



BOND & FINANCIAL PRODUCTS  
PROFESSIONAL LIABILITY

## Ethics and the Professional Engineer

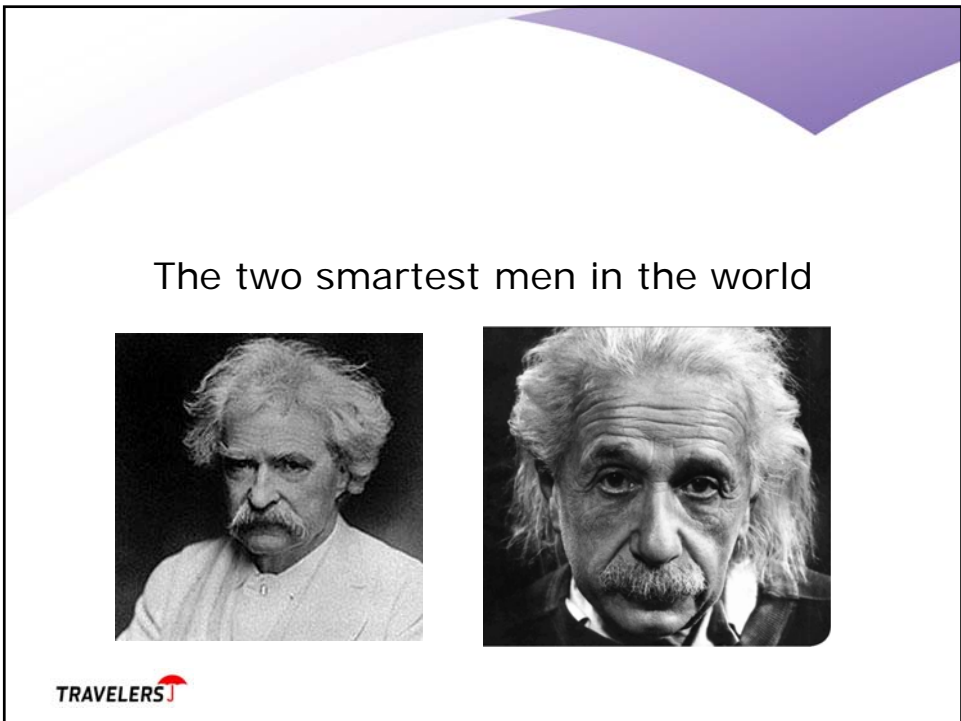
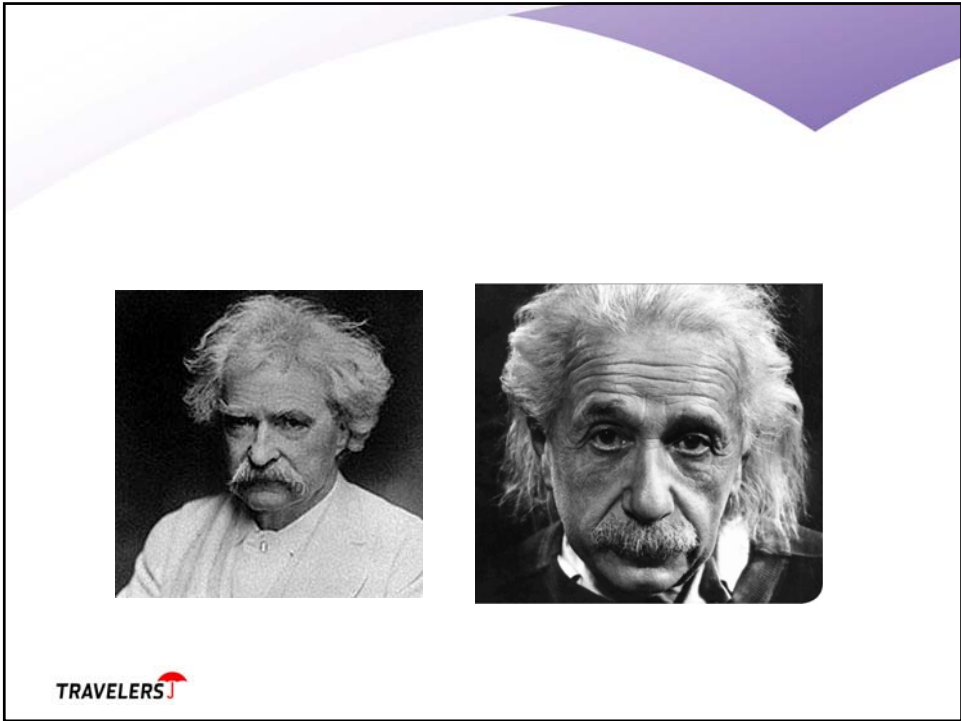
Gary M. Prather, MS. MBA, P.E.

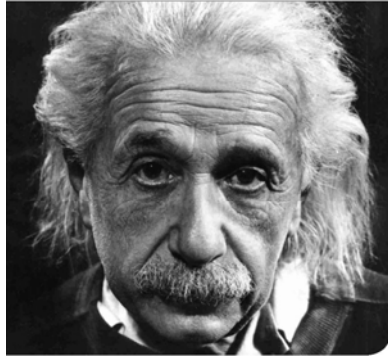
Travelers' National Risk Management Director

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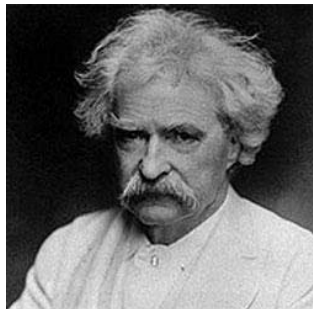






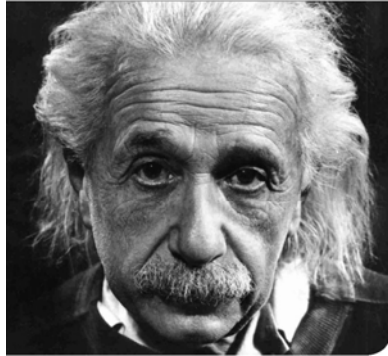
*Einstein knows everything  
that's important...*

TRAVELERS 



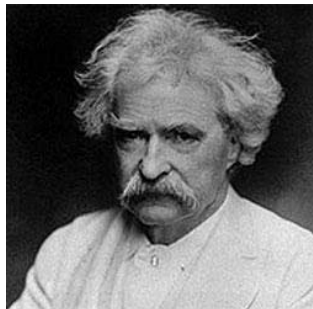
*... and I know everything else.*

TRAVELERS 



*"Relativity applies to physics not ethics."*

TRAVELERS 



*"The low level which commercial morality has reached in America is deplorable. We have humble God fearing Christian men among us who will stoop to do things for a million dollars that they ought not to be willing to do for less than 2 million."*

TRAVELERS 

## **Ethics and the Professional Engineer**

### Learning Objectives

At the end of this program, you should be able to:

- Understand ethical requirements
- Identify ethical issues
- Comply with your ethical responsibilities
- Make ethics central to firm culture



## **Agenda**

### **I. Professional Ethics Overview**

- II. Ethics and Professional Liability
- III. Cases
- IV. Q&A



## I. Professional Ethics Overview

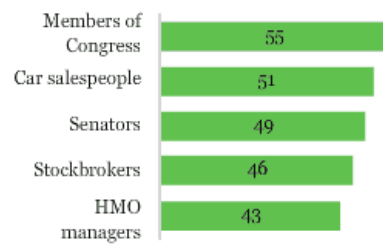
**professional ethics**, *n* the rules governing the conduct, transactions, and relationships within a profession...



## I. Professional Ethics Overview

### *Five Least Well-Rated Professions*

■ % Low/Very low honesty & ethical standards



Nov. 20-22, 2009

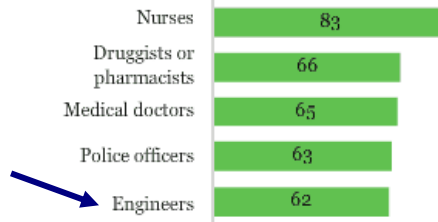
GALLUP



## I. Professional Ethics Overview

### *Five Most Highly Rated Professions*

■ % Very high/High honesty & ethical standards



Nov. 20-22, 2009



GALLUP

## I. Professional Ethics Overview

**THE STATE OF TEXAS  
TEXAS ENGINEERING PRACTICE ACT  
AND RULES CONCERNING  
THE PRACTICE OF ENGINEERING  
AND  
PROFESSIONAL ENGINEERING LICENSURE**



## I. Professional Ethics Overview

### Chapter 137: Compliance and Professionalism

#### SUBCHAPTER C: PROFESSIONAL CONDUCT AND ETHICS

##### §137.51 General Practice

§137.53 Engineer Standards of Compliance with Professional Services Procurement Act

§1837.55 Engineers Shall Protect the Public

§137.57 Engineers Shall be Objective and Truthful

§137.59 Engineers' Actions Shall be Competent

§137.61 Engineers Shall Maintain Confidentiality of Clients

§137.63 Engineers' Responsibility to the Profession

§137.65 Action in Another Jurisdiction



## I. Professional Ethics Overview

### §137.51 General Practice

#### Board Interaction/Direct Supervision

- Shall cooperate with the board in investigating violations
- Shall promptly answer all inquiries
- Shall be a registered in Texas
- Shall directly supervise the engineering work of subordinates





## I. Professional Ethics Overview

### 131.81 Definitions

**(10) Direct supervision** - The control over and detailed professional knowledge of the work prepared under the engineer's supervision. The degree of control should be such that the engineer personally makes engineering decisions or personally reviews and approves proposed decisions prior to their implementation. The engineer must have control over the decisions either through physical presence or the use of communications devices.



## I. Professional Ethics Overview

### 131.81 Definitions

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### 131.81 Definitions

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## I. Professional Ethics Overview

### Polling Question

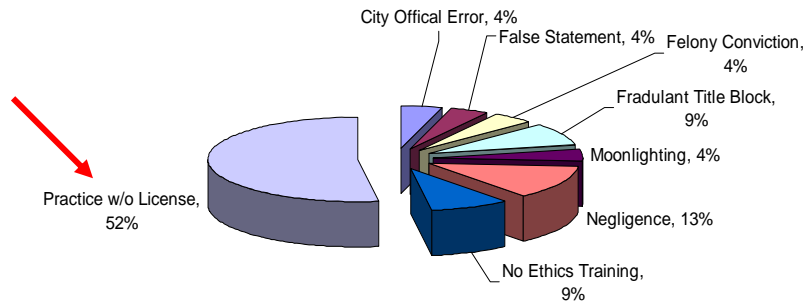
**What is the most common ethics violation in Texas?**

1. Moonlighting
2. Practicing without a License
3. Negligence
4. No Ethics Training



### III. Professional Ethics Overview

#### Engineering Ethics Violations A Snap Shot



Source: Texas Board of Professional Engineers

### I. Professional Ethics Overview

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## I. Professional Ethics Overview

### **§137.53 Engineer Standards of Compliance with Professional Services Procurement Act**

#### **Securing Work**

- Shall not competitively bid public projects unless authorized by state law
- Does not prohibit competitive bidding in the private sector
- QBS



## I. Professional Ethics Overview

### **Polling Question**

**How many professional contract tiers should be subject to QBS?**

- 1. Prime Contract**
- 2. First Tier Consultant**
- 3. Second Tier Consultant**
- 4. All Tiers**



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## I. Professional Ethics Overview

### §137.55 Engineers Protect the Public

#### Protect Health, Safety, Property and Welfare of the Public

- **The public** as used in this section and other rules is defined as any individual(s), client(s), business or public entities, or **any member of the general population whose normal course of life might reasonably include an interaction of any sort with the engineering work of the license holder**



I. Professional Ethics Overview

§137.55 Engineers Protect the Public (cont)

Protect Health, Safety, Property and Welfare of the Public

- Shall not perform any engineering function which, when measured by generally accepted engineering standards or procedures, is reasonably likely to result in the endangerment of lives, health, safety, property, or welfare of the public
- Incompetence or gross negligence, or a criminal violation of law, constitutes misconduct and shall be censurable by the Board



I. Professional Ethics Overview

Standard of Care

§137.55 Engineers Protect the Public (cont)

Protect Health, Safety, Property and Welfare of the Public

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- Incompetence or **gross negligence**, or a criminal violation of law, constitutes misconduct and shall be censurable by the Board



## I. Professional Ethics Overview

### §137.55 Engineers Protect the Public (cont)

#### Protect Health, Safety, Property and Welfare of the Public

- The central issue was the definition of what constitutes gross negligence. The Appeal Court relied upon the definition sent down by the State Supreme Court which said, "What lifts ordinary negligence into gross negligence is the mental attitude of the defendant . . .



## I. Professional Ethics Overview

### §137.55 Engineers Protect the Public (cont)

#### Protect Health, Safety, Property and Welfare of the Public

. . . The plaintiff must show that the defendant was consciously, i.e., knowingly, indifferent to his rights, welfare and safety. In other words, the plaintiff must show that the defendant knew about the peril, but his acts or omissions demonstrated that he didn't care. Such conduct can be active or passive in nature."

*Olin Corp. v. Dyson* 709 S.W.2d. 251 Tex. App.-Houston 14th Dist. 1986]



## I. Professional Ethics Overview

### §137.55 Engineers Protect the Public (cont)

#### Protect Health, Safety, Property and Welfare of the Public

- Shall notify parties of engineering decisions or practices that might endanger the health, safety, property or welfare of the public
- Shall report any fraud, gross negligence, incompetence, misconduct, unethical or illegal conduct to the Board or to proper civil or criminal authorities
- Strive to examine the environmental impact of their actions and projects





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I. Professional Ethics Overview

## Polling Question

Interpret this quote by Robert Louis Stevenson

*"The cruelest lies are often told in silence."*



I. Professional Ethics Overview Ethics

During a job interview at the local pharmacy, an applicant was asked, "Have you ever been convicted of a felony?"

"No," he answered.



I. Professional Ethics Overview

**"My hearing is scheduled for next week."**



I. Professional Ethics Overview

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§137.65 Action in Another Jurisdiction



## I. Professional Ethics Overview

### §137.57 Engineers Shall Be Objective and Truthful

#### Engineering Judgment/Conflict of Interest

- Shall issue statements only in an objective and truthful manner.
- Strive to advise parties of the consequences of engineering decisions or judgments that are overruled or disregarded
- Oral or written assertions in the practice of engineering shall not be:
  - (1) fraudulent,
  - (2) deceitful, or
  - (3) **misleading**
  - (4) **shall not create a misleading impression**
- Shall disclose a possible conflict of interest to a potential or current client or employer upon discovery of the possible conflict



## I. Professional Ethics Overview

### §137.57 Engineers Shall Be Objective and Truthful

#### Engineering Judgment/Conflict of Interest

- A conflict of interest exists when the engineer's own financial, business, property, or personal interests may affect any professional judgment, decisions, or practices exercised on behalf of the client or employer
- An engineer may accept employment only if all parties involved in the potential conflict of interest are fully informed in writing and the client or employer confirms the knowledge of the potential conflict in writing.



## I. Professional Ethics Overview

### §137.57 Engineers Shall Be Objective and Truthful (cont)

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## I. Professional Ethics Overview

### §137.59 Engineers' Actions Shall be Competent

#### Standard of Care

- Shall practice only in areas of competence
- May accept an assignment which includes phases outside of the engineer's area of competence if those other phases are performed by qualified licensed professionals, consultants, associates, or employees
- Opinions rendered as expert testimony shall be supported by adequate modeling or analysis



## I. Professional Ethics Overview

### §137.59 Engineers' Actions Shall be Competent

#### Standard of Care

- Shall practice only in areas of competence
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I. Professional Ethics Overview

**§137.51 General Practice Direct Supervision??**

**§137.59 Engineers' Actions Shall be Competent**

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I. Professional Ethics Overview

**§137.59 Engineers' Actions Shall be Competent**

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## I. Professional Ethics Overview

### §137.61 Engineers Shall Maintain Confidentiality of Clients

#### Confidentiality

- May reveal confidences and private information only with a **fully informed client's or employer's consent**
- When required by law or court order
- If left undisclosed, would constitute a threat to the health, safety or welfare of the public.
- Shall not use a confidence or private information to the disadvantage of client or advantage of a third party.
- Shall exercise reasonable care to prevent unauthorized disclosure or use of private information or confidences





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I. Professional Ethics Overview

## Polling Questions

Do you have a code of ethics?

Do you conduct ethics training?



I. Professional Ethics Overview



## I. Professional Ethics Overview

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**§137.63 Engineers' Responsibility to the Profession**

§137.65 Action in Another Jurisdiction



## I. Professional Ethics Overview

### §137.63 Engineers' Responsibility to the Profession

#### Promote Ethics, Code Compliance, Faithful Agent

- Strive to **promote ethics** both in the **education and practice** phases of engineering
- **Shall endeavor to meet applicable federal, state and local statutes, codes**
- Shall **act as faithful agent** for their employers and clients



## I. Professional Ethics Overview

### §137.63 Engineers' Responsibility to the Profession

#### Promote Ethics, Code Compliance, Faithful Agent

- An aspiring business student (a wanta be Wall Street stockbroker) was called into the dean's office for cheating on an ethics exam.
- The Student asked the dean to explain how she knew that he had, in fact, cheated.
- The dean presented two copies of the exam. The student's and the young lady's that sat next to him during the exam.



## I. Professional Ethics Overview

### §137.63 Engineers' Responsibility to the Profession

#### Promote Ethics, Code Compliance, Faithful Agent

Her answer to question 12 – I don't know



I. Professional Ethics Overview

**§137.63 Engineers' Responsibility to the Profession**  
**Promote Ethics, Code Compliance, Faithful Agent**

Your answer – I don't know **either**



I. Professional Ethics Overview

**§137.63 Engineers' Responsibility to the Profession**  
**Licensing/Inducements/Advertising**

- Shall not aid unlicensed persons/businesses in the unlawful practice of engineering
- Shall not give, offer or promise to pay or deliver, directly or indirectly, any commission, gift, favor, gratuity, benefit, or reward as an inducement to secure any specific engineering work or assignment;
- Shall not solicit professional employment through false or misleading advertising



## I. Professional Ethics Overview

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## I. Professional Ethics Overview

### §137.65 Action In Another Jurisdiction

#### Practicing in Other States

- Shall not practice or offer to practice engineering in any other jurisdiction in violation of the regulations in that jurisdiction
- Any disciplinary actions taken by another jurisdiction that constitutes a violation in Texas shall be cause for disciplinary action





## I. Professional Ethics Overview

### §137.65 Action In Another Jurisdiction

#### Practicing in Other States

- Shall not practice or offer to practice engineering in any other jurisdiction in violation of the regulations in that jurisdiction
- Any disciplinary actions taken by another jurisdiction that constitutes a violation in Texas shall be cause for disciplinary action



## I. Professional Ethics Overview

### Key Points

- Board cooperation required
- Direct supervision defined
- jobsite safety duty implied??
- Standard of care addressed
- Professional judgment protected



## Agenda

- I. Professional Ethics Overview
- II. Ethics and Professional Liability**
- III. Most Common Ethical Issues
- IV. Cases
- V. Q&A



## II. Ethics and Professional Liability

- Ethical practice is central to the standard of care
- Boards and courts can differ
- Ethical standards can raise the bar

*".... a design professional's code of ethics can significantly increase one's liability exposure."*

American Bar Association Forum on the Construction Industry  
Design Professional Liability: Existing Law and New Direction  
Handling An Unfamiliar Role: Ethical Considerations  
For the Design Professional And Its Attorney  
P. Douglas Folk, Esq.  
October 2000



## II. Ethics and Professional Liability

### Limited Coverage for Ethical Violations

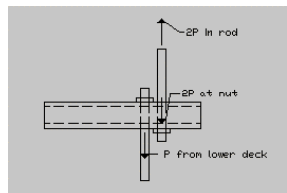
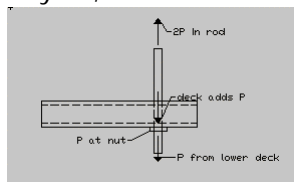
#### Exclusions

- Crime
- Dishonesty
- Fraud
- Willful violation of laws
- Civil or criminal fines
- penalties



## II. Ethics and Professional Liability

July 17, 1981



- Gross negligence
- Misconduct
- Unprofessional conduct
- Lost engineering Licenses in two states
- +/- \$140 Million in civil damages



## II. Ethics and Professional Liability

### Key Points

- Ethics violations can impact professional liability exposure
- Limited insurance for disciplinary actions
- Board actions can have broad reaching consequences



### Agenda

- I. Professional Ethics Overview
- II. Ethics and Professional Liability
- III. Cases**
- IV. Q&A



### III. Cases

#### Case 1

##### The Facts

- Engineer provides engineering services
- Due to potentially dangerous nature of project, Engineer recommends full time site observation
- Client ignores recommendation due to costs
- Engineer continues to work on project



### I. Cases

#### Case 1

##### Discussion

Proceeding without construction phase services

- A good thing?
- A bad thing?



## I. Cases

### Case 1

#### NSPE CODE

"Engineers shall at all times recognize that their primary obligation is to protect the safety, health, property, and welfare of the public. If their professional judgment is overruled under circumstances where the safety, health, property, or welfare of the public are endangered, they shall notify their employer or client and such other authority as may be appropriate."



## I. Cases

### Case 1

#### NSPE CODE

"The issue presented in this case goes to the heart of the Code of Ethics. A code of ethics is of course a statement of commitment from a particular profession to assist its members in the protection of the public health and safety."



## I. Cases

### Case 1

#### NSPE CODE

"Under the facts, Engineer made a professional judgment based upon education, expertise, and experience that a full-time, on-site project representative would be necessary during the construction phase of the project because of the dangerous nature of the project. This was presumably a determination which was made after a careful and thorough weighing of the costs of the full-time, on-site project representative versus the benefits of having such a representative."



## I. Cases

### Case 1

#### NSPE CODE

"When the client indicated that the project would be too costly if a full-time, on-site project representative were hired, Engineer acceded to the client's wishes and proceeded with the work despite the fact that Engineer believed that to proceed, without an on-site project representative, would be potentially dangerous. Engineer did not force the issue or insist that a project representative be hired. Instead, Engineer went along without dissent or comment."



## I. Cases

### Case 1

#### NSPE CODE

"If Engineer's ethical concerns were real, which we presume they were, Engineer should have insisted that the client hire the on-site project representative or refuse to continue to work on the project. While this might appear to be a harsh result, we think that such an approach is the only one that would be consistent with the Code of Ethics."



## III.Cases

### Case 2

#### The Facts

- Engineer's believes a fire suppression system is needed
- The Design-Build Contractor does not want to allocate budget dollars to for a fire protection system





### III.Cases

#### Case 2

##### Discussion

- What should the engineer do?
- Does the engineer have any ethical responsibility?
- How could this problem have been avoided?



### III.Cases

#### Case 2

##### Discussion Topics

##### **§137.57 Engineers Shall Be Objective and Truthful**

Strive to advise parties of the consequences of engineering decisions or judgments that are overruled or disregarded



### III.Cases

#### Case 3

##### Facts

- Upon completion of a major bridge project you discover that the concrete test results show that some of the poured concrete failed to meet the required air content
- The DOT is not aware of the issue



### III.Cases

#### Case 3

##### Discussion

What do you do?



### III.Cases

#### Case 3

##### Discussion

##### **§137.57 Engineers Shall Be Objective and Truthful**

Shall issue statements only in an objective and truthful manner.



### III.Cases

#### Case 4

##### Facts

- You contract to design a concrete silo for a sand processing plant
- The specification states that the design “will withstand the pressures” encountered during plant operation
- You understand that the silo will be used to drain the water from a pumped-in sand/water slurry using a filter system at the bottom of the silo



### III.Cases

#### Case 4

##### Discussion

- Do you have an ethical obligation to ask for more information about the project design?



### III.Cases

#### Case 4

##### Discussion

- Do you have an ethical obligation ask for more information about the project design?
- Should the silo be designed to keep from cracking and leaking?



### III.Cases

#### Case 5

##### Facts

- The client is pressuring you to provide your final design documents so the code review process can start
- You need at least two more weeks to complete the design and conduct a thorough quality review of the design



### III.Cases

#### Case 5

##### Discussion

What do you do?



### III.Cases

#### Case 5A

##### Facts

- Same client demands that the project be bid and awarded even though you are still incorporating the code comments into the design documents



### III.Cases

#### Case 5A

##### Discussion

What do you do?



### III.Cases

#### Case 6

##### Facts

- It's the end of design and you're way over budget
- Your project manager wants to move money from construction phase services to pull the design out the fire
- If you agree, your client will only receive a fraction of the construction site observations in your contract.
- To save money, you entertain the idea of using an newly-hired graduate engineer to perform the majority of the CA including submittal review.



### III.Cases

#### Case 6

##### Discussion

- What do you do?



### III.Cases

#### Case 7

##### Facts

- Engineer was asked to design a fire escape for a historic fraternity house on a prestigious Midwestern college.
- The design incorporated the use of expansion anchors to secure the steel-framed structure to the brick exterior
- As was common, the Frat partied well into the night on most weekends. The fire escape was regularly used as an overflow area for the rowdy crowd.
- The Sunday morning after what many recalled as “the party of all parties” the fire escape collapsed paralyzing a frat brother from the neck down.



### III.Cases

#### Case 7

##### Discussion

- Is the Engineer negligent?
- Did the Engineer violate the codes of ethics?

##### **§137.55 Engineers Protect the Public**

Shall not perform any engineering function which, when measured by generally accepted engineering standards or procedures, is reasonably likely to result in the endangerment of lives, health, safety, property, or welfare of the public





### III.Cases

#### Case 7

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### III.Cases

#### Case 7

##### Discussion

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### III.Cases

#### Case 8

##### Facts

- You are giving your expert testimony in a suit brought against a fellow engineer
- Opposing counsel leaves the room
- Your attorney proceeds to rifle through opposing counsel's brief case.



### III.Cases

#### Case 8

##### Discussion

What do you do?



### III.Cases

#### Case 9

##### Facts

- You are on site to review the underground plumbing rough for the basement of a 16 story office building
- You overhear the following conversation between the superintendent and concrete foreman"
- Foreman, "We poured the 3,000 PSI mix for the footings, but the spec calls for 4,000 PSI!!" What do we do?
- Superintendent, "Throw in a bag of cement and move on."



### III.Cases

#### Case 9

##### Discussion

What do you do?





## Agenda

- I. Professional Ethics Overview
- II. Ethics and Professional Liability
- III. Cases
- IV. Q&A



## Ethics and the Professional Engineer

Thank You

Questions





Ethics and the Professional Engineer

Closing Thoughts



Closing Thoughts

***“The social responsibility of business is to increase profit within the bounds of the law which is to say, engage in open and free competition, without deception or fraud...”***

**Milton Friedman**

Professor at the University of Chicago; Recipient of the Nobel Memorial Prize in Economic Sciences





Closing Thoughts

***Be sure you put your feet in the right place, then stand firm....."***

Abraham Lincoln



Closing Thoughts

***"...We need to try to do the right thing every time because we never know what moment in our lives we will be judged on..."***

Chesley (Sully) Sullenburger





Closing Thoughts

***"Always do the right thing –this will gratify some and astonish the rest..."***

Mark Twain



Closing Thoughts

"Mr. Peterson, are you an honest lawyer?"

"I'm so honest that my father lent me fifteen thousand dollars for my education and I paid back every penny the minute I tried my very first case."



Closing Thoughts

"Impressive. And what sort of case was that?"

**The lawyer squirmed in his seat and admitted,**



Closing Thoughts

**"He sued me for the money."**





## Closing Thoughts

### Firm Culture is Shaped by the Actions of Senior Management

