observe the demeanor of the witness. No unavailable witness's testimony shall be admissible unless the opposing party was offered a meaningful opportunity to cross-examine the witness. The hearing shall not be open to the public. The Hearing Official shall have the discretion to hold open the hearing to accept recorded video testimony of unavailable witnesses. The Respondent will be responsible for the expense of bringing his or her witnesses to the hearing or to have their testimony video recorded. Following the closing of the hearing, the Hearing Official shall make findings only as to the disputed material facts and transmit the findings to the full Ethics Committee, the Ethics Officer, and the Respondent. The Hearing Official, prior to issuing findings, may request that the parties submit proposed findings of fact for his or her consideration.

#### **14. Deciding the Case**

The Ethics Committee (including the Hearing Official member of the Committee) shall resolve the ethics matter by reviewing the documentation that sets out the facts that were not in dispute, any fact findings that were required to be made by a Hearing Official, and any arguments submitted to it by the Respondent and the Ethics Officer. The Ethics Officer shall give 45 calendar days notice to the Respondent of the date of the Ethics Committee meeting during which the matter will be resolved. The Ethics Officer and the Respondent shall have 21 calendar days to submit memoranda stating their positions. The Ethics Officer shall transmit the memoranda to the Ethics Committee no later than 15 calendar days prior to the scheduled meeting. If the Committee determines that the Rules of Conduct have not been violated, it shall dismiss the Complaint and direct the Ethics Officer to notify the Respondent and an identified Charging Party. If the Ethics Committee determines that the Ethics Officer has demonstrated that the Rules of Conduct have been violated, it shall also determine the appropriate sanction, which shall either be a reprimand, suspension, or expulsion. The Ethics Committee shall direct the Ethics Officer to notify the Respondent and an identified Charging Party of its action and to draft a formal explanation of its decision and the discipline chosen. Upon approval of the Ethics Committee, the explanation and discipline chosen shall be published and titled "Opinion of the AICP Ethics Committee." The determination of the AICP Ethics Committee shall be final.

#### **15. Settlement of Charges**

a) Prior to issuance of a Complaint, the Ethics Officer may negotiate a settlement between the Respondent and an identified Charging Party if the Ethics Officer determines that the Charging Party has been personally aggrieved by the alleged misconduct of the Respondent and a private resolution between the two would not be viewed as compromising Code principles. If a settlement is reached under such circumstances, the Charging Party will be allowed to withdraw the charge of misconduct.

b) Also prior to issuance of a Complaint, the Ethics Officer may enter into a proposed settlement agreement without the participation of an identified Charging Party. However, in such circumstances, the proposed settlement agreement shall be contingent upon the approval of the Ethics Committee. An identified Charging Party will be given notice and an opportunity to be heard by the Ethics Committee before it votes to approve or disapprove the proposed pre-Complaint settlement.

c) After issuance of a Complaint by the Ethics Officer, a settlement can be negotiated solely between the Ethics Officer and the Respondent, subject to the approval of the Ethics Committee without input from an identified Charging Party.

#### **16. Resignations and Lapses of Membership**

If an AICP member who is the subject of a Charge of Misconduct resigns or allows membership to lapse prior to a final determination of the Charge (and any Complaint that may have issued), the ethics matter will be held in abeyance subject to being revived if the individual applies for reinstatement of membership within two years. If such former member, however, fails to apply for reinstatement within two years, the individual shall not be permitted to reapply for certification for a period of 10 years from the date of resignation or lapse of membership. If the Ethics Officer receives a Charge of Misconduct against a former member, the Ethics Officer shall make an effort to locate and advise the former member of the filing of the Charge and this Rule of Procedure.

#### **17. Annual Report of Ethics Officer**

Prior to January 31 of each calendar year the Ethics Officer shall publish an Annual Report of all ethics activity during the preceding calendar year to the AICP Ethics Committee and the AICP Commission. The AICP Commission shall make the Annual Report available to the membership.