

Ethics Cases of the Year: 2019



Created by the Ethics Committee, American Institute of Certified Planners, April 2019
Presented by Clark Larson, AICP, NCAC-APA Professional Development Officer



American Planning Association
National Capital Area Chapter



The American Planning Association's
Professional Institute
**American Institute
of Certified Planners**
Making Great Communities Happen

Session Agenda

- ❑ **Why learn about ethics?**
- ❑ **Refresher on AICP Ethics Code and Ethical Principles**
- ❑ **Ethics Case Scenarios**
 1. Taking Credit
 2. Inadequate Information
 3. Workplace Harassment
 4. Professional Comments
 5. Expert Witness Testimony
 6. Discrimination
 7. Political Donations
 8. Gifts

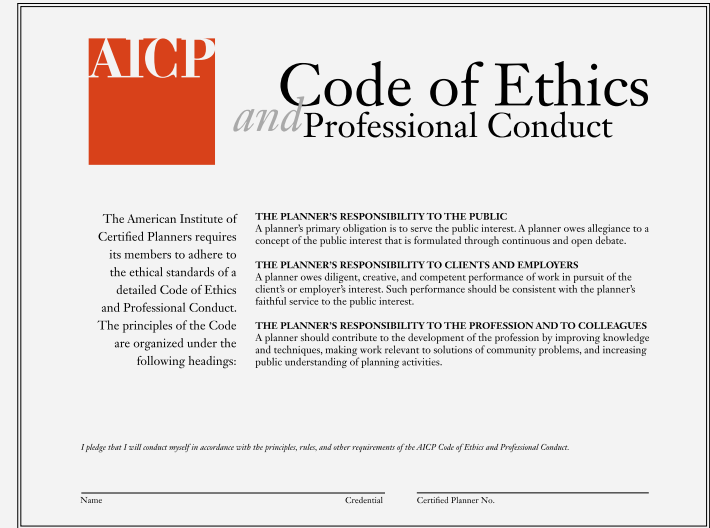
Disclaimer

This session has been created to provide general education regarding the *AICP Code of Ethics*.

Although ethical scenarios and question-and-answer sessions are an important part of illustrating the application of the Code's provisions, all certified planners should be aware that **only the AICP Ethics Officer is authorized to give formal advice on the propriety of a planner's proposed conduct** (see Section C3 of the *AICP Code of Ethics*).

If you have a specific question regarding a situation arising in your professional practice, you are encouraged to seek an informal opinion from the AICP Ethics Officer by calling 312-786-6360 or emailing ethics@planning.org.

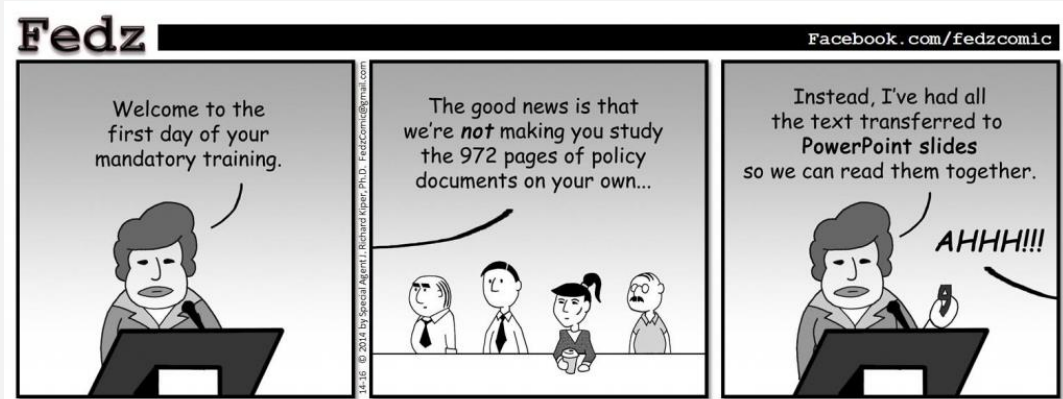
AICP Ethics Code Certificate



This AICP Ethics Code certificate is available for downloading from planning.org/ethics . (See https://planning-org-uploaded-media.s3.amazonaws.com/document/AICP-Code-of-Ethics-Certificate_Updated.pdf)

Why we do this every two years?

- Many of us work in the public sector
- Even in the private sector, we have ethical responsibilities
- We belong to the American Institute of Certified Planners
- Frequently, state and local jurisdictions have no ethical provisions
- Ethical dilemmas are rarely “cut and dried” and often contain a high level of nuance



AICP's Ethics Code

Adopted in 1948 by the American Institute of Planners; revised in 1959, 1970, 1978, 1991, 2005, and 2016

*NOTE: Please turn **on** your cell phones: planning.org/ethics*

A. Aspirational Principles

Responsibility to Public, Clients/Employees, and Profession/Colleagues

B. Rules of Conduct

Twenty-Six Rules to Which AICP Members Are Held Accountable

C. Advisory Opinions

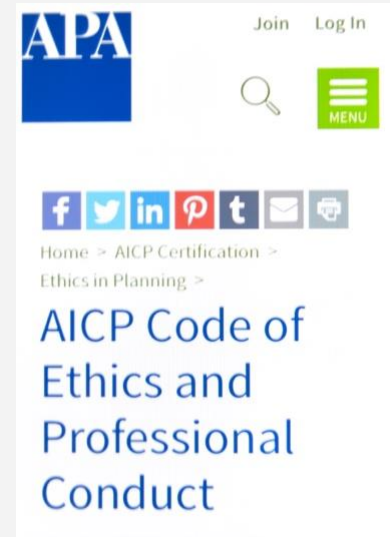
Informal Advice, Formal Advisory Opinions, Annual Report

D. Complaints of Misconduct

Filings, Preliminary Charge/Dismissal, Settlement, Decision, Appeal

E. Discipline of Members

Confidential Letter of Admonition, Public Censure, Suspension, Revocation



APA's Ethical Principles of Planning

Adopted by the APA Board of Directors in 1980; revised in 1992

Guidelines for those who participate in the process of planning as advisors, advocates, and decision makers

1. Serve the public interest

Provide accurate information, provide opportunity for all, protect natural and built environment, pay attention to long-range consequences of action, etc.

2. Maintain high standards of integrity/proficiency

Provide independent judgment, disclose personal interests, seek no gifts or favors, avoid conflicts of interest, don't disclose confidential information, don't misrepresent facts, respect rights of all persons, etc.

3. Improve planning competence

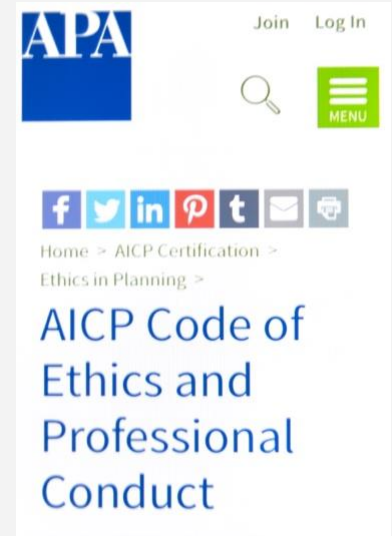
Provide high level of professionalism, commit no wrongful acts, contribute time for groups lacking planning resources, treat other professionals fairly, etc.

Actions Regarding Ethical Conduct

File a complaint of misconduct, seek informal advice, access annual reports

All communications regarding specific ethics situations should occur either in letters or phone conversations with the AICP Ethics Officer in their capacity as the ethics officer. Because of issues of reliability and confidentiality, email communication is not to be used.

- **Filing a complaint of misconduct.** If you believe an AICP member has violated the AICP Code of Ethics and Professional conduct, consider submitting an *AICP Ethical Conduct Complaint Form*.
- **Seeking informal advice.** Contact the AICP Ethics Officer at 312-786-6360 if you would like to discuss a matter involving your own professional conduct or matters involving other planners.
- **Access the Annual Reports** on *Case Activity and Requests*



Ethical Misconduct Cases in 2018

Five Cases Dismissed

(no preliminary charge filed)

Three Cases Dismissed

(after a preliminary charge is filed)

Seven Cases Settled

(all AICP credential misuses)

No Disciplinary Actions



Credit: abovethelaw.com

Ethics Topics

Derived from misconduct cases and informal inquiries in 2018 and early 2019

Honest and Fair Dealing

Conflicts of Interest

False/Deceptive Statements

Respect for Confidentiality

Abuse of Position

Quality of Practice

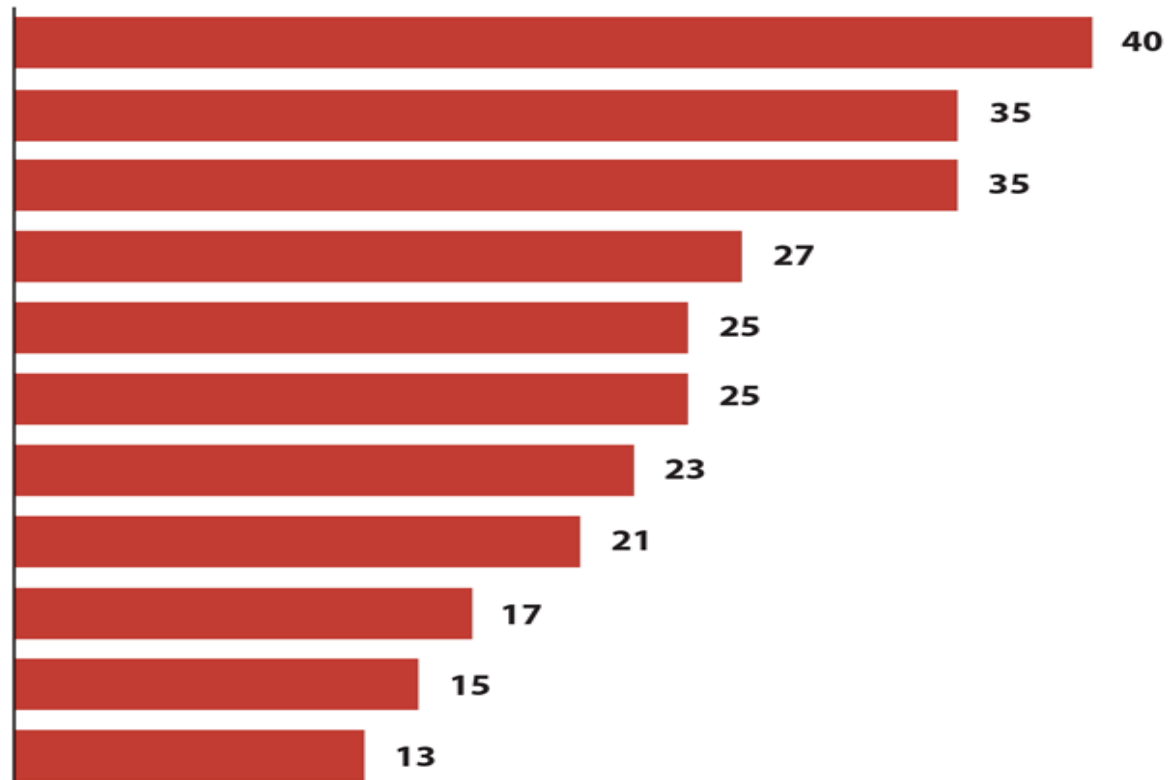
Legal and Ethical Conduct

Misuse of AICP Credential

Loyalty to Employer

Private Communication

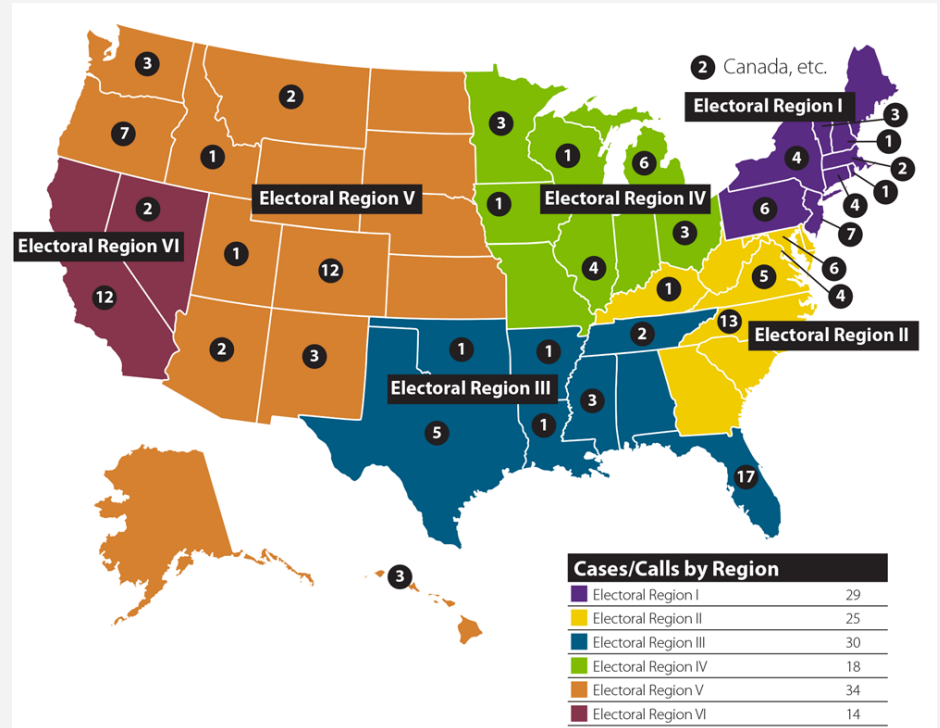
Lack of Cooperation



Cases of the Year

The following ethical scenarios are based on real situations from 2018 and early 2019 — although the names and locations are all fictional.

The case scenarios were derived from informal inquiries or misconduct complaints reviewed by the AICP Ethics Officer and the AICP Ethics Committee.



Cast of Characters



Consultant
Jane, AICP



County Planner
Dan, AICP



Town Planner
Catherine, AICP



Consultant
Marion, AICP



City Planner
Ian, AICP

Scenario 1

Taking Credit

Jane, AICP, who runs a small consulting firm, worked on a new comprehensive plan for Hudson County, as a sub-consultant to a larger firm, GarGan.

The comprehensive plan recently won an APA award and GarGan has been actively promoting the project at national and state planning conferences.



Jane, AICP



Marion, AICP



Credit: Yvonne Bambrich; Flickr CC

Scenario 1

Meanwhile, GarGan's chief planner, Marion, AICP, has told the firm's subcontractors on the plan, including Jane, that they are not permitted to mention the plan in their own marketing materials.

Marion says that, since the contract was GarGan's, the only credit should go to GarGan, not its subs.



Marion, AICP



Credit: beleaderly.com

Scenario 1

Questions

Q:

Is this appropriate behavior on the part of Marion and GarGan?

Q:

Could Marion be the subject of a potential ethics misconduct complaint?



Marion, AICP

Scenario 1

Additional Question

Q:

What if the client, Hudson County's planning director, Dan, AICP, told GarGan the same thing: It should not promote its work on the plan since it was the County who paid for—and adopted—the plan?

Is this an ethically appropriate action on the part of Dan?



Dan, AICP

Scenario 1

Ethical Issues

AICP Ethics Code—Principles

#3c: “We shall describe and comment on the work and views of other professionals in a **fair and professional** manner.”

AICP Ethics Code—Rules of Conduct

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

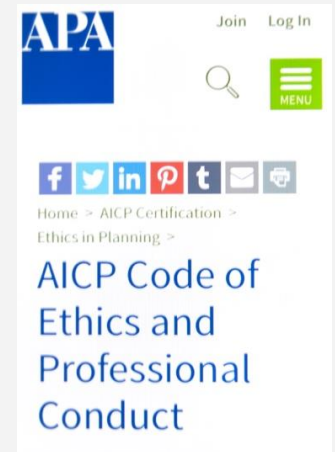
#12: “We shall not **misstate** our education, experience, training, or other facts which are relevant to our professional qualifications.”

#17: “We shall not **use the product of others’ efforts** to seek professional recognition or acclaim intended for producers of original work.”

#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.”



Credit: wync.org



Scenario 2

Inadequate Information

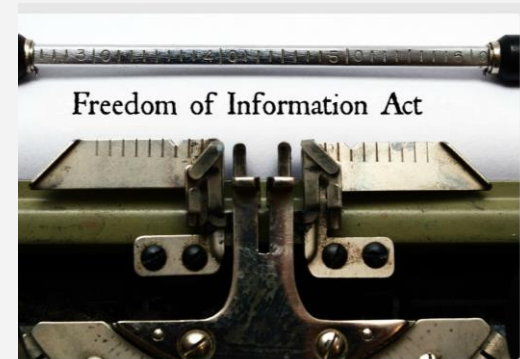
Catherine is a newly-hired planner with the Town of Wurster, having recently graduated from Bauer State with a master's degree in planning.

One of her jobs is to respond to FOIA requests from the media and the public.

She receives a FOIA request from an advocacy group, seeking data from an affordable housing study the Town recently completed.



Catherine, AICP



Alex Skopje, American Journalism Review

Scenario 2

Catherine's supervisor (a non-AICP planner) tells her not to comply with the FOIA request, despite a recent state court ruling requiring local communities to disclose this type of information.



In addition, Catherine knows that her supervisor recently deleted much of the affordable housing study data from the department's computers in order to make it inaccessible to the public.



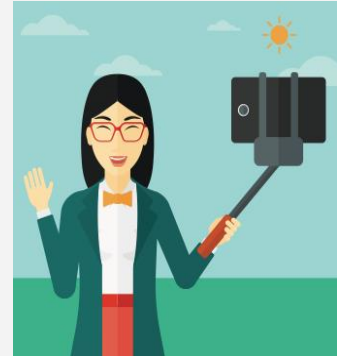
Credit: depositphotos.com

Scenario 2

Questions

Q:
What should Catherine tell her boss?

Q:
Should she provide the remaining data to the advocacy group?



Catherine, AICP

Scenario 2

Ethical Issues

APA's Ethical Principles in Planning

#A2: Strive to give citizens...full, clear, and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programs.

#A5: Ensure that reports, records, and any other non-confidential information which is, or will be, available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision."

AICP Ethics Code – Principles

#1f: "We shall seek social justice by working to expand choice and opportunity for all persons....We shall urge the alteration of policies, institutions, and decisions that oppose such needs."

#2a: "We shall exercise independent professional judgment on behalf of our clients and employers."

#2b: "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."

(More Code excerpts, see next slide)

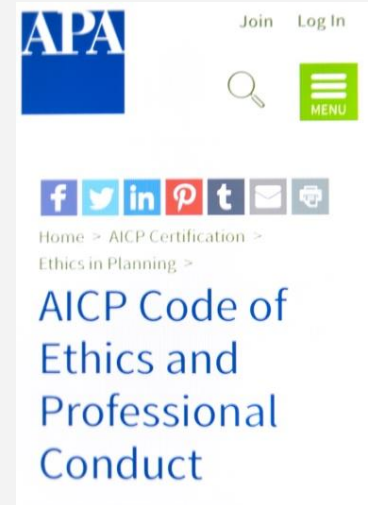
Scenario 2

AICP Ethics Code—Rules of Conduct

#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.”

#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.



Scenario 3

Workplace Harassment

Marion, AICP, a planning consultant, is approached by two staff planners.

They tell her that Dan, AICP, the planning director of Hudson County, has made unwanted sexual comments to each of them at APA chapter events.

Dan also is an APA chapter officer.



Dan, AICP



Credit: Getty Images

Scenario 3

Questions

Q:

Does Marion have *any* obligations under the *AICP Ethics Code*?

Q:

Should she talk directly to Dan?

Q:

Should she talk to someone else, such as the Chapter President?



Marion, AICP

Scenario 3

Ethical Issues

AICP Ethics Code—Principles

#3a: “We shall **protect and enhance the integrity** of our profession.”

AICP Ethics Code—Rules of Conduct

#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.**”



Lorraine Sorlet, tampabay.com



NYC Commission on Human Rights

Scenario 4

Professional Comments

Catherine, AICP, a planner with the Town of Wurster, has been telling developers not to hire Jane, AICP, a local planning consultant.

Catherine has been saying that Jane's performance on previous projects has been unsatisfactory.



Catherine, AICP



Jane, AICP



Credit: Leadingwithtrust.com

Scenario 4

Questions

Q:

Are Catherine's negative comments about Jane a potential ethics violation?

Q:

How else could Catherine have handled this situation?



Credit: twocents/lifehackler.com

Scenario 4

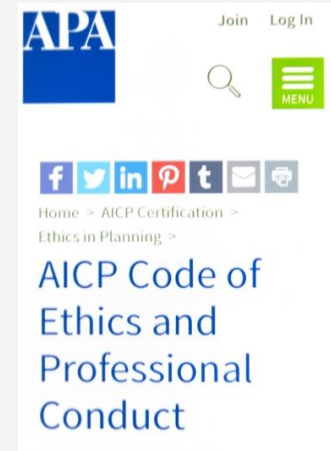
Ethical Issues

AICP Ethics Code—Principles

#3c: “We shall describe the work and views of other professionals in a fair and professional manner.”

AICP Ethics Code—Rules of Conduct

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



Scenario 5

Expert Witness Testimony

Jane, AICP, a consultant, has been asked to be an expert witness in a lawsuit against Jacobsville, where she was the former planning director.

The lawsuit involves a development proposal that was denied by the City Council, in part due to floodplain regulations.



Jane, AICP

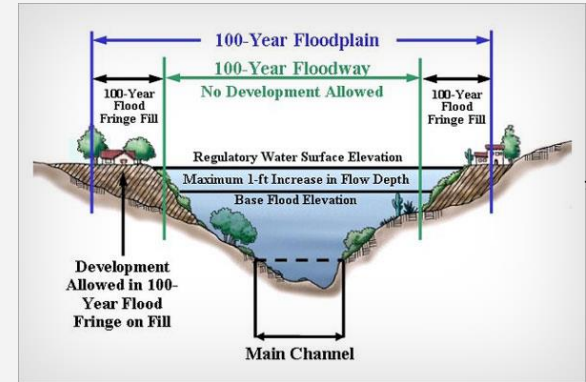


Credit: Maiya Greenwood; Flickr CC

Scenario 5

One of Jane's former duties with the City of Jacobsville was the drafting of its floodplain regulations.

However, the project she's being asked to testify on behalf of took place after she left Jacobsville—which was more than three years ago.



Credit: Pinal County, Ariz.



Credit: Nicholas Tonelli, Flickr CC

Scenario 5

Questions

Q:

Should Jane agree to be an expert witness in this case?

Q:

If so, what (if any) ethical issues should she have concerns about?



Credit: Getty Images/OJO Images RF

Scenario 5

Ethical Issues

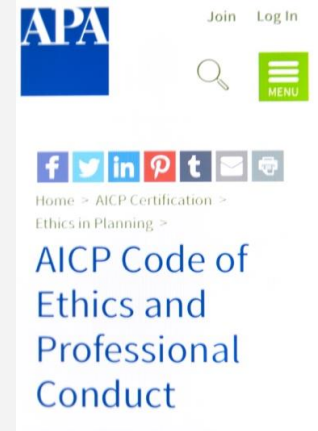
AICP Ethics Code—Principles

#1c: “We shall pay special attention to the [interrelatedness of decisions.](#)”

AICP Ethics Code—Rules of Conduct

#3: “We shall not accept an assignment...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....](#)”

#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..”



Scenario 6

Discrimination

Davis, AICP, is a planner with Clydebank. One of the projects she manages is scheduled to go to the City Council next month for approval.

It is a project that requires data analysis to determine whether a property should be inside an empowerment zone or not. She has done this several times before.

However, Davis' boss, Ian, AICP, decides that Patrick, a non-AICP planner who Davis supervises, should present the application to the City Council.



Ian, AICP



Credit: Mark Air's: IEEE Spectrum

Scenario 6

A few weeks later, Davis is passed over for a promotion, despite her excellent performance reviews and years of experience. Instead, Patrick is given the job.

A month before the City Council meeting (where Davis was taken off the project), she began her gender transition and asked people to use the pronouns “she, her, hers” when referring to her. In the past, she had always dressed gender neutral, but now she occasionally wears a skirt to work.

Soon after Patrick’s promotion, Davis decides to quit.



Davis, AICP

Scenario 6

Questions

Q:

Does Davis have any recourse under the *AICP Ethics Code*?

Q:

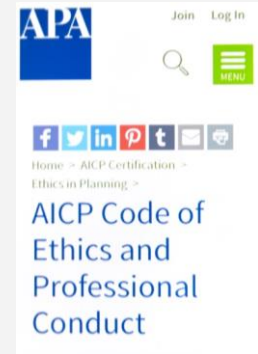
Are there any grounds for a misconduct case against her former boss, Ian, AICP, on the basis of “unlawful discrimination?”



Credit: bizlibrary.com

Scenario 6

Ethical Issues



AICP Ethics Code—Principles

#1a: “We shall always be conscious of the [rights of others.](#)”

#2b: “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.”

AICP Ethics Code—Rules of Conduct

#20: “We shall not [unlawfully](#) discriminate against another person.”

#25: “We shall neither deliberately, nor with reckless indifference, commit any [wrongful act](#)...that reflects adversely on our [professional fitness.](#)”

Scenario 7

Political Donations

GarGan, a consulting firm, has had several planning contracts with Hudson County over the last few years, including one current project.

Several County Board members are up for reelection and GarGan has made campaign contributions to them.

Marion, AICP, a GarGan principal, also has made donations to the candidates, after confirming there are no violations of state or local laws.



Marion, AICP



Credit: Jim Peters

Scenario 7

Questions

Q:

Does the *AICP Ethics Code* permit these campaign contributions—either by Marion or other principals of GarGan who are AICP members?

Q:

Should these campaign contributions preclude GarGan from bidding on any future projects with Hudson County?



Credit: complianceandethics.org

NOTE TO PRESENTERS: After participants answer, see Additional Question (next slide)

Scenario 7

Additional Question

Q:

What if campaign contributions were being made by Dan, AICP, Hudson County's planning director?

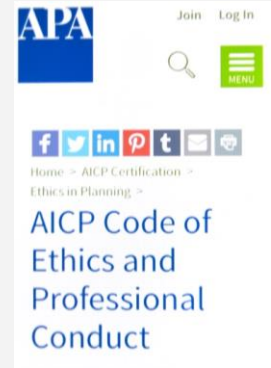
Is that permissible, according to the *AICP Ethics Code*?



Dan, AICP

Scenario 7

Ethical Issues



AICP Ethics Code—Principle

#1c: “We shall pay special attention to the [interrelatedness of decisions](#).”

AICP Ethics Code—Rules of Conduct

#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 customs.”

#11: “We shall not [solicit prospective clients](#) or employment through use of false or misleading claims, harassment, or duress.”

Scenario 8

Gifts

Bollards R Us (BRU), which sells street furniture, is sponsoring an exhibit booth at the state planning conference.

BRU also is hosting an evening reception at the conference, featuring free food and cocktails. However, BRU has only invited municipal planners (i.e., their potential clients) to the reception.



Credit: zaun.co.uk



Credit: PepperLaw

Scenario 8

Questions

Q:

Is this a potential violation of the *AICP Ethics Code*—either for BRU or for any AICP public planners who attend the reception?

Q:

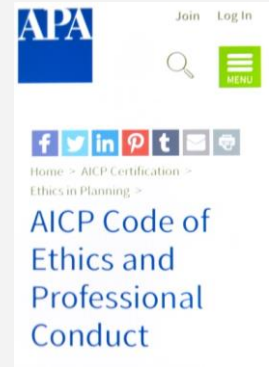
If so, what should the conference organizers do?



Credit: Rice Business

Scenario 8

Ethical Issues



AICP Ethics Code—Principles

#1c: “We shall pay special attention to the [interrelatedness of decisions](#).”

#2a: “We shall exercise [independent professional judgment](#) on behalf of our clients and employers.”

AICP Ethics Code—Rules of Conduct

#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.”

Final Note

- Contact your Chapter representative at aicp@ncac-apa.org.
- For informal advice regarding ethical conduct, contact the AICP Ethics Officer, Jim Peters, FAICP, at 312-786-6360 or ethics@planning.org.
- For more information, please visit planning.org/ethics

AICP Ethics Committee

Karen Wolf, FAICP, Chair

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