

# W E I L & D R A G E, APC

## MEMORANDUM

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### **Ethical Obligations of Design Professionals When an Error or Omission is Discovered**

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It is an innate and admirable quality of design professionals to strive for perfection. Yet it would be naïve to disregard the notion that we are all human and that it is part of human nature to make mistakes. The standard of care in the design field does not require perfection, but rather obliges architects and engineers to act with reasonable care and competence, applying the attention and skill of a like professional in good standing acting under similar circumstances and conditions. (See, e.g., California Code of Regulations, Section 160). But some mistakes by design professionals can result in serious consequences. So how should design professionals respond when faced with an error or omission that could potentially have dire results?

As a design professional, you not only have a professional but also an ethical duty to appropriately respond to errors or omissions that you may come across, whether or not they were made by you. Professional licensing boards across the country hold their professionals responsible first and foremost for the health, safety and welfare of the public. (See, e.g., California Code of Regulations, Section 475; see also, American Institute of Architects ([https://www.cab.ca.gov/act/ccr/title\\_16/division\\_2/article\\_9/section\\_160.shtml](https://www.cab.ca.gov/act/ccr/title_16/division_2/article_9/section_160.shtml)) and National Society of Professional Engineers (<https://www.nspe.org/resources/ethics/code-ethics>)). There is an accountability that comes with the practice of architecture or engineering. Where there is a conflict, that charge must come even before the pecuniary interests of your client.

When mistakes happen in a perfect world, the owner, contractor and designer collaborate on a solution to remediate the problem and move the project forward. Indeed, such cooperation does often exist as part of the natural process of a project. We are all aware, however, that in a very imperfect world that feeds our litigious culture, admitting fault is difficult and often frowned upon. Lawyers will certainly counsel you not to acknowledge wrongdoing without uncovering every potential actor that may have had a hand in the proverbial pot. Keeping in mind your

ethical obligations of protecting the public, the appropriate response will depend on the urgency and severity of the situation.

Fortunately, there are resources at your disposal when faced with such a dilemma. Your professional liability carrier is a great start. Your carrier can help you work through legal, ethical and financial considerations for the issue before you, including assigning legal counsel before your problem becomes a claim. Mistakes are inevitable. Having a trusted resource to fall back on should bring some solace in even the most precarious circumstances.

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### **References:**

#### **California Board of Professional Engineers and Land Surveyors, Rules of Conduct:**

<https://www.bpelsq.ca.gov/laws/475.pdf> :

Title 16, California Code of Regulations 475. Code of Professional Conduct – Professional Engineering To protect and safeguard the health, safety, welfare, and property of the public, every person who is licensed by the Board as a professional engineer, including licensees employed in any manner by a governmental entity or in private practice, shall comply with this Code of Professional Conduct. A violation of this Code of Professional Conduct in the practice of professional engineering constitutes unprofessional conduct and is grounds for disciplinary action pursuant to Section 6775 of the Code. This Code of Professional Conduct shall be used for the sole purpose of investigating complaints and making findings thereon under Section 6775 of the Code.

#### **California Architects Board, Rules of Conduct:**

[https://www.cab.ca.gov/act/ccr/title\\_16/division\\_2/article\\_9/section\\_160.shtml](https://www.cab.ca.gov/act/ccr/title_16/division_2/article_9/section_160.shtml)

A violation of any rule of professional conduct in the practice of architecture constitutes a ground for disciplinary action. Every person who holds a license issued by the Board shall comply with the following:

##### Competence:

1. An architect shall undertake to perform professional services only when he or she, together with those whom the architect may engage as consultants, are qualified by education, training, and experience in the specific technical areas involved.
2. In addition to subsection (a)(1) above, when practicing architecture, an architect shall act with reasonable care and competence, and shall apply the technical knowledge and skill which is ordinarily applied by architects of good standing, practicing in this state under similar circumstances and conditions.

#### **National Society of Professional Engineers Code of Ethics:**

<https://www.nspe.org/resources/ethics/code-ethics>

## II. Rules of Practice

1. Engineers shall hold paramount the safety, health, and welfare of the public.
  - 1a. If engineers' judgment is overruled under circumstances that endanger life or property, they shall notify their employer or client and such other authority as may be appropriate.
  - 1b. Engineers shall approve only those engineering documents that are in conformity with applicable standards.
  - 1e. Engineers shall not aid or abet the unlawful practice of engineering by a person or firm.
  - 1f. Engineers having knowledge of any alleged violation of this Code shall report thereon to appropriate professional bodies and, when relevant, also to public authorities, and cooperate with the proper authorities in furnishing such information or assistance as may be required.

**American Institute of Architects:**

[http://aiad8.prod.acquia-sites.com/sites/default/files/2018-09/2018 Code of Ethics 0.pdf](http://aiad8.prod.acquia-sites.com/sites/default/files/2018-09/2018_Code_of_Ethics_0.pdf)

Rule 2.105

If, in the course of their work on 2.105 a project, the Members become aware of a decision taken by their employer or client which violates any law or regulation and which will, in the Members' judgment, materially affect adversely the safety to the public of the finished project, the Members shall: (a) advise their employer or client against the decision, (b) refuse to consent to the decision, and (c) report the decision to the local building inspector or other public official charged with the enforcement of the applicable laws and regulations, unless the Members are able to cause the matter to be satisfactorily resolved by other means. Note: This rule extends only to violations of the building laws that threaten the public safety. The obligation under this rule applies only to the safety of the finished project, an obligation coextensive with the usual undertaking of an architect.



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