
The Rocky Mountain Land Use Institute
Thirteenth Annual Conference

Session Handouts
To Accompany Home Study Audio CD

for

Ethics Considerations for Planners and Attorneys

Original Presentation

Friday, March 12, 2004

Moderator: J. Bart Johnson, Esq.
Shareholder/Director
Otten, Johnson, Robinson, Neff & Ragonetti, P.C.
Aspen, Colorado

Panelists: Lora A. Lucero, Esq., AICP
Albuquerque, New Mexico

Timothy P. Cox, Esq.
Assistant County Attorney
Jefferson County
Golden, Colorado

The Rocky Mountain Land Use Institute
University of Denver College of Law
2255 E. Evans Ave., Suite 404
Denver, CO 80208
Phone: (303) 871-6319 ? Fax: (303) 871-6051 ? Email: rmlui@law.du.edu
Website: www.law.du.edu/rmlui

All rights reserved. No part of these materials may be reproduced in any form or by any means, electronic or mechanical, including photocopying, or by any information storage and retrieval system, without permission from the publisher.

The Rocky Mountain Land Use Institute
Thirteenth Annual Conference

PRESENTER BIOGRAPHIES

J. Bart Johnson, Esq., is a shareholder and director of the Denver-based law firm of Otten, Johnson, Robinson, Neff & Ragonetti, P.C. Mr. Johnson works out of the firm's Aspen office, which opened in 2000, and represents landowners throughout Colorado in the areas of land use, real estate transactions, and resort development. Mr. Johnson received his B.A. degree, cum laude, from Middlebury College and his J.D. from the University of Denver, where he served as Editor-in-Chief of the *Denver University Law Review*. Before entering private practice, Mr. Johnson served as a judicial clerk to Hon. Wade Brorby of the U.S. Court of Appeals for the Tenth Circuit.

Lora A. Lucero, Esq., AICP, is currently the Project Director of the Albuquerque Alliance for Active Living, a unique partnership formed to encourage design and behavior changes that will lead to more active living in the community. She is also staff to the American Planning Association's *amicus curiae* committee, regularly filing amicus briefs in important cases to the planning profession. As an active member of the New Mexico Chapter of APA, she is a strong advocate for statutory reform of New Mexico's planning and land use laws. Ms. Lucero consulted with the City of Albuquerque in the preparation of the city's Planned Growth Strategy and most recently drafted portions of the Middle Rio Grande Regional Water Plan.

Timothy P. Cox, Esq., has been an Assistant County Attorney for Jefferson County since 1999. He advises the County's Board of County Commissioners, Planning Commission, Planning & Zoning Department and Board of Adjustment, and oversees prosecution of the County's zoning enforcement cases. He also handles the County's land use litigation, including Rule 106(a)(4) appeals, as well as litigation for other County officials and departments. He is admitted to practice in Colorado and Massachusetts, the federal district courts for Colorado and Massachusetts, the First Circuit Court of Appeals, and the United States Supreme Court.

Before joining the County Attorney's Office, Tim was in private practice with Kennedy & Christopher, P.C. in Denver, litigating primarily professional malpractice cases, and with Roche, Carens & DeGiacomo, P.C. in Boston, Massachusetts, where he worked on land use, employment, banking and general civil litigation. He has also worked for the Massachusetts legislature and as a radio announcer and television anchor/reporter.

Tim received his B.A. in Communications from Boston College in 1985 and his J.D. cum laude from Suffolk University Law School in 1993.

Ethical Scenarios - Dilemmas for Planners

Lora A. Lucero, AICP, Esq.

Project Director – Albuquerque Alliance for Active Living

Staff to the Amicus Curiae Committee of the American Planning Association

Based on the AICP Code of Ethics provided below, how would you respond to the following scenarios taken from real life examples?

Scenario #1. The City of XYZ is facing tremendous growth pressures and needs to revise its comprehensive plan which hasn't been updated in more than 20 years. The City hires the ABC planning consulting firm to undertake the studies, engage the public in a lengthy planning process and draft the new comprehensive plan. One city councilor doesn't approve of the new growth management proposals contained in the plan and decides to seek a second opinion, hiring the OHMYGOSH planning consulting firm to review the plan prepared by the ABC planning consulting firm.

Scenario #2. A planner in private practice submits a proposal in response to an RFP issued by City ABQ to prepare a sector plan for a part of the city which is experiencing rapid growth. After disclosing to the elected officials that she has private clients who are property owners in that part of the city, the planner is awarded a contract to prepare the plan. Within a year following completion of the sector plan, the planner approaches city hall on behalf of one of her private clients with a proposal that will require an amendment to the sector plan in order to accommodate the type of development her client wants to build.

Scenario #3. A planner is employed full-time by the City of Enchantment, working in the long range planning division. On the side, the planner moonlights as a private planning consultant. Under what circumstances might that arrangement be consistent with the Code of Ethics?

AICP Code of Ethics and Professional Conduct <http://www.planning.org/ethics/>

(Adopted October 1978 — as amended October 1991)

This Code is a guide to the ethical conduct required of members of the American Institute of Certified Planners. The Code also aims at informing the public of the principles to which professional planners are committed. Systematic discussion of the application of these principles, among planners and with the public, is itself essential behavior to bring the Code into daily use.

The Code's standards of behavior provide a basis for adjudicating any charge that a member has acted unethically. However, the Code also provides more than the minimum threshold of enforceable acceptability. It sets aspirational standards that require conscious striving to attain.

The principles of the Code derive both from the general values of society and from the planning profession's special responsibility to serve the public interest. As the basic values of society are often in competition with each other, so also do the principles of this Code sometimes compete. For example, the need to provide full public information may compete with the need to respect confidences. Plans and programs often result from a balancing among divergent interests. An ethical judgment often also requires a conscientious balancing, based on the facts and context of a particular situation and on the precepts of the entire Code. Formal procedures for filing of complaints, investigation and resolution of alleged violations and the issuance of advisory rulings are part of the Code.

The Planner's Responsibility to the Public

A. A planner's primary obligation is to serve the public interest. While the definition of the public interest is formulated through continuous debate, a planner owes allegiance to a conscientiously attained concept of the public interest, which requires these special obligations:

- 1) A planner must have special concern for the long range consequences of present actions.
- 2) A planner must pay special attention to the interrelatedness of decisions.
- 3) A planner must strive to provide full, clear and accurate information on planning issues to citizens and governmental decision-makers.
- 4) A planner must strive to give citizens the opportunity to have a meaningful impact on the development of plans and programs. Participation should be broad enough to include people who lack formal organization or influence.
- 5) A planner must strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons, and must urge the alteration of policies, institutions and decisions which oppose such needs.

- 6) A planner must strive to protect the integrity of the natural environment.
- 7) planner must strive for excellence of environmental design and endeavor to conserve the heritage of the built environment.

The Planner's Responsibility to Clients and Employers

B. A planner owes diligent, creative, independent and competent performance of work in pursuit of the client's or employer's interest. Such performance should be consistent with the planner's faithful service to the public interest.

1) A planner must exercise independent professional judgment on behalf of clients and employers.

2) A planner must accept the decisions of a client or employer concerning the objectives and nature of the professional services to be performed unless the course of action to be pursued involves conduct which is illegal or inconsistent with the planner's primary obligation to the public interest.

3) A planner shall not perform work if there is an actual, apparent, or reasonably foreseeable conflict of interest, direct or indirect, or an appearance of impropriety, without full written disclosure concerning work for current or past clients and subsequent written consent by the current client or employer. A planner shall remove himself or herself from a project if there is any direct personal or financial gain including gains to family members. A planner shall not disclose information gained in the course of public activity for a private benefit unless the information would be offered impartially to any person.

4) A planner who has previously worked for a public planning body should not represent a private client, for one year after the planner's last date of employment with the planning body, in connection with any matter before that body that the planner may have influenced before leaving public employment.

5) A planner must not solicit prospective clients or employment through use of false or misleading claims, harassment or duress.

6) A planner must not sell or offer to sell services by stating or implying an ability to influence decisions by improper means.

7) A planner must not use the power of any office to seek or obtain a special advantage that is not in the public interest nor any special advantage that is not a matter of public knowledge.

8) A planner must not accept or continue to perform work beyond the planner's professional competence or accept work which cannot be performed with the promptness required by the prospective client or employer, or which is required by the circumstances of the assignment.

9) A planner must not reveal information gained in a professional relationship which the client or employer has requested to be held inviolate. Exceptions to this requirement of non-disclosure may be made only when (a) required by process of law, or (b) required to prevent a clear violation of law, or (c) required to prevent a substantial injury to the public. Disclosure pursuant to (b) and (c) must not be made until after the planner has verified the facts and issues involved and, when practicable, has exhausted efforts to obtain reconsideration of the matter and has sought separate opinions on the issue from other qualified professionals employed by the client or employer.

The Planner's Responsibility to the Profession and to Colleagues

C. A planner should contribute to the development of the profession by improving knowledge and techniques, making work relevant to solutions of community problems, and increasing public understanding of planning activities. A planner should treat fairly the professional views of qualified colleagues and members of other professions.

1) A planner must protect and enhance the integrity of the profession and must be responsible in criticism of the profession.

2) A planner must accurately represent the qualifications, views and findings of colleagues.

3) A planner who reviews the work of other professionals must do so in a fair, considerate, professional and equitable manner.

4) A planner must share the results of experience and research which contribute to the body of planning knowledge.

5) A planner must examine the applicability of planning theories, methods and standards to the facts and analysis of each particular situation and must not accept the applicability of a customary solution without first establishing its appropriateness to the situation.

6) A planner must contribute time and information to the professional development of students, interns, beginning professionals and other colleagues.

7) A planner must strive to increase the opportunities for women and members of recognized minorities to become professional planners.

8) A planner shall not commit an act of sexual harassment.

The Planner's Self-Responsibility

D. A planner should strive for high standards of professional integrity, proficiency and knowledge.

1) A planner must not commit a deliberately wrongful act which reflects adversely on the planner's professional fitness.

2) A planner must respect the rights of others and, in particular, must not improperly discriminate against persons.

3) A planner must strive to continue professional education.

4) A planner must accurately represent professional qualifications, education and affiliations.

5) A planner must systematically and critically analyze ethical issues in the practice of planning.

6) A planner must strive to contribute time and effort to groups lacking in adequate planning resources and to voluntary professional activities.