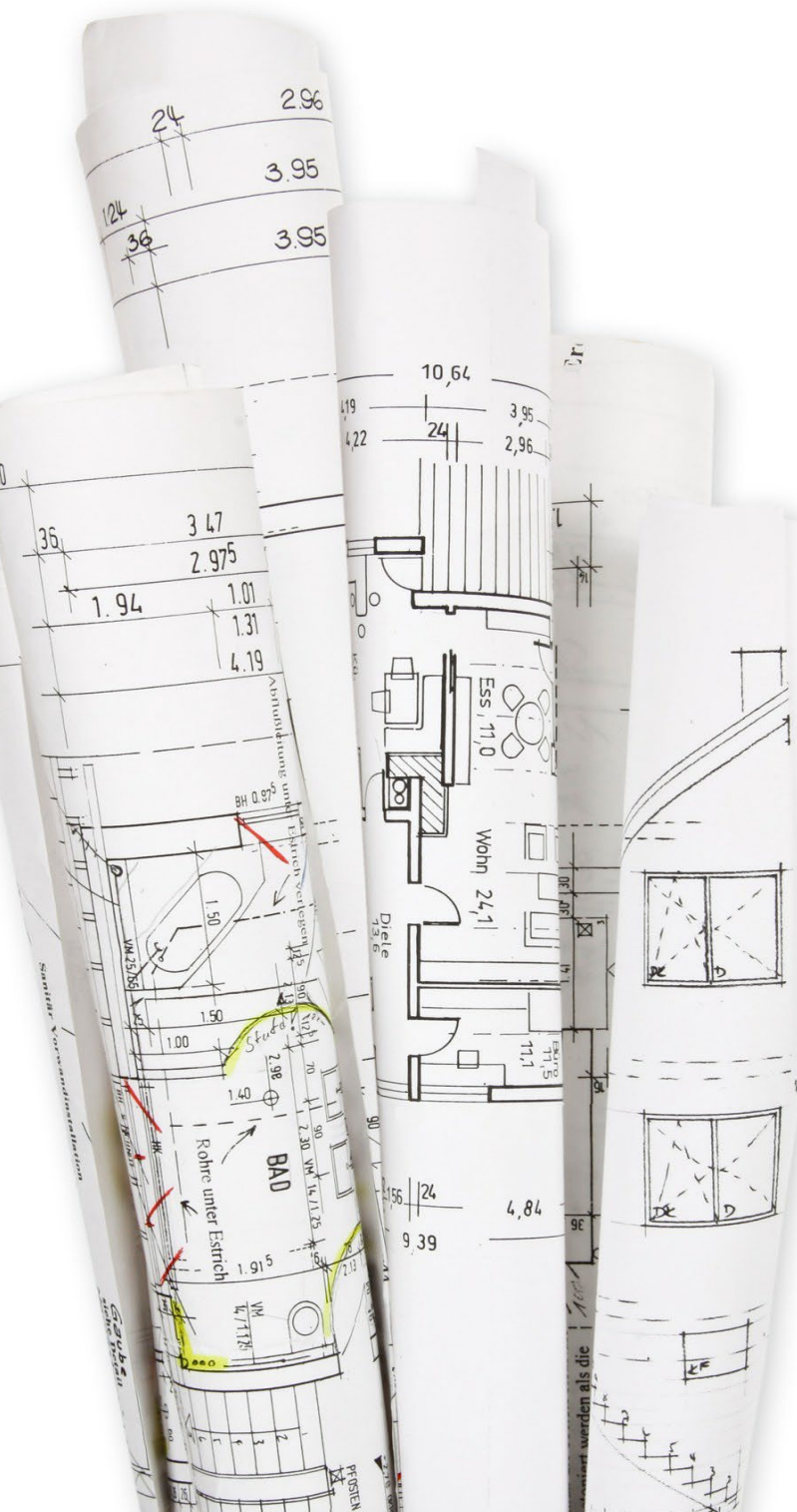


BUILDING BLOCKS

DESIGNPRO
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Conflicts of Interest in the Design Profession: What You Need to Know

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DesignPro Insurance Group

“Rule of Thumb” regarding conflicts of interest—in any place in our world, including the design and construction industry, avoid even the appearance of impropriety. This rule is probably the best and most universal rule. A conflict of interest occurs when an individual’s personal interests, such as family, friendships, financial, or social factors could compromise a person’s judgment, decisions, or actions in the workplace. Conflicts of interest are a clash that most often occurs between requirements and interests. Various types of conflicts of interest can occur because of the nature of relationships versus rules of organizations.

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Consider these two well thought-out professional association rules for the design professions.



NATIONAL SOCIETY OF
PROFESSIONAL ENGINEERS

Code of Ethics for Engineers

4. Engineers shall act for each employer or client as faithful agents or trustees.

- a. Engineers shall disclose all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services.

5. Engineers shall not be influenced in their professional duties by conflicting interests.

- a. Engineers shall not accept financial or other considerations, including free engineering designs, from material or equipment suppliers for specifying their product.
- b. Engineers shall not accept commissions or allowances, directly or indirectly, from contractors or other parties dealing with clients or employers of the engineer in connection with work for which the engineer is responsible.



2020 Code of Ethics and Professional Conduct

FROM THE OFFICE OF GENERAL COUNSEL

E.S. 3.2 Conflict of Interest:

Members should avoid conflicts of interest in their professional practices and fully disclose all unavoidable conflicts as they arise.

Rule 3.201 A Member shall not render professional services if the Member's professional judgment could be affected by responsibilities to another project or person, or by the Member's own interests, unless all those who rely on the Member's judgment consent after full disclosure.

Conflicts of interest occur in every way in our business world—in medicine, law, government, and the design professions too.

CONFLICTS OF INTEREST 101 – WHAT THEY ARE AND HOW TO AVOID THEM?

<https://www.qualitygurus.com/conflict-of-interest-101-what-they-are-and-how-to-avoid-them/>

To understand it better, let's split this topic into three broad categories of conflict of interest: actual, potential, and perceived.

1. Actual Conflict of Interest

Actual conflicts of interest are those where a person or business has an immediate personal stake in the outcome of decision making. This means that they are directly impacted financially by the decisions made.

Examples of actual conflicts of interest include:

- a. An attorney who represents both sides of a case;
- b. A law firm where the partner works both for a client and for themselves;
- c. A government official who lobbies on behalf of a company that they regulate;
- d. A journalist who writes positively about companies whose stock they invested in;
- e. A purchasing manager who purchases supplies from vendors which their family owns; or
- f. A financial advisor who knowingly advises customers to buy investments that aren't in their best interests.

2. Potential Conflicts of Interest

Potential conflict of interest occurs when a person does not have any direct financial impact from the outcome of a decision but could be affected indirectly as a result of what happens.

Examples of potential conflicts of interest may include:

- a. A judge who does not recuse himself from cases involving parties which they personally support;
- b. An attorney who was formerly employed by one side but now represents the opposing side; or
- c. A quality manager of the company who audits products manufactured by their previous company.

3. Perceived Conflict of Interest

Perceived conflicts of interest arise when people believe a possible conflict exists even though it might not exist. In some cases, these perceptions can become so strong that they actually affect how people act.

Examples of perceived conflicts of interest may include:

- a. A person who thinks there is corruption at work simply because they cannot understand why certain decisions were made; or
- b. A person who believes they are being cheated just based upon rumors heard through gossip.

EXAMPLES OF “CONFLICTS OF INTERESTS” ETHICAL DECISIONS

At the expense of taking up too much space in this risk management article, copied below is an excerpt from the alphabetical list of ethical decisions by the engineering Board of Ethical Review (“BER”) through 2020 (only “A” through the letter “C”). Without question, it can be seen in this list from the National Society of Professional’s *Engineers Ethics Reference Guide* that the topic of “conflicts of interest” in ethical cases outnumber the other topics by the BER.

Professional engineers (and architects) often find themselves involved with and representing multiple organizational interests in their professional activities, and this can give rise to organizational conflicts of interest. Conflicts of interest are the most prevalent ethical concerns facing engineering practitioners. Over the years, the BER has considered numerous cases involving engineers who have interests in conflict with the interests of clients, employees, or other engineers. At one time, the NSPE Code of Ethics specifically prohibited engineers from becoming involved in cases or situations in which a conflict of interest was present. BER Case 20-3.

Consolidated Table of Contents to the Opinions of the Board of Ethical Review

Case No.	Subject
77-3	Appropriate Compensation for Engineering Services
93-3	Appropriate Notification and Review of Another Engineer's Work
69-9	Approval of Engineering Plans Related to Architectural Plans Prepared by Nonregistered Persons
65-14	Assistance in Preparation of Applications under Advance Planning Act
01-8	Associating with a Firm Not Authorized to Practice
61-4	Association with Nonregistered Engineers
92-8	Attempt to Influence Prospective City/Client
75-15	Attempt to Restrain Employment of Engineer-Employees
95-7	Authorship of Article—Misleading Reference
71-5	Boycott of Public Agency Engineering Employment
80-2	Brochure of Subsidiary Firm
76-10	Brochure—Distribution through Reader Service Card
63-8, 74-8, 77-6	Brochure—Format and Content
75-6	Brochure—Text and Built-in Reply Card
71-2	Brokerage of Engineering Services
92-3	Brokerage of Engineering Services—Building Inspection Services
67-7	Certification of Plans Prior to Payment of Engineer
91-8	Certification of Work Performed by Technician
18-8	Certificate of Merit and Reviewing Work of Another Engineer
86-5	City Engineer Seeking to Retain Employees of Engineering Firm Independent of Their Firm
73-2	Classified Advertisement—Contract Work
96-10	Comments by One Engineer Concerning Another
78-7	Commission Basis of Payment under Marketing Agreement
98-8	Competence to Certify Arms Storage Rooms
94-8	Competence to Perform Foundation Design
61-5	Competition for Engineering Employment
60-2	Competitive Bidding—Professional Services
65-5	Competitive Bidding—Professional Services Integrated with Construction
60-8	Competitive Bidding—Reduction of Fees
60-7	Competitive Bidding—Reduction of Standards
71-7	Competitive Bidding—Rental of Aircraft
62-6	Competitive Bidding—Research and Development
75-1	Competitive Bidding—Salary Request in Recruiting Advertisement
74-9	Competitive Bidding—Selection Procedures
63-2	Competitive Bidding—Speculative Designs
72-7	Competitive Bidding—Study Contracts
69-7	Competitive Bidding—Submission of Project Cost
10-7	Compliance with ADA Guidelines
07-11	Confidential Information—Client's Failure to Obtain Building Permits
06-5	Confidential Information—Foundation Design Services
15-8	Confidentiality of Competitor Information Submitted to Government Agency
82-2	Confidentiality of Engineering Report
16-12	Confidentiality—Access to Competitor's Proposal
13-9	Confidentiality—Becoming Aware of Technical Information Important to the Public Health and Safety
15-7	Confidentiality—Discussion with Potential Bidding Contractor
12-3	Confidentiality—Duty to Advise Client of Subpoena
19-7	Confidentiality—Fire Investigation
01-6	Confidentiality—Records Relating to Services to Former Client
59-3, 60-5	Conflict of Interest



Consolidated Table of Contents to the Opinions of the Board of Ethical Review

Case No.	Subject
06-7	Conflict of Interest—Accepting Real Estate as Payment for Services
94-9	Conflict of Interest—Accident Reconstruction Services
02-3	Conflict of Interest—Allegations of Bias
03-7	Conflict of Interest—Appraisal of Manufacturing Facility
14-1	Conflict of Interest—Assistant Director of Public Works—Part-Time Consulting
78-3	Conflict of Interest—Binary Service to Same Client
18-4	Conflict of Interest—Bridge Construction Inspection and Shop Drawing Preparation
18-2	Conflict of Interest—Chairman of Editorial Board of Technical Society Publication
89-6	Conflict of Interest—Chairman of Owners' Association
89-4	Conflict of Interest—Claim Review of Contractor
89-5	Conflict of Interest—Claim Services to City
92-5	Conflict of Interest—Community Service
67-12	Conflict of Interest—Consultant Service as County Engineer
01-11	Conflict of Interest—Consultant Serving as City Engineer
82-4	Conflict of Interest—Consultant to a Government Body—Member of a Local Authority
76-3	Conflict of Interest—Consultant to County Testimony Adverse to County Client
62-7	Conflict of Interest—Consultant to Governmental Body
12-5	Conflict of Interest—Consultant to Redevelopment Authority
05-10	Conflict of Interest—Design Build
16-11	Conflict of Interest—Design of Playground As Favor To Public Official
94-11	Conflict of Interest—Disclosure & Participation as Government Official on Work Related to Former Firm
13-8	Conflict of Interest—Disclosure Obligation to Parties
95-4	Conflict of Interest—Disclosure to a Client A Relationship with Another Client
83-1	Conflict of Interest—Duty of Loyalty of Terminated Employed Engr. to Employer—Misleading Brochure
04-9	Conflict of Interest—Engineer Inspecting Own Work
76-2	Conflict of Interest—Engineer Ownership of Construction Firm
87-3	Conflict of Interest—Engineer Retained by County to Inspect Project Developed by Client
94-1	Conflict of Interest—Engineer Retained by State
85-2	Conflict of Interest—Engineer Serving on Private Hospital Board and Performing Services
18-1	Conflict of Interest—Engineer Spouse as Sales Representative
10-10	Conflict of Interest—Engineer's Out-of-State Office Providing Review of Steel Fabricator's Work
14-7	Conflict of Interest—Engineer's Side Business Outside of Regular Employment
94-3	Conflict of Interest—Engineering Consultant Serving as Equipment Manufacturing Sales Representative
95-6	Conflict of Interest—Engineering Services by Trustee of College
04-10	Conflict of Interest—Establishing an Environmental Services Company that Provides Services to Employer
02-9	Conflict of Interest—Expert Testimony Involving Landlord
82-6	Conflict of Interest—Expert Witness for Contractor
06-11	Conflict of Interest—Expert Witness Testimony
99-2	Conflict of Interest—Failure to Disclose Other Business Interest
09-7	Conflict of Interest—Father's Ownership of Property Adjacent to Client
88-1	Conflict of Interest—Feasibility Study
15-1	Conflict of Interest—Former Government Official—Independent Contractor for Firm
72-2	Conflict of Interest—Free Engineering (Computers)
90-7	Conflict of Interest—Furnishing Limited Advice
91-6	Conflict of Interest—Hazardous Waste Services
02-6	Conflict of Interest—Inspection of Work in Joint Venture
02-4	Conflict of Interest—Loan from Contractor
62-21	Conflict of Interest—Member of City Council
70-6	Conflict of Interest—Member of Legislature
75-7	Conflict of Interest—Membership on Public Agency

Consolidated Table of Contents to the Opinions of the Board of Ethical Review

Case No.	Subject
14-2	Conflict of Interest—Mining Engineer’s Review of Claims for Federal Government
74-2	Conflict of Interest—Municipal Engineer
71-6	Conflict of Interest—Nominal Ownership
97-3	Conflict of Interest—Obligations of Engineer on a Defaulted Project
16-4	Conflict of Interest—Overlapping Service Arrangements
69-8, 79-9	Conflict of Interest—Ownership of Product Firm
74-4	Conflict of Interest—Part-Time Consultant
63-5	Conflict of Interest—Part-Time Service as City Engineer
17-8	Conflict of Interest—Participating in Multiple DOT Proposals for Different Contractors
06-1	Conflict of Interest—Participation in Seminar and Reward Program for Specifying Systems
79-1	Conflict of Interest—Payment from Related Party
18-10	Conflict of Interest—Peer Reviewer Participating on Subsequent Joint Venture
17-11	Conflict of Interest—Performing Fire Investigation and Forensic Engineering Services as an Employee of a Company Owned by an Insurance Company
17-9	Conflict of Interest—Performing Forensic Engineering Services Against Wholly Owned Subsidiary After Providing Engineering Service to Another Subsidiary of Holding Company
20-03	Conflict of Interest—PEs Serving on State Licensure Boards
04-2	Conflict of Interest—Prior Employment with Vendor
17-4	Conflict of Interest—Prior Forensic Engineering Services to Defense Counsel
01-7	Conflict of Interest—Privatization of Plan Reviews
04-12	Conflict of Interest—Professional Opinions of Engineering Expert Witness
10-12	Conflict of Interest—Promotion and Tenure Process for Engineering Faculty
94-5	Conflict of Interest—Providing Both City Engineer and Inspection Services
93-6	Conflict of Interest—Providing Views on Feasibility of Project
79-4	Conflict of Interest—Public Advisory Board
02-8	Conflict of Interest—Public Employee Serving as Part-Time Consultant
67-1	Conflict of Interest—Public Employment
11-9	Conflict of Interest—Public Health and Safety—Design and Construction of House in Flood Area
14-9	Conflict of Interest—Purchase of Land Intended for Development by Client
65-15	Conflict of Interest—R&D Services for University and Private Company
80-5	Conflict of Interest—Recommendation of Former Firm
14-11	Conflict of Interest—Recusal Relating to Jointly Funded Site Development Study
94-10	Conflict of Interest—Registration Not Licensed in State
72-9	Conflict of Interest—Related Work for Two Parties
04-3	Conflict of Interest—Retiring Director of Public Works, Member of City Council
96-7	Conflict of Interest—Returning Retainer Prior to Accepting Another Assignment
15-10	Conflict of Interest—Review and Approval of Work by Subordinate
19-4	Conflict of Interest—Reviewing and Approving Engineer Offering Redesign Services
97-4	Conflict of Interest—Reviewing Own Work—Failure to Disclose Property Ownership/Relationship w/ Developer
13-1	Conflict of Interest—Role on Public Utility Board
17-1	Conflict of Interest—Selected as Conference Speaker by Former Employer
78-9	Conflict of Interest—Services on Same Project
95-9	Conflict of Interest—Services to a Village
11-5	Conflict of Interest—Serving as a Manufacturing Representative
19-5	Conflict of Interest—Serving on a Public Utility Board Selection Committee
02-12	Conflict of Interest—Serving Two Clients
99-1	Conflict of Interest—Soliciting Former Clients Through an Employee
98-11	Conflict of Interest—Specifying Equipment of Company Owned by Engineer
75-10	Conflict of Interest—Specifying Equipment of Employer
99-9	Conflict of Interest—Specifying Equipment—With Ownership Interest

Consolidated Table of Contents to the Opinions of the Board of Ethical Review

Case No.	Subject
06-10	Conflict of Interest—Spouse as Employee of Vendor
07-1	Conflict of Interest—State Engineer – Village Road
69-13	Conflict of Interest—Stock and Land Ownership
01-2	Conflict of Interest—Third Party Developer
76-9	Conflict of Interest—Turnkey Procedure
80-6	Conflict of Interest—Use of Former Public Employee
72-2	Conflict of Interest—Use of “Free Engineering” from Manufacturer
01-5	Conflict of Interest—Utility Audits for City
66-5	Conflict of Interest—Wife's Investment in Project
63-6	Conflicting Engineering Opinions
00-4	Confronting Former Employee for Improper Conduct
93-5	Contingency Fees—Director Services Re: Litigation

About the Author of this Risk Management Building Block Article

As a risk manager for the last 18 years for the design profession, Eric has experience in professional liability insurance and claims, architecture, engineering, land use, law, and a unique background in the construction industry. Prior to risk management, he has 25 years of experience in the practice of architecture/engineering, and as an adjunct professor teaching professional practice courses at the undergraduate and graduate levels for the last 35 years at Kent State University's College of Architecture & Environmental Design.

As a Fellow of the American Institute of Architects and AIA National Ethics Council 2021 Chair, he has demonstrated his impact on architectural profession. He has presented numerous loss prevention and continuing educational programs to design professionals since 2000 on topics of ethics, contracts, and professional practice in various venues across the United States and Canada. He is a former member and chair of his city's Board of Zoning & Building Appeals for 24 years, and is a licensed architect, attorney, and property & casualty insurance professional.

His educational background includes a JD from Southwestern University School of Law, Los Angeles; Master of Science in Architecture from University of Cincinnati; and BA in psychology/architecture from Miami University, Oxford, Ohio.

The above comments are based upon DesignPro Insurance Group's experience with Risk Management Loss Prevention activities and should not be construed to represent a determination of legal issues but are offered for general guidance with respect to your own risk management and loss prevention. The above comments do not replace your need for you to rely on your counsel for advice and a legal review, since every project and circumstance differs from every other set of facts.

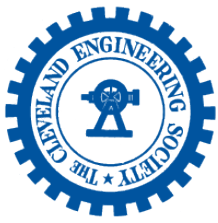
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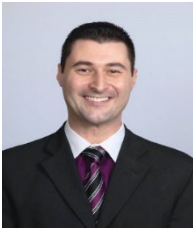
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