

Proposal for Additions to Ethics Guidelines and General Professional Standards

The ASTC Professional Code, in its present form, contains those Ethical Principles, General Professional Standards, and Practice Area Standards and Guidelines that guide our membership's work-related activities. The Code was drafted and approved by votes of the full membership of ASTC. As the preamble states, the Code is an "evolving" document.

In line with the current Board's focus on fostering an environment among members of collaboration and mutual respect, the Board is proposing the following redlined additions to the Ethical Principles and General Professional Standards. The Board realized that, while the Professional Code included ethical and professional guidelines for how members should interact with clients, it did not provide any ethical or professional guidance for how members should interact with each other. Consequently, the Grievance Committee or Board had no identifiable role or recourse when difficulties among members were brought to its attention. It is important to note that these proposed additions are not intended to dictate exactly how members should interact and work with each other. Rather, like most of the Professional Code, they lay out a minimum threshold for treating fellow members with respect, with fairness, and in accordance with any agreements between them. It is also important to note that only the Professional GuidelinesStandards -are enforceable via the Grievance Procedures.

The suggested additions to the Professional Code are redlined in the following pages:

- 1) A new Section V added to the Ethical Guidelines, on page 3
- 2) New language that would become Section II of the Professional Guidelines, on pages 4 and 5
- 3) Some language that was in the new General Professional Standards language, that wasn't really appropriate as a Standard, has been separated out into a new section called General Professional Practice Guidelines, at page 7
- 4) The addition of some commentary on possible exceptions, so as not to make the Standard language unnecessarily restrictive, at page 8

The current Professional Code can be found [here](#).

We are now circulating this draft, effective January 21, 2021, and are soliciting your review and comment by April 2, 2021. After receiving commentary to the proposed additions, we will send out the final proposed additions to the Standards prior to the start of the conference. We will take a vote on the additions at the Annual Business Meeting at the June 2021 Annual Conference. Please submit all questions and comments by 5pm CST on April 2 to Jeff Leonard in the ASTC management office at jleonard@firminc.com.

ETHICAL PRINCIPLES

I. Competence

Trial consultants strive to maintain high standards of competence in their work. They recognize the boundaries of their particular competencies and the limitations of their expertise. When in the role of trial consultant, the member does not practice law but seeks to enhance the practice of law by facilitating the skills of the legal practitioner. Trial consultants are dedicated to providing the legal community with information on litigation related behavior and communication. They provide only those services and use only those techniques for which they are qualified by education, training, or experience. They maintain knowledge of relevant professional information related to the services they render.

II. Integrity

Trial consultants conduct themselves at all times with professional integrity, personal dignity and respect for the legal system.

III. Professional Responsibility

Trial consultants uphold professional standards of conduct and clarify their professional roles and obligations.

IV. Social Responsibility

Trial consultants comply with the law and encourage the development of law and social policy that serve the interests of their clients and the public generally. Trial consultants strengthen and improve the legal system by offering pro bono services to indigent litigants, to law schools, and law firm training programs, to court systems and legislative bodies, and to training programs within our own profession.

V. Professional Behavior

Members will treat other members with respect and integrity. Communications with each other and about each other will be conducted in a civil and professional manner.

GENERAL PROFESSIONAL STANDARDS

I. Consultant-Client Relationship

The trial consultant is generally retained directly by the attorney, but may be employed by the litigant or insurer representing the litigant.

A. *Attorney as Client:*

The trial consultant who is retained by the attorney: (1) works under the direction and supervision of the attorney; (2) cooperates with the attorney to assure all consultant-attorney communication is subject, to the extent provided under the law, to attorney/client privilege and work-product doctrine.

B. *Litigant as Client:*

The trial consultant who is retained by the litigant informs the litigant, prior to retention that the consultant's work will be treated as professionally confidential, but probably is not subject to legal protection from disclosure under any attorney/client privilege, work-product, or other doctrine.

C. *Insurer as Client:*

The trial consultant who is retained by the insurer: (1) informs the attorney that the trial consultant works under the authority of the insurer; (2) cooperates with the attorney to assure all consultant-attorney communication is subject, to the extent possible under the law, to attorney/client privilege and work-product doctrine.

II. Member-to-Member Relationships

A. *Contracts*

Members who collaborate with each other ~~will~~shall abide by the terms of their oral and written agreements(s), if any.

B. *Intellectual Property Ownership*

Members ~~will~~shall respect and not infringe or misappropriate any other member's intellectual property, trade secrets, or proprietary or confidential information.

CD. *Non-Solicitation*

Subcontractor-Members introduced to a Contractor-Member's individual client through a collaborative engagement ~~will~~shall not solicit the Contractor-Member's individual client unless allowed under an agreement and ~~will~~shall engage in good-faith efforts to respect each other's client relationships.¹

"Individual client" is limited to an individual person with whom the Contractor has an established client relationship. It is not intended to be overly broad, e.g., to a whole firm, organization, or industry. It is best practice for DNeither F. ~~Violations of Professional Code~~

~~Suspected violations of the Professional Code should be submitted to the ASTC Grievance Committee, following the process prescribed by the Grievance Procedures (available on the ASTC website here or from the Management office). As per the ASTC Grievance Procedures, violations of the Professional Code that are submitted to the ASTC Grievance Committee are to remain confidential.~~

III. Training and Provision of Services

The trial consultant fully discloses academic qualifications and consulting experience to potential clients, specifies the services provided, and identifies the objectives of each consultation.

IV. Advertising and Publicity

Trial consultants may advertise services. Such advertising avoids material misrepresentation of qualifications, experience, and research or trial outcomes. Client permission is obtained prior to the placement of any advertisement that identifies a client or case. The trial consultant does not publish a claim to a win-loss record.

V. Conflicts of Interest

Trial consultants do not provide services for a client if those services appear to be in conflict with the interest of another client, unless the trial consultant informs each client of the nature of the conflict and both clients give their consent. The trial consultant remains alert throughout the consultant-client relationship for potential conflicts with present and past clients, and with present and past clients of trial consultants employed within the same business or practice group.

VI. Integrity of the Jury Pool

Trial consultants provide all services in a manner that will protect the integrity of the jury pool.

GENERAL PROFESSIONAL STANDARDS: PRACTICE GUIDELINES

I. Member-to-Member Relationships

A. *Non-Solicitation*

It is best practice for Members to include Non-Solicitation clauses within their engagement contracts and specify the terms within.¹

B. *Personal / Professional Disputes*

Neither the ASTCNET listserv, nor any of the **ASTC** website forums are platforms for airing personal disputes or resolving contractual or other conflicts with fellow members. These forums are intended for the exchange of relevant practice-related information among members.

GENERAL PROFESSIONAL STANDARDS AND GUIDELINES: COMMENTARY

Standards

¹ Exceptions may include:

1. When a client relationship already exists between the Subcontractor-Member and the Contractor-Member's individual client.

2. As provided by law (e.g., limitations on non-compete agreements).

3. The Contractor-Member's individual client relationship ceases to exist, with little or no prospect of continuing in the future.

4. An individual client relationship is developed by the Subcontractor-Member independently and subsequent to the engagement with the Contractor-Member in the normal course and scope of business or marketing.

"Normal course and scope of business" may include, for example, a subsequent engagement secured by the Subcontractor through another person or firm where a Contractor's client is involved.

"Normal course and scope of marketing" may include, for example, a presentation to a firm or organization, a publication, a referral, attendance at a conference or other meeting, etc. that prompts the Contractor's client to initiate contact with the Subcontractor.

Guidelines

¹ It is also best practice for non-solicitation clauses to anticipate exceptions like those noted above.