

Topics in Professional Ethics for Discussion

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Mining & Metallurgical Society of America
Ethics Webinar, July 15, 2020

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Introduction

- ◆ Betty Gibbs is the host controlling the meeting's mechanics.
- ◆ Please keep yourself muted unless you've been called on.
- ◆ We want participants to comment on each slide they'd like to discuss. Send a chat message "comment" and you will be called on to contribute.
- ◆ If we only discuss few slides, that's okay. We will have spent an interesting hour. And we'll have slides ready for a future webinar.

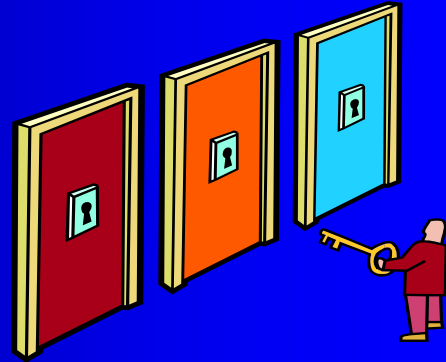
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Who is the “client”?

Given a corporate employer or client, for whom do you work? Who is the ultimate “client”?

- ◆ the officers?
- ◆ the directors?
- ◆ the shareholders?

Why is this an important issue?



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Insider trading

- ◆ Can you keep sensitive material information confidential?
- ◆ Regular stock purchase plans and material non-public information.
- ◆ Receiving a stock option bonus from a Board that doesn't know what you do.

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Balancing what to say to shareholders/public versus what the data supports

- ◆ Dealing with a client or employer who wants to put a more positive spin on a technical report for which you are responsible.

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Qualified versus Competent

- ◆ A lawyer colleague remarked one day, “I’m qualified to represent O.J. Simpson, but I’m not competent to do so.” Why is this true?
- ◆ Are there situations in which you may be competent but not qualified?
- ◆ Are there rules about this, and if so, where?

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Practicing within one's competence: tourmaline value

What competencies are required to render an opinion on the validity of a reserve valuation on a tourmaline-bearing property?

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MMSA Ethical Guidelines Clause 4: Use of specialized knowledge

4. Members shall build their professional reputation on merit and shall not compete unfairly.

Should a firm excuse itself from bidding on a job for which it has unique, site specific information that is not known by the other bidders and thus giving the firm a business advantage?

Are there circumstances that might change your answer?

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Ethical Principles Can Result in Conflict

One of the most important points Bernard Gert makes in his *Common Morality: Deciding What to Do* (1998) is that moral or ethical analysis cannot decide all ethical or moral questions. This results from different people giving different weights to various morally or ethically desirable principles. The result is that people on either side of a debate can have well-based and thoughtfully considered bases for their opposing positions.

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Geoscience Ethics Statements

Two principal provisions in geoscience ethics statements are:

- ◆ Protection of the public's health, safety, and welfare (public protection)
- ◆ Maintaining the confidentiality of an employer's or client's confidential information (confidentiality)

What happens when these two provisions come into conflict?

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MMSA Ethical Guidelines

Clause 1: The responsibility of members for the welfare, health and safety of the community shall at all times come before their responsibility to the profession, to sectional or private interests, or to other members.

The interpretation of this clause states, “The principle here is that the interests of the community have priority over the interests of others. It follows that a member:

- a. shall avoid assignments that may create a conflict between the interests of his or her client or employer and the public interest;
- b. shall work in conformity with acceptable technological standards and not in such a manner that jeopardizes public welfare, health or safety;

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MMSA Ethical Guidelines, Clause 1 interpretation

- c. shall endeavor at all times to maintain technological services essential to public welfare;
- d. shall in the course of their professional life endeavor to promote the wellbeing of the community. If his or her judgment is overruled in this matter, they should inform their client or employer of the possible consequences (and, if appropriate, notify the proper authority of the situation);
- e. shall, if they consider that by so doing they can constructively advance the well-being of the community, contribute to public discussion on scientific and technological matters in their area of competence.

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“Tattle tales” and whistle-blowing

- ◆ The “Don’t tattletale rule” is something we all learned in the sandbox. The “rule” assisted our standing among our peers and helped us become responsible for our own actions.
- ◆ However, the “rule” can cause us to sanction, to aid and abet immoral or unethical acts through our failure to act by blowing the whistle.
- ◆ How many of the corporate ethics problems that have come to light over the past years were fostered by the “don’t tattletale” rule?



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Examples of corporate cultures aiding incompetent practice

- ◆ NASA: 1986 Challenger explosion due to low temperatures. *But this is the Teacher-in-space launch!*
- ◆ 2014 General Motors ignition switch flaw; some GM engineers had known of the problem for years.
- ◆ 2014 Volkswagen faked diesel emissions tests
- ◆ Flint, Michigan lead in the water crisis—how many cities use lead supply pipes to homes?
- ◆ 2015 Gold King Mine spill near Silverton, CO.

PE magazine, May/June 2016

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Integrity

Stephen L. Carter, in his book, *Integrity* (1996), defines *integrity* as requiring three steps:

1. *Discerning* what is right and what is wrong.
2. *Acting* on what you have discerned, even at personal cost.
3. *Saying openly* that **you** are acting on your understanding of right from wrong.

Legitimate whistle blowing requires integrity.

Adverse consequences are likely.

How you blow the whistle can significantly affect the adverse consequences.

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Case history: *Enemy of the People*

Henrik Ibsen's *Enemy of the People* (1882) (available from several web sites) concerns a doctor in a small, southern Norwegian town who discovers that the town's spa, which is its economic base, is polluted. His disclosure of his findings lead to ostracism of the doctor and his family. He then learns that the source of the pollution is his father-in-law's paper mill.

The economic community's ostracism contrasts with today's environmental groups, which are frequently in opposition to the economic community. Nevertheless, the potential consequences are the same.

Read *Enemy of the People* and reflect on your reactions.

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Rio Tinto Mozambique coal case

The SEC sued Rio Tinto plc, its former CEO, and its former CFO for failing to disclose the delays, setbacks, and rapid decline in the value of coal assets in Mozambique acquired in April 2011 for \$3.7 billion. The former CEO and CFO kept the increasingly negative information about the coal assets from the Board of Directors, the Audit Committee, the independent auditors, and the investing public. By May 2012, executives for the Mozambique coal assets, had estimated the value of **-\$680 million.** It wasn't until January 2013, when the Mozambique coal executives realized that Mozambique coal assets were being publicly carried at an inflated value and, bypassing the CEO and CFO, reported to the Board Chairman and the fraud was disclosed.

www.sec.gov/news/press-release/2017-196

Australian Securities & Investment Commission charged in May 2018

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Rio Tinto Mozambique coal case

- ◆ One of the Mozambique coal executives was a geologist.
- ◆ The unethical and fraudulent failure to disclose the negative information about the various problems with the Mozambique coal assets was resolved by internal disclosures within Rio Tinto.
- ◆ Following an internal review, Rio Tinto disclosed that the Mozambique coal assets' value was reduced by more than \$3 billion and the assets were sold for \$50 million.

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Company not following agreed to plans

- ◆ C.J., an environmental geologist, was hired by a large company to join the team working on a large project in foreign country. The company's website touted its commitment to environmental responsibility.
- ◆ As part of proceeding with the large project, the company had agreed to take a number of mitigation actions to avoid environmental degradation of surrounding areas. However, after a few weeks on site, C.J. realized that the promised mitigation actions had not been implemented.
- ◆ What should C.J do?

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Legal "gag" orders

A case for which a geoscientist was to be an expert witness was settled by consent, which included a gag order preventing the parties from discussing the case. The geoscientist believed that others would be harmed if his opinion were not made public.

- ◆ If he is a party to the gag order, can the geoscientist disclose his opinion despite the gag order?
- ◆ What are consequences of violating the gag order?
 - to the geoscientist?
 - to his client?

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Subpoena for confidential information

Susan received a subpoena for her testimony and a copy of a confidential report prepared for a client. The subpoena called for compliance in two days from the date of receipt. Susan's last conversation with the client suggested to her that client was no longer interested in the property covered by the report.

What should Susan do?



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MMSA Ethical Guidelines

Interpretation Clause 4(b): bribe or facilitating payment?

In many countries, payments of varying size are commonly paid to officials in order to obtain permits, clearance for equipment and supplies, and a variety of other purposes. Such payments are known as “grease,” “baksheesh,” “facilitating payments,” “bribes,” etc.

Is it ethical to make such payments? If so, when?

How should the making of such payments be disclosed?

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Corruption or custom?

I was in a Central American country and was stopped by a highway patrolman who claimed I was speeding. He wanted me to pay him the fine for a speeding ticket in Colorado in dollars.

Is this corruption or country custom?

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The free lunch?

- ◆ A contractor offers to take you to lunch. Should you accept?
- ◆ Can you go out to lunch or dinner with friends who work with a competing firm?
- ◆ Are golf games or sporting events different from meals?
- ◆ Does frequency make a difference?
- ◆ What about industry partners?
- ◆ What about royalty interest owners?



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Questions or Comments?

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**Thank you
for your
attention!**

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