

# Ethics in Engineering & Government Contracting

## A Business Case

Jim Cownie  
MnDOT Deputy Chief Counsel  
CPAM Meeting – March 10, 2017



Why is a lawyer talking about engineering ethics?



# AGENDA

Ethics Rules  
Refresher

Discipline &  
Enforcement

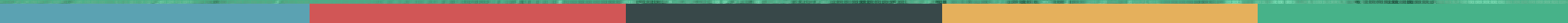
Ethics in Public  
Contracting

Working with  
Public Employees

Business Case for  
Ethics



# WHY ETHICS?





# 5 MOST UNETHICAL BEHAVIORS

ETHICS IN AMERICA

NUMBER 1  
Abuse of power



NUMBER 2

Violating internet policies



NUMBER 3

Misuse of work time



NUMBER 4

Lying



NUMBER 5

Employee theft

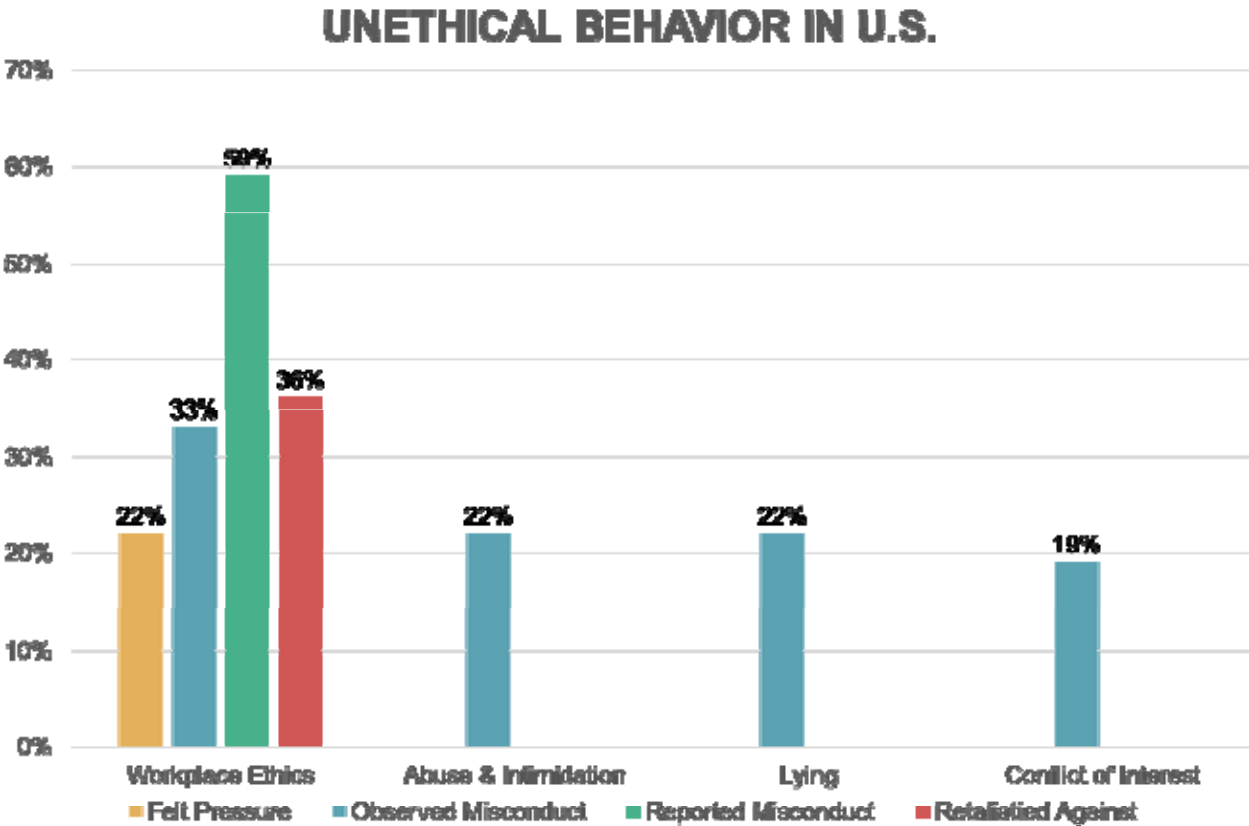




# WHY WE TALK ABOUT ETHICS

“The reputation of 1,000 years is determined by the conduct of 1 hour.”

-Japanese proverb





## VALUES

Integrity  
Honesty  
Trust  
Equity

## CHARACTER

Responsibility  
Follow-Through  
Self-Discipline

## MORALITY

Religion  
Cultural Values  
Right v. Wrong

## SOCIAL NORMS

Golden Rule  
Platinum Rule  
Group Think

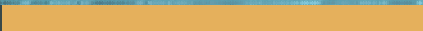
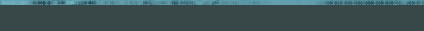
## LAW

Statutes  
Rules  
Policies  
Professional Codes



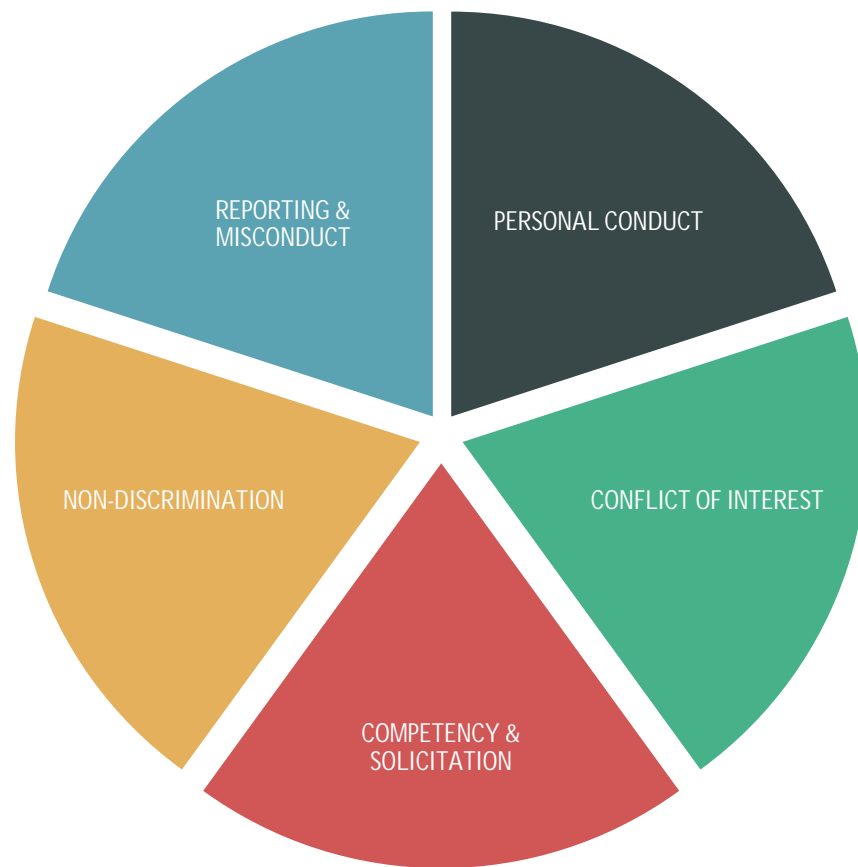
The background of the slide is a blue-tinted, halftone-style image. It depicts a city skyline with several tall skyscrapers in the background. In the foreground, there is a complex highway interchange with multiple lanes and overpasses. A highway sign on the right side of the interchange indicates 'EXIT 168 EAST' and 'St Paul 1 MILE'. The overall image has a grid-like texture, characteristic of halftone printing.

# ETHICS FOR ENGINEERING PROFESSIONALS



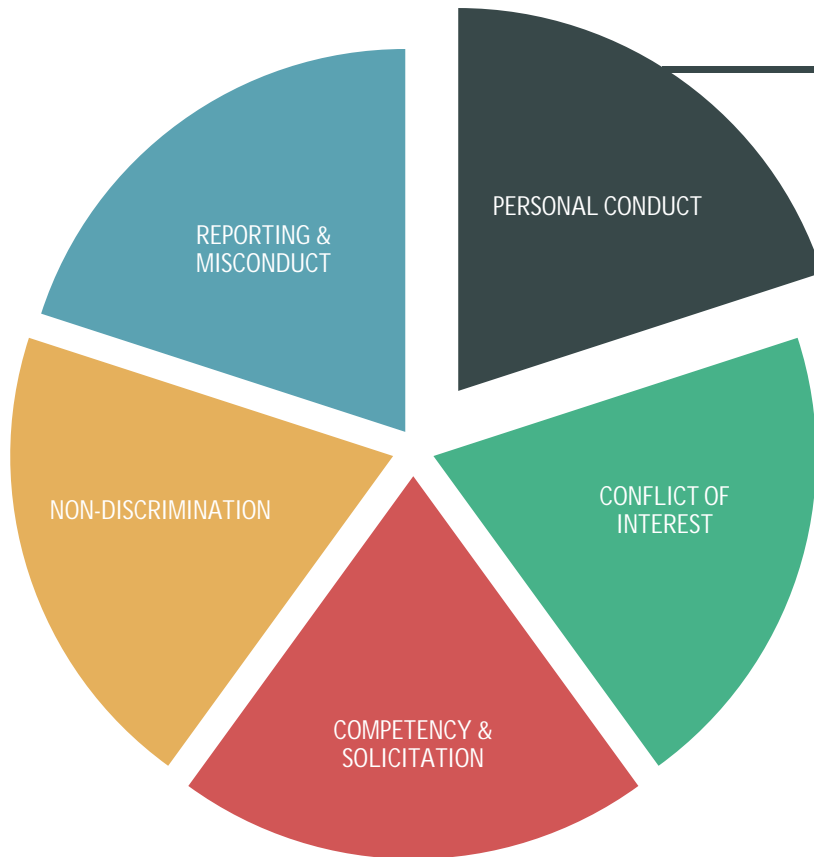


## BOARD RULES





## STATUTES & RULES



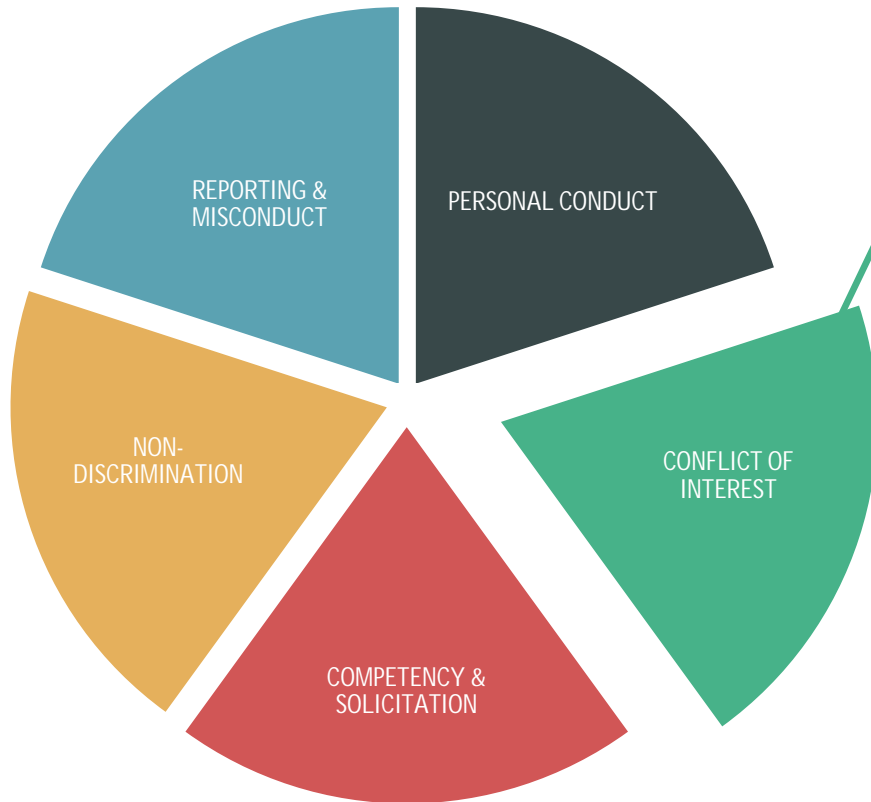
### DO

1. Uphold public confidence
2. Preserve personal integrity
3. Make true statements
4. Full disclosure in license application
5. Assist only qualified applicants

### DON'T

1. Break rules directly or thru someone else
2. Commit a crime
3. Lie, commit fraud, or misrepresent facts
4. Damage your reputation or profession's
5. Sign documents unless you directly supervised
6. Make false/malicious statements about another professional or business

## STATUTES & RULES



### DO

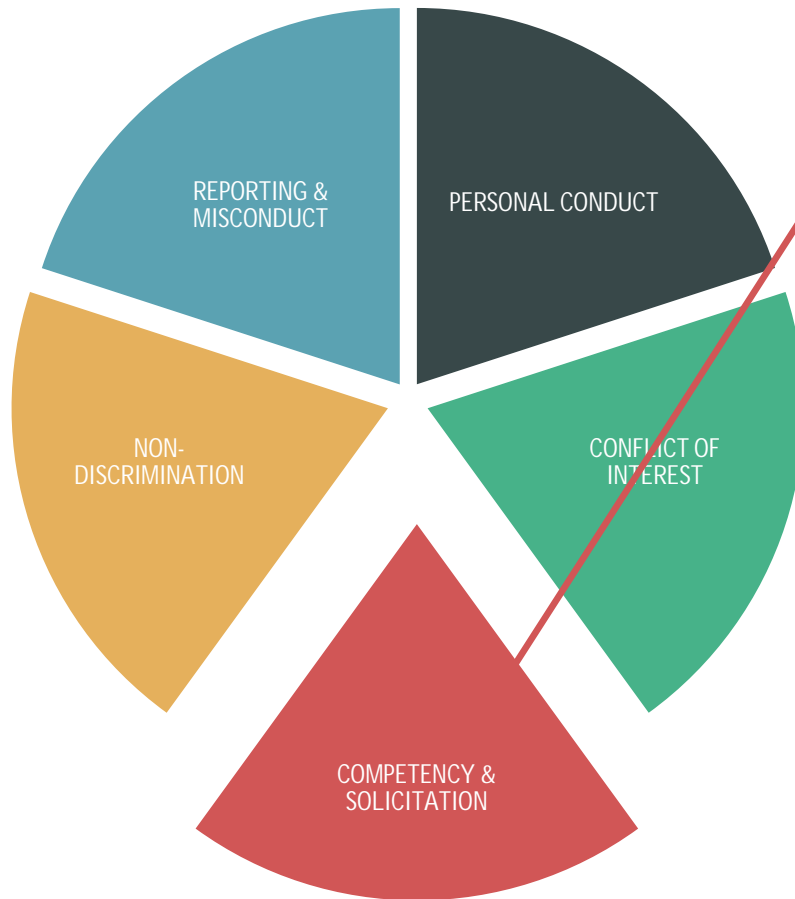
1. Make full disclosures

### DON'T

1. Accept outside work which conflicts with your interest, the client's or the public's
2. Accept double-payment
  - Disclosure
  - Consent
3. Accept gifts/money for work unless employer approved



## STATUTES & RULES



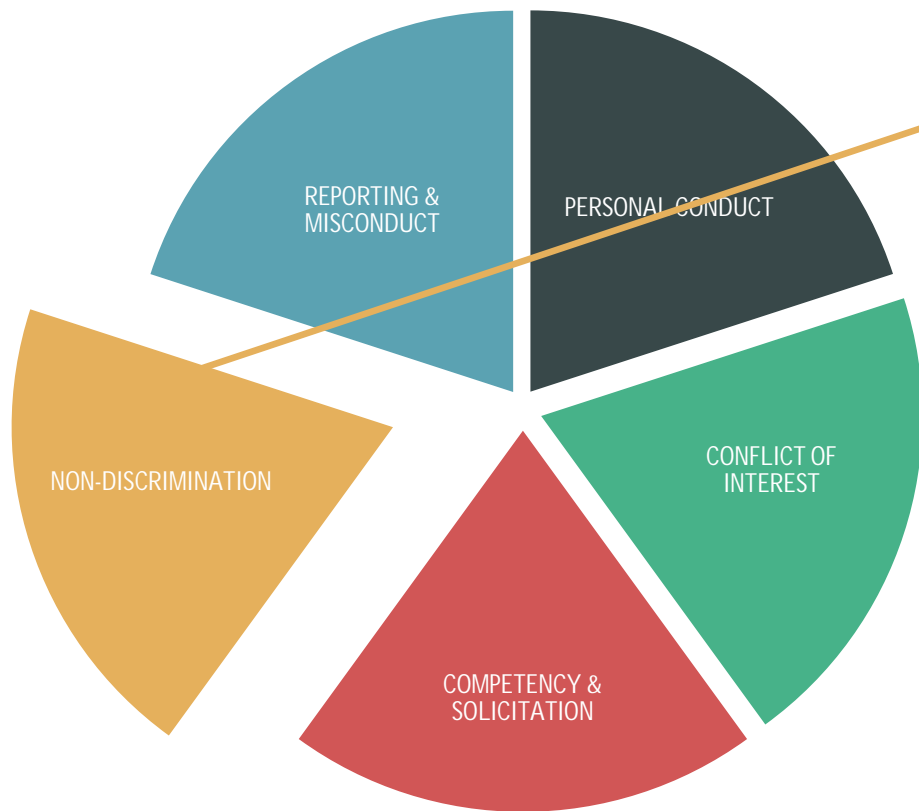
### DO

1. Work in areas you're competent and qualified in

### DON'T

1. Falsify/mislead public about your
  - Education
  - Training
  - Experience
  - Qualifications
  - Past employment
2. Send or publish false/misleading information about #1
3. Pay to secure employment

## STATUTES & RULES



DO

Hire based on merit

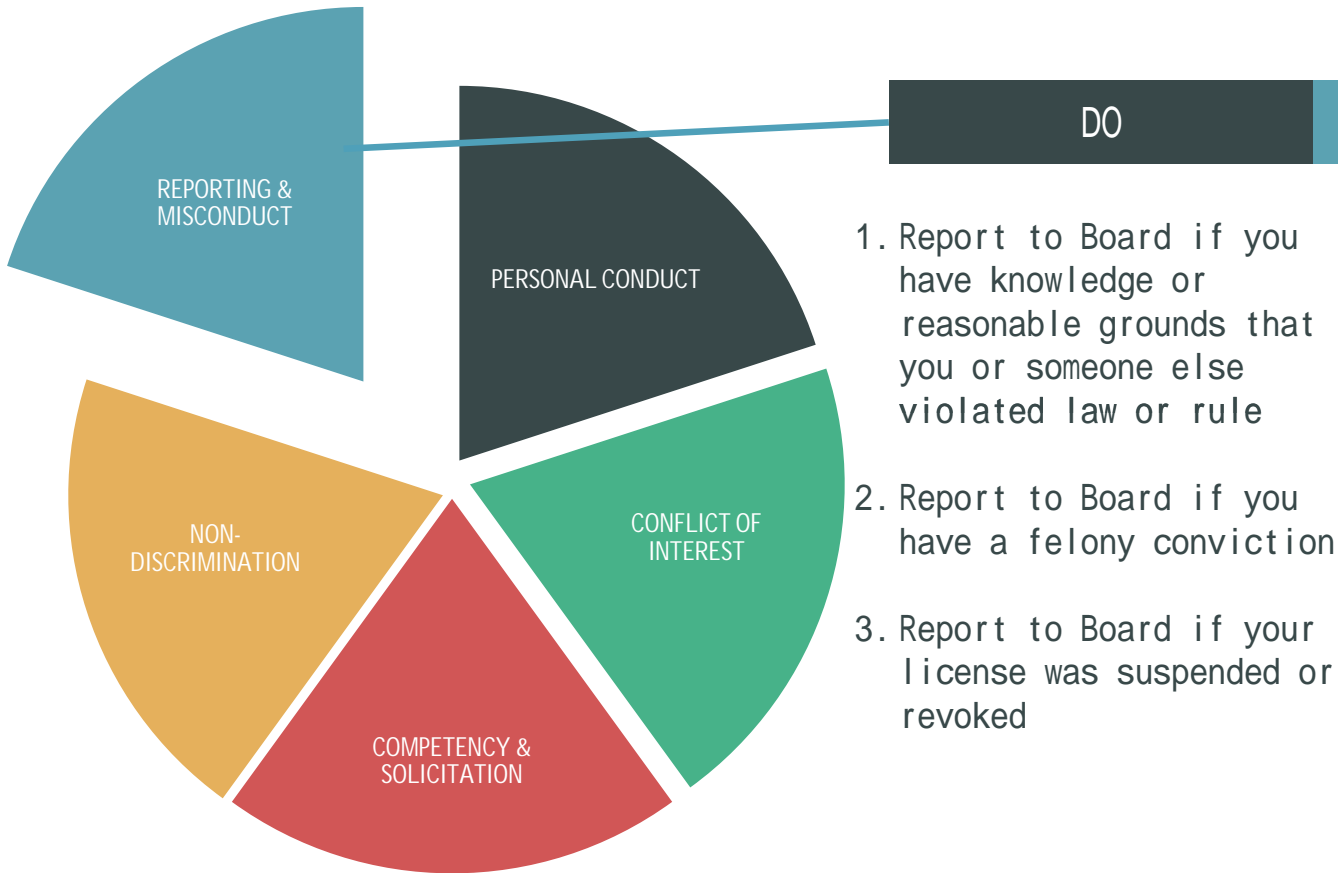
DON'T

Discriminate





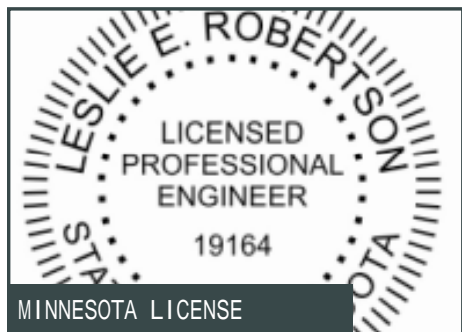
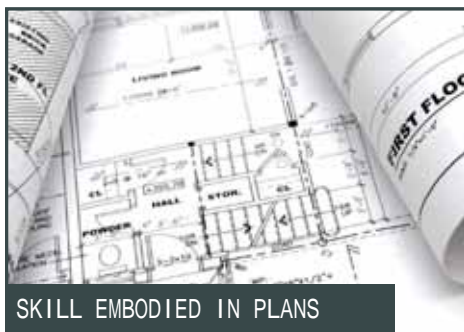
## BOARD RULES



## DON'T

1. Fail or refuse to provide information to Board if questioned

# RESPONSIBLE CHARGE





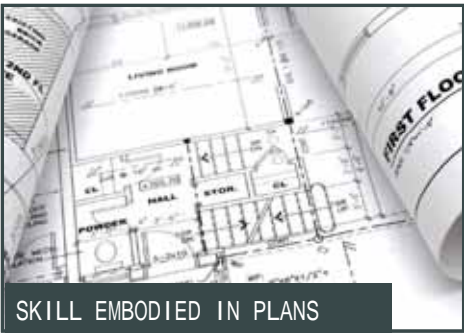
# DIRECT SUPERVISION



SAME FIRM



RESPONSIBLE CHARGE



SKILL EMBODIED IN PLANS

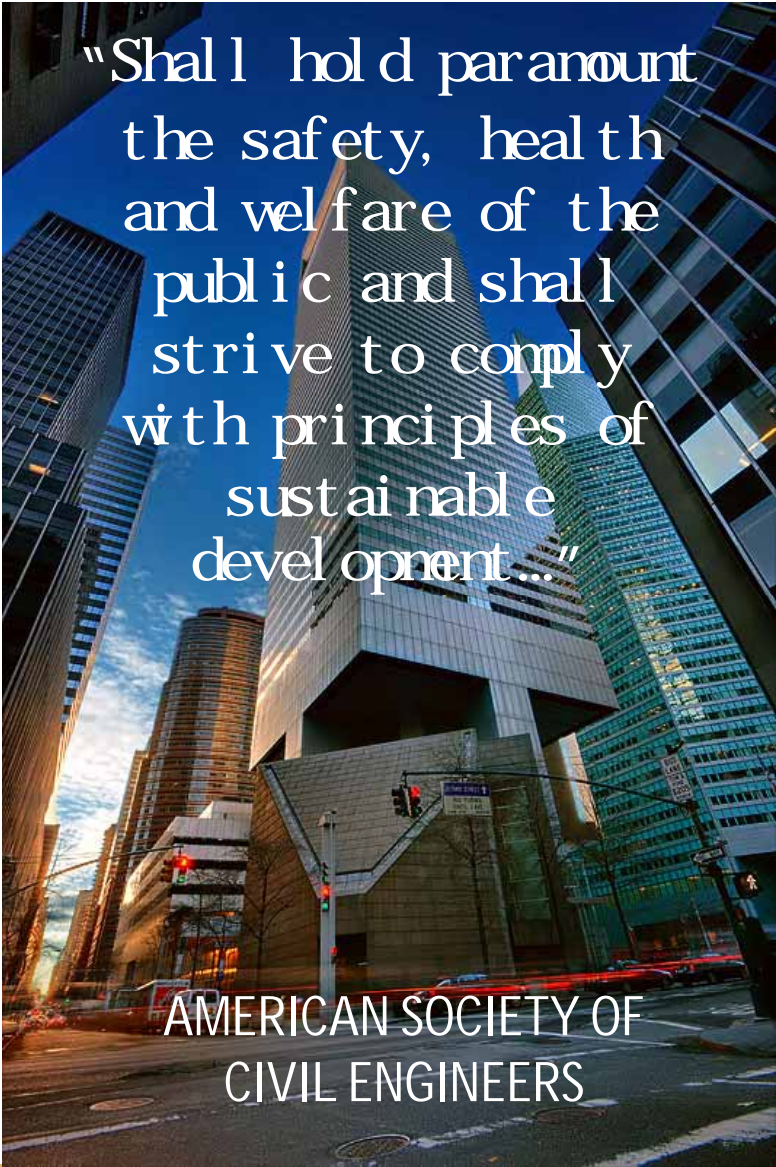


DIRECTS OTHERS



## ENGINEERS

- **Safety**  
Life, **safety, health, welfare** of public depends on your judgment  
Work to advance **communities**
- **Truth & Objectivity**  
Endeavor to **extend public knowledge**  
**Dignified and modest** when explaining work and merit
- **Conflicts of Interest**  
Disclose business associations that **could influence** your judgment  
No **tips**
- **Reputation**  
Negotiate **fairly**  
**Give credit** where credit is due
- **Integrity**  
Zero tolerance for bribes, fraud corruption  
Scrupulously honest with money
- **Professional Development**  
Stay current by **reading**, attending meetings and seminars  
“**Mutually satisfying**” employer relationship



“Shall hold paramount  
the safety, health  
and welfare of the  
public and shall  
strive to comply  
with principles of  
sustainable  
development...”

AMERICAN SOCIETY OF  
CIVIL ENGINEERS





# AMERICAN SOCIETY OF CIVIL ENGINEERS

“Shall hold paramount the **safety, health and welfare** of the public and shall strive to comply with principles of **sustainable development**.”

<p>1. Safety</p> <p>Life, safety, health, welfare of public depends on your judgment</p> <p>Work to advance communities</p>	<p>2. Competency</p>	<p>3. Truth &amp; Objectivity</p> <p>Endeavor to extend public knowledge</p> <p>Dignified and modest when explaining their work &amp; merit</p>	<p>4. Conflicts of Interest</p> <p>Disclose business associations that <i>could</i> influence your judgment</p> <p>No tips</p>
	<p>5. Reputation</p> <p>Negotiate fairly</p> <p>Give credit where its due</p>	<p>6. Integrity</p> <p>Zero tolerance for bribes, fraud, corruption</p> <p>Knowingly</p> <p>Scrupulously honest with money</p>	<p>7. Professional Development</p> <p>Stay current by reading literature, attending meetings and seminars</p> <p>“Mutually satisfying” employer relationships</p>



## STANDARD OF CARE



## REASONABLE CARE

Level of skill and diligence  
others in your profession would  
**ordinarily exercise under  
similar situations**

1. Degree and skills ordinarily required by other professionals
2. Reasonable & ordinary care required to accomplish the job
3. Professional judgment (discretionary immunity)

A red-tinted photograph of a city skyline, likely Chicago, featuring several skyscrapers and a complex highway interchange in the foreground. The image is overlaid with a white grid pattern. The title text is centered over the skyline.

# DISCIPLINE & ENFORCEMENT

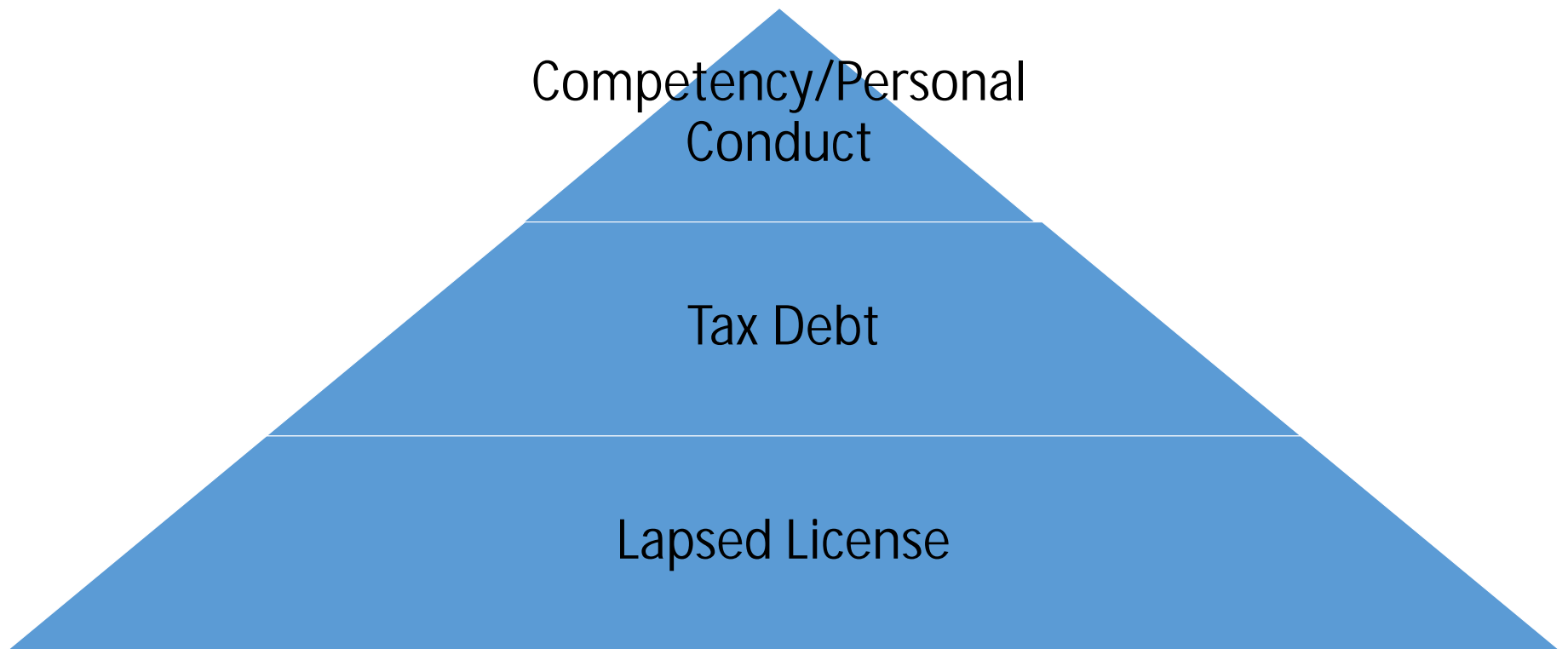
BOARD of ENGINEERING DISCIPLINE

1	CEASE & DESIST
2	COMPLIANCE ORDER
3	CORRECTIVE ACTION
4	EDUCATION
5	FINE
6	SUSPENSION
7	REVOCATION





# Major Categories





Licenses suspended until tax debts paid.

Increasing number of cases.

Working with Tax Authority (e.g. payment plan) will likely be a mitigating factor.

Can also be suspended for child support non-payment



The most common discipline case

Board imposes fines – ranging from a few hundred to several thousand \$\$\$

Mitigating factors? Short duration....disclosure and cooperation?

Aggravating factors? Signing plans? Holding self out as licensed? Social Media. PD requires licensure.





Board sanctions for failure to complete and inability to produce documentation when audited.

- Architect licensed in Mn but apparently living in California certified meeting his PDH requirements. He was selected for “random” audit of PDH’s. After ignoring multiple requests from the board he wrote:

“My lack of response is due in part to procrastination, as well as a general frustration with my lack of suitable records” Went on to say he didn’t have the records to substantiate his certification, but made a “sincere estimate”.

Reprimand, \$1K fine, Suspended until conditions met



- Architect has run of bad luck:
  - Affirmed attendance at 32 PDH
  - Selected for random audit in August
  - Did not respond by Oct – got second notice from Board
  - Responded in November:
    - I took online PDH, all the information was stored in a laptop that died and an email account I no longer have access to.
    - No backup records
  - Also held himself out as an architect for a 10-day period where his license was expired
- Outcome: reprimanded, suspended until PDH's completed and \$1K fine



Professional Negligence – Use of shredded tires in driveway exceeds engineering standards and fails and lacks beneficial use determination.

Reprimand and \$5K fine.





- Engineer applied for licensure by comity.
- Application asks: Have you ever had a license disciplined, denied, surrendered, suspended, or revoked?
  - Response: No
- Had actually been disciplined in both North Carolina and West Virginia (twice in WV). Oops!
- Outcome: reprimand, \$2K fine



## Three-year saga ends with reinstatement:

January, 2013: Admitted to assisting a client in changing the date on document that would be reviewed by PCA, in order to avoid having PCA take a 5% reduction in petrofund reimbursement.

Reprimand, \$3K fine, complete ethics course

December, 2013: Ex-employer files complaint with Board. Alleges that engineer did work for a business before that business was officially a client of the employer. Engineer used the employer's name and letterhead in connection with this work. Engineer sent invoice on employer's letterhead, but directed payment to the engineer personally, at his home address. Reports to PCA describe work as being done by the employer. Employer says engineer was "moonlighting" and misrepresenting his own work as work of the firm.

License revoked for minimum of two years, \$10K fine



2016: Engineer's license was reinstated after he showed that he had complied with PDH requirements, and he submitted an affidavit stating that he had not held himself out as an engineer while his license was revoked.

Takeaway? Secretive behavior is a good indicator you're in rough waters ethically



DISCIPLINARY FACTORS

NATURE

What was the type of violation?

Was the violation minor?

Was a client or member of the public harmed?

HARM CAUSED

INTENT

Was the violation inadvertent or unintentional?

Was the violation willful?

Was it a result of knowing disregard for the Code?

How much experience did the violator have?

Should they have known better?

SKILL LEVEL

PAST VIOLATIONS

Have there been previous violations?

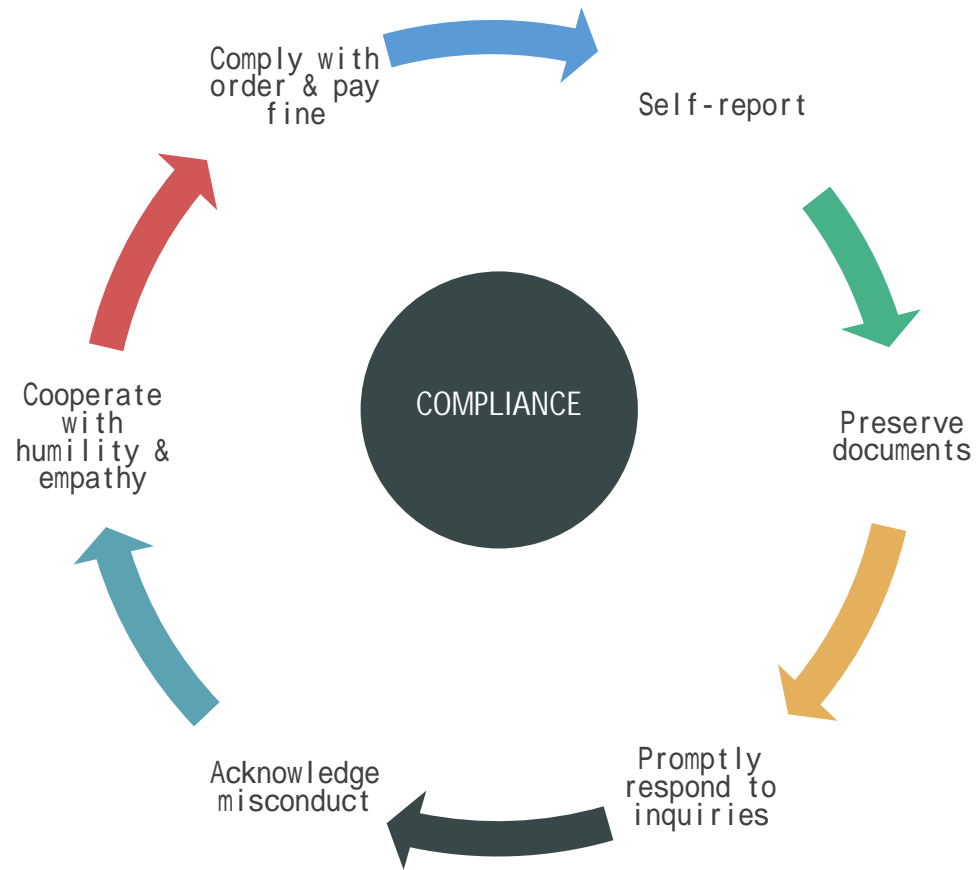
How often?

How recent?

Is the current violation similar to past violations?



## MITIGATION

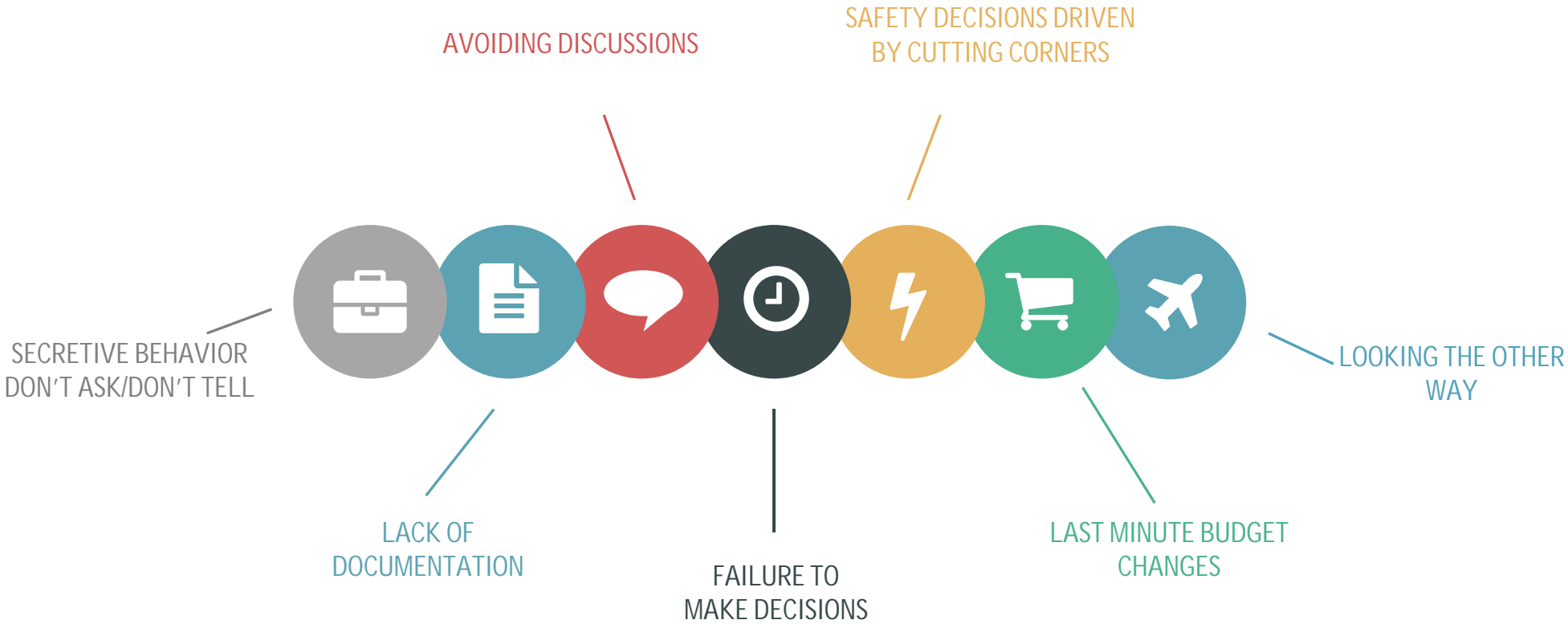


## LEARNING LESSONS





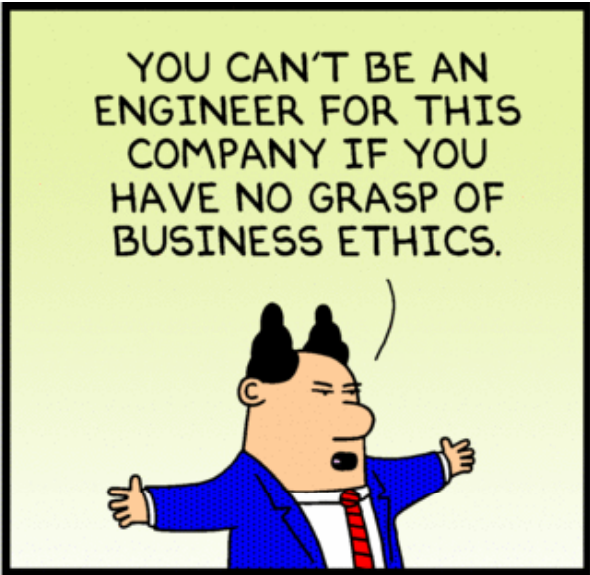
WARNING SIGNS OF UNETHICAL BEHAVIOR



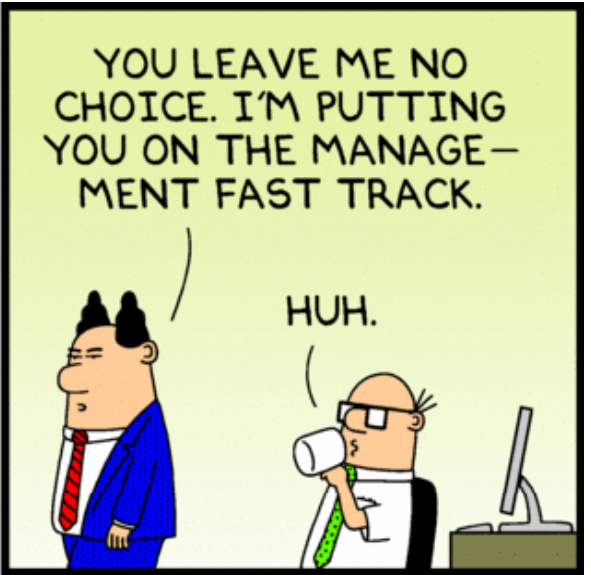
ON A LIGHTER NOTE



Dilbert.com DilbertCartoonist@gmail.com

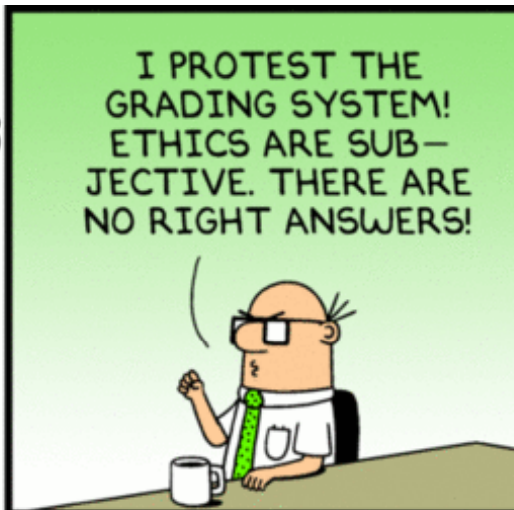


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# ETHICS IN PUBLIC CONTRACTING



# Unethical, Illegal, or Both?

- Some activities are just unethical
  - Bid Shopping
  - Bid peddling
  - Misrepresenting work you've performed
- But, some unethical activities have legal consequences:
  - Collusion
  - Bribery
  - Falsifying test reports
  - Making false claims
  - Sexual harassment / discrimination / hostile workplace

# What does it cost?

- Public Costs:
  - Fixed budgets – increasing one slice of the pie decreases another
  - Public support for programs is undermined – public less willing to pay
  - Value to public is reduced, e.g. sub-par materials = more maintenance \$\$
- Private costs:
  - Loss of reputation
  - More intensive inspection
  - Fines? Jail?

## The ABC's (and F's) of Jail

Avoiding payments

Bribery - making or taking

Collusion

Fraud







# ETHICS IN PUBLIC CONTRACTING



## Working with Public Employees

There are special ethical laws, rules and policies that apply to public employees.

MnDOT focuses on training its employees to administer the contract fairly and impartially.



Employee guidance

Sets expectations

Discipline and discharge for non-compliance

# CODE OF ETHICS

Minnesota Department of Transportation Policy HR008  
*Effective Date as Signed by Responsible Senior Officer*

## POLICY STATEMENT

All public employees, Minnesota Department of Transportation (MnDOT) staff must maintain a high standard of conduct and level of scrutiny. The public trust and confidence in MnDOT employees is critical to the success of the Department. MnDOT expects employees to use their authority and resources in the public interest. The department also expects its employees to adhere to the highest ethical values when conducting state business and to follow the *MnDOT Code of Ethics policy* and related statutes and policies

## REASON FOR POLICY

- To safeguard the reputation of MnDOT and the State of Minnesota
- To safeguard state assets
- To establish expectations for ethical business conduct
- To ensure compliance with the law, [Minnesota Statute §43A.38](#):
  - Subd. 2. Acceptance of gifts; favors
  - Subd. 3. Use of confidential information
  - Subd. 4. Use of state property or time
  - Subd. 5. Conflicts of interest

## WHO NEEDS TO KNOW THIS POLICY?

All MnDOT employees must be aware of and comply with this policy.

## PROCEDURES

## RESPONSIBLE SENIOR OFFICER

**Tracy Hatch**  
*Deputy Commissioner/CFO/COO*  
[tracy.hatch@state.mn.us](mailto:tracy.hatch@state.mn.us)  
651-366-4800

## POLICY OWNER

**Karin van Dyck**  
*Director, Office of Human Resources*  
[karin.van.dyck@state.mn.us](mailto:karin.van.dyck@state.mn.us)  
651-366-3385

## POLICY CONTACT

**Jodi Mathiason**  
*Manager, Labor Relations  
Office of Human Resources*  
[jodi.mathiason@state.mn.us](mailto:jodi.mathiason@state.mn.us)  
651-366-3404

## ADMINISTRATIVE POLICY MANAGER

**Nancy Melvin**  
*Office of Chief Counsel*  
[nancy.melvin@state.mn.us](mailto:nancy.melvin@state.mn.us)

# ETHICS LAW FOR STATE EMPLOYEES



- Accepting meals
- Accepting giveaways at conferences and other gifts
- Accepting outside payment for work on state time
- Coffee?

- Using state vehicles
- Using a MnDOT snowplow to clear your driveway
- Misuse of IT resources

- Looking up driver's license information on state system
- Not destroying private data (e.g. SSNs)
- Using inside information for private gain/benefit

- Representing MnDOT while also representing outside firms
- Using job to get advantages not available to the public

# Some “Concrete” Takeaways

A State employee cannot:

- Accept a gift from you unless it is of “nominal” value (a “trinket”)
- Solicit a gift from you, solicit employment for self or family member, or solicit contribution to a philanthropic cause they are involved with
- Moonlight for you if the employee oversees your work
- Give you access to non-public information to give you an advantage on your next bid
- Allow you to use MnDOT equipment or IT resources
- Participate in a raffle in events not open to the public



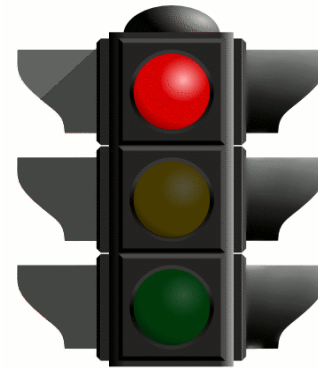


# BUSINESS CASE FOR ETHICS



# Running an Ethical and Legal Red Light

- Redflex bribed Chicago officials to land “photo cop” contracts and also made a written statement saying it committed no ethics violations in connection with the contracts.
- Former Redflex CEO pled guilty, got 30 months in jail; Chicago official got 10 years in jail.
- Chicago pulled contracts, agreed to \$20 million settlement.
- Redflex escaped prosecution by “extensively” cooperating with DOJ and cleaning house, but faces serious financial pressures.



# The Rolls-Royce of Bribery!

- Rolls Royce agreed to pay US, UK, and Brazil over \$800 million for bribing officials to get government contracts and confidential government information



# VW Passes Gas



- Rigged software in “clean diesel” engines to pass emissions tests
- VW will pay at least \$1.2 billion to vehicle owners
- VW shares lost 1/3 of their value



# A Dark Deal on Bright Lights



- Miami airport official conspired with lighting seller to inflate costs of LED fixtures, in exchange for a hefty kickback.
- Airport and company officials get 3-5 years in prison

# George Dirt?

- GA DOT maintenance foreman George Bell gets 4 ½ years in prison
- Took bribes to allow more than 2,600 dump truck loads of unsuitable dirt to be dumped in the state
- Total bribes? Less than \$15,000; about \$3,300 for each year spent in prison



# General Motors Ignition

1	• DOJ lawsuit
6	• Civil lawsuits
12.8M	• Cars recalled
15	• GM executives fired
100+	• Compensation claims
\$28,000	• NHTSA fine
\$35M	• DOT fines
\$900M	• DOJ penalties

## Closer to home....

- Trucking contractor spent some time at Club Fed for cheating on prevailing wage laws (committing wire fraud in the process)
- South St. Paul airport manager charged with stealing from city by setting up receivables account and accessing it for personal expenses
- Former Stillwater mayor sentenced for conspiring with others to evade taxes
- MnDOT detected falsified material testing reports on projects
- Mn lottery director resigned for scheme to collect reimbursement for nights spent in his own time-share unit; Lottery assistant director fired for, among other things being drunk at an official function - Lt. Gov. called her "a disgrace"





## TOOLS & STRATEGIES

### DISCUSS WITH OTHERS

Talk to trusted advisor,  
friend, colleague

Gather support of others

Consult an attorney

### RESEARCH & DOCUMENT

Research the issue

Document your work and  
efforts

Review law, rules,  
policies & codes

### TAKE TIME TO CONSIDER IMPACTS

Conduct cost-benefit  
analysis

Will your company survive  
if it gets caught?

Consider long-term effects

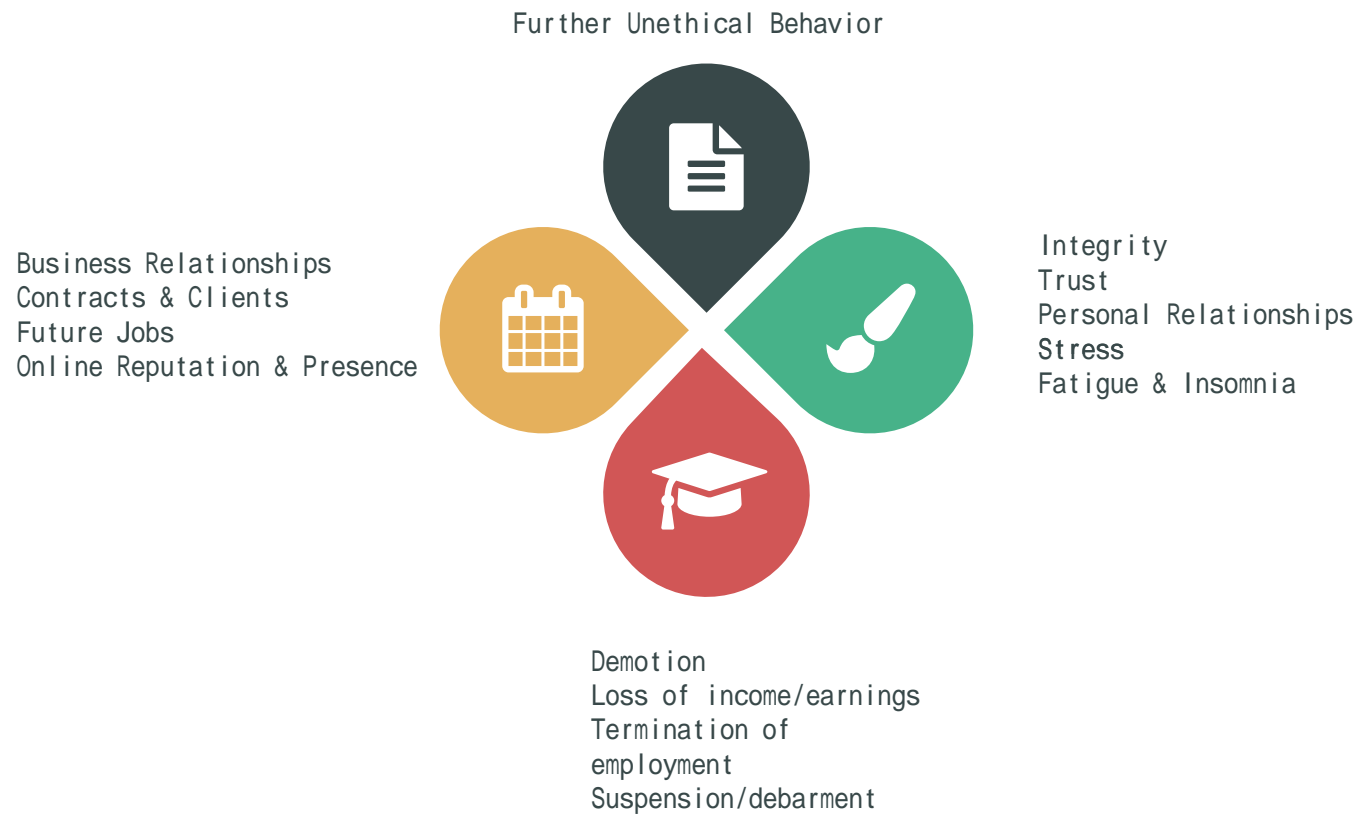
### PROTECT YOUR BUSINESS REPUTATION

Publicity Test

Separate business & personal

Can you afford the time and  
cost to rebuild reputation

## CONSEQUENCES





15%

Increase in disciplinary actions

57%

Increase in suspensions

528

Backlogged cases

## Minnesota set a new record last year for punishing lawyers

The state Supreme Court disbarred six lawyers and suspended the licenses of 47 others last year.

By Dan Browning Star Tribune | JULY 1, 2016 — 9:10PM

Minnesota lawyers set a record in 2015, but it's nothing to boast about.

Sixty-five lawyers were publicly disciplined last year, breaking the previous record of 55 set in 1990, the Minnesota Lawyers Professional Responsibility Board said in its annual report Friday.

Among other disciplinary actions, the Minnesota Supreme Court suspended 47 lawyers in 2015, smashing the previous record of 27, set in 1990 and matched in 1995 and 1996.

"I wish that we knew why there was a record year, but we don't," said Susan M. Humiston, who took over as director of the lawyers board office in March. "It really does appear to be the fact that more people were engaged in more serious conduct."

The office has a backlog of complaints to investigate, although it has made progress in reducing that number.

Six attorneys were disbarred in 2015:



A low-angle photograph of a dense forest of tall, slender trees, likely redwoods or sequoias. The trees are tall and thin, with light-colored bark. Sunlight filters through the dense green canopy, creating a hazy, ethereal atmosphere. The perspective makes the trees appear to converge towards the top of the frame.

Perception is more  
important than reality.



## TONE FROM THE TOP

### Model the Behavior You Want

Ethical “tone” flows from the top down

Four Steps to Set the Tone:

- Communicate Expectations

- Lead by Example

- Provide a Reporting Mechanism

- Reward Integrity

Association of Certified Fraud Examiners:

Whatever tone management sets will have a trickle-down effect on employees.

National Commission on Fraudulent Reporting ("Treadway Commission"):

Tone at the top "plays a crucial and influential role" in creating opportunities for fraud to exist.

Young NY Investment Banker

Family transportation and real estate business in tailspin

Family favored shutting down; Would affect 500 employees and many others in community

Found investors, formed a new company, rehired all the employees, bought buses back from bankruptcy trustee

Today, Jefferson Lines is a thriving business that fills a community need for access to transportation

MCI WorldCom billing/collections manager

Employees pressured to meet/exceed revenue targets

Saw upper managers manipulate results (cook the books)

He and his colleagues start manipulating their own results

MCI WorldCom scandal becomes public

Arrested, convicted, imprisoned





Why Tell These Stories?

# REPORT FRAUD

<http://www.dot.state.mn.us/reportwrongdoing/>





# THANK YOU!

[James.Cownie@state.mn.us](mailto:James.Cownie@state.mn.us)