

BUILDING BLOCKS

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WHAT AN ARCHITECT & ITS ENGINEERING CONSULTANTS SHOULD KNOW ABOUT EACH OTHER'S ETHICS

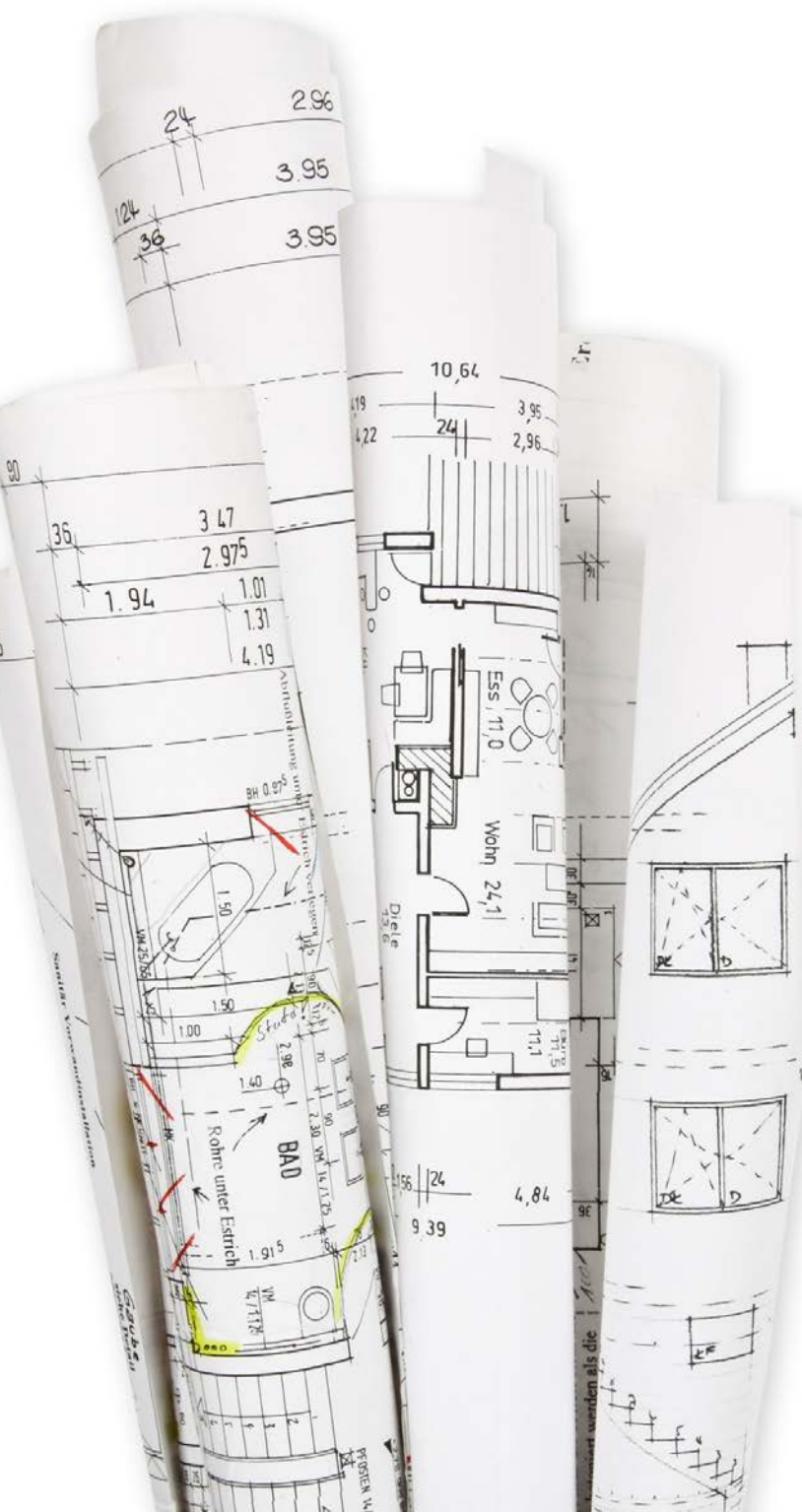
BY: ERIC O. PEMBUS
FAIA, ESQ., NCARB
DESIGN PRO INSURANCE GROUP

In DesignPro Insurance Group's November 2019 Building Block article, we discussed a design firm's culture and ethical practices. A year later, in this November 2020 Building Block article, we are discussing individual design professionals' codes of ethics. We will compare an engineer's professional association's code of ethics (the National Society Professional Engineers—NSPE) with that of an architect's professional association code of ethics (the American Institute of Architects—AIA).

Obviously we cannot examine every part of each code of ethics and conduct, but will highlight some interesting commonalities with emphasis added when possible, and distinctions between the two. Following the code sections cited, we analyze the comparisons. Throughout this article, where an engineer or architect is mentioned, it is meant that the design professional is a member of their professional association.

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PREAMBLES

THE NSPE CODE: Engineers are expected to exhibit the **highest standards** of honesty and **integrity**. Services provided by engineers require honesty, impartiality, fairness, and equity, and must be dedicated to the **protection of the public health, safety, and welfare (HSW)**.

THE AIA CODE: Architects are dedicated to the **highest standards** of professionalism, **integrity**, and competence.

Analysis: Both focus on the **highest standards** of their professions, but what stands out in the NSPE is the recognition of the protection of **the public health, safety, and welfare**.

However, the AIA Code addresses the **HSW** of the public in its Canon II—Obligations to the Public, and in its Ethical Standard 1.5—Design for Human Dignity & the **Health, Safety & Welfare of the Public**, which states architects should employ their professional knowledge and skill to design buildings and spaces that will enhance and facilitate human dignity and the **health, safety and welfare of the individual and the public**.



<https://thebluediamondgallery.com/legal/code-of-ethics.html>

CANONS (BROAD STATEMENTS OF CONDUCT)

THE NSPE CODE: 1. Hold paramount the **safety, health, and welfare of the public**; 2. Perform services only in areas of their competence; 3. Issue public statements only in an objective and truthful manner; 4. Act for each employer or client in objective and truthful manner; 5. Avoid deceptive acts; and 6. Conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.

THE AIA CODE: I. General Obligations; II. **Obligations to the Public**; III. Obligations to the Client; IV. Obligations to the Profession; V. Obligations to Colleagues; and VI. Obligations to the Environment.

Analysis: The AIA takes the approach of recognizing its obligations to the wide range of participants and concerns in the design and construction process. In contrast, the NSPE looks inward to cover a wide range conduct within the engineering profession.

FORMAT OF THE CODES

THE NSPE CODE: The structure of the code spells out its obligations in an organized fashion, in accordance with its six canons.

THE CODE AIA: Is arranged in three tiers of statements: Canons which are broad principles of conduct; Ethical Standards which are more specific goals toward which an architect should aspire to in professional performance and behavior; and Rules of Conduct which are mandatory—violation of a Rule is grounds for disciplinary action by the Institute. And the Rules, in some instances, implement more than one Canon or Ethical Standard. In addition, the Code contains “Commentaries” after some of the Rules, which assist those seeking to conform their conduct to the Code, and assist those charged with its enforcement (the National Ethics Council).

Analysis: The NSPE’s obligations are stated in equal weight, whereas in contrast, the AIA spells out aspirational goals apart from Rules of Conduct, which are mandatory. The violation of the Rules can result disciplinary action, which is addressed at the end of the AIA Code. Enforcement by the Institute is administered by the AIA National Ethics Council (NEC), and formal charges are filed directly with the NEC by AIA members, AIA chapters, or anyone directly aggrieved by the conduct of an AIA member. Penalties that may be imposed by the NEC are (a) admonition, (b) censure, (c) suspension of membership for a period of time, or (d) termination of membership of the AIA.

In contrast, the NSPE Code has no provisions regarding disciplinary actions, but which are overseen by the engineering Board of Ethical Review (BER). The BER is comprised of a panel of engineering ethics experts that serve as the profession's guide through ethical dilemmas. The board consists of seven licensed members who are appointed by the NSPE president.

STANDARD OF CARE OF THE DESIGN PROFESSIONAL

THE NSPE CODE: Does not have a well-defined **standard of care**. The closest the Code comes is that engineers shall undertake assignment only when qualified by education or experience in the specific technical fields involved (such as civil, structural, mechanical, and electrical engineering). (II.2.a.)

THE AIA CODE: In practicing architecture, architects shall demonstrate a consistent pattern of **reasonable care and competence**, and shall apply the technical knowledge and skill which is ordinarily applied by architects of good standing practicing in the same locality. (Rule 1.101.)

***Analysis:** While the AIA Code's preamble states that it is not intended to suggest or define the **standard of care** of an architect, one could easily assume that it is the case. Thus, the AIA Code does not take the place of an architect's state laws or regulations for defining an architect's **standard of care**. And, Rule 1.101 should not be used in a civil action against an architect as evidence that the **standard of care** has been breached.*

DISCRIMINATION & HARASSMENT

THE NSPE CODE: Engineers shall treat all persons with dignity, respect, fairness, and without **discrimination**. (II.1.f.)

THE AIA CODE: Architects shall not engage in harassment or **discrimination** in their professional activities on the basis of race, religion, national origin, age, disability, caregiver status, gender, gender identity, or sexual orientation. (Rule 1.401.) The Commentary in the Code for the Rule states that harassment may include, but not limited to, offensive jokes, slurs, epithets or name calling, unwelcome physical contact, or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance. However, petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of violation of this Rule.

***Analysis:** The AIA Code has gone at great lengths to address **discrimination** and harassment in professional practice, compared to the NSPE Code.*

SUSTAINABLE DESIGN & THE ENVIRONMENT

THE NSPE CODE: Engineers are encouraged to adhere to the principles of **stainable development** in order to protect the **environment** for future generations. (III.2.d.) The Code further states that "**sustainable development**" is the challenge of meeting human needs for natural resources, industrial products, energy, food, transportation, shelter, and effective waste management while conserving and protecting environmental quality and the natural resource base essential for future development.

THE AIA CODE: There are several provisions in the Code that address **sustainable design and the environment**. In Canon I—General Obligations, architects shall thoughtfully consider the social and **environmental impact** of their professional activities. In Canon II—Obligations to the Public, architects should promote fairness and safety in providing professional services and make reasonable efforts to advise their clients and employers of their **obligations to the environment**, including: access to clean air, water, sunlight and energy for all; **sustainable** production, extraction, transportation and consumption practices; a built environment that equitably supports human health and well-being and is resistant to climate change; and restoring degraded or depleted natural resources (Ethical Standard 2.4).

Also in Canon II—Obligations to the Public, when performing professional services, architects shall make reasonable efforts to inform their clients of the potential **environmental impacts** or consequences the architect reasonably believes may occur as a result of work performed on behalf of

the clients. (Rule 2.401.) In Canon VI—Obligations to the **Environment**, there are five Ethical Standards addressing the **sustainable design and the environment**, including performance goals for greenhouse gas emissions, water conservation, building materials that contain toxins and pollutants, the impact on the natural habitat, and climate change. Lastly, Rule 6.501 states that architects shall consider with their clients the **environmental effects** of their project decisions.

Analysis: Like discrimination and harassment, the AIA Code has gone at great lengths to address sustainable design and the environment, compared to the NSPE Code.

REPORTING VIOLATIONS OF THE CODES

THE NSPE CODE: Engineers having knowledge of any alleged **violation of the Code shall report** thereon to **appropriate professional bodies** and, when relevant, also to public authorities, and cooperate with proper authorities in furnishing such information or assistance as may be required. (II.1.f.)

THE AIA CODE: Architects having substantial information which leads to a reasonable belief that another architect has committed a **violation of the Code** which raises a serious question as to that architect's honesty, trustworthiness, or fitness as an architect, **shall file a complaint** with the **National Ethics Council**. (Rule 4.101). The Commentary of the Rule states that often, only an architect can recognize that the behavior of another architect poses a serious question as to that other's professional integrity. In those circumstances, the duty to the professional's calling requires that a complaint be filed. In most jurisdictions, a complaint that invokes professional standards is protected from a libel or slander action if the complaint was made in good faith. If in doubt, an architect should seek counsel before reporting on another architect under the Rule.

Analysis: The Commentary of Rule 4.101 states that the violation of Rule 4.101 cannot be established without proof of a pertinent violation of at least one other Rule. Presumably, likewise, the same would hold true for a violation of the NSPE Code. Reporting a violation of a Code of another design professional is a serious matter, and that is why the Commentary to the AIA Rule 4.101 is well stated.

SUMMARY

Some of the NSPE and AIA Codes of ethics are more specific than the corresponding affiliated design profession. The following gives a graphic illustration that the two allied professions run parallel, with no conflicting ethical practices, while each considers their ethical codes in similar but different ways. Note that ethical dilemmas hit you broadside as opposed to being hit on, like a truck crossing the tracks.



About the Author

Eric O. Pempus, FAIA, Esq., NCARB has been a risk manager for the last 15 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 33 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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MEET OUR PEOPLE:



Brad Bush, CPCU, AU
Principal
brad.designproins@wichert.com



Eric Pempus
FAIA, Esq., NCARB
Risk Manager
eric.designproins@wichert.com



Tracey Heise
Account Manager
tracey.designproins@wichert.com



Ken Windle
Account Executive
ken@wichert.com



Roger Perry
Account Executive
roger.designproins@wichert.com



Tracy Combs
Risk Manager & Loss Control Specialist
tracy@wichert.com