

**For:** The American Society of Civil Engineers, Board of Direction  
**Item:** Report of the Task Committee on the Code of Ethics  
**Date:** 24 September 2020

### **Charge to the Committee**

The Task Committee on the Code of Ethics (TCCoE) officially received its charge on 29 October 2018. The TCCoE's charge reads as follows:

*The Task Committee on the Code of Ethics shall be charged with developing and proposing a comprehensive overhaul of the ASCE Code of Ethics. To ensure the Task Committee does not simply edit or rewrite the existing provisions, it is envisioned that the Task Committee should approach its task as if drafting an ASCE Code of Ethics for the first time, working first to identify the moral concepts that should be captured in a civil engineer's professional code of conduct and then second to commit those moral concepts into concise and readable language.*

### **Intent of this Report**

On 10 July 2020, The American Society of Civil Engineers (ASCE) Board of Direction (Board) approved the Proposed Code of Ethics on First Reading. The Board provided the TCCoE with guidance to further investigate specific items that are detailed herein.

Enclosure 1 is the Proposed Code of Ethics for ASCE for consideration, debate, and discussion (Second Reading). It should be noted that only minor revisions have been made to the Proposed Code subsequent to the First Reading.

This report details the edits made to the Proposed Code and provides an update of the TCCoE's activities, subsequent to the presentation made during the July Board meeting. This report supplements the TCCoE reports dated 8 February 2019, 31 May 2019, 31 January 2020, and 26 May 2020.

### **Edits to Proposed Code of Ethics**

Two small edits have been made to the Proposed Code of Ethics subsequent to the Board of Direction's First Reading. Those edits are as follows:

- The opening sentence of the Preamble has been changed from "...commit to the highest standards of integrity and professionalism..." to "...conduct themselves with integrity and professionalism..." This edit is the result of liability concerns raised by multiple groups who reviewed the language.
- Item 1.g has been changed from "recognize the diverse, social, and cultural needs..." to "acknowledge the diverse, historical, and cultural needs..." This edit addressed liability concerns regarding the potential lack of education and training required for a Member to "recognize" these items in their work.

The TCCoE views these edits as necessary, but not large. The primary intent of the amended sections remains intact with the noted changes.

### **Activities Subsequent to the July Presentation to the Board**

The TCCoE made a formal presentation to the Board on 10 July 2020. At that time, the TCCoE documented constructive feedback and suggestions provided by members of the Board. The comments received were deliberated by the TCCoE and incorporated as appropriate into the Proposed Code. In addition to the Outreach, Engagement and Clarification activities listed herein, the TCCoE continued to meet on a bi-weekly basis to review and deliberate over findings and suggestions received.

*Outreach – Region 6 Webinar*

At the request of ASCE Board Member, Jerry Paz, the TCCoE prepared and delivered a presentation to Region 6 on 7 August 2020. The presentation focused on the charge presented to the TCCoE, a detailed description of the process used in writing the Proposed Code, a review of all stake-holder engagements to-date, a discussion related to the need for a revised Code, and a summary of key items inherent to the Proposed Code. The web-based presentation audience included the Region 6 Governors, as well as select other invited Region 6 members. Approximately 20 individuals were in attendance. After the presentation, the TCCoE received and responded to comments and questions.

*Outreach – ASCE Pipelines Conference*

The TCCoE prepared and delivered a presentation to the ASCE Pipelines Conference on 13 August 2020. That conference was conducted online. The presentation focused on ethics case studies, an overview of the Proposed Code of Ethics in comparison to the existing Code of Ethics, a summary of key items inherent in the Proposed Code, and two test questions/case studies using the Proposed Code. A total of 112 individuals attended the presentation.

*Outreach – Louisiana Civil Engineering Conference & Show*

At the invitation of ASCE President-Emeritus Norma Jean Mattei, the TCCoE will deliver a presentation regarding the Proposed Code of Ethics to the Louisiana Civil Engineering Conference & Show on 7 October 2020. The conference will be conducted online. The presentation will focus on the charge presented to the TCCoE, a detailed description of the process used in writing the Proposed Code, a review of all stake-holder engagements to-date, a discussion related to the need for a revised Code, and a summary of key items inherent to the Proposed Code.

*Engagement – National Society of Professional Engineers*

Monte Phillips, a TCCoE member and Past-President of the National Society of Professional Engineers (NSPE), connected with Arthur Swartz, General Counsel and Deputy Executive Director of NSPE. Mr. Swartz is an attorney and has been actively engaged in engineering ethics matters for many years, including oversight of the NSPE Board of Ethical Review. After reviewing the Proposed Code, Mr. Swartz noted that the content was appropriate and that the structure was similar to the NSPE Code of Ethics. At the time that Mr. Swartz was contacted he was in the process of retiring from his positions at NSPE. Thus, Mr. Swartz's comments do not officially represent the opinion of NSPE. The positions of NSPE General Counsel and Deputy Executive Director have not been filled as of the date of this report.

*Engagement – AECOM*

ASCE President K. N. Gunalan facilitated the opportunity for a review of the language of the Proposed Code of Ethics by Stephen Del Percio, J.D., Assistant General Counsel for AECOM. Mr. Del Percio reviewed the language in general, but applied a specific emphasis on the potential for increased liability. Mr. Del Percio indicated that the language looked good, but he did suggest that the opening sentence of the Preamble be rewritten. That revision was noted earlier in this report and is seen in the final version of the Proposed Code of Ethics (Enclosure 1).

*Engagement – American Council of Engineering Companies*

Through the coordinated efforts of ASCE Board Member, Peter Moore and ASCE General Counsel, Tara Hoke, the American Council of Engineering Companies (ACEC) was engaged in a discussion related to the language in the Proposed Code and potential for litigation with regard to a standard of care. Specifically, ACEC General Counsel and Corporate Secretary, Charles Kim, provided a review of the Proposed Code. Charles further engaged the opinions of Jim Lowe, P.E. Vice President of Atwell, LLC, Gail Kelley, P.E., J.D. of ConstructionRisk, LLC, and J. Kent Holland, J.D. Principal of ConstructionRisk, LLC.

The collective opinions of this group noted that membership in a professional society is voluntary and thus it is difficult to suggest that a professional society's Code of ethics establishes a de facto professional standard of care. Further, the group noted that violation of the Code of Ethics would not automatically make an individual negligent.

The TCCoE notes that two important revisions have been made to the Proposed Code of Ethics subsequent to the version that this group of individuals reviewed. First a footnote was added that states: "This Code does not establish a standard of care, nor should it be interpreted as such." Secondly, the edit to the opening sentence of the Preamble, as noted above. Both of these revisions improve the document and serve to further insulate the member from any potential litigation related to a standard of care.

#### *Engagement – ASCE Committee on Professional Conduct*

The TCCoE attended a meeting of the ASCE Committee on Professional Conduct (CPC) on 17 July 2020. During that meeting the TCCoE requested that CPC perform a formal evaluation of the enforceability of the Proposed Code of Ethics relative to a representative set of cases. TCCoE member and CPC member Peter Terry prepared 15 hypothetical cases. Each case was written with a limited amount of detail. Two additional CPC members performed the enforceability evaluation. One of the CPC member reported that all 15 cases could be clearly and sufficiently addressed using the Proposed Code. The other CPC member felt that 1 of the cases could not be definitively addressed using the Proposed Code, but the primary issue was the lack of sufficient information in the case itself, rather than a shortcoming of the language in the Proposed Code.

#### *Engagement – ASCE Committee on Claims Reduction & Management*

The TCCoE participated in the 14 July 2020 meeting of the ASCE Committee on Claims Reduction & Management (CCRM). During that meeting, the TCCoE provided CCRM with a short overview of the task committee's charge and process to date. The TCCoE requested that CCRM provide a review of the Proposed Code of Ethics with the specific focus of evaluating if the language of the Proposed Code results in a higher degree of liability above the existing Code of Ethics. Multiple members of CCRM reviewed the Proposed Code and CCRM then participated in the 9 September 2020 TCCoE meeting to provide their feedback. CCRM did identify several areas of potential concern in their initial review. Two of those areas were addressed in the edits noted previously in this report. Most of the additional areas of concern were sufficiently addressed through conversation directly between the TCCoE and the CCRM.

#### *Engagement – ASCE Governing Documents Committee Review*

The Proposed Code of Ethics was reviewed by the ASCE Governing Documents Committee (GDC) at its meeting of September 18, 2020. The GDC found the Proposed Code to be acceptable for Second Reading Approval.

#### *Clarification – Members/Engineers/Civil Engineers*

At the request of the ASCE Board of Direction, the TCCoE revisited the use of the term "engineers" at the start of each section in the Proposed Code of Ethics. The specific request was to evaluate and explain why "engineers" was used rather than "civil engineers" or "members." It should be noted that the Proposed Code of Ethics version using the term "engineers" was presented at the First Reading to the Board in July 2020.

A literature review was conducted of the terms used within non-profit engineering societies when referencing their membership entities within their Codes of Ethics. The terms used vary. For societies most relevant in their similarities to ASCE in types of demographics the society serves, there is an approximately even split between some form of "engineers" or "members."

Following initial review and discussion, the TCCoE immediately eliminated the term “civil engineers” as not accurately reflecting the diversity of ASCE membership. ASCE members include many engineers who do not have civil engineering degrees, including multiple members of the TCCoE. Examples include geologic, environmental, and architectural engineers. ASCE members also includes those who are technicians, surveyors, lawyers, and other non-engineers. The task committee then settled on “Members” as the appropriate terminology, which was used in several of the Draft Code of Ethics versions posted for public comment in 2019 and early 2020.

As part of outreach efforts, the TCCoE subsequently presented the Draft Code of Ethics to leadership within the National Institute for Engineering Ethics (NIEE) (noted in a prior report by the TCCoE). Multiple members who are experts in ethics made a comment that “Members” does not accurately reflect the fact that The American Society of Civil Engineers is seen as a leader in engineering ethics. Those present felt that “Members” weakened that standing and strongly encouraged a return to the use of “engineers” or “civil engineers.”

“Engineers” was then selected by the TCCoE based on this feedback for two reasons. One, it matches the terminology used in ASCE’s current Code of Ethics, implying that the society as a whole is comfortable with this terminology from both a practical and enforceability standpoint. Second, “engineers” was selected instead of “civil engineers” due to the previously mentioned inclusion issue relative to the members of ASCE who are not civil engineers by degree or practice.

Regardless of the terminology used, it is important to understand that all members of The American Society of Civil Engineers are expected to abide by the proposed code of ethics if approved, as clearly stated twice in the Preamble of the Proposed Code. The existing Code of Ethics also uses the term engineers, and although this is not explicitly stated in the existing Code like it is the Proposed Code, this understanding is consistent with how the ASCE Committee on Professional Conduct (CPC) has reviewed charges of ethical misconduct, in that ASCE’s Code of Ethics applies to ALL members, not just engineers.

#### *Clarification – Health, Safety, Welfare*

At the request of the ASCE Board of Direction, the TCCoE revisited the term “health, safety, and welfare” and specifically the sequence of those items. The TCCoE identified multiple ASCE publications that use those items, but in varying order (safety, health, and welfare or health, safety, and welfare). While there is no stated or implied level of importance within the listing of those terms, the TCCoE revised the Proposed Code to align with the order used in the ASCE Mission Statement. The Proposed Code of Ethics now use “health, safety, and welfare.”

#### **Proposed Code of Ethics Posted to Website**

The Proposed Code of Ethics (identical to the document in Enclosure 1) will be posted to a public ASCE website on or about 25 September 2020. A short description of the TCCoE charge and Code development process will be posted with the Proposed Code.

#### **Why a New Code Should Be Considered**

The challenges and shortcomings of the existing Code of Ethics have been identified and discussed in detail in the TCCoE’s prior reports and presentations. In the interest of brevity, the TCCoE will not repeat the explanation of each highlighted item, but will merely list those items here and direct the interested reader to the TCCoE prior reports and presentations.

Challenges and shortcomings of the existing Code of Ethics:

- Overdue Comprehensive Review
- Outdated Model

- Gray Areas
- American-Centric Language

### **What the Proposed Code of Ethics Provides**

The TCCoE has detailed the benefits of the structure, content, and wording of the Proposed Code in our prior reports and presentations. In the interest of brevity, the TCCoE will not repeat the explanation of each highlighted item, but will merely list those items here and direct the interested reader to the TCCoE's prior reports and presentations.

#### Highlights of the Proposed Code of Ethics:

- Improved Model Format
- Positive Empowering Language
- Enforceability
- Clear Hierarchy
- Stakeholder Responsibility
- Concise
- Modern Language

### **Recommendation to the Board**

The process used in developing this Code has been rigorous, thorough, thoughtful, and consensus-building. The Task Committee on the Code of Ethics respectfully recommends that The American Society of Civil Engineer's Board of Direction strengthen both The American Society of Civil Engineers and the profession of civil engineering by accepting the Proposed Code of Ethics for Second Reading and Approval. Upon approval of the Proposed Code of Ethics, the Board is asked to discharge the Task Committee with Thanks.

### **Point of Contact**

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Encls:

Enclosure 1 – Proposed Code of Ethics (dated 24 September 2020)

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## **CODE OF ETHICS THE AMERICAN SOCIETY OF CIVIL ENGINEERS**

### **PREAMBLE**

Members of The American Society of Civil Engineers conduct themselves with integrity and professionalism, and above all else protect and advance the health, safety, and welfare of the public through the practice of Civil Engineering.

Engineers govern their professional careers on the following fundamental principles:

- create safe, resilient, and sustainable infrastructure;
- treat all persons with respect, dignity, and fairness in a manner that fosters equitable participation without regard to personal identity;
- consider the current and anticipated needs of society; and
- utilize their knowledge and skills to enhance the quality of life for humanity.

All members of The American Society of Civil Engineers, regardless of their membership grade or job description, commit to all of the following ethical responsibilities. In the case of a conflict between ethical responsibilities, the five stakeholders are listed in the order of priority. There is no priority of responsibilities within a given stakeholder group with the exception that 1a. takes precedence over all other responsibilities.<sup>1</sup>

### **CODE OF ETHICS**

#### **1. SOCIETY**

Engineers:

- a. first and foremost, protect the health, safety, and welfare of the public;
- b. enhance the quality of life for humanity;
- c. express professional opinions truthfully and only when founded on adequate knowledge and honest conviction;
- d. have zero tolerance for bribery, fraud, and corruption in all forms, and report violations to the proper authorities;
- e. endeavor to be of service in civic affairs;
- f. treat all persons with respect, dignity, and fairness, and reject all forms of discrimination and harassment;
- g. acknowledge the diverse historical, social, and cultural needs of the community, and incorporate these considerations in their work;
- h. consider the capabilities, limitations, and implications of current and emerging technologies when part of their work; and
- i. report misconduct to the appropriate authorities where necessary to protect the health, safety, and welfare of the public.

#### **2. NATURAL AND BUILT ENVIRONMENT**

Engineers:

- a. adhere to the principles of sustainable development;

- b. consider and balance societal, environmental, and economic impacts, along with opportunities for improvement, in their work;
- c. mitigate adverse societal, environmental, and economic effects; and
- d. use resources wisely while minimizing resource depletion.

### **3. PROFESSION**

Engineers:

- a. uphold the honor, integrity, and dignity of the profession;
- b. practice engineering in compliance with all legal requirements in the jurisdiction of practice;
- c. represent their professional qualifications and experience truthfully;
- d. reject practices of unfair competition;
- e. promote mentorship and knowledge-sharing equitably with current and future engineers;
- f. educate the public on the role of civil engineering in society; and
- g. continue professional development to enhance their technical and non-technical competencies.

### **4. CLIENTS AND EMPLOYERS**

Engineers:

- a. act as faithful agents of their clients and employers with integrity and professionalism;
- b. make clear to clients and employers any real, potential, or perceived conflicts of interest;
- c. communicate in a timely manner to clients and employers any risks and limitations related to their work;
- d. present clearly and promptly the consequences to clients and employers if their engineering judgment is overruled where health, safety, and welfare of the public may be endangered;
- e. keep clients' and employers' identified proprietary information confidential;
- f. perform services only in areas of their competence; and
- g. approve, sign, or seal only work products that have been prepared or reviewed by them or under their responsible charge.

### **5. PEERS**

Engineers:

- a. only take credit for professional work they have personally completed;
- b. provide attribution for the work of others;
- c. foster health and safety in the workplace;
- d. promote and exhibit inclusive, equitable, and ethical behavior in all engagements with colleagues;
- e. act with honesty and fairness on collaborative work efforts;
- f. encourage and enable the education and development of other engineers and prospective members of the profession;
- g. supervise equitably and respectfully;
- h. comment only in a professional manner on the work, professional reputation, and personal character of other engineers; and
- i. report violations of the Code of Ethics to The American Society of Civil Engineers.

<sup>1</sup> This Code does not establish a standard of care, nor should it be interpreted as such.