

PLANNING ETHICS

18th Annual *Alfred B. DelBello Land Use and Sustainable Development Conference:*
Building the Infrastructure for Our Sustainable Future

Presented by the Land Use Law Center of Pace University
December 5, 2019



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Agenda

- Required AICP Content
- AICP Ethics Code Overview
- Focused Discussion
 - Taking Credit
 - Inadequate Information
 - Workplace Harassment
 - Professional Comments
 - Expert Witness Testimony
 - Discrimination
 - Political Donations
 - Gifts
- Audience Discussion

Required AICP Content

“Please Note: This session has been created to provide general education regarding the AICP Code of Ethics. Though examples, sample problems, and question and answer sessions are an important part of illustrating application of the code’s provisions, all certified planners should be aware that **“Only the Ethics Officer is authorized to give formal advice on the propriety of a planner’s proposed conduct.”** (AICP Code of Ethics, Section C3). If you have a specific question regarding a situation arising in your practice, you are encouraged to seek the opinion of the Ethics Officer.”

- 312-786-6360
- www.planning.org/ethics
- ethics@planning.org (not to discuss specific situations)

AICP

Why Talk About Ethics

- AICP planners belong to the American Institute of Certified Planners, and **must practice in accordance with standards of practice**, including the AICP's Code of Ethics and Professional Conduct.
- Citizens have a right to expect that planners (in the public or private sectors) will help **elevate governance**, not fall to its more base level.
- Planners have **ethical responsibilities** to their colleagues, their clients and their communities.
- Planners are guided by both existing local, and sometimes state, ethics provisions. But frequently none exist, and planners must **exercise common sense**.
- Ethics scenarios are rarely “cut and dried” and often contain a high level of nuance. **Ethics discussions help develop reasoning and reflection skills** that can be applied in everyday situations.

APA's Ethical Principles of Planning

- Adopted in 1980; Revised in 1992
 - ***Guidelines*** for those who participate in the process of planning as advisors, advocates, and decision makers
1. Serve the public interest
 2. Maintain high standards of integrity / proficiency
 3. Improve planning competence

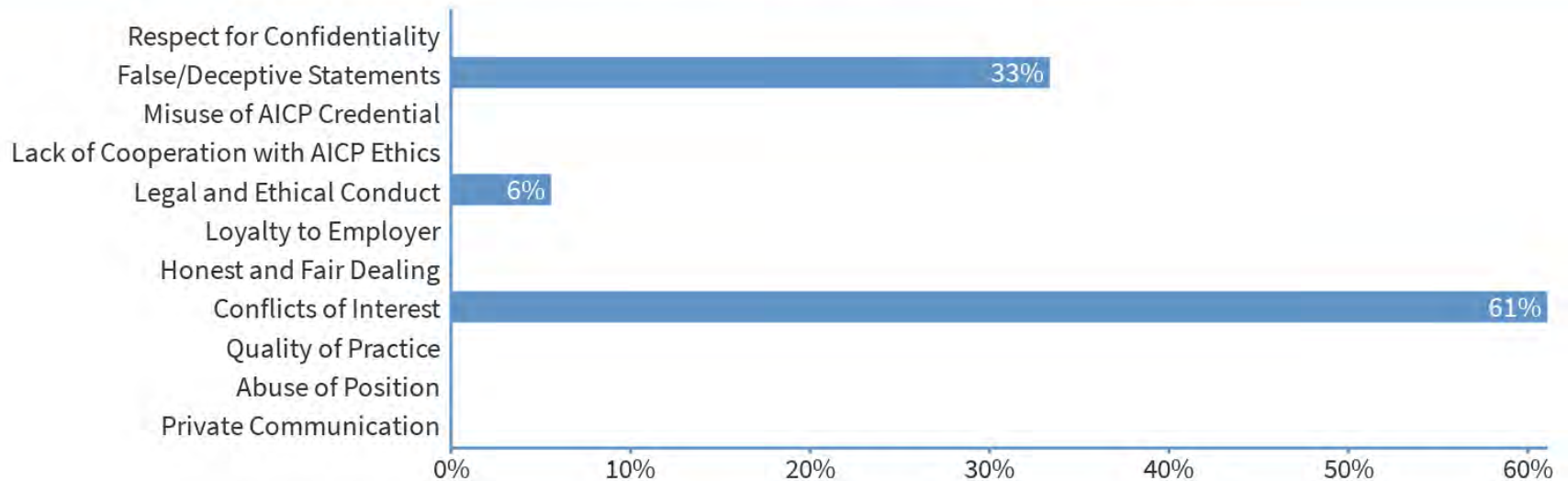
Overview of AICP Code of Ethics

- Aspirational Principles
 - Responsibility to Public, to Clients/Employees, and to the Profession/Colleagues
- Rules of Conduct
 - 26 Rules to which AICP Members are held accountable
- Advisory Opinions/Guidance
 - Informal Advice, Formal Advisory Opinions, Annual Report
- Complaints of Misconduct
 - Filings, Preliminary Charge/dismissal, Settlement, Decision, Appeal
- Disciplinary Actions
 - Letter of Admonition (private), Public Censure, Suspension, Revocation

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📱 Text **PETERFEROE311** to **22333** once to join

What issue do you think was the subject of the most ethics cases and inquiries last year?



Actual Ethics Cases and Inquiries (2018)



Ethical Misconduct Cases in 2019

- Four (4) cases dismissed with no preliminary charge filed
- Three (3) cases dismissed after a preliminary charge was filed
- Six (6) cases settled
 - Five (5) for misuse of AICP credential
- One (1) disciplinary action
 - Letter of Admonition: disclosure of confidential information

Actions Cited in Misconduct Charges (2019)

- Rule #1 – Providing inaccurate information (out-of-date building code)
- Rule #4 – Working a second job (as realtor) without notifying supervisor
- Rules #6 & 7 – Working on a rezoning that could benefit planner's personal residence
- Rule #7 – Revealing confidential information on a project (two cases)
- Rule #10 – Misrepresenting the views of another professional

What Do You Want to Discuss if We Have Extra Time?

Respond at [PollEv.com/peterferoe311](https://www.poll-ev.com/peterferoe311) Text PETERFEROE311 to 22333 one to join, then A, B, C, D, E...

- Principles

- A. 1.b – We shall have special concern for the long-range consequences of present actions.
- B. 1.f – We shall seek social justice, expand opportunity, urge alterations of policies that oppose such needs.
- C. 2.b – Principle 2.b: We shall accept the decisions of our client/employer concerning the objectives/nature of our services unless action is illegal or "plainly inconsistent with our primary obligation to the public interest"

- Rules

- D. 13 – We shall not sell services by implying ability to influence decisions by improper means
- E. 18 – We shall not direct or coerce other professionals to make analyses or reach findings not supported by evidence



Scenario 1

Taking Credit

Adapted from the 2019/20 AICP Ethics Cases of the Year



Taking Credit

Arya, AICP, who runs a small consulting firm, worked on a new Comprehensive Plan for Westeros County, as a subconsultant to a larger firm, DragonCo.

The Comprehensive Plan won an APA award and DragonCo has been actively promoting the project at national and state planning conferences.

DragonCo chief planner, Ceresei, AICP, has told the firm's subcontractors on the plan that they are not permitted to mention the plan in their own marketing materials.

Cersei says that since the contract was DragonCo, the *only* credit should go to DragonCo, not its subcontractors.

- Is the behavior of Ceresei and DragonCo appropriate? Does it violate the AICP Code of Ethics?
- What if the County told DragonCo the same thing?

Relevant AICP Code Provisions

AICP Ethics Code—Principles

#3c: “We shall describe and comment on the work and views of other professionals in a **fair and professional** manner.”

AICP Ethics Code—Rules of Conduct

#10: “We shall neither deliberately, nor with reckless indifference, **misrepresent the qualifications**, views, and findings of other professionals.”

#12: “We shall not **misstate** our education, **experience**, training, or other facts which are relevant to our professional qualifications.”

#17: “We shall not **use the product of others’ efforts to seek professional recognition or acclaim** intended for producers of original work.”

#25: “We shall neither deliberately, nor with reckless indifference, commit any **wrongful act**, whether or not specified in the Rules of Conduct, that reflects adversely on our professional fitness.”



Scenario 2

Inadequate Information

Adapted from the 2019/20 AICP Ethics Cases of the Year



Inadequate Information

- Sansa, AICP, is a planner in the Winterfell municipal planning department. A local non-profit organization that promotes affordable housing submitted a Freedom of Information Act (FOIA) Request for data compiled as part of the Town's recently completed affordable housing study.
- Sansa's supervisor (*a non-AICP planner*) tells her not to comply with a FOIA request, despite a recent state court ruling requiring local communities to disclose the information requested.
- Sansa also knows that her supervisor recently deleted much of the affordable housing study data from the department's computers in order to make it inaccessible to the public.

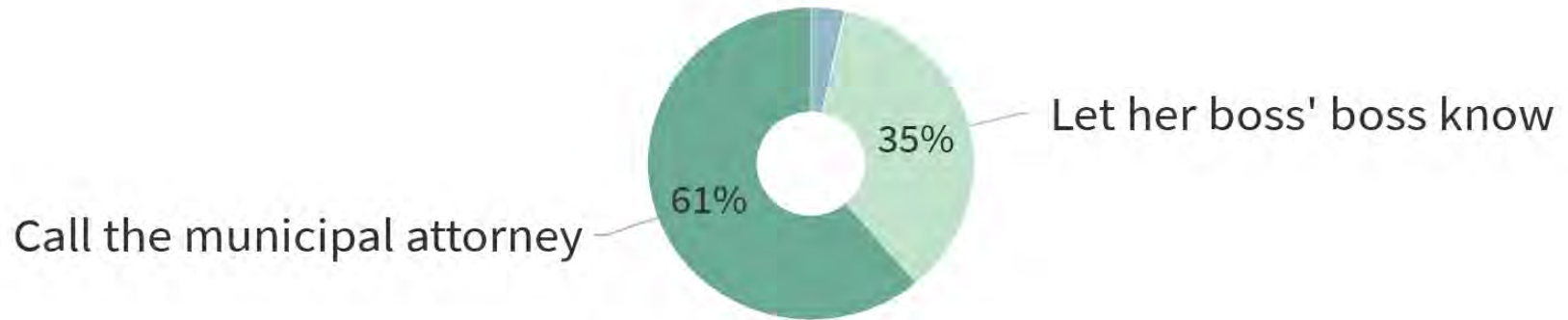
i Inadequate Information

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What should Sansa do?

- Listen to her supervisor **A**
- Give out the data available **B**
- Let her boss' boss know **C**
- Call the municipal attorney **D**



Inadequate Information

Relevant AICP Code Provisions

APA's Ethical Principles in Planning

- **#A2:** "Strive to give **citizens...full, clear, and accurate information** on planning issues and the opportunity to have a meaningful role in the development of plans and programs.
- **#A5:** Ensure that reports, records, and any other non-confidential information which is, or will be, available to decision makers is **made available to the public** in a convenient format and sufficiently in advance of any decision."

AICP Ethics Code—Principles

#1f: "We **shall seek social justice** by working to expand choice and opportunity for all persons....We shall urge the alteration of policies, institutions, and decisions that oppose such needs."

#2a: "We shall exercise **independent professional judgment** on behalf of our clients and employers."

#2b: "We shall **accept the decisions of our client or employer** concerning the objectives and nature of the professional services we perform **unless** the course of action is illegal or plainly inconsistent with our primary obligation to the public interest."

Inadequate Information

Relevant AICP Code Provisions

AICP Ethics Code—Rules of Conduct

#1: “We shall not deliberately or with reckless indifference **fail to provide adequate, timely, clear, and accurate information** on planning issues.”

#2: “We shall **not accept an assignment** from a client or employer when the services to be performed involve conduct that we know to be **illegal or in violation of these rules**.”

#25: “We shall neither deliberately, nor with reckless indifference, **commit any wrongful act**, whether or not specified in the Rules of Conduct, that reflects adversely on our professional fitness.



Scenario 3

Workplace Harassment

Adapted from the 2019/20 AICP Ethics Cases of the Year



Workplace Harassment

Daenerys, AICP, a planning consultant, is approached by two staff planners.

They tell her that Tyrion, AICP, the planning director of Meereen County, has made unwanted sexual comments to each of them at APA chapter events.

Tyrion also is an APA chapter officer.



Workplace Harassment

- Does Daenerys have any obligations under the AICP Code of Ethics?
- Should she talk to Tyrion? To Chapter President?

Relevant AICP Code Provisions

AICP Ethics Code—Principles

#3a: “We shall **protect and enhance the integrity** of our profession.”

AICP Ethics Code—Rules of Conduct

#25: “We shall neither deliberately, nor with reckless indifference, commit **any wrongful act**, whether or not specified in the Rules of Conduct, that **reflects adversely on our professional fitness.**”

APA NY Metro Chapter Bylaws

VII (a): Executive Committee members can be removed with a 2/3 majority if “guilty of malfeasance, misfeasance, or nonfeasance.”



Scenario 4

Professional Comments

Adapted from the 2019/20 AICP Ethics Cases of the Year



Professional Comments

Theon Greyjoy, AICP, a planner with the Iron Islands, has been telling developers not to hire Ramsay Bolton, AICP, a local planning consultant.

Theon has said that Ramsay's performance on previous projects has been unsatisfactory.



Professional Comments

- **Are the negative comments about Ramsey an ethics violation?**
- **How else could Theon have handled the situation?**

Relevant AICP Code Provisions

AICP Ethics Code—Principles

#3c: "We shall describe the work and views of other professionals in a fair and professional manner."

AICP Ethics Code—Rules of Conduct

#10: "We shall neither deliberately, nor with reckless indifference, **misrepresent the qualifications**, views, and findings of other professionals."



Scenario 5

Expert Witness Testimony

Adapted from the 2019/20 AICP Ethics Cases of the Year





Expert Witness Testimony

Jon Snow, AICP, a consultant, has been asked to be an expert witness in a lawsuit against the City of Night's Watch, where he was the former planning director.

The lawsuit involves a development proposal that was denied by the City Council, in part due to floodplain regulations.

One of Jon's former duties with the Night's Watch was the drafting of its floodplain regulations.

However, the project he's being asked to testify on behalf of took place after he left the Night's Watch—which was more than three years ago.



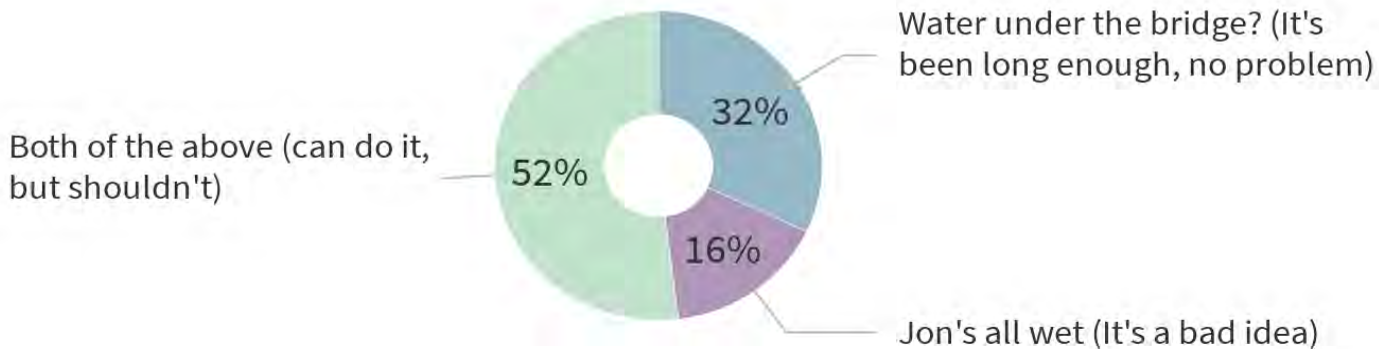
Expert Witness Testimony

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Is this a case of...

Water under the bridge? (It's ... **A** Jon's all wet (It's a bad idea... **B** Both of the above (can do it, ... **C**





Expert Witness Testimony

- **Should Jon agree to be an expert witness in this case?**
- **If so, what (if any) ethical issues should he have concerns about?**

Relevant AICP Code Provisions

AICP Ethics Code—Principles

#1c: “We shall pay special attention to the **interrelatedness of decisions.**”

AICP Ethics Code—Rules of Conduct

#3: “We shall not accept an assignment...to publicly advocate a position on a planning issue that is **indistinguishably adverse to a position we publicly advocated for a previous client or employer within the past three years....**”

#7: “We shall not use to our personal advantage, nor that of a subsequent client or employer, **information gained in a professional relationship** that the client or employer has requested be held inviolate or that **we should recognize as confidential** because its disclosure could result in **embarrassment or other detriment** to the client or employer..”



Scenario 6

Discrimination

Adapted from the 2019/20 AICP Ethics Cases of the Year



Discrimination

Sandor Clegane, AICP, is a planner with King's Landing. One of the projects Sandor (the hound) manages is scheduled to go to the City Council next month for approval.

It is a project that requires data analysis to determine whether a property should be inside an empowerment zone or not. Sandor has done this several times before.

However, Sandor's boss, Joffery, AICP, decides that Gregor (the mountain), a non-AICP planner who Sandor supervises, should present the application to the City Council.



Discrimination

A few weeks later, Sandor is passed over for a promotion, despite her excellent performance reviews and years of experience. Instead, Gregor is given the job.

A month before the City Council meeting (where Sandor was taken off the project), she began her gender transition and asked people to use the pronouns “she, her, hers” when referring to her. In the past, she had always dressed gender neutral, but now she occasionally wears a skirt to work.

Soon after Gregor’s promotion, Sandor decides to quit.



Discrimination

- Does Sandor have any recourse under the *AICP Ethics Code*?
- Are there any grounds for a misconduct case against her former boss, Joffery, AICP, on the basis of “unlawful discrimination?”

Relevant AICP Code Provisions

AICP Ethics Code—Principles

#1a: “We shall always be conscious of the **rights of others.**”

#2b: “We shall **accept the decisions of our client or employer** concerning the objectives and nature of the professional services we perform unless the course of action is illegal or plainly inconsistent with our primary obligation to the public interest.”

AICP Ethics Code—Rules of Conduct

#20: “We shall not **unlawfully** discriminate against another person.”

#25: “We shall neither deliberately, nor with reckless indifference, commit any **wrongful act**...that reflects adversely on our **professional fitness.**”



Gifts/Donations

Adapted from the 2019/20 AICP Ethics Cases of the Year





Donations

Vale, a consulting firm, has had several planning contracts with Lannister County over the last few years, including one current project.

Several County Board members are up for reelection and Vale has made campaign contributions to them.

Petyr Baelish, AICP, a Vale principal, also has made donations to the candidates, after confirming there are no violations of state or local laws.

Lord Varys, AICP, Lannister County's planning director who has worked closely with the County Board members over many years also made a donation.

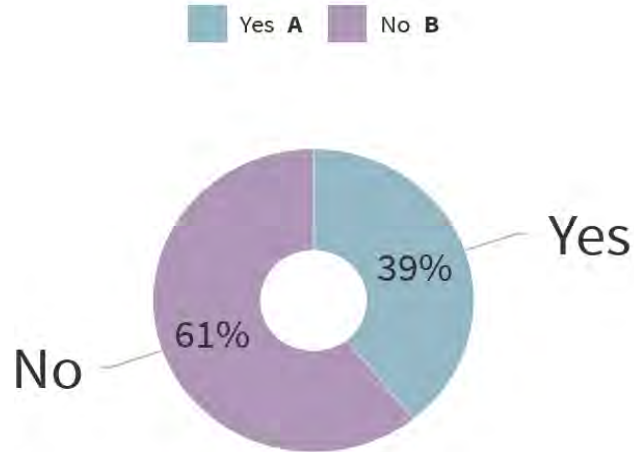


Donations

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Does the AICP Code of Ethics permit Petyr's contribution?



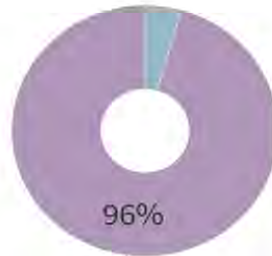


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Does the AICP Code of Ethics permit Lord Varys' contribution?

Yes A No B



No



Donations

- **Should these campaign contributions preclude Vale from bidding on any future projects with Lannister County?**
- **What if Lord Varys makes all decisions regarding bids?**

Relevant AICP Code Provisions

AICP Ethics Code—Principles

#1c: “We shall pay special attention to the **interrelatedness of decisions.**”

AICP Ethics Code—Rules of Conduct

#9: “We shall not engage in **private discussions** with decision makers in the planning process in any manner prohibited by law or by agency rules, procedures, or customs.”

#20: “We shall not **solicit prospective employment** through use of false or misleading claims, harassment, or duress.”



Wildlings R Us (WRU), which sells street furniture, is sponsoring an exhibit booth at the Beyond the Wall planning conference.

WRU also is hosting an evening reception at the conference, featuring free food and cocktails. However, WRU has only invited the White Walkers, who are all municipal planners (i.e., their potential clients) to the reception.



- Is this a potential violation of the AICP Code of Ethics? For WRU or an AICP Planner?
- What if it was open to private sector planners?

Relevant AICP Code Provisions

AICP Ethics Code—Principles

#1c: “We shall pay special attention to the **interrelatedness of decisions.**”

#2a: “We shall exercise **independent professional judgment** on behalf of our clients and employers.”

AICP Ethics Code—Rules of Conduct

#5: “We shall not, as public officials or employees, **accept from anyone other than our public employer** any compensation, commission, rebate, **or other advantage** that may be **perceived as related** to our public office or employment.”



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What if it was a training (installation and operation)?

That's OK - learning
how to use a new
product is important

71%

Still no good - changing
event name doesn't
change WRU's intent

29%

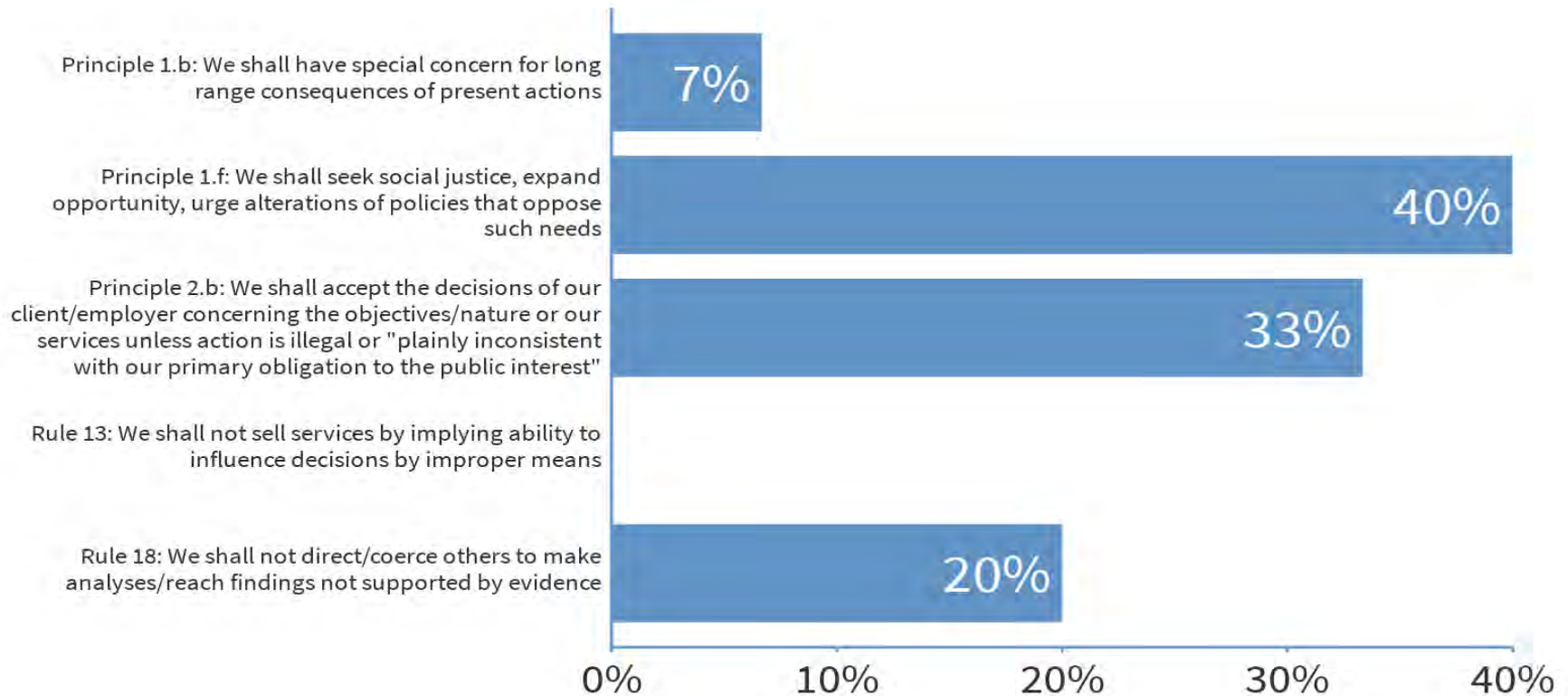


Audience Choice

Time to help lead the discussion



What Did You Choose?



“By far the greatest and most admirable form of wisdom is that needed to plan and beautify cities and human communities.”

- *Socrates*



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