

2024 Structural Engineering Webinar  
March 5, 2024




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# Conflict of Interest in Professional Practice and its Ethical Entanglements

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# Conflict of Interest in Professional Practice and its Ethical Entanglements

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## Introduction

- o Ethical dilemma decision you have made
- o What was the process?



Levi Civjan


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## Introduction

- o Saw someone throwing trash from car into the parking lot...
- o Reaction?
- o Internal emotions?



<http://www.levincivjan.blogspot.com/2012/06/week-8-ginger-tells-story-in-pics.html>



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## Introduction

- o Intern experience with trash
- o Anything hazardous in the trash?
- o Improperly disposing of chemical waste

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## Introduction

- o Where is the line where one intervenes?



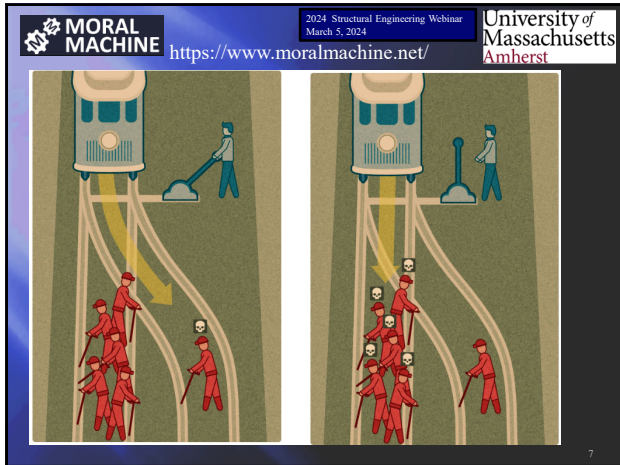


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Decision Making Process

- o Ethical dilemma decision you have made
- o My ethical decision process
  - o Reflexive
  - o Rational
  - o Combination

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Decision Making Process

- o Practicing "what-ifs" can prepare you for upcoming decisions
- o Awareness can slow reflexive decisions
- o Reflexive behavior can be modified through rational reflection

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Decision Making Process

- o Ethical dilemma decision you have made
- o How certain was your choice?
- o Have you second guessed your choice?
- o How did you **rationalize** your choice?
- o Can decisions be "undone"?

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Conflict of Interest

- o Conflict of Interest
  - o Benefit personally or professionally (company)
  - o Inhibit ability to act impartially

"Appearance, or perception, is a key characteristic of impartiality, neutrality, fairness and integrity."  
(Canadian Govt.)

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## Conflict of Interest

- Conflict of Interest:
- Interests?
  - Monetary
  - Reputation
  - Prestige
  - Advantage

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## Conflict of Interest

- Conflict of Interest:
- The American Society of Civil Engineers (ASCE) advocates that civil engineers must:
- Continually guard against conflicts of interest, **either real or perceived.**

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## Conflict of Interest

- **NSPE Code of Ethics**
  - Prohibited engineers from engaging in any activities that presented a conflict of interest
  - Criticized as unworkable
  - Revised to reflect the basic notion that an engineer has an obligation to disclose all known or potential conflicts of interest to employers or clients
    - Inform of anything that could influence, or appear to influence, judgment or the quality of services.

<https://www.nspe.org/resources/ethics/ethics-resources/board-ethical-review-cases/conflict-interest-reviewing-and>

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## Conflict of Interest

- **NSPE Code of Ethics**
  - This puts decision on owner/client
  - Allows engineers to defer to others to make decision
  - Advice from others - State Ethics Commission

<https://www.nspe.org/resources/ethics/ethics-resources/board-ethical-review-cases/conflict-interest-reviewing-and>

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## Conflict of Interest

- Conflict of Interest:
  - "A Conflict of Interest shall be defined as any activity, transaction, relationship, service, or consideration **which is, or appears to be**, contrary to the best interests of the Society, or in which the interests of an individual or another organization has the potential to be placed above those of the Society."

(ASCE Bylaws §10.1)"

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## Conflict of Interest

- Conflict of Interest:
  - "Any interested individual **must disclose the existence of any actual or possible** Conflict of Interest and all material facts to the Society entity considering the proposed transaction. Action to address the conflict shall be taken by either the interested individual or the Society entity."

(ASCE Bylaws §10.1)

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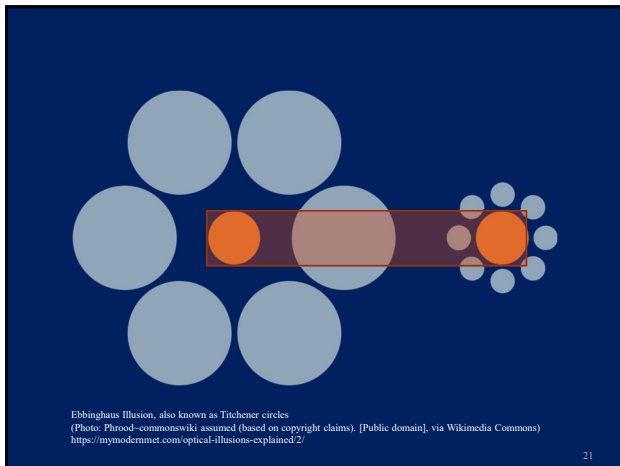
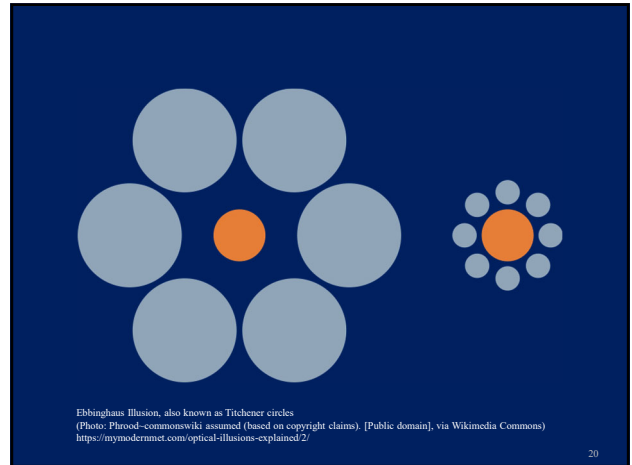
## Conflict of Interest

- o **ASCE Code of Ethics 2020**
- o In the case of a conflict between ethical responsibilities, the five stakeholders are listed in the order of priority
  - o Society
  - o Natural and Built Environment
  - o Profession
  - o Clients and Employers
  - o Peers

↑ Broader impacts and perspectives

Where does self enter in?

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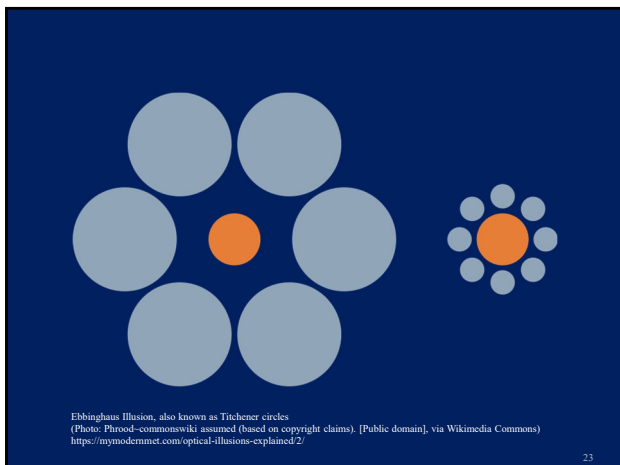
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## Conflict of Interest

- o **“Ethical fading** occurs when the ethical aspects of a decision disappear from view.
- o This happens when people focus heavily on some other aspect of a decision, such as profitability or winning”

[ethicsunwrapped.utexas.edu/glossary/ethical-fading](https://ethicsunwrapped.utexas.edu/glossary/ethical-fading)

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## Conflict of Interest


- o Conflict of Interest:
  - o Defining interests and conflicts
  - o Process of making a decision
  - o Evaluating rationalizations and ethical fading
- o Perception!
- o State Ethics Commission

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## SURVEY 1

- What are typical engineering practice **CONFLICTS OF INTERESTS?**
- Examples
- Email: Civjan@umass.edu



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## Transition

- Tara Hoke

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## Scenarios

- OSHA.gov
  - Priority Goal=Reducing trench and excavation hazards
  - "potential for a collapse in virtually all excavations"
  - 2011-2016 130 fatalities recorded in trenching and excavation
  - 1992-2001, 542 fatalities averaging 54 fatalities per year (CDC.gov)



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## Scenarios

- OSHA: Trench Safety Measures:
  - Trenches 5 feet (1.5 meters) deep or greater require a protective system unless the excavation is made entirely in stable rock. If less than 5 feet deep, a competent person may determine that a protective system is not required.
  - Trenches 20 feet (6.1 meters) deep or greater require that the protective system be designed by a registered professional engineer or be based on tabulated data prepared and/or approved by a registered professional engineer in accordance with 1926.652(b) and (c)

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## Scenarios

- ASCE I Society a.
  - Ia. First and foremost, protect the health, safety, and welfare of the public
- ASCE I Society i.
  - Ii. Report misconduct to the appropriate authorities where necessary to protect the health, safety, and welfare of the public.
- ASCE V Peers c
  - Vc. Foster health and safety in the workplace


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## Scenarios

- How does context and self enter in?
  - History on site
  - History within company
  - Training/mentoring
  - Relationships
  - Mood



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## Scenarios

- Interests?
  - Personal/Company/Project
  - Liability Insurer
  - ASCE Code of Ethics
  - Personal Relationships
  - State Ethics Commission

**Project completed on time**  
**Safety**  
**Good relationships**  
**Minimal mediation/conflict**

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## Scenarios

- Gifts
  - Public Employees \$50
  - Interests?
  - Perception?
- State Ethics Commission

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## Scenarios

- Why are \$ limits provided?
- What is expected in return?
- Rationalization
- Ethical fading
- Perception

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## Scenarios

- Promotional Lecture
  - Interests?
  - Perception?

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## Scenarios

- Promotional Lecture with Dinner
  - Interests?
  - Perception?


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## Scenarios

- Promotional Lecture with Dinner (Open Bar)
  - Interests?
  - Perception?


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- NSPE Case No. 87-5 Description
- In an effort to become better known in the engineering community, a pipe manufacturing company offers a complimentary seminar to educate engineers on the current advances in the selection and use of pipe in construction.
- Invitations are extended to several local engineers and refreshments are included at the seminar, including a buffet luncheon during the seminar and a cocktail reception immediately following.

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- NSPE Case No. 87-5 Description
- A local engineer who is new to the area receives an invitation and is not sure how to respond.
- Attending the seminar will provide the opportunity to meet and network with other engineers. Furthermore, learning more about the selection and use of pipes would be useful.
- However, purchasing pipes at some point in the future is likely.
- Would accepting the invitation later create a conflict of interest?
- Is this similar to a bribe?

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- NSPE Case No. 87-5 Decision
- Instances where gifts or other property of monetary value are exchanged between an engineer and a potential client are extremely sensitive and do require careful scrutiny to determine if such exchanges are proper.

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- NSPE Case No. 87-5 Decision
- Is the supplier providing the engineer with a gift or valuable consideration under circumstances that could create an appearance that the supplier was seeking to influence the engineer's judgment?

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- NSPE Case No. 87-5 Decision
- Board noted that an occasional free luncheon or dinner, and a holiday or birthday present when there is a personal relationship, are acceptable practice.
- On the other hand, cash payments to those in a position to influence decisions favorable or unfavorable to the giver are not in good taste and do immediately raise the suspicion of an ulterior motive.
- The Code unequivocally states that engineers must not accept gifts or other valuable consideration from a supplier in exchange for specifying its products.

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- NSPE Case No. 87-5 Decision
- Complimentary invitation to such a seminar would not reach the level that would raise an ethical concern.
- The board views the buffet luncheon and cocktail reception immediately following the seminar as falling within the "minimal" provisions noted in earlier cases, and thus it would not be improper for the engineer to participate in those activities.

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<https://www.amherst.edu/center-for-urban-innovation/education/ethics-seminar/>

- NSPE Case No. 87-5 Decision
- It is ethical for Engineer A to attend the one-day complimentary educational seminar, luncheon and reception.
- We note, however, that had the engineer agreed to accept items of substantial value (e.g., travel expenses, multi-day program, resort location, etc.) the conclusion would have been quite different.



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## Scenarios

- Committee Work
  - Interests?
  - Board Member/Presentation /Feasibility



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[HTTPS://WWW.FLICKR.COM/PHOTOS/CONCORDNC/ALBUMS/72157662380664996/](https://www.flickr.com/photos/concordnc/albums/72157662380664996/)

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## Scenarios

- Committee Work
  - Board Member
  - Expertise
  - Consulting
  - Recusal?
  - Disclosure?
  - Perception?



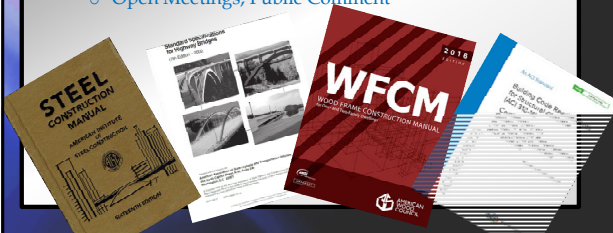
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## Scenarios

- Committee Work
  - Code Development
  - Open Meetings, Public Comment




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## Scenarios

- Committee Work
  - Presentation



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## Scenarios

- The main purpose of the meeting?
  - Present the design to the community
  - Explain design decisions to the community
  - Hear community concerns about the project
  - Obtain information that can guide design decisions
  - Get publicity for the project
  - Fulfill project requirements

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## Scenarios

- The audience at this meeting?
  - Is supportive of new projects
  - Is resistant to change and new projects
  - Has a good grasp on technical aspects of the project
  - Do not understand the engineering constraints


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## Scenarios

- Committee Work
  - Options possible?
  - Stage of design?
  - Funding?




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## Scenarios

- "This project will enhance safety and improve the efficiency of traffic flow at the intersection of X/Y by replacing the existing flashing red/yellow beacon with a fully actuated traffic signal. The new signals will include an exclusive push-button pedestrian phase and a pre-emption phase for emergency vehicles. Work also includes the realignment of approaches and a minor road widening in order to add exclusive left turn only lanes."




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## Scenarios

- Committee Work
  - Feasibility Study – Eligible for Bid?



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## Infrastructure Report Cards

- Infrastructure Report Cards



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## Scenarios

- NSPE Case 78-9 Description
- X, P.E., is city engineer authorized by the city council to select engineering firms for project assignments on the basis of experience, competence, and expertise, subject to review and approval of the city council.
- X selected a firm headed by Y, P.E., for a large water sewer project for an initial study of the technical and economic feasibility of the project and thereafter negotiated a lump sum agreement for the study, which was approved by the city council.
- Y's firm completed the study, concluding that the proposed project was feasible from both technical and economic standpoints.

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## Scenarios

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- NSPE Case 78-9 Description
- The city council approved the project concept and directed X to proceed with the selection of an engineering firm for the design of the project and professional services during construction.
- X invited submission of technical proposals from all interested engineering firms in the geographical area for the design and related work, making available to all the complete feasibility study report submitted by Y's firm.
- Following review of the technical proposals from a number of firms, X determined that Y's firm was best qualified and proposed selection of that firm to the city council.

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## Scenarios

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- NSPE Case 78-9 Description
- Z, P.E., head of one of the other competing firms, protested the selection of Y's firm on the ground that such selection would constitute unfair competition and preferential treatment by X and would indicate a conflict of interest on the part of Y's firm because the favorable feasibility report could have been influenced by the intention or hope of receiving the design contract if the project was found feasible.

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## Scenarios

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- NSPE Case 78-9 Description
- Was X unethical in selecting the same firm which had performed the feasibility study for the design services on the same project?
- Was Y unethical in seeking a contract for the design service following their firm's favorable feasibility report on the same project?

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## Scenarios

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- NSPE Case 78-9 Decision
- Conflict is already known to client.
- An engineer who would prepare a biased feasibility report would be guilty of a serious breach of ethical standards.
- In the absence in the facts before us of any evidence or reasonable indication that there was such a breach, we assume that Y's favorable conclusion in the feasibility study was an honest evaluation of the available data.

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## Scenarios

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- NSPE Case 78-9 Decision
- Subjectivity, not influenced by personal benefits or improper motivation by the selecting authority, is the essence of professional responsibility in making the choices after fair consideration of all pertinent factors of competence and quality.
- X was not unethical in selecting the same firm which had performed the feasibility study for the design services on the same project.
- Y was not unethical in seeking a contract for the design services following their firm's favorable feasibility report on the same project.

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## Scenarios

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- NSPE Case 78-9 Decision
- There does exist an attitude of wariness or cynicism on the part of some governmental bodies or individuals, leading to a policy to not permit the same firm to perform both the feasibility study and the later design services if the project goes forward.
- State Ethics Commission

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○ Questions?

SCOTT CIVJAN©

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BREAK: 15 Minutes

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Transition

○ Tara Hoke

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Scenarios

- Committee Work
  - Interests?
  - Board Member/Presentation /Feasibility

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Scenarios

- Inspection Services/Bridge Ratings
  - Interests?
  - Perception?

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DOT Bid Documents

- Bid Documents
- Prior experience on the Design-Build Project including feasibility study, master plan, program or any development or preliminary design (be as specific as possible): If so, are there reasons in the public interest that the entity should not be precluded from further participation on the Project? Explain.

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## DOT Bid Documents

- Have or had a contract (prime/subcontract/subconsultant) for the Design Build Project?
- Other reasons might be unable, or potentially unable, to provide impartial and objective assistance or advice due to other activities, interests, relationships, contracts, or circumstances? Explain.

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## DOT Bid Documents

- Aware of any information in possession that is not generally available to the public?
- Been involved in the establishment of ground rules for the procurement contract but developing specifications, requirements, statements of work, invitations for bids, requests for proposals, evaluation factors, or similar documents?

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## DOT Bid Documents

- Includes parent, affiliate, and subsidiary entities to the company
- Categorize conflict of interest as indirect, remote, or "de minimus" and rationale on why the conflict of interest should be waived or mitigated.
- Recommendation on how the conflict of interest or potential conflict of interest can be avoided, neutralized, or mitigated?

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## DOT Bid Documents

- The State Ethics Commission should be consulted to determine how involvement on the Project may present a conflict of interest.

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- Perception!
- Disclosure/Recusal/Recusal of individuals
- Local policies
- Rationalization
- Ethical fading

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## Scenarios

- Culvert Replacements



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## Tropical Storm Irene

- Web search "Irene culvert road washout"

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## Scenarios

- Culvert Replacements
  - Interests?
  - Perception?
- Maintenance
- Grants
- Permits
- Local CC

MassDOT Training Materials (2019)

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## Ethical Perspectives

- Conflict of Interest
- Perception
- Rationalization/Ethical Fading

- Active bystander
- Whistleblower
- "Not my problem"

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## Ethical Perspectives

- Doing the right thing when no one is looking
- Assume someone is always watching
- Assume things can be brought up in arbitration
  - Email
  - Missing documentation



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## Ethical Perspectives

- Ethical dilemma or difficult ethical decision you have made related to Conflict of Interest
- Provide a reasonable argument for:
  - A client or other engineer would feel you made the wrong decision
  - Someone would want to sue you for unfair competition
  - Real OR perceived

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## Ethical Perspectives

- Ethical dilemma decisions
  - Prepare for future decisions
  - Perspectives/perception
  - Putting others in difficult situation
  - Mentoring



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AELSLAGID

Basic Requirements


All licensees or certificate holders (with the exceptions noted below) must obtain 24 professional development hours (PDH). Two of those hours must be dedicated to professional (but not necessarily profession-specific) ethics and those ethics hours must be earned during the proper period (they cannot be carried forward as ethics hours). A PDH hour is defined as no less than 50 minutes (MN Statute 326.106, Subd. 4)

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## Other Examples



Emails:  
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[THoke@asce.org](mailto:THoke@asce.org)

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- o Tara Hoke

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