The **Architect's Handbook** Of **Professional Practice**

Fifteenth Edition

WILEY

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Editor-in-Chief

WILEY

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Foreword

The *Architect's Handbook of Professional Practice*, published by the AIA since 1920, has become the definitive information source of architectural practice for over 90 years. While major changes have altered the demand for design and architectural services in the intervening decades, this handbook has kept pace and has risen in value to the profession.

The 15th edition, which you are about to read, reflects a range of current AIA initiatives aimed at improving the built environment and public well-being. At the same time, it reflects a contemporary ethos with emphasis on diversity and inclusion, small-firm culture, sustainability, and evolving representational and project delivery methods such as BIM and architect-led design-build.

How does the Handbook reflect these factors? By including expanded content for emerging professionals, such as information on career development, as well as expanded content for established architects who work for or own small and midsize firms. Case studies and targeted articles, written by real-world practitioners, portray a discipline that has been recently segmented by economic circumstances, technological change, and generational difference. Licensed architects, who are united in their professionalism, and those on the path to licensure—both are represented here, united in their desire to meet a high standard of excellence.

Architecture has become an adaptable enterprise for a world that requires nimbleness, pragmatism, and no small amount of ingenuity. From one architect to another, I think you will appreciate the strength of the knowledge base on which this 15th edition rests. I think you will also find it to be an indispensable tool in a time of great change and even greater opportunity for architects.

Robert A. Ivy, FAIA
EVP/Chief Executive Officer
The American Institute of Architects
Washington, D.C.

Preface

The 15th edition of the *Architect's Handbook of Professional Practice* builds on its long tradition as a definitive resource while providing new and significantly revised material. Since the release of the 14th edition, rapidly developing technologies saw greater adoption and the economy plunged into recession. These and other changing conditions influence firm management, project delivery, and other aspects of practice, and the 15th edition has been modified and supplemented accordingly.

When the AIA and Wiley's editorial team asked us to serve on the Steering Group, we were honored to help guide the development of the 15th edition. Our members reflect the diversity of the profession in terms of firm size, geographical distribution, services offered, technologies and delivery methods employed, involvement in academia, and stages of firms and careers. We shared a common goal of crafting a reference relevant to firms of all sizes, and useful to emerging firms and professionals as well as established practitioners.

The Steering Group started work by reviewing the 14th edition in depth. We met for intense conversations regarding how the profession had changed and would continue to develop, which topics were important to retain and update, and what needed to be set aside or added to the 15th edition. As the content took shape, editors called on steering committee members to continue their involvement by suggesting potential authors and reviewing submissions.

We hope you find that our efforts—and the efforts of many others—have contributed to a reference that is both timely and farsighted. We were privileged to be part of this endeavor and believe that the work of the many architects and allied professionals who undertook to develop and share their expertise has resulted in an indispensable resource. We expect you will turn to this Handbook many times as you make decisions related to participating in, developing, and managing a successful practice.

Linda Reeder, AIA
Associate Editor
15th Edition Handbook Steering Group Member

Acknowledgments

I t has been my privilege to work with those who have participated in the creation of the 15th edition of the Handbook. I am deeply grateful to the contributing authors who have generously shared their knowledge. I especially appreciate their willingness to engage in our peer review process and work closely with the editorial team to produce excellent content.

At the outset of content development for the 15th edition, the Handbook editors turned to subject matter experts for guidance on many of the chapters. These "chapter captains," as we called them, advised us on the articles needed for their chapter and, in many cases, recommended authors to write them. Many were tireless in their work as peer reviewers and in assisting us in creating comprehensive chapters with minimum redundancy. I would like to extend special and heartfelt thanks to these expert advisers, including Jim Atkins and Phil Bernstein, who gave significant time and thought to the Handbook effort. Similarly, the guidance and insight of the Steering Group has been critical to the development of the 15th edition and their effort is also greatly appreciated.

To enable coordination between Handbook authors and their related topics, especially within a chapter, most contributors also served as peer reviewers for the other authors in their chapters. I truly appreciate the willingness of the authors to accept this extra task on top of producing their own articles. In addition, we had a number of peer reviewers who were not Handbook authors and we are sincerely grateful for their efforts.

The efforts of AIA's publishing partner John Wiley & Sons, Inc., are also most appreciated. Katherine Malm Bourgoine, Wiley's architecture and design Senior Acquisitions Editor, was always available to offer advice on publishing matters, and Senior Editorial Assistant Danielle Giordano was extremely helpful in addressing numerous administrative details.

Finally, on a personal note, I would like to thank the Handbook editorial team for their excellent work throughout this process. Although our collaboration was conducted almost entirely online, we worked together with remarkable effectiveness. I can only describe the team as insightful and dedicated and I am honored to have been able to work with Linda Reeder, Mary Anderson, and Richard L. Hayes.

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About the 15th Edition of the Handbook

Much has changed in the practice of architecture since the publication of the Handbook's 14th edition in 2008. Many tools that architects take for granted in 2013 were not widely used or available in 2008. More important, in 2008 the U.S. economy fell into the grip of a widespread and deep economic downturn, with a long-awaited recovery just now beginning at the time of this writing.

Many articles in the 15th edition discuss the significant impact of the Great Recession on the profession of architecture, including "Navigating Economic Cycles" by AIA Chief Economist Kermit Baker. Chapters on firm management, particularly in the areas of human resources and marketing, benefit from insight gained during this difficult period. Articles such as "Entrepreneurial Practice: Starting an Architectural Firm" offer understanding gained from practice experience about management strategies that respond to the new norm.

Significant changes in technology and project delivery have also taken place since 2008. Architects and owners are increasingly turning to delivery methods other than traditional design-bid-build in an effort to improve effectiveness and reduce risk. The 15th edition includes an expanded section on project delivery. It also includes, for the first time in the Handbook, an entire chapter devoted to technology.

While there is no chapter specifically focused on sustainability in the 15th edition, the topic is not being ignored. Just as sustainable design is no longer additive but instead integrated into the work of most architects, the topic of sustainable design has been integrated into other content. This is particularly true in relation to teamwork, project delivery, and codes. A case study that illuminates strategies for sustainable office management practices is also included.

NEW TO THE 15TH EDITION

Two-thirds of the 15th edition content is completely new, reflecting the state of practice in 2013 and looking ahead to emerging trends. In an effort to present the most current information, over 90 percent of 15th edition authors are new to the Handbook, although all are experts in their topics. These authors have contributed articles that are new to the Handbook, have written new articles on topics that have previously appeared in the Handbook, or have updated articles written for the 14th edition by others. Many of these authors are seasoned practitioners, sharing insight sourced from personal practice experience. Overall, they represent a diverse group that is meant to be reflective of the profession as a whole.

New Chapters

In addition to *Technology in Practice*, the 15th edition includes a number of other chapters that are new to the Handbook. These include:

- **Diversity and Demographics.** The importance of diversity as a practice management issue is discussed in this chapter along with a historical perspective on diversity in the AIA. Significant data on practice trends from *The Business of Architecture: AIA 2012 Survey Report on Firm Characteristics* are also presented.

- **Career Development.** Contributions from the National Council of Architectural Registration Boards (NCARB) explain the basics of the Intern Development Program and the path to licensure for emerging professionals. For seasoned practitioners, articles have been included to help increase understanding of the regulatory environment of professional practice, including state-mandated continuing education (MCE) and certification as a minority, women-owned, or small business enterprise.
- **Public Interest Design.** This new chapter reflects the growing interest and participation by architects in activities that benefit local communities and the public at large. Many examples of how architects are applying their skills and talents for the public good are included. Also discussed is the architect's role in disaster recovery and preparedness, pro bono work, and the profession's engagement with the non-profit sector.
- **Research in Practice.** Research is increasingly becoming a regular and integrated aspect of architectural practice. In this chapter, academic researchers who work in practice settings and experienced practitioners who engage in research discuss various topics, including evidence-based design and research in a small firm context.

More Content for Smaller Firms

For the 15th edition, care has been taken to include information and best practices that are applicable to architects who practice in small and midsize firms, as well as large firms. Authors have been encouraged to help readers understand how to apply general information and recommend processes that work in the context of smaller practices. Authors from small firms were asked to write about their experiences to supplement information that might apply only to larger firms.

As a result there are a number of backgrounders targeted to small-firm practitioners, such as "Professional Developing and Mentoring in Small Firms," "Architect-Led Design-Build for Small Projects and Small Firms," "The Multi-Office Small Firm," and "Research in Small Firm Practice." There is also an article called "Small Firm Collaboration," which explores ways that small firms are aligning with other design firms to acquire and deliver work. And in the realm of technology, there is an article about using Building Information Modeling (BIM), called "Small Firms, Small Projects, and BIM."

Expanded Business Management Content

Twenty-first-century business realities require that entrepreneurial architects and their staffs develop skill in business management. The chapters on organizational development, marketing, finance, and human resources contain articles that demystify concepts and introduce firm leaders to best practices in each management arena. Consultants, who possess deep knowledge of specific aspects of practice, are the authors of most of these articles.

For owners of midsize firms with mature practices, there are articles on developing multiple offices or a global practice, and advice on how to maintain a culture of creativity. Articles on ownership transition, leadership effectiveness, the legal context of practice, and more provide information and knowledge vital to leaders of firms of all sizes.

NAVIGATIONAL FEATURES

The Handbook is divided into four major sections:

- Part 1: The Profession
- Part 2: Firm Management
- Part 3: Project Delivery
- Part 4: Contracts and Agreements

Each part contains a number of chapters. For example, "Part 4: Contracts and Agreements" includes the chapters "Project Definition," "Risk Management," and "Agreements and AIA Documents."

Each chapter contains multiple articles. Each article addresses a specific aspect of practice within the practice area covered by the chapter. For example, the chapter "Design Project Delivery" contains articles on integrated project delivery, design-build, and construction management, among others.

Some articles include backgrounders that elaborate on an aspect of the topic or bring a new perspective. For example, the article "Recruiting and Hiring" contains a backgrounder on social networking in recruiting activities.

Most articles conclude with a "For More Information" section, which lists and describes relevant resources about the subject. These resources may include publications, organizations, and URLs.

HOW TO USE THE HANDBOOK

The Handbook is designed to have multiple entry points. It is expected that most users will have an interest or need for knowledge in a particular area of practice and start there.

Articles can be read individually and in any order. Many chapters begin with an overview article that can direct the reader to the location of more detailed information on a particular topic. When articles in a chapter are taken together, they are intended to present the whole picture of a practice area. Users may want to read an entire chapter to gain fuller understanding of the material presented in any one of the articles. For example, the articles on financial management work best when read together.

The index, which contains key words and concepts, will help readers readily find specific information. In addition, margin elements on the article pages contain both navigational and informational features by

- Reinforcing some aspect of the narrative with a quote
- Highlighting key ideas in brief notes or comments
- Pointing to related Handbook articles and backgrounders

THE HANDBOOK AND THE "STANDARD OF CARE"

Architects are expected to perform within the legal concept of the "standard of care," which considers what reasonably prudent architects would do in the same community at the same time, facing the same or similar circumstances. As a result, fixed or uniform standards cannot be used to evaluate the performance of architects. Thus, the Handbook does not contain absolute rules and procedures. Rather, it presents concepts, principles, techniques, and other fundamental information that together provide guidance for the day-to-day needs of architects and other building design professionals.

Rena M. Klein, FAIA
Executive Editor

THE PROFESSION

Laws, regulations, and codes of conduct govern the profession of architecture and define the obligations of architects to the public. AIA members comprise a community of practice that additionally agrees to abide by its Code of Ethics and its requirements for continuing education. For prospective architects, the path to licensure is prescribed. For emerging and mature practitioners, professional life includes participation in professional organizations and architectural education. For some architects, professional life at every stage includes engagement in public interest design.

CHAPTER **1**

Ethics and Professional Practice

1.1 The AIA Code of Ethics and Professional Conduct

Michael L. Prifti, FAIA

Members of the American Institute of Architects lead the way through the highest standards of professionalism, integrity, and competence. The Code of Ethics and Professional Conduct is both guide and measurement of those practices.

INTRODUCTION TO THE CODE OF ETHICS AND ETHICAL PRACTICE

Architecture in built form is exclusively predicated on the universal constant of gravity. This is true regardless of location, weather, material, building or client type, codes and regulations, aesthetic, or other variable. Architecture as a practice is equally based on a moral foundation of professionalism, with responsibilities to the general public, our respective clients, to the profession itself, our colleagues, and to the shared environment

Michael L. Prifti is managing principal of BLT Architects, a firm headquartered in Philadelphia, Pennsylvania. Prifti has played an instrumental role in promoting professional practice, serving for two terms on the National Ethics Council and speaking at numerous AIA National Conventions on related topics such as "The Role of Ethics in Sustaining the Profession."

that surrounds all of us. For members of the American Institute of Architects (AIA), the concise language of the Code of Ethics and Professional Conduct is both guide and measuring stick for professional behavior.

HISTORY OF THE AIA CODE OF ETHICS

In 1909, the AIA first adopted a formal set of rules governing the conduct of architects. The rules were published as "A Circular of Advice Relative to Principles of Professional Practice and the Canons of Ethics." According to the National Council of Architectural Registration Boards (NCARB), only four states (Illinois, New Jersey, California, and Colorado) had by that time adopted laws regulating the practice of architecture. As a result, the AIA's rules served to set standards for practice in much of the country. The AIA periodically revised its ethical code in mostly limited ways during the ensuing 60 years.

Limitations Imposed by Antitrust Law

Unlike the NCARB member registration boards, each of which is a part of a state or other government entity, the AIA is a nongovernmental organization. State governments and their agencies enjoy various powers and privileges that do not extend to other types of organizations or to individuals. As a result, both the scope of professional rules adopted by the AIA and the manner of their enforcement by the AIA necessarily differ from what registration boards may do.

Antitrust law imposes significant restrictions on what conduct the AIA can mandate or prohibit in a code of ethics for its members. Although antitrust law is complex, its general purpose is to foster economic competition. One way that antitrust law accomplishes this goal is to prevent competitors in a given market from acting together to unreasonably restrain competition. Because the members of the AIA are competitors of each other, AIA activities cannot be carried out with the purpose or effect of reducing competition in ways that courts have found to be unreasonable, that is, without having an offsetting precompetitive effect.

In the 1970s, in various legal proceedings, the U.S. Supreme Court and other courts established new understandings of antitrust law as applied to professional membership associations, including their codes of ethics. As a direct result, the AIA's own code of ethics was repealed in 1980, temporarily replaced by unenforceable "Ethical Principles," then completely revised and reinstituted as a new enforceable Code of Ethics and Professional Conduct in 1987. The structure and much of the content adopted in 1987 continue to be reflected in the current version of the AIA's code of ethics.

Prior Provisions No Longer in the Code

Some subjects were covered in pre-1980 versions of the AIA's code of ethics but are no longer covered, mostly as a result of restrictions imposed by antitrust law. Prominent in a list of such subjects is any restriction pertaining to fees or compensation for services. In a 1978 appeal by the National Society of Professional Engineers, the U.S. Supreme Court specifically held that a professional association's ethical code may not prohibit competitive bidding—despite the argument that such a regulation would further public health, welfare, and safety.

The absence of ethical provisions regarding fees has a broader effect than just competitive bidding or minimum fee amounts, however. There is no ethical restriction on providing free services whether or not part of marketing; providing services at no charge is, of course, simply charging a fee of zero. Similarly, there are no ethical restrictions specifically pertaining to design competitions, which amount to providing services for no fee or a very small fee.

Other subjects no longer prohibited by the AIA code of ethics include:

- *Supplanting or replacing another architect on a project*. Historically, it was considered unprofessional to have any business contact with another architect's client. The AIA code of ethics does not prohibit such conduct.
- *Advertising*. The AIA's code does not prohibit advertising of professional services. The code does contain provisions that could be violated in the context of advertising, however, such as making false statements or failing to properly credit other participants in a project.
- *Contracting to do construction*. The 1909 code prohibited engaging in any of the "building trades" or guaranteeing any estimate. These restrictions, which are incompatible with design-build, disappeared by the 1970s.
- *Determinations of law*. Prior versions of the code did not shy away from provisions that required legal analysis. For example, prior to 1997 the code made explicit reference to copyright. Currently, however, in order for any legal or regulatory violation to be taken into account in application of the AIA's code of ethics, the legal or regulatory determination must have been made by an appropriate authority.

THE SIX CANONS OF THE AIA CODE OF ETHICS

CANON I: GENERAL OBLIGATIONS

Members should maintain and advance their knowledge of the art and science of architecture, respect the body of architectural accomplishment, contribute to its growth, thoughtfully consider the social and environmental impact of their professional activities, and exercise learned and uncompromised professional judgment.

CANON II: OBLIGATIONS TO THE PUBLIC

Members should embrace the spirit and letter of the law governing their professional affairs and should promote and serve the public interest in their personal and professional activities.

CANON III: OBLIGATIONS TO THE CLIENT

Members should serve their clients competently and in a professional manner, and should exercise unprejudiced and unbiased judgment when performing all professional services.

CANON IV: OBLIGATIONS TO THE PROFESSION

Members should uphold the integrity and dignity of the profession.

CANON V: OBLIGATIONS TO COLLEAGUES

Members should respect the rights and acknowledge the professional aspirations and contributions of their colleagues.

CANON VI: OBLIGATIONS TO THE ENVIRONMENT

Members should promote sustainable design and development principles in their professional activities.

STRUCTURE OF THE CODE

The code is arranged in three tiers of statements: Canons, Ethical Standards, and Rules of Conduct.

- *Canons* are broad principles of conduct. The code of ethics primarily addresses responsibilities that architects and other AIA members have to others. Except for Canon I, General Obligations, the canons reflect the categories of those to whom duties are owed: the public, clients, the architectural and related professions, colleagues (as individuals), and the environment.
- *Ethical Standards* are more specific goals toward which members should aspire in professional performance and behavior.
- *Rules of Conduct* are mandatory. Violation of a Rule of Conduct is grounds for disciplinary action by the Institute. Rules of Conduct, in some instances, implement more than one Canon or Ethical Standard.

Commentary is provided for some of the Rules of Conduct. That commentary is meant to clarify or elaborate the intent of the rule. The commentary is not part of the code, however. Enforcement is determined by application of the Rules of Conduct alone. The commentary is intended to assist those who are seeking to conform their conduct to the code as well as those who are charged with its enforcement.

NATIONAL ETHICS COUNCIL

The bylaws of the AIA establish the processes under which the ethical code is adopted, amended, and enforced. The bylaws provide for the establishment of a National Ethics Council, which has the authority to interpret the Code of Ethics. Individual members, officers, directors, employees, and officers and staff of state and local components of the AIA do not have this authority.

The National Ethics Council is the body charged by the bylaws to enforce ethical matters in the practice of architecture, in accordance with current, published editions of the Code of Ethics and Rules of Procedure. It does so through the process of complaint and response, measuring ethical behavior as defined by the code. The Council also considers proposed changes to the code for adoption by the Board of Directors or membership of the Institute, and may itself propose revisions. The Council amends its Rules of Procedure when appropriate, with any such changes requiring approval of the Board of Directors. As part of its educational mission, the Council conducts programs at the annual National Convention and at other component events. Occasionally, members of the Council publish articles on ethics.

The Council operates with operational support provided by the Institute's Office of General Counsel. The Council publishes on the Institute's website all of its publicly available information. This information can also be obtained by contacting the Office of General Counsel.

Composition of and Appointments to the Council

As established by the AIA's bylaws, the National Ethics Council consists of up to 12 architect members of the Institute, appointed by the Board of Directors to staggered three-year terms. Typically, the Council operates with seven members, each of whom generally is reappointed to a second three-year term. Individual terms are staggered to enhance institutional memory since Council members are not permitted to serve more than two consecutive three-year terms. Nominations for new appointments to the Council are made by the Institute's president with the advice of the Council. The Council's chairperson is also appointed annually by the Board of Directors following recommendation of the Council and nomination by the Institute's president.

Promulgation of the Code of Ethics

The National Ethics Council's page on the AIA website contains the current Code of Ethics, supporting documentation, and all necessary forms. In addition to violation notices published upon the conclusion of a case, decisions of the Council are also published in redacted form, that is, with names, places, and other identifying information removed. Prospective ethical matters may also be addressed through published advisory opinions issued by the Council upon request.

Redacted Decisions

Decisions of the Council in redacted form are published on the National Ethics Council's page of the AIA's website. These decisions are analogous to case law in a legal system and provide examples of how the National Ethics Council has applied various Rules of Conduct in contested cases. It should be noted, however, that prior decisions do not have binding authority on the Council in applying the Code of Ethics in any particular case that comes before it. Summaries of two such decisions are included here.

Advisory Opinions

The National Ethics Council offers the opportunity to AIA members to request advisory opinions be issued that apply the Code of Ethics to particular factual situations. Unlike complaints, which the Council always accepts in keeping with its current Rules of Procedure, granting a request for an advisory opinion is at the discretion of the Council. Decisions issued at the conclusion of a contested complaint have the benefit of the fact-gathering hearing process and usually input from both a complainant and a respondent. Advisory opinions, by comparison, ordinarily would be based on the single point of view of the member making the request.

Changes in the Code of Ethics and Complaint Process

How the Code Itself Is Modified

The AIA's bylaws provide two means for amending the Code of Ethics. The Institute's Board of Directors is empowered to adopt amendments at any time. In addition, the members as a whole, through a vote of their delegates at an annual meeting, may adopt amendments. Typically, amendments have been made by the Board.

How the Rules of Procedure Are Modified

The National Ethics Council is given authority by the AIA's bylaws to adopt the rules under which it operates, subject to specific requirements set by the bylaws themselves. Under the Council's Rules of Procedure, notice is given to the Board of Directors annually of any amendments adopted by the Council. The rules under which appeals are taken are established by the bylaws and the Board of Directors.

COMPLAINT PROCESS

Confidentiality

The AIA's bylaws require that the complaints filed with the National Ethics Council and the complaint processes that follow are maintained in confidence. Limited exceptions to the confidentiality requirement apply, as, for example, when a member is found to have committed a violation and a nonconfidential penalty is imposed. The confidentiality requirement does not prevent the complainant or respondent from contacting persons who already have knowledge of the circumstances described in the complaint and who are therefore potential witnesses. Maintaining confidentiality prevents an ethics complaint from becoming a subject of discussion beyond those who are already involved in the circumstances. In some instances, of course, no violation is ultimately found or only a confidential penalty is imposed for a minor infraction. In those instances, confidentiality ensures that the respondent does not suffer from publicity about the ethics complaint.

Filing of Complaints and Circumstances of Dismissal

Anyone who is directly aggrieved by the conduct of a member of the Institute may lodge a formal complaint against the member. This must be done in accordance with the Council's Rules of Procedure. A time limit of one year is imposed for filing a complaint after the alleged violation unless good cause for delay is shown.

Complaints are filed with the chairperson of the Council by sending them to the Institute's Office of General Counsel, which provides staff support for the Council. The format for complaints is established by the Council's Rules of Procedure, and a form is provided for this purpose. Once staff has determined that a complaint meets the formal requirements of the Rules of Procedure, the complaint will be reviewed by the Council chairperson, who may dismiss or defer the complaint, or determine that the case should proceed.

The chairperson is authorized to dismiss a complaint when the matter is trivial, when filing was delayed beyond the one year time limit without good cause, or if the matter would not result in an ethical violation, even if the facts alleged were proven to be true. The latter reason is analogous to the "motion to dismiss" standard in legal proceedings, but the Council does not follow any procedure analogous to "summary judgment."

The chairperson typically will defer a case if the parties are involved in litigation, arbitration, or another dispute resolution process, including a proceeding before a licensing board. In that instance, both parties will be notified of the deferral and a copy of the complaint will be sent to the respondent. Deferral due to another proceeding is not uncommon. About half of the complaints filed with the Council are deferred either upon initial filing or later if another dispute resolution proceeding is initiated.

In nearly all other instances, however, the Chair will determine that the initially filed complaint should proceed, and the Council forwards it to the respondent for response. As with a complaint, the form for the respondent's response is established by the Rules of Procedure, and a form is provided for this purpose. In the event that a respondent does not file a response after being notified, the complaint process will nevertheless proceed. Even if a respondent remains uncommunicative while the ethics case is proceeding, the Council sends notices of all opportunities for the parties to participate.

The Hearing Officer

Unless information received from the respondent would support dismissal or deferral of the ethics case under the same standards that apply to review of the complaint itself, the chairperson assigns the case to one of the other members of the Council who will serve as the hearing officer. This selection is predicated on an absence of previous knowledge of the matter and existence of significant ties to the complainant, the respondent, or any of the likely witnesses. To help meet these standards and to avoid other possible conflicts, the Council member selected to serve as a hearing officer is often located geographically distant from parties to the case. Notice of the hearing officer's appointment is sent to both the complainant and respondent to allow them to challenge the appointment by reason of alleged bias, prejudice, or conflict of interest.

The hearing officer serves in a capacity similar to an arbitrator. One major difference, however, is that a Council member serving as hearing officer is not the decision maker in the case but runs the process during the pre-hearing and hearing phases. The hearing officer's responsibilities for a case largely end with submission of a report and recommendation as described below.

After receiving the case file, the hearing officer will review the complaint, response, and accompanying documentation in order to independently confirm whether the case should proceed based on the same standards under which the complaint was initially reviewed by the chairperson. Dismissal or deferral by the hearing officer is subject to concurrence by the chairperson.

The complaint process does not provide for counterclaims, even in circumstances when the complainant is a member of the AIA. Upon occasion, a respondent has filed a separate complaint against an original complainant while the original complaint is pending. Although the Council formally treats the two cases separately, in the past the same Council member has been appointed to serve as hearing officer in both cases in the interest of efficiency.

Before the Hearing

The AIA's ethics complaint process is streamlined and does not include features of more formalized dispute resolution methods. Discovery of the opposing party's information through depositions and document production, which are common to litigation and arbitration, is not a part of the Council's procedures. As a nongovernmental organization, the AIA does not have governmental powers and has little means, if any, by which to enforce directives to complainants, respondents, or third parties to produce information that may be relevant to a case. With limited exceptions, a complainant and a respondent both come to a hearing primarily with the information they have in their own possession.

One essential step in preparing for an ethics hearing is for the hearing officer to conduct a pre-hearing conference, which is akin to a pretrial conference conducted by a judge in a court case.

The conference, which is typically by telephone, ordinarily includes introductions, brief statements by the parties regarding their views of the case, and reference to the possibility of settlement between the parties. The parties are permitted to have their counsel or their designated non-attorney advisers participate in this call. The

conference call is neither transcribed nor recorded, and nothing said during the call becomes part of the case record. The hearing officer may ask questions of the parties in order to better understand the framework of the dispute. A date for the hearing is set, along with a location, in the event that the complainant and respondent are not in the same area.

Also established during the pre-hearing conference call is a deadline for the parties to submit and exchange various information in advance of the hearing, notably including their expected witnesses and any additional documents (not submitted with the complaint or response) that will be used as evidence at the hearing. This pre-hearing exchange largely constitutes the extent of "discovery" in the AIA's ethics complaint process.

Hearing

The hearing is conducted as an in-person meeting among the hearing officer (assisted by staff counsel), the complainant, the respondent, and their respective counsel or other designated advisers. Witnesses are ordinarily allowed to be present in the room only during the time that they are giving their testimony. The hearing is also attended by a court reporter, retained by the AIA, who makes a transcript of the proceedings for the case record. Most commonly, a hearing lasts the better part of a day, but occasionally the amount of information to be presented may require more than one day.

As with the pre-hearing conference call, the hearing officer presides. No evidence is typically permitted beyond what was indicated by the parties in their pre-hearing exchange of information. The hearing typically follows the following agenda: brief opening statements by both parties, presentation of the complainant's evidence, presentation of the respondent's evidence, and, finally, brief closing statements by both parties. After each witness (usually including the complainant and respondent) provides testimony, an opportunity is provided to the opposing party to ask questions of the witness. The hearing officer (and staff counsel) also frequently have questions to ask a witness to complete the record. During the hearing, the complaint, the response, and the supporting documentary evidence submitted by each party are marked as exhibits for inclusion in the case record.

Report and Recommendation

Following the hearing, the hearing officer prepares a Report and Recommendation. This written document describes the circumstances of the case, cites the Rule(s) of Conduct from the Code of Ethics that were alleged to be violated, presents pertinent facts, states the hearing officer's conclusions regarding violations, and, if a violation is found, recommends a penalty. This Report and Recommendation is distributed to the parties, who are given the opportunity to submit written comments.

Deliberation and Decision by the Council

The entire case record is submitted to the members of the Council for their review. The case record includes the Report and Recommendation, the reporter's transcript of the hearing, the hearing exhibits, and the written comments, if any, submitted by the parties. At a subsequent meeting of the Council, the hearing officer makes introductory remarks and responds to questions that the other Council members may have, after which the hearing officer withdraws and is not present for any case deliberations. If either of the parties has requested to appear before the Council, they also may make short statements and respond to questions the Council members may have.

The Council conducts a vigorous review and deliberation of the transcript, other evidentiary materials, and the hearing officer's Report and Recommendation. The Council makes its determinations by majority vote and authors the written decision, which is subsequently issued to the parties. In the event no ethical violation is found, the

case is closed and confidentiality continues to protect the innocent respondent. Should the Council find one or more violation has occurred, a penalty will be determined.

Penalties

Penalties that may be imposed for ethical violations are set by the AIA's bylaws. The National Ethics Council does not have the authority to require a respondent to pay money. The Council also does not have the authority to require a respondent to take any action or to refrain from any conduct. Penalties are imposed in keeping with the severity of the violation by the respondent in the eyes of the Council.

Unintended or relatively minor matters may result in a nonpublic *admonishment*. More significant violations are made public and are of increasing severity. First is a *censure* of the respondent, which includes publication of a notice describing the violation in an Institute periodical. Next, membership in the Institute may be *suspended* for a period of time, usually one to three years. In more egregious matters, membership is *terminated*. In all instances of violation, the respondent's AIA membership record will reflect the penalty, although the AIA will maintain confidentiality in the matter except for the published notice of violation.

Appeals

Members found in violation of the Code of Ethics may choose to appeal the decision of the Council to the AIA's Executive Committee. In an appeal, both parties are given an opportunity to submit statements to the Executive Committee. The Executive Committee is provided the entire case record for consideration. Except in cases where the penalty is termination, the decision of the Executive Committee is final, and no further appeal is offered. Upon appeal, the Executive Committee may approve the Council's decision and penalty, approve the decision but reduce the penalty, dismiss the complaint, or return the matter to the Council for further proceedings.

Matters resulting in termination are automatically considered as an appeal. In such cases, the Council's decision is first considered by the Executive Committee. In the event that the Executive Committee approves the decision and the penalty of termination, the case is further considered as an appeal by the full AIA Board of Directors. The Board is provided the Council's decision, the parties' statements to the Executive Committee, and the Executive Committee's decision. The Board may concur in the Executive Committee's decision or return the matter for reconsideration.

PRACTICAL CONSIDERATIONS

Although the number of cases pending before the National Ethics Council varies, usually between 20 and 30 complaints are filed each year. Because of the requirement of confidentiality, most of these will never be made known to the public in any fashion. Only in cases where violations are found, accompanied by penalties of censure, suspension, or termination, are the names of the respondents disclosed.

Guidelines for Complaint and Response

Complaints

Regardless of category, the formal complaints will cite one or more Rules of Conduct and briefly describe the circumstances of alleged violation. It is essential that complainants thoroughly and accurately understand the rules chosen for citation and that the argument be clearly stated.

Responses

A member's response to a complaint falls into a few broad categories, regardless of the particulars of the matter. Best are the thoughtful, well-documented responses filed in