



June 11, 2019

Society of Petroleum Evaluation Engineers Annual Meeting

The Ethics of Advocacy

Andrea Levin Kim, Partner

Daniels Tredennick, LLP

with

Tom Collier, Chair

SPEE Ethics Committee



DANIELS & TREDENNICK
— ATTORNEYS AT LAW, LLP —

Ethics Committee Membership*



Tom Collier, Chair



Charles Gleeson



Jay Thrash



Mike Horne



Tim Gilblom

*As of May 2018

Ethics Committee Activity

- Ethics talk and slide presentation is now available for membership use
- A full script of the talk is not available

SPEE
SOCIETY OF PETROLEUM EVALUATION ENGINEERS

Society of Petroleum Evaluation Engineers
Discussion & Guidance on Ethics

SPEE Ethics Committee
Society of Petroleum Evaluation Engineers Ethics Committee

"Did you ever stop to think, and forget to start again?"
A. A. Milne

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- Keeping ethics evaluation pro...
- Moving beyond "right" vs. "w..."
- Ethics paper (January 2018)
- Ethics training
- Newsletter ar...

Ethics Committee Membership

"It takes two flints to make a fire."
Louisa May Alcott

Tom Collier, Chair

Charles Gleeson

Mike Horne

Jay Thrash

Tim Gilblom

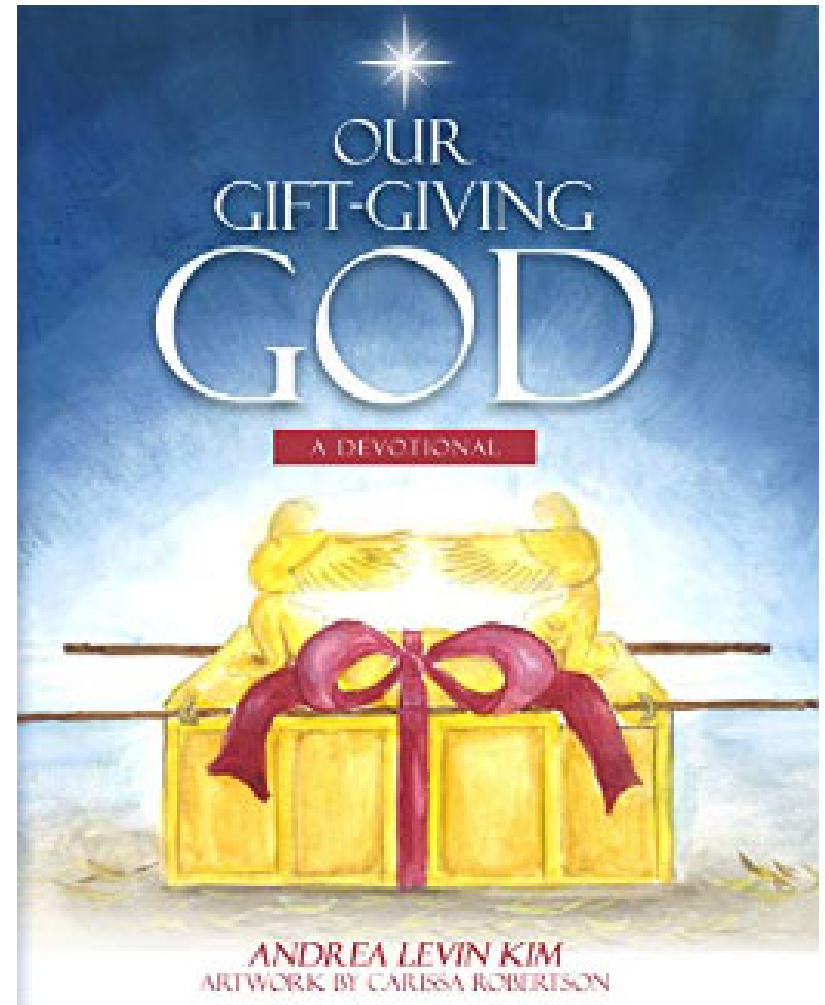
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*As of May 2018

Ethics Committee

- A print and Kindle edition of the ethics paper has been developed
- Widely available through Amazon.com
- Where fine books are sold

Look inside ↴



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Andrea Levin
Kim

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Fiduciary & Professional Negligence & Fraud

- **Fiduciaries & Professionals:** Directors, officers, employees, valuation professionals, auditors, tax accountants, lawyers
- Using professional (usually specialized) judgment every day
- Making representations that DECISION-MAKERS rely on
- High stakes



Ethical Tensions of Advocacy

- Process of taking “positions”
 - Examples: **Varying valuation methodologies & assumptions, Tax Avoidance v. Tax Evasion**
- “Results oriented”/ Ends justify means
- Advocate’s Credibility & Integrity is Everything
 - **Without it – not persuasive, trustworthy, or respected**



Rules, A Cautionary Tale, & Remedies

- **Rules (Unawareness of the Rules Is Rarely the Problem)**
- **A Cautionary Tale**
- **Remedies (A Look at the Patterns To Avoid That Lead to Ethical Failures)**



Rules: Ethical Codes & Regulations

- IPT (**Institute of Professionals in Taxation**)
- Property Tax Consultant Administrative Rules, Code of Ethics (**Texas Administrative Code sec. 66.100**)
- Petroleum Evaluators: **Principals of Acceptable Engineering Practice, Code of Ethics of Engineers**



What Ethics Rules Have in Common

- Regulate relationship with the client (representations to, scope of representation, confidentiality)
- Regulate relationship with the regulating body (with the IPT, with the State of Texas Department of Licensing & Regulation, etc.)
- Regulate representations to public or taxing officials (honesty, not misleading or deceitful)



SPEE Code of Ethics

Appendix A

Code of Ethics of Engineers

The Fundamental Principles

Engineers uphold and advance integrity, honor and dignity of the engineering profession by:

- 1) using their knowledge and skill for the enhancement of human welfare;
- 2) being honest and impartial, and serving with fidelity the public, their employers and clients;
- 3) striving to increase the competence and prestige of the engineering profession; and
- 4) supporting the professional and technical societies of their disciplines.

2) being honest and impartial, and serving with fidelity the public, their employers and clients;

- **Employers and clients**
 - Almost always understand the implications of our work
 - Rarely disinterested in the outcome
- V.
- **“The public”**
 - Sophisticated
 - Unsophisticated



SPEE Principles of Acceptable Engineering Practice

PRINCIPLES OF ACCEPTABLE EVALUATION ENGINEERING PRACTICE

Article I Fundamental Canons

Engineers, in the fulfillment of their professional duties, shall:

- Hold paramount the safety, health and welfare of the public.
- Perform services only in areas of their competences.
- Issue public statements in an objective and truthful manner.
- Act for each employer or client as faithful consultants or trustees.
- Avoid deceptive acts.
- Conduct themselves honorably, responsibly, ethically and lawfully so as to enhance the honor, reputation and usefulness of the profession.

safety, health and welfare of the public

objective and truthful



SPEE Principles of Acceptable Engineering Practice

Article III Relation of Members to the Public

1. Members will make oral and written statements that are honest and fair, avoiding exaggeration and sensationalism.



SPEE Principles of Acceptable Engineering Practice

Article IV Relation of Members to Employer and Client

1. A member shall protect, to the fullest extent possible, the interest of his employer or client so far as it is consistent with the laws of the state, the public welfare, and professional obligations and ethics.

Always work *for* your company / client **as far as is consistent. . . with professional obligations and ethics**



Cautionary Tale

- The officers of the company were obligated:

- (a) To render “executive and managerial services to [REDACTED] and its Subsidiaries as are commensurate with the customary duties, responsibilities and authority of [their] officers, subject to the power of the Board of Directors; and
- (b) To “devote [their] best efforts and [their] full business time and attention to the business affairs of [REDACTED] and its Subsidiaries . . . [and] perform [their] duties and responsibilities to the best of [their] abilities in a diligent, trustworthy, businesslike and efficient manner.”



Cautionary Tale:

24,320,856+ Reasons NOT To Breach Your Duties of Care & Loyalty

18. On February 19, 2019, the Arbitrator issued his Final Award in a 97 page opinion in favor of the Trust holding that:

based on the evidence of record, the testimony and demeanor of witnesses, fact and expert, the documentary evidence, the arguments of counsel and applicable law, I conclude that Claimant has established that . . . Respondents were grossly negligent and breached their contractual obligations to ██████████ to 'perform their duties and responsibilities to the best of their abilities in a diligent, trustworthy, businesslike and efficient manner.' Claimant shall accordingly recover from Respondents damages in the principal amount of \$24,320,856 plus interest at the rate of 5.5%, compounded annually, from August 1, 2012 to February 19, 2019 and thereafter from that date to the date of final satisfaction of the award at the same rate. All parties shall bear their own costs and attorneys' fees. The Administrative fees and expenses of the AAA totaling \$23,932.09, and the compensation and expenses of Arbitrator totaling \$114,934.00, are to be borne as incurred.



Cautionary Tale: Circumstances

- Company claiming to be worth ~\$300 million
- Purchased assets in 2008 with the 5-year rule looming in 2012
- Pressure from the State to drill to hold lease
- Impatient with smaller lower-risk projects, looking for “home run”
- Running out of time to develop high risk/highest cost prospect
- No time spent evaluating, re-evaluating, or risking highest cost prospect
- Last minute switch to the highest cost prospect with little notice to stakeholders
- Warnings from internal and third-party professionals largely ignored



Cautionary Tale: Culture

- Management rarely present in office with technical staff
- History of firing people who argue with the boss
- Ridicule of people who disagreed
- Management themes were only voice to stakeholders



How to Avoid Traps, Triggers & Temptations of Unethical Conduct

- **Beware the Consequences?**
 - Lawsuit, firing, loss of reputation
 - Enron, Worldcom, Tyco, Madoff
- **Know the Ethical Standards?**
- **Study the Culture & Creed of Ethics Failures**
 - What corporate credos, personalities, belief systems led smart, capable people to make bad choices
 - What can we do to avoid even the temptation



Cultures, Creeds & Cliques

- A Perfect Storm: **Circumstances, Culture, & Personalities**
- Common Patterns in Organizations Taken Down by Ethical Misconduct



Common Patterns in Organizational Ethical Failures

- **Culture/Value System: Tone at the Top**
 - Promotes Defensiveness
 - Results Are All That Matters: Whatever it Takes
 - Cult of Personality: Pride/ Bigger, Better, More
 - No Accountability
- **Adopting Form over Substance**
- **Employees Punished for “Rocking the Boat”**
- **Circumstances: No Margin/Over-extended**



Culture/Value System: Tone at the Top

- **Leadership: Talk the talk & walk the walk**
 - Results Are All That Matters: Whatever it Takes
 - Badge of Honor to Skate the Truth – Enron skit
 - Too many times in our cases, we've seen instances of senior managers demanding "results," and what employees heard was a demand for "results at any cost - including non-compliance with the rules." SEC Dir of Enforcement, 2004
- **Corporate Cult of Personality: Pride, Don't Question Me**
 - Not ready, willing and able to hear the good, bad and ugly
 - No accountability



Common Patterns in Organizational Ethical Failures

- **Form over Substance:**
 - What does “is” mean? (E.g., revenue recognition)
 - “not material”
 - Hiring third parties to affirm management or what is already there, no independent work



Common Patterns in Organizational Ethical Failures

- **Employees Punished for “Rocking the Boat”:**
 - Only good news allowed
 - Raising counter points leads to ridicule (or worse)
 - Getting “on board” with most popular plan rewarded



Common Patterns in Organizational Ethical Failures

- **Circumstances: No Margin/Over-extended**
 - **Desperate Times – Desperate Measures**
 - **No Plan B**
 - **Most Bankruptcies, over-extended**
 - **All eggs in one basket**



Conclusion

- Ethical practice for corporate and professional advocates starts with intentionally communicated individual and organizational creeds and culture
- Organizations taken down by unethical behavior almost always have warning signs
- Deciding in advance on lines you won't cross no matter what can help combat the pressures and tension involved in professional advocacy

