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## **Examining Land Use Planning and Zoning Ethics from a Planner's Perspective: Lessons for All Stakeholders in the Real Estate Game**

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# *Zoning and Land Use Planning*

PATRICIA E. SALKIN\*

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## **Examining Land Use Planning and Zoning Ethics from a Planner's Perspective: Lessons for All Stakeholders in the Real Estate Game**

### **I. Introduction**

Certain behavior in land use planning and zoning decision-making may pose ethical challenges in the sense that conduct may amount to an illegal action based upon a state or local conflict of interest law or another regulation governing the actions or conduct of one of the many participants in the planning and zoning game. These scenarios are typically easy to

spot, and the “rules of the game” are generally known to the players. For example, decisionmakers should not act when they or members of their immediate families may stand to personally benefit from a vote or decision. Less known and understood, however, are the ethical codes of conduct that govern the professional conduct of certain players in the land use game, including planners, engineers, architects, attorneys and realtors. Each of these professions provides codes of conduct for their members who may be either licensed or certified by a governmental and/or professional organization. Some of the codes of conduct (or codes of ethics or professionalism) are mandatory, and others are aspirational. They offer varying levels of enforcement and penalties. This column examines the Code of Ethics and Professional Conduct of the American Institute of Certified Planners (AICP).<sup>1</sup> Since only

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<sup>1</sup>The American Institute of Planners (AICP) is a membership organization. To apply for membership, individuals must meet certain criteria and then pass a written national certification examination. Once accepted as a member of

two states, Michigan<sup>2</sup> and New Jersey,<sup>3</sup> license planners as a profession, the ability for planners to achieve certification from the AICP is important, raising the prominence of the AICP Code of the Ethics, since as a condition of membership, each AICP member agrees to abide by the Code.

In her book *Everyday Ethics for Practicing Planners*, Carol D. Barrett, FAICP identifies the following among the qualities of ethical planners: they are rational, self-determining, and able to recognize errors in judgment, they seek to avoid doing bad things and act in a constructive manner to do good, and they embrace obligations to others.<sup>4</sup> She correctly observes that it is critical for professional planners and citizen planning commissions (including planning boards and zoning boards) to work together to establish a climate that supports high ethical standards.<sup>5</sup> Barrett notes that the public is asking more questions and expressing

less confidence in local officials, and that “Without the support of the planning commission, the planner is unlikely to be able to establish and nurture an ethical environment regardless of her or his personal intentions.”<sup>6</sup>

Barrett suggests that citizen planners can help to establish a high standard of public confidence by:

\*having open minds and exploring creative solutions;

\*operating by adopted by-laws and rules of procedure that establish the minimum that all participants have a right to expect;

\*discussing and adopting APA’s Statement of Ethical Principles in Planning;

\*respecting codes of ethics that govern the conduct of professionals;

\*taking advantage of job training opportunities to improve one’s ability to do the job.<sup>7</sup>

Although not mentioned in this list of appropriate actions, ap-

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AICP, each individual agrees, as one of the conditions of remaining a member in good standing, to abide by the AICP Code of Ethics.

<sup>2</sup>See MI St. 339.2306.

<sup>3</sup>See N.J.S.A. 45:14A-9.

<sup>4</sup>Carol D. Barrett, *Everyday Ethics for Practicing Planners* (American Institute of Certified Planners, Washington, DC) (2001).

<sup>5</sup>*Id.* at 10.

<sup>6</sup>*Id.* at 11.

<sup>7</sup>*Id.*

plicable state and local ethics laws govern the conduct of local officials, including appointed planning commission members. In addition, there is a developed body of state-level administrative opinions (e.g., attorneys general) and caselaw addressing a variety of ethics issues including conflicts of interest of compatibility of dual office holding for local government actors.

Understanding the ethical principles, laws, regulations and guidance of all of the participants in the land use process is essential. While this column is limited to a discussion of the professional, as opposed to government, ethical guidelines and rules applicable to professional planners, other codes guide the conduct of architects,<sup>8</sup> engineers,<sup>9</sup> professional

public managers,<sup>10</sup> realtors,<sup>11</sup> and others involved in the planning and zoning decisionmaking arena. An awareness of each of these codes, and some basic understanding of their differences and similarities, can help all of the public and private participants achieve an open, ethical environment for the conduct of the public's business.

## II. Background<sup>12</sup>

### A. AICP Code of Ethics

In 1959, the American Institute of Planners (AIP) enacted an ethics code for its members. This code remained in effect until 1970. The code provisions were largely an attempt to regulate business practices such as advertising, no fee competition, and boycotting of clients who owed planners money. In

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<sup>8</sup><http://www.aia.org/SiteObjects/files/codeofethics.pdf> (site visited February 2006).

<sup>9</sup>American Society of Civil Engineers Code of Ethics available at: <http://www.asce.org/inside/codeofethics.cfm> (site visited February 2006); National Society for Professional Engineers Code of Ethics available at: <http://www.nspe.org/ethics/eh1-code.asp> (site visited February 2006).

<sup>10</sup><http://www.icma.org/main/topic.asp?tpid=25&stid=118&hsid=1> (site visited February 2006).

<sup>11</sup><http://www.realtor.org/mempolweb.nsf/pages/printable2006Code> (site visited February 2006).

<sup>12</sup>The Background Section is excerpted from Salkin, AICP Code of Ethics and Professional Conduct: A Critical Review and Audit, Assessment and Recommendations (Final Report June 2002). This report is available to APA/AICP members at [www.planning.org](http://www.planning.org) or by contacting the American Institute of Certified Planners. Specific citations are omitted as they are available in the Report, which was drafted by the author.

1970, a new code was adopted. This code, like the 1959 version, was aspirational, but it included rules of conduct. The revisions included provisions focusing on minority community involvement, public participation, and addressing the disadvantaged in the planning process. That code remained in effect until 1978.

In October 1978, when the AIP consolidated with the American Society of Planning Officials, the AICP Code of Ethics and Professional Conduct was adopted. The purpose of the Code was to regulate the conduct of AICP members, to serve as a guide to members of the American Planning Association, and to inform members of the planning community and the public of the ethical standards to which they should expect professional planners to adhere. The design and format of the Code was influenced by the code of the National Association of Social Workers. The AICP Code was amended in 1991 and was supplemented by a Statement of Ethical Principles in Planning that was adopted by the AICP in 1992. The original AICP Code resulted from a collaborative multi-year process of consideration by the AICP that included outreach to AICP leadership and to the general membership.

According to those who drafted the Code, the principles enunciated in the Code were derived from both the general values of society and from the planning profession's special responsibility to serve the "public interest".

The AICP, as an organization, has historically placed great emphasis on the code as a cornerstone of the core values of the planning profession. The Code of Ethics is viewed as a critical component to the increased status of planning as a profession. In 2001, the AICP retained the Government Law Center of Albany Law School to engage in a lengthy assessment of the AICP Code of Ethics. This assessment, which consisted of an historical review of the ethics codes for the profession, an examination of the codes of ethics promulgated by other professions involved in planning and/or professions who serve the public interest, a survey of AICP leadership and members, interviews with AICP members who had been intimately involved with the Code of Ethics, a review of all filed ethics complaints as well as resulting investigations and outcomes, a review of published AICP ethics opinions and a review of the existing Code for both legal issues (e.g., due process issues, clarity of

provisions, etc.) and organizational/policy issues. The assessment provided information used in the development of the current AICP Code of Ethics and Professional Conduct, adopted on March 19, 2005 and effective as of June 1, 2005.<sup>13</sup>

### **B. AICP/APA Ethical Principles in Planning**

The American Planning Association (APA) is a voluntary organization of planners, employers and members of the public who are involved in or interested in the business of planning. Members are not required to take an examination for membership and need not be employed as professional planners. Members may participate in local chapters and receive publications from the APA relevant to planning. The Code of Ethics that applies to certified planners is not enforceable against all members of the APA. However, the AICP/APA Ethical Principles in Planning set aspirational goals that are to be attained by everyone who is a member of APA. The Principles are not legally enforceable, nor do they provide a basis for filing formal complaints against members of

the APA or the AICP. Rather, they are intended to be a guide for those who participate in the process of planning as advisors, advocates, and decision makers. Some of the APA state chapters (e.g., Colorado and Michigan) have chosen to adopt the APA Statement of Ethical Principles in Planning as their own chapter code. The APA adopted its first statement of ethical principles in 1987. These principles were prepared by the AICP Ethics Committee. In May 1992, the APA Board of Directors adopted a revised “Statement of Ethical Principles in Planning”, and that statement remains in effect today.

Although lawyers generally look to ethics codes that may govern conduct through the application of mandatory provisions, the APA Ethical Principles serve to remind those involved in the community planning process that regardless of whether certain actions are legal or illegal, subject to or not subject to disciplinary proceedings, planners (and all participants in the land use game) have a special responsibility to serve the public interest. While acknowledging that what is in the “public in-

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<sup>13</sup>A copy of the AICP Code of Ethics and Professional Conduct is also available on-line at [www.planning.org](http://www.planning.org) (site visited February 2006).

terest” may be a question of continuing debate, it does require a “conscientiously held view of the policies and actions that best serve the entire community.”<sup>14</sup> This is because planning issues may often involve a conflict of values and competing large private interests at stake, necessitating that those involved in the process exhibit the highest standards of fairness and honesty.<sup>15</sup>

The Ethical Principles in Planning are organized into three main statements: 1) The planning process must continuously pursue and faithfully serve the public interest; 2) Planning process participants must continuously strive to achieve high standards of integrity and proficiency so that the public respect for the process will be maintained; and 3) APA members who are practicing planners must continuously pursue improvements in their planning competence as well as in the development of peers and aspiring planners. They recognize that enhancement of planning as a profession leads to greater public respect for the

planning process and thus serves the public interest.<sup>16</sup> These broad statements are then explained through a series of actions that should be taken by participants in the process. For example, to achieve the goal of serving the public interest, participants are encouraged to, among other things, recognize the rights of citizens to participate in the planning process; provide full, clear and accurate information on planning issues to the public; expand choice and opportunity for all members of the community, including recognition of a special responsibility to plan for the needs of disadvantaged groups and persons; strive to protect the integrity of the natural environment and the heritage of the built environment; and pay special attention to the interrelatedness of decisions and long range consequences of present actions.<sup>17</sup>

Overlapping with clearly defined legal standards (both statutory and common law) in various jurisdictions, the APA Ethical Principles in Planning provide that participants in the process: should publicly dis-

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<sup>14</sup>Ethical Principles in Planning (adopted May 1992) available at [www.planning.org](http://www.planning.org) (site visited January 2006).

<sup>15</sup>*Id.*

<sup>16</sup>*Id.*

<sup>17</sup>*Id.*



close “personal interests”<sup>18</sup> they may have in a particular matter they may be involved with; abstain completely from direct and indirect participation in any matter where they have a personal interest; neither seek nor offer any gifts or favors under circumstances where it might be reasonably inferred that such was intended or expected to influence a participant’s objectivity; not switch sides (e.g., participate in a project in which they previously participated on another side); not use confidential information acquired in the course of their duties to further a personal interest; not disclose confidential information acquired in the course of official duties unless required by law, to prevent a clear violation of law or to prevent substantial injury to third persons; and not improperly discriminate against or harass others based upon characteristics that are protected under civil rights laws and regulations.<sup>19</sup> In addition, the Principles provide that participants should not fraudulently misrepresent their qualifications. Should these

situations present themselves, participants in the process found to have violated these concepts would likely be subject to applicable criminal or civil penalties. All of the other provisions of the Ethical Principles in Planning seek to guide the conduct of planners to best ensure the integrity of the community planning process from the perspectives of all involved and impacted.

### III. AICP Code of Ethics

Significant enhancements were made to the AICP Code of Ethics in 2005 to clarify certain provisions of the Code and to reorganize it for better use. It also, for the first time, clearly states which provisions are aspirational, which provisions are enforceable, and it provides a clearer process for how allegations of Code violations will be investigated, prosecuted and adjudicated. The first section of the Code contains the general aspirational principles which may not be the subject of a misconduct charge but rather represent a social consciousness or a social contract with the public. While a num-

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<sup>18</sup>The Principles define “personal interest” to include “any actual or potential benefits or advantages that they, a spouse, family members or person living in their household might directly or indirectly obtain from a planning decision.”

<sup>19</sup>APA Ethical Principles in Planning, *supra*, note 15.



ber of these aspirational goals were contained in the 1992 Code, the way the former Code was organized made it unclear whether an AICP member could be the subject of a formal ethics investigation for failure to comply with seemingly undefined, aspirational goals, the compliance of which often depends upon the vantage points of the accuser(s) and actor(s).

#### **A. Enforceable Standards**

Separating the aspirational standards from the enforceable standards is critical for individuals whose ongoing certification is dependent upon compliance with the Code's provisions. The 2005 Code contains a new section entitled "Rules of Conduct" which clearly states up front that members understand that the AICP will enforce compliance with these rules, and that failure to comply may result in sanctions, the ultimate being loss of certification. One gap in the Code is the absence of a definition section to provide further guidance to AICP members, the public and the Institute. The Rules of Conduct contain twenty-five rules all beginning with the words "We shall not . . .". The Rules can be categorized into: conduct that is in essence illegal; conduct that is less than truthful; conduct that is not profes-

sional; and general conduct that would cause a lack of public confidence. Some of these provisions are highlighted below.

#### **B. Conduct That is in Essence Illegal**

The following enforceable provisions contained in the Rules of Conduct would likely amount to illegal conduct in most jurisdictions, as similar provisions are contained in state and local ethics laws, as well as in common law:

\*Members shall not accept an assignment from a client or employer when they know such conduct would be illegal;

\*Where the Member is a public official or employee, they shall not accept from anyone other than a public employer any compensation, commission, rebate, or other advantage that may be perceived as related to their public office or employment;

\*Members may not work on a project for a client or employer where there is a possibility for direct personal or financial gain to the Member, a family member, or a person living in their household, unless based on written disclosure where there is consent in writing from the employer;

\*Confidential information should not be disclosed unless legally required to do so;

\*Ex parte conversations are prohibited;

\*Private discussions with decisionmakers that would violate the

law (e.g., an Open Meetings Law) are prohibited;

\*Members should not state or imply an ability to influence decisions by improper means;

\*Members may not use the power of any office to seek or obtain special advantage that is not a matter of public knowledge or in the public interest;

\*Members may not plagiarize other's work; and

\*Members shall not unlawfully discriminate against others.

### **C. Conduct That is Less Than Truthful**

Honesty is not only important, but it is critical for individuals who are responsible for dealing with members of the public. Emotions run high in many community planning situations. There may be social equity issues, fairness concerns and potential public health issues that could result from various proposals. The public must have confidence in the integrity of planners, or the public will lack confidence in both the planner-public official and in the process. A number of provisions in the AICP Code of Conduct are designed to ensure truthfulness. Among these are:

\*Members are prohibited, either deliberately or with reckless indifference, to fail to provide clear and accurate information on planning issues;

\*Members may not deliberately, nor with reckless indifference, misrepresent the qualifications, views and findings of other professionals;

\*Members may not misstate their education, training or other facts relevant to their professional qualifications;

\*Members may not use someone else's work to seek professional recognition or acclaim intended for others;

\*Members shall not direct or coerce other professionals to make analyses or findings not supported by available evidence; and

\*Members may not conceal the true interests of clients and employers.

### **D. Process**

Unlike the former AICP Code, the newly adopted Code contains significant procedural guidelines for individuals concerning both obtaining advice and investigations into alleged violations of the Code. The addition of this section to the Code is extremely helpful to planners, and it provides for the requisite due process in situations where an individual may be stripped of their certification.

#### **1. Advice**

By their nature, ethics codes and programs should be designed to be preventive in nature, meaning that the codes

should be well written, clear and relevant, and that the regulating entity should provide an education component to inform those subject to the ethics guidelines about their meaning and interpretation. The ability of planners to obtain advice, preferably in advance of contemplated conduct, is a critical component to a comprehensive ethics program. According to the AICP website, all communications regarding specific situations should occur either in letters or phone conversations, and due to issues of reliability and confidentiality, e-mail communication is not to be used.<sup>20</sup>

#### **a. Informal Advice**

The AICP Code provides for two avenues of advice: informal and formal. Planners are encouraged to seek informal advice from the AICP Ethics Officer (who is the Executive Director according to the AICP website). The Code is clear, however, that this informal advice is not given in writing and that it is not binding on the AICP Ethics Committee. In the event a planner requests informal advice from the Ethics Officer and no response is received within 21 days, the Code provides that the planner

is to then notify the Chair of the Ethics Committee that they are awaiting a response. However, a visit to the APA/AICP website did not disclose the name and contact information for the current Chair of the AICP Ethics Committee.

#### **b. Formal Advice**

Formal advice regarding the propriety of a planner's proposed conduct may also be rendered by the Ethics Officer. Formal advice must be in writing and signed by the Ethics Officer and will only be issued in response to a written request for such containing sufficient details, real or hypothetical, to permit a definitive opinion. Where formal advice is given, it is binding on the AICP, and it is a defense to any charge of misconduct where a member asserts that they followed such advice. A request for formal advice is to be answered within twenty-one days, and the Ethics Officer is required to docket the requests for formal advice in a log, and such log is to be shared quarterly with the Chair of the AICP Ethics Committee. In the event the AICP Ethics Officer fails to respond to a request within the twenty-one day timeframe, the inquiring member is to notify the Ethics

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<sup>20</sup><http://www.planning.org/ethics/index.htm> (site visited February 2006).

Committee Chair that a response has not yet been received.

By creating a process that accepts up to three weeks for the rendering of even informal advice, AICP may not be as accommodating as necessary for practicing planners who are often times pressured by government officials and/or private clients to make decisions or render advice. While attorneys and others in the land use arena need to be aware of the timeframes within which opinions may be rendered for planners, it is often more an issue of necessity rather than sensitivity in terms of their ability to wait while an AICP planner seeks an informal ethics opinion. To the extent that AICP experiences many requests for informal and/or formal advice, and it is challenged to render such advice within a week on a continual basis, additional ethics staff should be added to ensure timely assistance to members. The Code prohibits the Ethics Officer from rendering a formal opinion regarding past conduct that should be the subject of a charge of misconduct. This provision sends a strong message that planners should use the advice avenue as a vehicle to ensure that future conduct is appropriate and in accordance with ethical standards. Opin-

ions may not be sought in an effort to thwart a possible allegation or investigation into actions already taken.

### **c. Publication of Advice**

The AICP Code requires that the Ethics Officer only transmit a copy of formal advice to the AICP Ethics Committee. It is within the discretion of the Committee to determine whether the advice provides guidance as to the interpretation of the Code warranting an official publication of the advisory ruling. In addition, the Code grants to the Committee the authority to draft and publish formal advisory rulings when it determines that guidance to interpretation of the Code is appropriate. Although there is no similar language for the posting of informal advice, the AICP should consider posting a “frequently asked questions” or “FAQs” on the Code of Ethics to the website as an additional means of proactive education on the Code.

To date, there are no published advisory rulings posted to the AICP ethics website. Under the previous Code, a series of advisory rulings were issued regarding sexual harassment, conflicts of interest when a public planner has a stake in private development, outside employment or moonlighting, honesty in the use of informa-

tion, certain duties of planners to ensure effective enforcement of the Code of Ethics and Professional Conduct, and the disclosure of information gained in a professional relationship when there may be a violation of law.<sup>21</sup> Since the Code has been updated, and the advisory rulings are no longer published on the website, it is assumed that the desired content of these prior rulings were incorporated into the new Code.

## **2. Allegations of Misconduct**

The Code provides that any person may file a charge of misconduct against an AICP member. With education about the AICP Ethics Code aimed primarily at member planners, it is unlikely that many others in the land planning and development process will have an awareness of the Code content, its application, and the processes thereunder for the filing of a misconduct charge. Once a charge has been filed, the alleging party may only withdraw the complaint with permission from the Ethics Officer. While the Code requires allegations of misconduct to be made in writing, such allegations may be submitted anonymously. Allowing for anonymous allega-

tions of unethical conduct is a controversial concept. While fairness may dictate that the accused know who the accuser is, the Code attempts to provide a “safe” process for those who may fear retribution for the filing of a complaint. It is not uncommon in the government ethics environment for the federal and state governments to accept anonymous “tips” about fraud, abuse, waste and corruption in government. Planners may believe that there would be fewer frivolous allegations if filers were not able to remain anonymous. However, the Code places a significant burden on the party making the allegation to cite relevant Code provisions that have allegedly been violated. This suggests that filers will spend time reading and considering the Code and the conduct in question before taking action. From an investigation perspective, it may make it more difficult for the AICP Ethics Officer to conduct an effective investigation without the ability to follow-up with a party making an anonymous complaint if additional facts, documentation or information are needed to make certain threshold determinations. Individuals filing charges of misconduct

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<sup>21</sup>Barrett, *Everyday Ethics for Practicing Planners*, *supra*, note 5 at 207.

should weigh the pros and cons of anonymity.

Due process considerations were significantly enhanced in the new version of the AICP Code. The Ethics Officer is directed to notify, in writing, the named AICP member in a misconduct allegation within two weeks of receipt of the charge. The notice may either inform the member that a charge was made and summarily dismissed because it is "clearly without merit," or it may require the member to file a "preliminary response." Where a response is required, the member has thirty calendar days from receipt of the letter to send a response to the Ethics Officer. A fifteen day extension may be granted if requested within the initial thirty-days. Failure to respond constitutes a failure to cooperate with the investigation, which in itself is a violation of the Code. When a preliminary response is received, where the Ethics Officer knows the identity of the person who made the complaint, the Ethics Officer is required to send a copy of the response to that person ("charging party") and allow fifteen calendar days after receipt of the information to respond. The Code provides that members subject to a misconduct allegation have a right to retain legal representation at any point in the process.

#### **a. The Investigation**

Based upon all information received in the response(s), the Ethics Officer determines whether an investigation is warranted. When such occurs, the Ethics Officer is authorized to designate an AICP staff member or AICP counsel to conduct the investigation. The Code prohibits any of these AICP actors from making credibility findings for purposes of resolving different witness versions of facts in dispute.

Whether or not an investigation is commenced, where the charge appears to be without merit, the Ethics Officer is required to issue a dismissal letter setting forth the rationale for the action. Where the charge appears to have merit, the Ethics Officer is required to draft, and send via certified mail, a Complaint to the AICP member (as well as a copy to the person making the allegation if they are identified) formatted according to the Code. In the event the Ethics Officer dismisses a charge, and the identified party was notified of such, that party has thirty calendar days from receipt of the notification to file an appeal with the Ethics Committee. However, to access the appeal process, the intent to do so must be filed through the Ethics Officer whose judgment is being



challenged. While the Ethics Officer must send a copy of such appeal to the Ethics Committee within twenty-one days of receipt, there is no timeframe contained in the Code with respect to when the Ethics Committee must meet to rule on the matter.

#### **b. Due Process**

The Code provides that the responding member shall have thirty calendar days from receipt of the Complaint to file an answer, with the opportunity to request within that time a fifteen day extension. Unlike a “legal” answer, the Code provides that “general denials are unacceptable,” and that it must specifically admit or deny each individual allegation. Failure to timely deny is construed as an admission of fact. There is a process for amended Complaints where the Ethics Officer determines such is appropriate to delete a disputed fact.

The Ethics Committee is vested with authority to designate a “hearing official” from the membership of the Committee where material facts are in dispute. The Code specifically allows for the Ethics Officer or his/her designee (AICP staff member or counsel) to serve as both Investigator-Prosecutor and the Clerk to the Ethics Committee. The Code makes clear that in so function-

ing, the Ethics Officer may only discuss procedural requirements with the Committee, and s/he may not discuss the merits of the case unless the Respondent is present and is afforded an equal opportunity to address the Committee. To initiate a hearing, the Ethics Officer is directed to send a “Notice of Hearing” to the responding member, the hearing official and an identified Charging Party, containing a list of disputed material facts to be resolved at the hearing. The hearing is to be conducted in “the vicinity” where the alleged misconduct occurred, and at the hearing, formal legal rules of evidence need not be followed. There is no specified timeframe within which a hearing must occur, and the hearings are not open to the public.

The burden of proof rests with the Ethics Officer to demonstrate by a “preponderance of the evidence” that the alleged misconduct occurred. The Code provides for the presentation of witnesses (and an exchange of witness lists thirty days prior to the hearing), the opportunity for cross-examination, and a requirement that the hearing be recorded. Upon conclusion of the hearing, the Hearing Official is required to issue findings, but no specific timeframe for such is set forth in the Code.



Ultimately, it is the Ethics Committee that is charged with resolving the matter. The Ethics Officer is to provide forty-five calendar days advance notice to the Respondent of the date of the meeting of the Committee where the matter will be discussed. Both the Ethics Officer and the Respondent have twenty-one calendar days to submit memoranda stating their positions, and this information must be provided to the Committee at least fifteen calendar days in advance of the meeting. Although the Code is silent as to the ability of the Respondent to be present at the Committee meeting, the language in paragraph 14 of the Code implies that the Respondent would not be present at the meeting where the final determination is to be made.

#### **b. Discipline/Sanction Options**

Prior to the issuance of a formal Complaint by the Ethics Officer, the Ethics Officer is empowered to negotiate a settlement. After a formal Complaint has been issued, a settlement may occur, subject to the approval of the Ethics Committee. Following a hearing, the Ethics Committee may choose to dismiss the Complaint, issue a reprimand, suspend the member or expel the member from the AICP. Deter-

minations of the Ethics Committee are final.

#### **IV. Conclusion**

The 2005 AICP Code of Ethics represents a significant improvement in organization, content and due process from the former Code. In effect for just nine months at the time of this writing, more training and education will be required to help not just planners, but members of the public, to better understand the Code's substantive provisions regarding conduct and process. In addition to "live" training, an enhanced presence of information about ethics on the AICP website and a web-based course/tutorial would be useful. In addition to more comprehensive ethics training in planning schools for future generations of professional planners, planners should assume responsibility for initiating ethics related dialogue within and among the various constituencies in the public planning process.