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PROVIDING PRO BONO SERVICES & OHIO'S GOOD SAMARITAN LAW FOR DESIGN PROFESSIONALS

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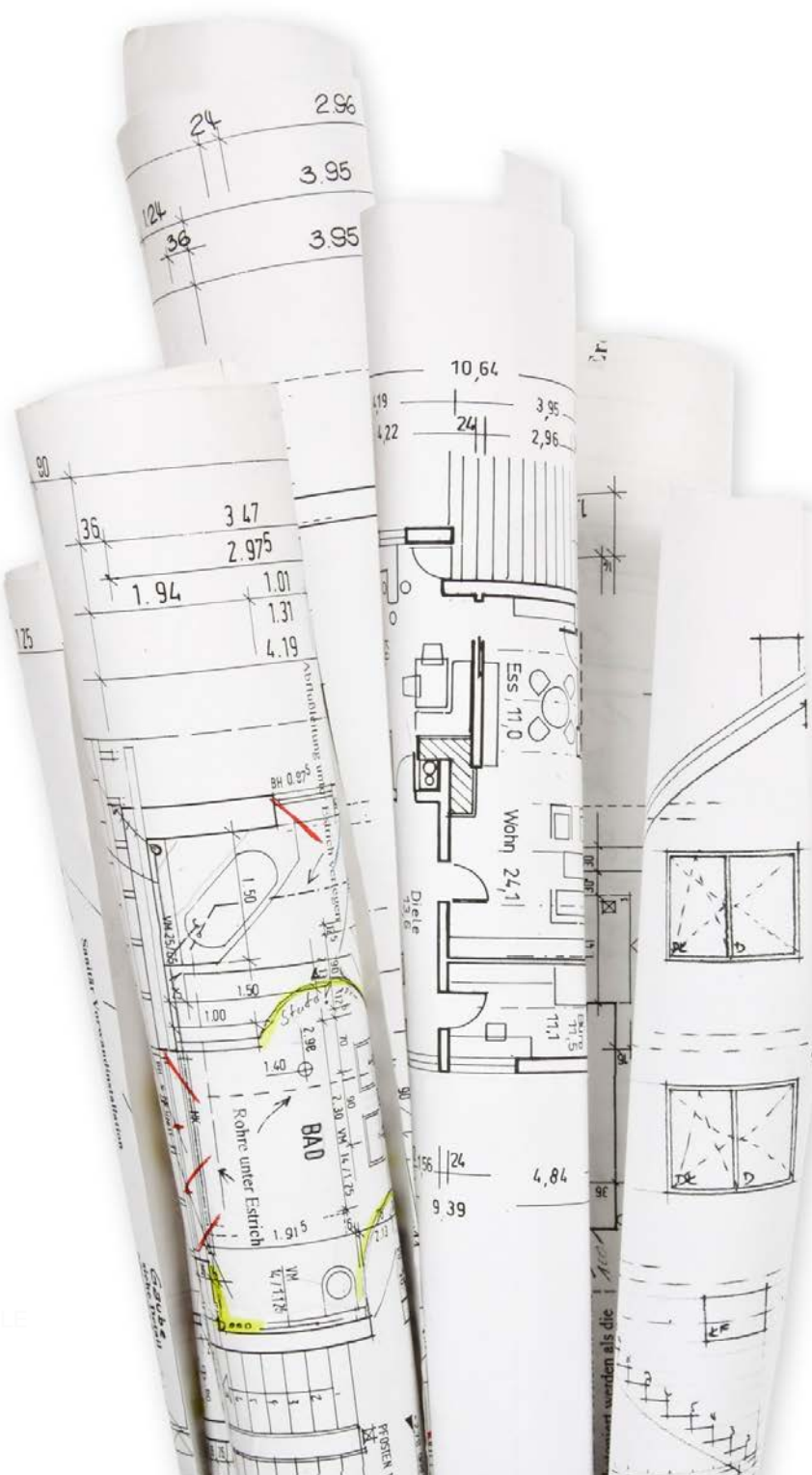
The term "pro bono," services undertaken without charge, is derived from Latin – *pro bono publico* meaning 'for the public good.' Many times such services are provided not only for the public, but also for private parties. Example - you are an architect or engineer and have a child in a private grade school. The school has ample parking, but no outdoor play area. As a design professional, you could volunteer your time and talents without charge to help design a playground, and help coordinate other parents to help construct it. Your "rewards" are obvious. The school has limited funds, and only has barely enough money to buy the materials. Your design services can provide a welcomed improvement not only for your child, but also other students. Your time, talents and leadership benefit the public and the individuals.

Ethical Considerations

The ethics of providing pro bono services are not obvious. Historically, the AIA 1909 Principles of Professional Practice & the Canons of Ethics stated:

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Principle 11. ON OFFERING SERVICES GRATUITOUSLY. The seeking out of a possible client and offering to him of professional services on approval and without compensation, unless warranted by personal or previous business relations, tends to lower the dignity and standing of the profession and is to be condemned.

Modernly, the AIA 2018 Code of Ethics & Professional Conduct's Preamble states:

The following practices are not, in themselves, unethical, unprofessional, or contrary to any policy of The American Institute of Architects or any of its components:

- (1) submitting, at any time, competitive bids or price quotations, including in circumstances where price is the sole or principal consideration in the selection of an architect;
- (2) providing discounts; or
- (3) providing free services.**

Times have changed since the Federal Antitrust Litigation in 1972. In The New York Times, July 6, 1990, David Johnston wrote:

In its suit, the Justice Department invoked the Sherman Antitrust Act, which was enacted in 1890 to break up the industrial monopolies created by the 19th-century robber barons. The act has been successfully applied by the Justice Department and the Federal Trade Commission against **professional associations**, including those representing **civil engineers**, accountants and lawyers. (Mr. Johnson easily could have included architects in his article.)

In similar Federal Antitrust Litigation against the National Society of Professional Engineers (NSPE), states in the 2007 Code of Ethics for Engineers, that:

By order of the United States District Court for the District of Columbia, former Section 11(c) of the NSPE Code of Ethics prohibiting competitive bidding, and all policy statements, opinions, rulings or other guidelines interpreting its scope, have been rescinded as unlawfully interfering with the legal right of engineers, protected under the antitrust laws, to provide price information to prospective clients; accordingly, nothing contained in the NSPE Code of Ethics, policy statements, opinions, rulings or other guidelines prohibits the submission of price quotations or competitive bids for engineering services at any time or in any amount.

Rewards & Risk Management Considerations

That being said, it is clear that design professionals' gratuitous services are not unethical. But what are the rewards and risk management concerns when providing free services? Many professional associations encourage their members to provide gratuitous services for nonprofit organizations. This benefits not only those professionals, but also their firms. Inexperienced members of a firm may gain valuable skills that may not necessarily be achieved on billable projects. Staff members and professionals' morale and team work can be improved when providing pro bono services, and the firm's visibility in the community can be enhanced while developing experience in other project types. Giving back to the community certainly has its rewards.

However, whether or not the services are provided gratuitously, the professional risks are the same. A design professional must provide their services in accordance with the standard of care of its profession even when providing services voluntarily, and the obligation to use due care is not reduced when doing so. A firm should have a written internal policy that all staff members and professionals are aware of (and abide by), so there is a consistent philosophy rather than piecemeal approaches.

And it is also wise to have a written (and signed) agreement between the firm or design professional and the client, even though the services are free. At least have the client agree to waive claims, and provide protection from third-party claims. The written agreement can go further, and require the client to defend and indemnify the firm, including those that are meritless. Lastly, the client must understand that the firm's reputation and financial wellbeing is always at stake, whether or not the services are provided gratuitously.

Ohio's Good Samaritan Laws

In the event of a common disaster, a design professional may be in a position of providing another type of pro bono service. Example – a F5 tornado devastating an Ohio community, with lives lost, injuries and structures severely or completely destroyed. (Xenia, Ohio, April 3, 1974).



https://upload.wikimedia.org/wikipedia/en/b/b3/Barneveld_tornado_damage.jpg

Ohio has a Good Samaritan act, protecting medical professionals when providing free on-site medical care, so long as they do so within their standard of care. And, providing emergency services in a common disaster will certainly be at no charge.

Ohio's existing Good Samaritan law provides certain protection from lawsuits to people who give first aid or other emergency treatment to someone suffering an injury or sudden illness. The care or treatment must be given at the scene of an emergency outside of a hospital, doctor's office or medical facility.¹

As design professionals, architects and engineers often find themselves in a position to provide emergency services after a disaster. But in providing assistance, architects and engineers must also understand their liability and protection afforded by the Good Samaritan laws enacted to shield them from liability resulting from their intervention.²

The Ohio Revised Code 2305.2310 Civil immunity for architects, contractors, engineers, surveyors, and tradespersons providing volunteer services, was signed into law:

Governor John Kasich signed AIA Ohio's "Good Samaritan" bill into law on Valentine's Day, 2016. The new law grants qualified immunity from civil liability to a volunteer architect for any acts, errors, or omissions conducted in the performance of professional services that are requested by government officials, for a building, structure, piping, or other engineered system during a declared emergency and 90 days thereafter. No immunity is granted from wanton, willful or intentional misconduct. Passage of the bill comes following a three year effort. Rep. Louis Blessing III (R-Cincinnati) introduced the bill three years ago during the last General Assembly as HB 379. That bill cleared the House and the Senate Committee, but failed to achieve a Senate vote prior to the end of the legislative Session. Rep. Blessing re-introduced the bill as HB 17 at the beginning of the current General Assembly. HB 17 passed the Ohio House unanimously last February and the Senate January 20 with only Senator, Michael Skindell (D-Lakewood), voting against it. AIA Ohio thanks all those who helped lobby for the passage of this bill... especially past AIA Ohio President, Elizabeth Corbin Murphy, FAIA, who testified on behalf of the bill on several occasions!³

And it states as follows:

(A) A volunteer who is an architect, contractor, engineer, surveyor, or tradesperson shall not be liable in damages in a civil action for any injury, loss to person or property, or wrongful death related to the volunteer's acts, errors, or omissions in the performance of any professional services or construction services for any structure, building, piping, or other engineered system, either publicly or privately owned.

(B) (1) The immunity provided in this section shall only apply to professional services or construction services provided during a declared emergency and to professional services or construction services provided not more than ninety days after the end of the period of the declared emergency.

(2) If the governor, under the governor's emergency executive powers, extends the period of declared emergency, the immunity provided under this section shall apply to services provided not more than ninety days after the end of the extended period of emergency.

(C) Nothing in this section shall provide immunity for wanton, willful, or intentional misconduct.⁴

In Conclusion

Giving back to the community certainly has its rewards. But, as a good professional practice, protection comes from avoiding bad risks, providing good risk management tools, and professional liability insurance. Professional services are provided not only on billable projects, but also projects or situations that receive gratuitous services. A design professional may provide pro bono services on “man-made” or “mother nature’s” common disasters, which may benefit the public, now that the Ohio’s Good Samaritan Law for Design Professionals has been made the law of the land in our state.

¹ Dayton Daily News, Ohio Bill Seeks “Good Samaritan Law” to Prevent Overdose Deaths, by Joanne Huist Smith, updated October 24, 2013

² RiskPro Blog, September 1, 2015, <https://www.riskpro.us/blog/architects-engineers-and-good-samaritan-liability-laws>.

³ <https://www.aiaohio.org/governor-kasich-signs-architects-good-samaritan-bill-into-law-2/>

⁴ Added by 131st General Assembly File No. TBD, HB 17, §1, eff. 5/17/2016.

About the Author

Eric O. Pempus, FAIA, Esq., NCARB, ORSA has been a risk manager for the last 12 years with experience in architecture, law and professional liability insurance, and a unique and well-rounded background in the construction industry. He has 25 years of experience in the practice of architecture, and as an adjunct professor teaching professional practice courses at the undergraduate and graduate levels for the last 30 years. As a Fellow of the American Institute of Architects and a member of the AIA National Ethics Council, he has demonstrated his impact on architectural profession. He has presented numerous loss prevention and continuing educational programs to design professionals and architectural students in various venues across the United States and Canada.

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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Quebec City Conference

Ontario Association of Architects, Quebec, Canada

May 23 and 24, 2019 - 10:30 a.m. – 12:00 p.m.

“Engineering Law & Ethics”

Half Moon Education Seminars, Middleburg Heights, OH

May 30, 2019 - 8:30 a.m. – 5:00 p.m.



“Practice Management Case Studies: From Disaster to Resolution”

AIA National Conference on Architecture 2019, Las Vegas, NV

June 5, 2019 - 1:00 p.m. – 5:00 p.m. Workshop

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