



Ethics and the public professional

by Robert Wilson, Esq.

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The perception of the public employee as bureaucrat

All too often the public employee is perceived as an unproductive bureaucrat with no apparent loyalties or ambitions. Generally no one appreciates his abilities, accomplishments, position, or the intricate relationship he has with his client. The problems of the public professional are even more complex in that the client has little understanding of his occupation, his motivations, abilities, or even the need for his services. We as public professionals simply do not receive the same recognition and respect as our private and corporate counterparts. This is evidenced by the following statements:

"You work for the State? Are you a real appraiser?"

"The only reason he's an engineer for the State is because he cannot make it in private practice."

"State employees are only there for the experience."

"I didn't know that the Highway Department needs lawyers."

Nothing could be further from the truth. Comparatively speaking, the experience and level of competence of the public professional is equal to or greater than the majority of the private practitioners.

However, the above examples continue to represent public opinion. Such beliefs are also the root of the public professional's problem as they create untold personal and ethical conflict which the public professional must wrestle with daily.

Overview of the Professional's Role

Our discussion will focus on the ethical considerations of the public professional — particularly the conflicts experienced by appraisers, engineers and lawyers in the acquisition and conversion of private lands to public uses.

Generally, the appraiser is employed to determine fair market value of the property so that the landowner will receive "just compensation" for his land. The purpose of the engineer is to design, locate, and construct the project in a manner that maximizes the efficiency

and effectiveness of the project and minimizes the damages to the remaining lands. The role of the lawyer is to advise the agency of the legal consequences of their actions and to represent the agency in any litigation that results from the project.

Rules, Standards and Codes

In fulfilling their roles, what rules do the professionals apply? As with most professionals, they must meet certain educational criteria for licensing and practice within their respective fields. (Some states do not require licensing of real estate appraisers, but they must satisfy the basic educational and training criteria to testify in court). They must be able to apply their knowledge and skills, using the appropriate industry and professional standards. These are the mechanics of the job.

In accomplishing their tasks, the professionals should not forget about the ethical considerations. The states, through legislation, judicial committees, or professional boards and associations, have promulgated rules and codes of conduct governing the various professions. Violations may result in disciplinary action to include denial of the

privilege to practice one's profession. The language of these codes differs from state to state, but its application and effect do not vary greatly. Even though the codes of the various professions differ, their common concern is the protection of and loyalty to the client.

The codes of conduct are models for the community, but all too often they are forgotten once the professional begins his practice. Since most professions are self-policing, immoral and unethical conduct flourishes until the clients complain or until the practitioner's conduct becomes so obviously outrageous that it brings shame or unfavorable attention upon the profession. Only then does the profession bring its member before the appropriate board or committee for disciplinary action.

Practically speaking, these codes are frequently violated, and the potential for abuse is greater among public employees because neither party is able to identify the client. Even when the relationship is known, the client is usually unaware of the employee's unethical conduct. Therefore, the client does not complain. How is this possible? First we must identify the client, and when this is done you will understand how the unethical professional is able to avoid detection.

Identifying the client

Who is the client? Ask the average citizen and you may receive such responses as the governor, the legislature, or the agency head. Ask most public professionals to whom they owe their loyalties, and they (truthfully answering) will generally agree with the average citizen. Certainly mayors, legislators, governors, and other politicians boast of and act as if they are the owners, bosses, and sole clients of the public professionals. They're all wrong! If you didn't already know, you've probably guessed by now that the true clients of the public professional are the citizens of the governmental entity. You will recall from your civics class that a governmental entity (city, county, parish, state, nation, etc.) is comprised of its citizens and their interests are one and the same. Now you understand why the client is unaware of the professional's conduct. He either doesn't realize he is the client; doesn't expect competence; doesn't know the nature of

the job; or he doesn't receive specific reports of the professional's activities.

So the general public is the client of the public professional. What does this mean to the state's appraisers, engineers, and lawyers? They are trustees and overseers of the public's funds and affairs, and the public's interest should be their first concern. This is a unique situation in that there are no direct communications between the professional and his client.

Conflicts

What are some of the conflicts that may develop? Elected officials may try to influence an appraiser to overvalue the property of a constituent or encourage an engineer to locate and design a road for political reasons. The reverse, but yet a conflict, occurs when an appraiser is requested to reduce his appraisal to get a favorable verdict; to reduce the agency's budget; to mask an error; or to please a politician. The former is clearly not in the best interest of the client, while the latter is contrary to the will and desires of the client.

Again, our civics classes taught that the will and desires of the public is expressed in its laws. Such an expression is made in the 5th and 14th Amendments to the United States Constitution in providing that private property shall not be taken without just compensation and due process of law. Similar provisions are found in state laws.


To remain loyal to the client, one must abide by its guidelines (laws). Therefore, loyalty demands that the appraiser give the property fair consideration in order that the landowner receive "just compensation" for his land. Similar examples may be cited for the engineer and the attorney, but such recitations are obvious and redundant.

What about the "gray areas"? The United States and most states have some form of freedom of information law. These laws are designed to protect your client's (public's) right to know. Often this right to know conflicts with the public's ultimate best interest. The laws generally apply to all types of public documents, reports, and meetings. They generally do not apply to information protected by the attorney-client privilege or the attorney's work product.

What happens when the appraiser or

engineer is about to perform a task that will result in public injury if his information and reports are subjected to disclosure. Assume further that discovery of this information is necessary before his project can be completed. There are no hard and fast rules for action in these cases. It is best to consult with your attorney prior to making any decision or gathering information.

Another reason for legal consultation is that private attorneys are using the "right to know" laws to discover materials of public agencies not otherwise available from private adversaries.

Ethical considerations for public professionals cannot be overstated. A simple rule to follow is to know and protect both your client's interests and your professional codes of conduct. 

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