

What Do We
Do About
Conflicts of
Interest?



ASCE's Ethics Resources

- Committee on Professional Conduct
 - Charge: investigate charges of misconduct against members of the Society ... [and] advance the ethical practice of engineering
 - Volunteer run, complaint-based
- Question of Ethics
 - Published in ASCE's bimonthly membership publication
 - Past columns made freely available at ASCE's online library

Engineers are highly regarded for ethical conduct

How would you rate the honesty and ethical standards of people in these different fields?

Gallup, January 22, 2024



But there are challenges to that perception

PRESS RELEASE

Engineering Firm Pleads Guilty to Decade-Long Bid Rigging and Fraud Scheme

Home · News

Second engineer loses licence over troubled Langford apartment building

Engineering consultant would pay \$8M to settle pending Flint water crisis civil cases

Published: Nov. 06, 2023, 2:50 p.m.

Ex-WKU engineering professor to serve 52 weekends in jail in fraud case

By JUSTIN STORY jstory@bgdailynews.com Jan 9, 2019

Engineer Gets 2.5 Years in Prison for Bribery, Fraud

The Hawaiian engineer gave cash, vehicles and gifts for \$10 million in contracts.

TECH

Ex-Google engineer charged with taking self-driving car trade secrets; DOJ considers flight risk and asks for \$2 million bond

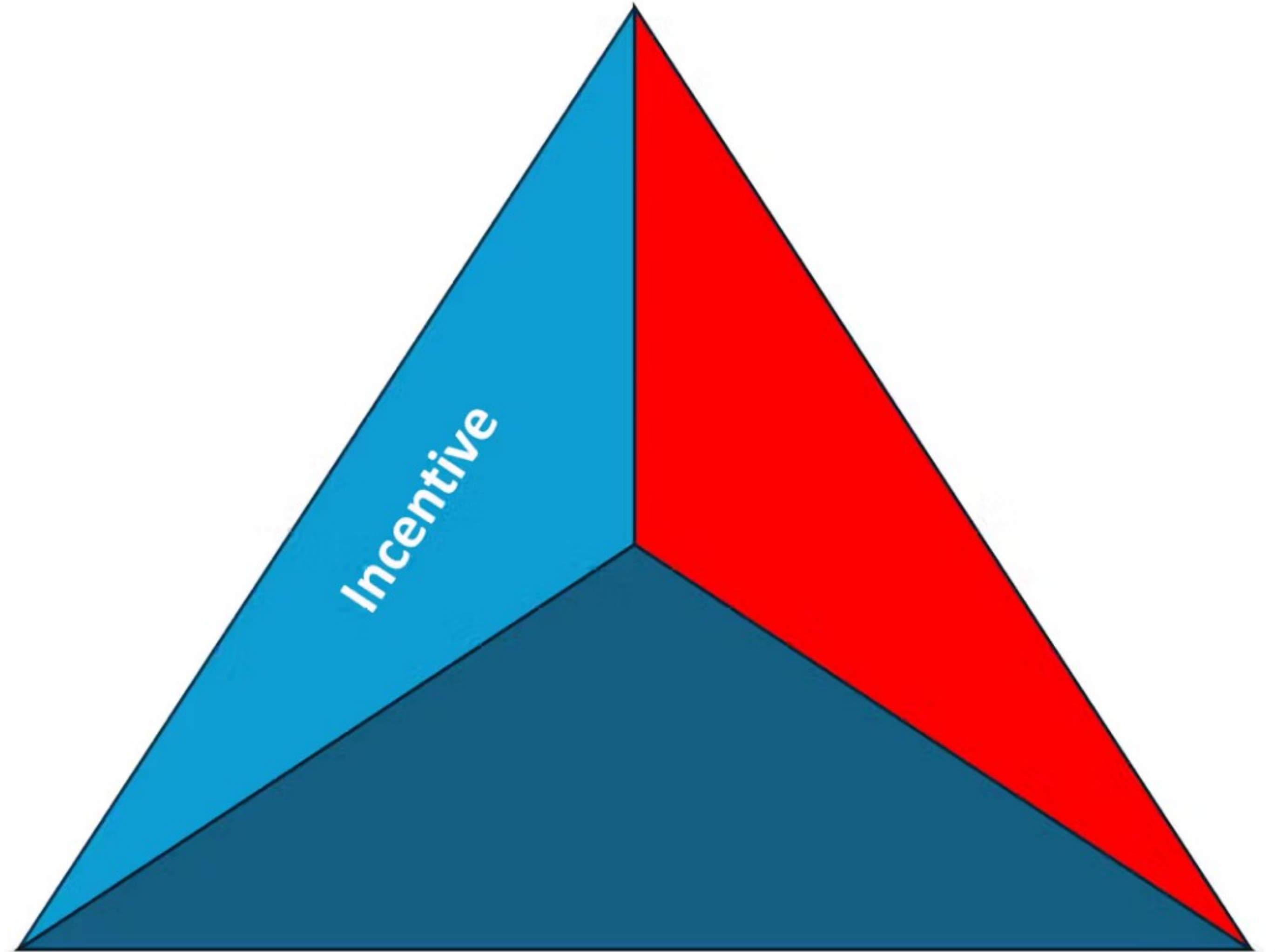
PUBLISHED TUE, AUG 27 2019 1:31 PM EDT | UPDATED TUE, AUG 27 2019 7:01 PM EDT

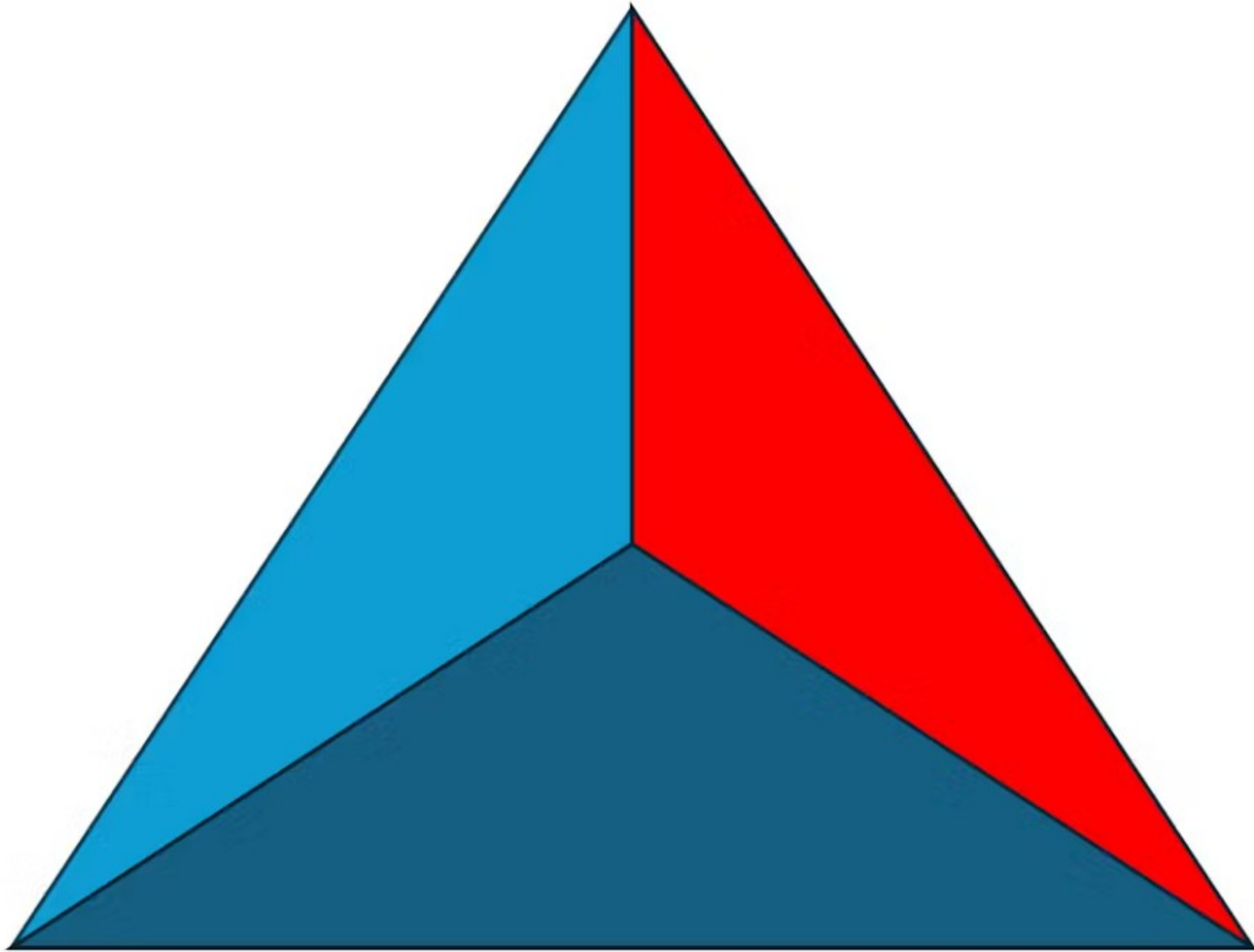
City of Cleveland engineer indicted in federal corruption probe suspended without pay

Updated Jan 01, 2019. Posted Dec 26, 2018



What makes
an ethical
person
(sometimes)
make
unethical
decisions?





Incentives

- Pressure to deliver results
- Fear of losing employment, status, etc.
- Desire for personal gain
- Conflicts of interest

What can be
done about
incentives?

2018 ASCE Code of Ethics

4: Engineers shall act in professional matters for each employer or client as faithful agents or trustees and shall **avoid** conflicts of interest.

NCSEA Model Code of Ethics

4: Structural engineers act for each employer or client as faithful agents or trustees, and **avoid** conflicts of interest.

Should you avoid conflicts of interest?

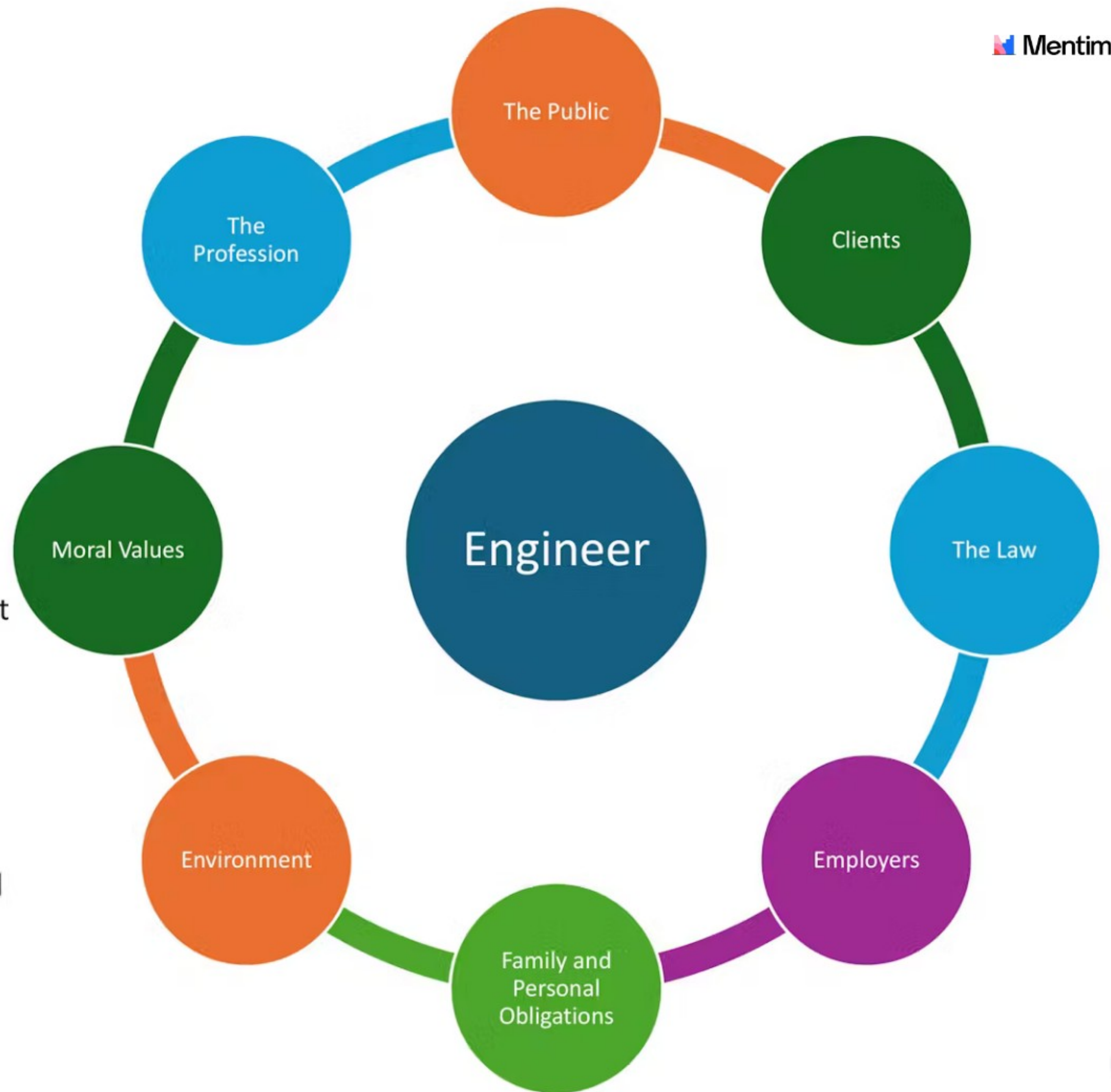
Is that even possible?

2024 NSPE Code of Ethics

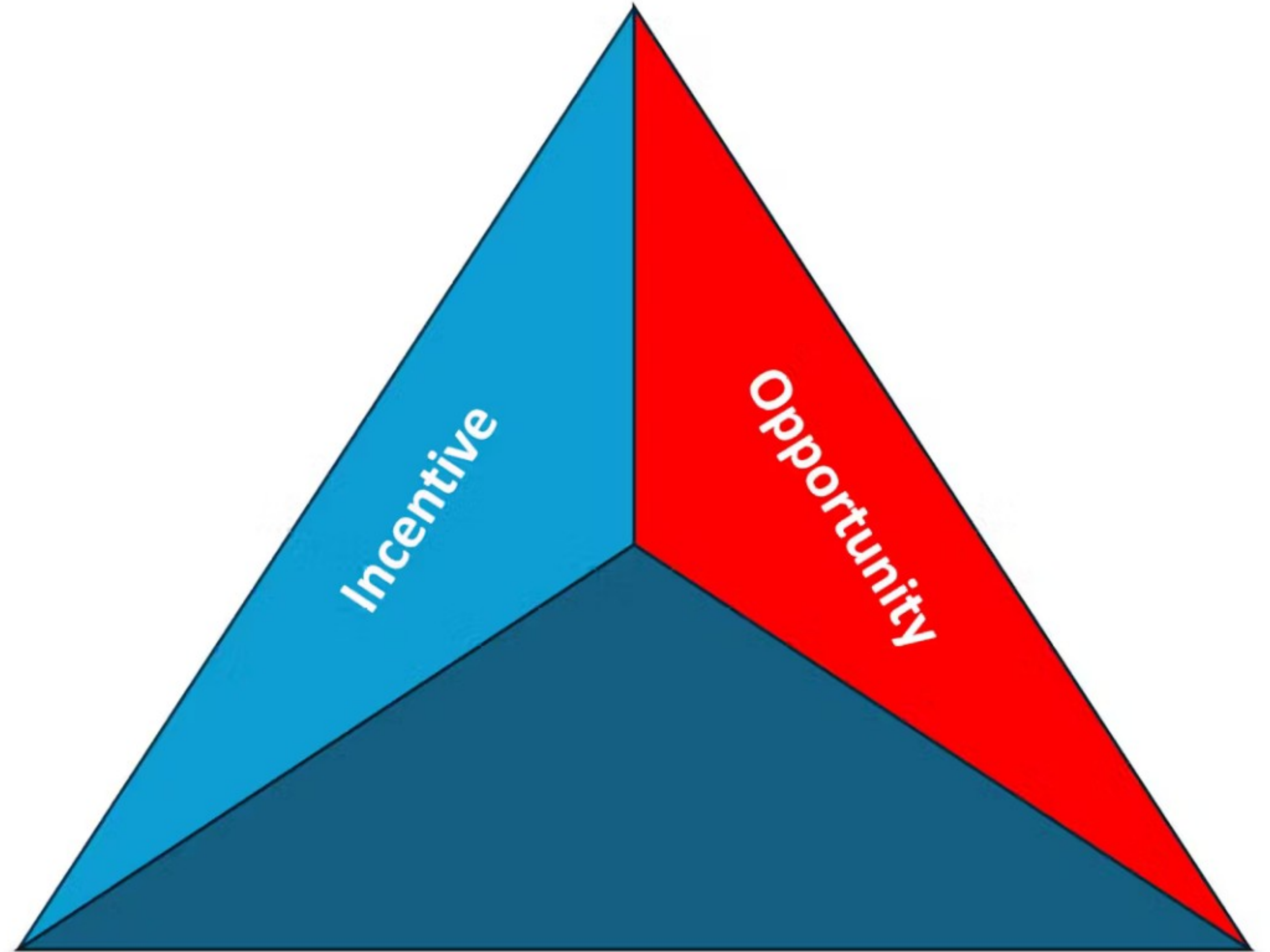
4(a) Engineers shall **disclose** all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services.

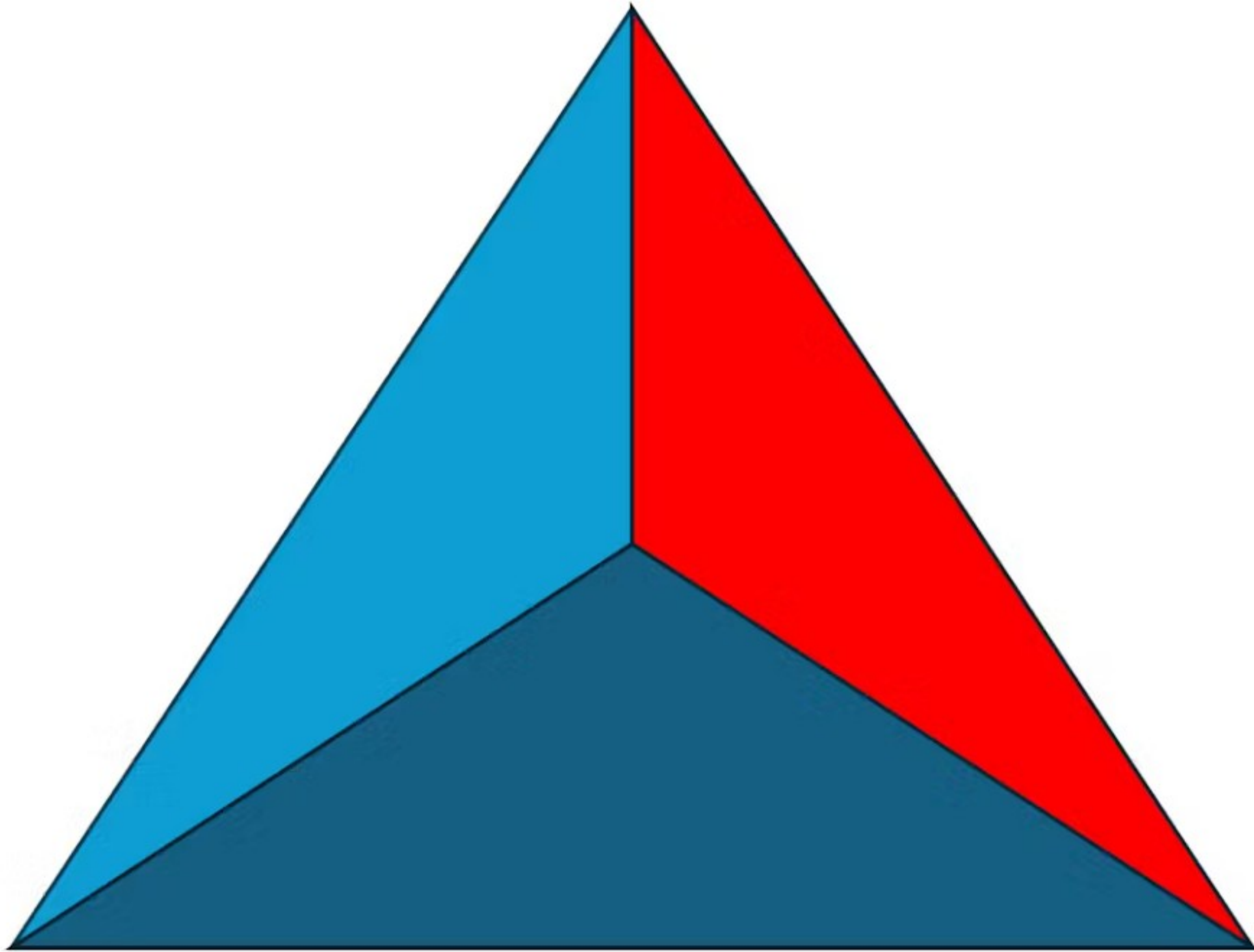
2024 ASCE Code of Ethics

Section 4(b) Engineers **make clear** to clients and employers any real, potential, or perceived conflicts of interest;



What makes
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Opportunities

- Lack of oversight
- Inadequate policies/procedures
 - (causal vs. corrective)
- Poor corporate culture

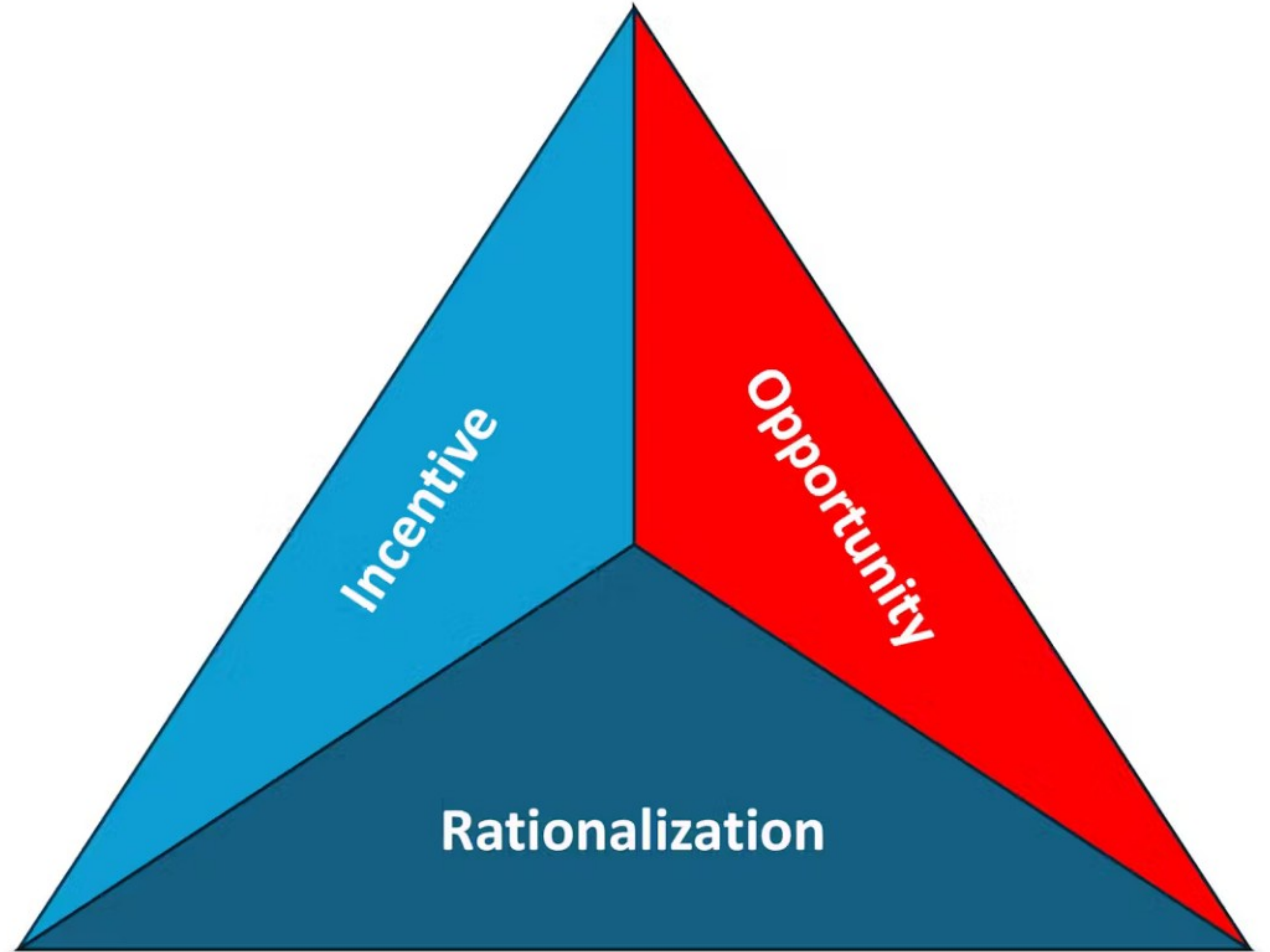


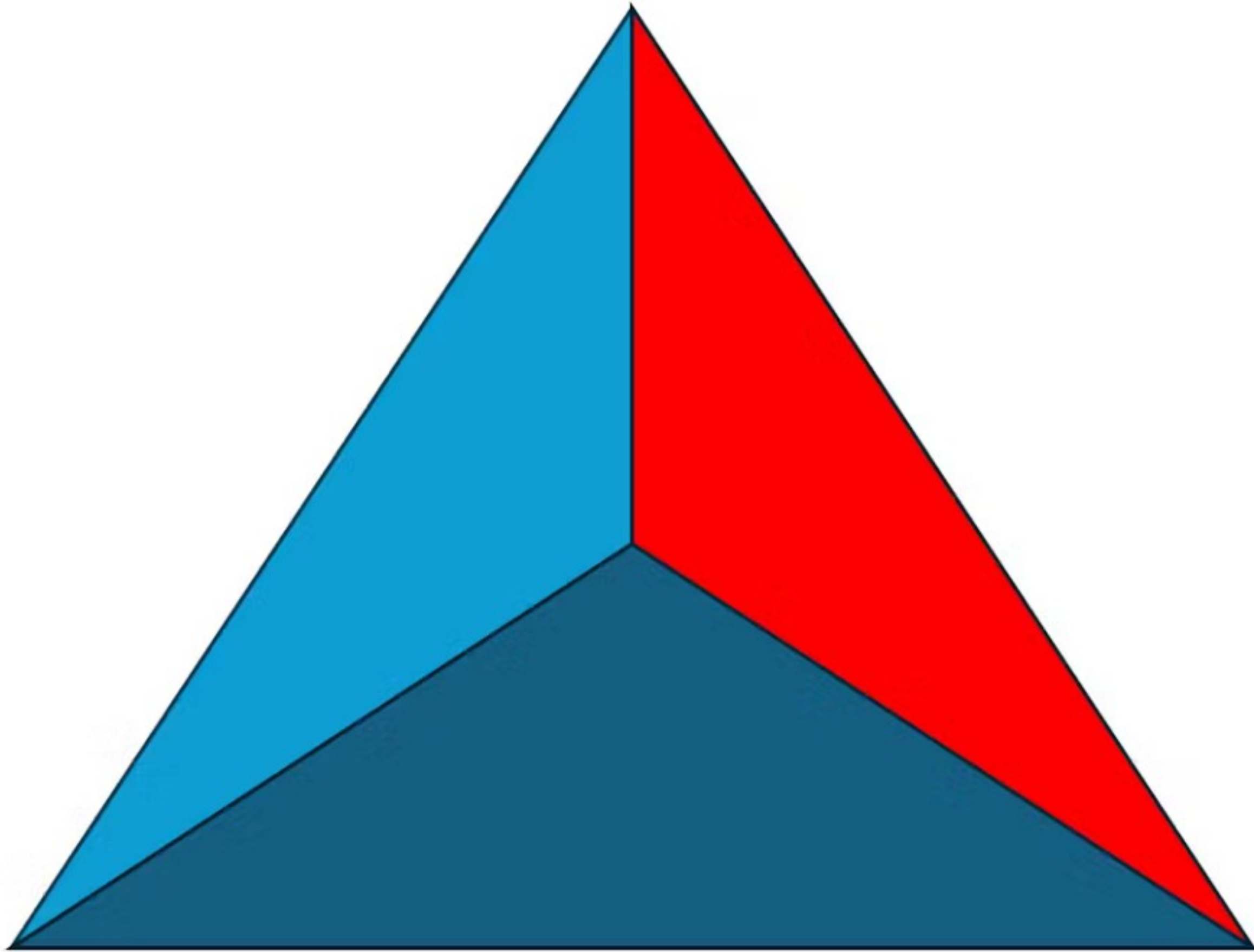
What can be
done about
opportunity?

Is this profession inherently vulnerable to misconduct?

- Specialized knowledge
- Uniqueness of work
- Complex transactions
- Layers of bureaucracy
- Work may be concealed
- Scale of investment

What makes
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Rationalization

- Everyone else is engaging in similar behavior
- No one is being harmed
- No other choice
- Can make up for behavior later

What can be done about rationalization?

Suggested Tests for Evaluating Actions

(M. Davis [1997], C. Skooglund, J. Smith, & P. Harper)

Harms test

Do the benefits outweigh the harms, both short-term and long-term?

Reversibility test

Would I think this was a good choice if I traded places?

Colleague test

What would my professional colleague say?

Legality test

Would my choice violate a law, or a policy of my employer?

Publicity test

How would my choice look on the front page of tomorrow's newspaper?

Common practice test

What if everyone behaved this way?

Wise relative test

What would my grandmother say? Would I want her to know what I'm doing?

Hiding test

Do I want people to know what I'm doing?

Self-respect test

How will I feel about myself after I make this choice?

What can be done about rationalization?

Creating an ethical environment:

- Establishing ethical norms
- Communicating these norms
- Training tailored to participants
- Follow-up, routine check-ins
- Enforcement

= Corporate culture



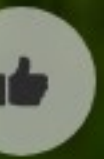
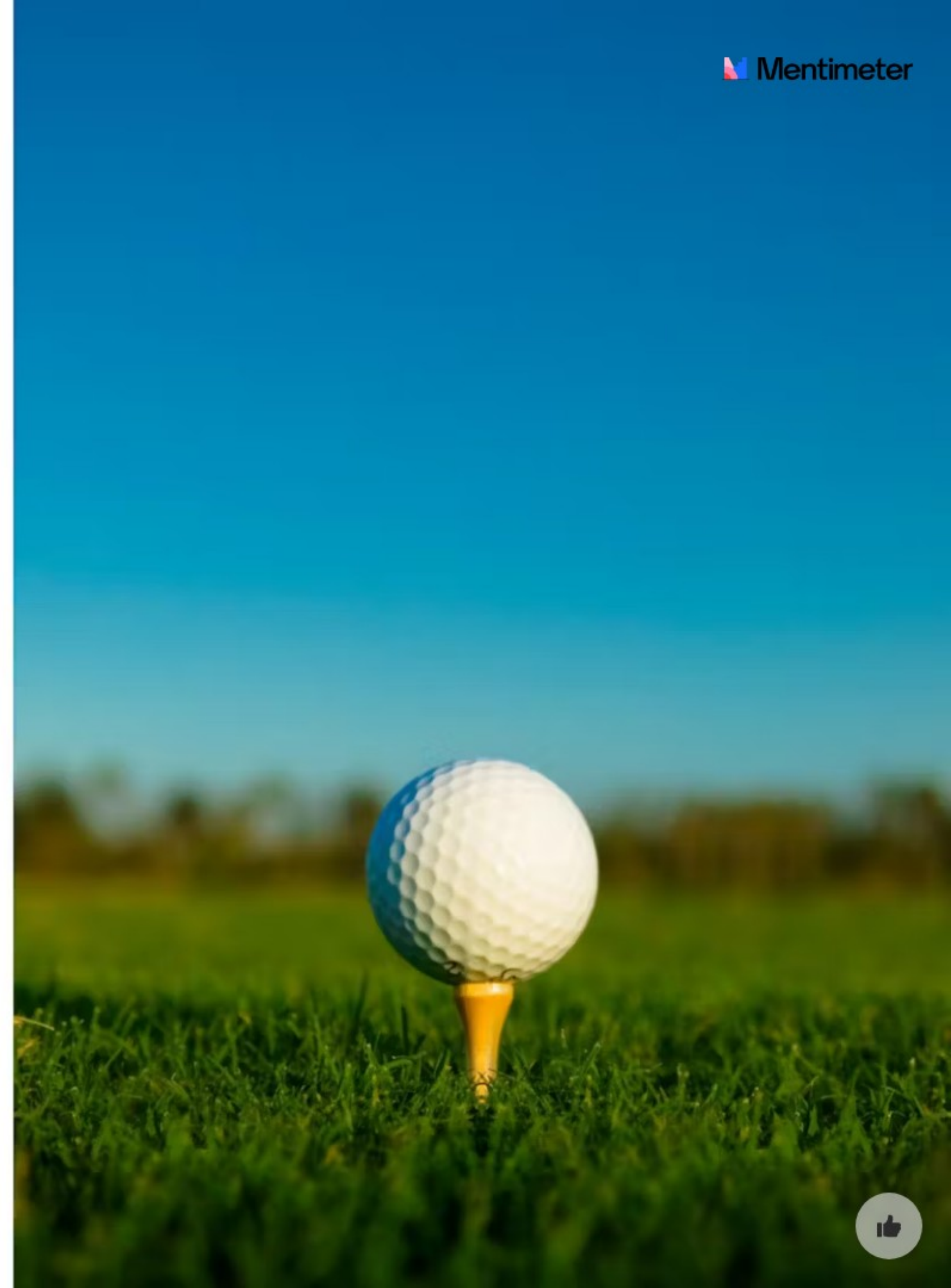
Case Studies



Case 1: Staying on Course?

- You are a management-level employee with decision-making authority over many of your organization's contracts and purchases.
- One of the companies that regularly does business with you invites you to a company meet-and-greet.
- The event is being held at a nearby top US golf course, and the invitation includes complimentary green fees, rentals, and refreshments.

Do you accept?



Instructions

Go to

www.menti.com

Enter the code

8990 2888



Or use QR code

Do you accept the invitation?

Yes, and maybe they'll throw in a new set of golf clubs for me too. Cha-ching!!	Yes, it's a business discussion and won't influence my judgment	Yes, but I would insist on paying my own way	I'd ask my supervisor and do what they recommend	No, my company doesn't allow this	No, it's not necessarily unethical but not the impression I want to give	No, I think it's unethical	No, I don't golf
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Guidance from Professional Codes

ASCE Code of Ethics:

1d: Engineers have zero tolerance for bribery, fraud, and corruption in all forms

4a: Engineers act as faithful agents of their clients and employers with integrity and professionalism

NSPE Code of Ethics:

II.4: Engineers shall act for each employer or client as faithful agents or trustees.

III.5: Engineers shall not be influenced in their professional duties by conflicting interests.

a) Engineers shall not accept financial or other considerations, including free engineering designs, from material or equipment suppliers for specifying their product.

b) Engineers shall not accept commissions or allowances, directly or indirectly, from contractors or other parties dealing with clients or employers of the engineer in connection with work for which the engineer is responsible.



What Would You Do?

Case 2: Corrected Conclusion

- Your firm is retained by an insurance company to do inspections of several homes following a severe weather event
- Following your onsite inspection, you submit reports describing your observations and concluding that each of the homes was damaged by the storm
- Your supervisor reviews your reports and makes significant changes to your reporting, ultimately changing the conclusion to report that most of the damage was pre-existing and not caused by the storm.
- You are asked to stamp the revised report

What would you do?

Seal it; I assume my supervisor knows best

Seal it, but carefully document that the changes were directed by my supervisor

Ask for a meeting with my supervisor to discuss why the changes were appropriate

Don't make the changes; who needs this job, anyway?

Don't make the changes and report my supervisor to the state licensing board.

Don't make the change and send my original report to the homeowners; hello, expert witness fee!



Guidance from Professional Codes

ASCE Code of Ethics:

- 1c. Engineers express professional opinions truthfully and only when founded on adequate knowledge and honest conviction
- 3a. Engineers uphold the honor, integrity, and dignity of the profession

NSPE Code of Ethics:

- II.3a. Engineers shall be objective and truthful in professional reports, statements, or testimony. They shall include all relevant and pertinent information in such reports, statements, or testimony, which should bear the date indicating when it was current.
- III.1.b. Engineers shall avoid the use of statements containing a material misrepresentation of fact or omitting a material fact.

What Would You Do?

- Engineering company and (former) executive plead guilty to deliberately falsifying engineering reports related to Hurricane Sandy
- Company is permanently barred from providing services under the federal flood insurance plan, pays fine of \$225K
- Executive is sentenced to 3 years probation and \$10K fine
- Attorney general issues a report highlighting flaws in the flood insurance plan, which created environment that incentivized insurance companies to underpay

Case 3: On the Way Out

Frustrated by what you perceive as under-resourcing on staff and other management failures, you decide to leave your current firm and go into private practice

While serving out your remaining weeks at the firm, you contact the clients you've worked most closely with to advise them of your departure

One client on a major project asks about the impact of your departure on their ongoing work with the firm

Frankly, you think the firm is struggling and your departure is only going to magnify the problem.

What do you say?



What would you say?

Let 'er rip! Tell them all the reasons you think this firm will be circling the drain without you

Be objective, but let the client know you have concerns about their ability to provide the same level of service as you gave

Deflect; that's a question they should be asking the firm's principal, not you

Tell them you can't answer this question without violating your ethical obligations

Give them your new number and ask them to ask again when you're off the firm's payroll

Tell them you're confident the firm will continue to provide good service even after you leave



Guidance from Professional Codes

ASCE Code of Ethics:

3d. Engineers reject practices of unfair competition

4a. Engineers act as faithful agents of their clients and employers with integrity and professionalism

5h. Engineers comment only in a professional manner on the work, professional reputation, and personal character of other engineers

NCSEA Model Code of Ethics:

5. Structural engineers build their professional reputation on merit and compete fairly with others.

5g. Avoid maliciously or falsely, directly or indirectly, injuring the professional reputation, prospects, practice or employment of others, or indiscriminately criticize another's work.

Case 3: On the Way Out

Departing engineer told clients that he had “grave concerns” about the firm’s ability to serve them after his departure. At least two clients terminated service with firm and followed engineer to his new practice.

CPC was not persuaded by his claim that he had an obligation to tell the truth this clients, voted to expel him from membership.

Upon appeal to ASCE’s ExCom, this was reduced to a three year suspension.



Case 4: Independent Review?

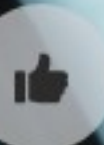
A high-profile project is plagued with cost overruns and delay

The client is unhappy with the structural engineer and reaches out to you, as someone the client has worked with on a previous project

You review the design and provide a report, in which you identify several instances in which you believe structural components have been overdesigned

Two months later, the client contacts you again; he has terminated the contract with the design engineer due to the overdesign and wants you to take over the project

Do you accept?



Do you accept the work?

Absolutely!
Business is
business

Yes, but only
if I'm sure the
other firm has
been paid for
its work

I'd talk to my
insurance
carrier about
this; what's
the chance of
my being
sued?

No, there are
too many red
flags here;
the client
might stick it
to me just like
my
predecessor

No, out of
ethical
concerns
over
perception
and/or fair
competition



Guidance from Professional Codes

NSPE Code of Ethics:

III.6.a. Engineers shall not attempt to obtain employment or advancement or professional engagements by untruthfully criticizing other engineers, or by other improper or questionable methods

NCSEA Model Code of Ethics:

3d. When serving as peer reviewers, preferably (subject to the consent of the client) inform the design engineer of their appointment, have access to those responsible for the design, and be able to freely discuss and resolve all pertinent matters with the design engineer. The peer reviewer should not seek to provide their services for any remedial design work to be undertaken; however, the client may elect to request the peer reviewer to review the remedial design work. In the event that the design engineer should either abstain from undertaking the remedial design work or not be engaged by the client to perform these services, the client may engage the services of the peer reviewer to undertake such work.

Case 4: Independent Review?

Government agency asks an engineering firm to review design on a project that is mired in problems

Firm identifies areas where it feels the design is inadequate; however, their analysis is based on more conservative assumptions than the original design criteria called for

The agency terminates its relationship with the original design engineer and retains the peer reviewer to take over the project

Worse yet, members of the new lead firm make public statements attributing the project problems to inadequate design

The original designers file suit against the firm on a variety of unfair competition counts, and the case is ultimately settled for an undisclosed amount after some five years of litigation

Case 5: Public vs. Private

- An engineering consultant is retained by a county commission to provide engineering and advisory services. The work and pay are minimal, and the engineer deems this as a “community service” giving back to his local community.
- The engineer is retained by a private company to perform the design for a large housing project.
- This private company is also engaged in extensive contract negotiations with the commission over construction and financing of facilities for the development. As the commission’s advisor, the engineer will play a key role in these negotiations.
- Both the commission and the project developer are aware of the engineer’s dual role.

Is this ethically acceptable?



Is this ethically acceptable?

Yes, all parties are aware of the circumstances, so any concerns about conflict of interest have been resolved	Yes, because the engineer is only giving advice and isn't the final decision-maker	Only if there is public notice given of the engineer's dual role	I don't know; I think it looks bad, even if it's not exactly unethical	No, because an engineer can't provide objective advice to the agency about work that he was personally involved in	No, because an engineer can't accept payment from two different sources on the same project
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Guidance from Professional Codes

ASCE Code of Ethics:

4a. Engineers act as faithful agents of their clients and employers with integrity and professionalism

NSPE Code of Ethics:

II.4. Engineers shall act for each employer or client as faithful agents or trustees.

II.4.d. Engineers in public service as members, advisors, or employees of a governmental or quasi-governmental body or department shall not participate in decisions with respect to services solicited or provided by them or their organizations in private or public engineering practice.



Case 5: Public vs. Private

- Based on NSPE Board of Ethical Review case 65-2, but a similar case reported to ASCE in the 1980s
- NSPE finds that disclosure addresses the COI language in the Code, but not the provisions requiring engineers to “act as faithful agent” and barring engineers from making engineering decisions where they have a personal business interest
- NSPE finds it unethical for the engineer to advise the public entity in this matter
- In the CPC case, the engineer’s service also violated a state conflict of interest law, so disclosure did not waive the illegality



Case 6: “Adver-torial”?

- Structural engineer writes an editorial for a large local newspaper
- In it, the engineer touts the benefits of a particular type of foundation for homes in flood-plain areas
- Engineer claims these foundations are “safer, better, and longer lasting” than other options
- Engineer does not disclose that she is a sitting board member of an industry group promoting this type of foundation
- She also received funding a few years ago from this association to conduct research on these foundations

Is there an ethics violation here?

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Is there an ethics violation here?

No, it's just an opinion, and everyone's entitled to have one

No, because these statements weren't made the context of delivering professional service to a client

Maybe, if she didn't have a sound technical basis for her statements

Maybe, if she influenced a member of the public to make a bad decision about their home

Yes, because she failed to disclose her personal connection to the industry

Yes, because engineers shouldn't publicly endorse a product or service



Guidance from Professional Codes

NSPE Code of Ethics:

II.3. Engineers shall issue public statements only in an objective and truthful manner.

II.3.c. Engineers shall issue no statements, criticisms, or arguments on technical matters that are inspired or paid for by interested parties, unless they have prefaced their comments by explicitly identifying the interested parties on whose behalf they are speaking, and by revealing the existence of any interest the engineers may have in the matters.

NCSEA Model Code of Ethics:

3a. Endeavor to extend the public knowledge of structural engineering, and avoid participating in the dissemination of inaccurate, unfair or exaggerated statements regarding structural engineering.

3e. Issue no statements, criticisms, or arguments on structural engineering matters which are inspired or paid for by interested parties, unless they indicate on whose behalf the statements are made.

Case 6: “Adver-torial”?

- CPC reviewed two different cases over a short span of time involving similar facts
- In both cases, CPC declined to take formal disciplinary action but issued a cautionary letter to engineers, reminding them of their ethical obligations, including the duty to be objective and truthful and to disclose conflicts of interest

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Case 7: Expert Witness

- Engineer is hired by a plaintiff's attorney to provide an expert review of the site of plaintiff's roadway accident
- Engineer provides a draft report to counsel attributing conditions to improper maintenance by the state government
- Attorney reminds the engineer that plaintiff will be unlikely to recover against state due to sovereign immunity
- Engineer prepares final report that attributes a large part of the fault to inadequate design by the private contractor

Was it unethical for the engineer to change his conclusion?



Was it unethical for the engineer to change his conclusion?

No, because he had a responsibility to act in his client's best interest

No, as long as he could cite some evidence to support the new conclusion

Maybe, if the report did not reflect his honest opinion and sound engineering judgment

Yes, because there was a conflict of interest between the attorney's request and his role as an expert witness

Yes, if he was paid extra for changing his report



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Case 7: Expert Witness

Engineer admits that his report was intended to support his client's interests, but that he felt both design and maintenance were equally responsible

CPC feels that the engineer violated his obligation to be objective and truthful

Engineer receives a three-year suspension from ASCE



The Importance of an Ethical Corporate Culture



Two Elements of “Institutional Failure”

Causal culture: circumstances that push an organization toward failure

- performance pressures
- poor prioritization
- ineffective management
- inadequate training
- understaffing

Corrective culture: circumstances that prevent organization from pulling back from failure

- lack of appropriate reporting mechanisms
- inattentiveness to employee concerns
- fear of reprisals
- “norm of silence”



What Does an Ethical Workplace Culture Look Like?

- Define values
- Communicate those values
- Demand compliance
- Reward compliance and penalize noncompliance

What is Your Role in Creating an Ethical Workplace Culture?

-
- Tone at the Top
 - Mood at the Middle
 - Buzz at the Bottom



Building an Ethical Workplace Culture

Tone at the top:

1. Model ethical behavior
2. Communicate ethical expectations.
3. Offer ethics training. Visibly reward ethical acts and punish unethical ones.
4. Provide protective mechanisms.

Robbins, S. P., & Judge, T. A. (2009). *Organizational behavior* (13th ed.). Pearson Education, Inc



Mood at the middle:

1. Talk frequently about the ethical values and ethical commitment of the organization, and apply to your group
2. Anticipate ethical dilemmas which typically arise in your area of responsibility
3. Recognize ethical issues when they do arise
4. Ask questions when the ethical action is unclear
5. Make ethical decisions consistent with organizational values and ethics
6. Report concerns about ethical and unethical actions to top managers

Kirk Hanson, Creating "Tone in the Middle," Markkula Center for Applied Ethics

Building an Ethical Workplace Culture



Buzz at the bottom:

1. Don't bring your personal issues/problems into the office; don't be a negative influence in workplace
2. Be supportive of peers and colleagues on matters of ethics
3. "Low key intervention" – talk to a peer if you observe them engaging in questionable behavior
4. Make use of internal or external resources if you have questions or concerns
5. Make a personal commitment to ethics: understand that ethics is everyone's responsibility

Bill Sheridan, Ethics, <https://www.macpa.org/ethics-its-the-tone-at-the-top-and-middle-and-bottom/>

Building an Ethical Workplace Culture



Questions?

