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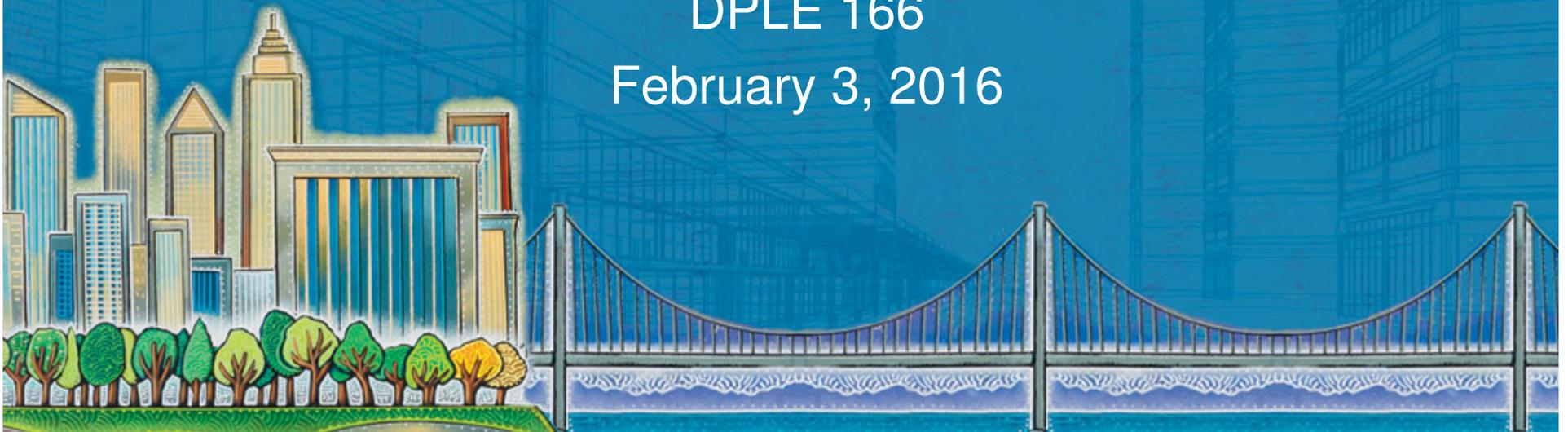
DIFFERENT WORKS

Things You Never Learned in School About Working as a Designer: From Social Media to Site Safety

RLI Design Professionals
Design Professionals Learning Event

DPLE 166

February 3, 2016

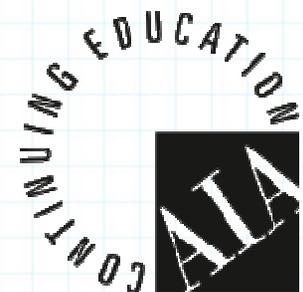




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DIFFERENT WORKS

**MARSHALL DENNEHEY
WARNER COLEMAN & GOGGIN, P.C.**

ATTORNEYS-AT-LAW PA NJ DE OH FL NY



■ Course Description

In speaking with design professionals about claims made against them, experience shows that they fall broadly into two categories:

items that are expected, regularly taught in loss prevention seminars, but still sometimes unavoidable (e.g., litigation over RFI responses)

items that are totally unexpected (e.g., a lawsuit for sexual harassment filed over Facebook comments, or a site safety emergency brought on by a simple site visit by a young project architect)

This course focuses on the latter type of unexpected claims with the goal of providing you enough real-life examples and the training necessary to avoid them outright or assist in training others.



■ Learning Objectives

Participants will:

Obtain practical advice for practicing ethically while avoiding liability in areas not addressed in your education, including social media liability and site safety emergencies.

Consider additional areas of concern that a design professional may encounter during the first years in practice.

Identify potential areas of risk for individual practitioners and for design firms.

Acquire practical advice on the mechanics of practicing ethically and avoiding liability.



■ The AIA Code of Ethics

Members of The American Institute of Architects are dedicated to the highest standards of **professionalism, integrity, and competence**. This Code of Ethics and Professional Conduct states guidelines for the conduct of Members in fulfilling those obligations. The Code is arranged in **three tiers** of statements:

Canons, Ethical Standards, and Rules of Conduct:

- **Canons** are **broad principles** of conduct.
- **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 is **grounds for disciplinary action** by the Institute. Rules of Conduct, in some instances, implement more than one Canon or Ethical Standard.



■ The NSPE Code of Ethics—Preamble

Engineering is an important and learned profession. As members of this profession, engineers are expected to exhibit the **highest standards of honesty and integrity**. Engineering has a direct and vital impact on the **quality of life** for all people. Accordingly, the services provided by engineers require **honesty, impartiality, fairness, and equity**, and must be dedicated to the **protection of the public health, safety, and welfare**. Engineers must perform under a standard of professional behavior that requires **adherence to the highest principles of ethical conduct**.



■ The ASCE Code of Ethics

Canon 1.

Engineers shall hold **paramount** the **safety, health and welfare of the public** and shall strive to comply with the principles of sustainable development in the performance of their professional duties.

Canon 3.

Engineers shall issue **public statements** only in an **objective** and **truthful** manner.



■ With Special Thanks to...



William F. Waldron, Jr., Esq.

Direct:	(973) 618-4112
Main:	(973) 618-4100
Fax:	(973) 618-0685

**MARSHALL DENNEHEY
WARNER COLEMAN & GOGGIN, P.C.**

ATTORNEYS-AT-LAW PA NJ DE OH FL NY



Site Safety



Site Safety

- What's your exposure?
- What's your responsibility?
- What does the contract say?
- What do your actions suggest?
- Who's in charge?

Case Studies

NJ—Carvalho v. Toll Brothers (1996)

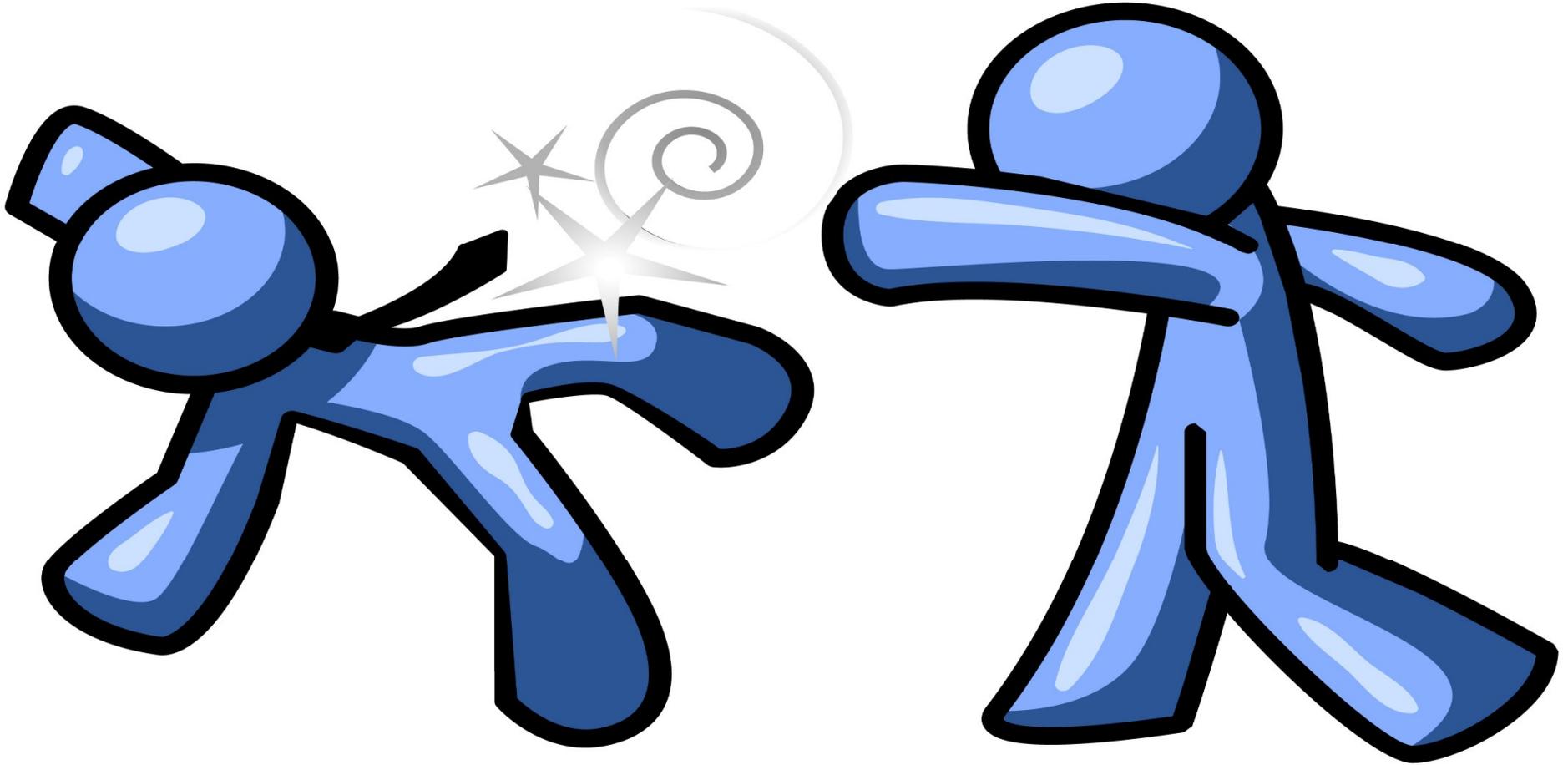
MS—Jones v. Foil Wyatt and McKewen (1997)

KS – Edwards v. Anderson Engineering, Inc. (2007)

VT—Pulitano v. Austin Design, Inc. (2008)

TX—Black + Vernoy Architects v. Lou Ann Smith (2011)

- **Choose a Client Wisely**



Are they litigious?



■ Choose a Client Wisely

**Do they
watch
reality
TV?**



■ Choose a Client Wisely

Are they sufficiently funded?

Architectural experience?

Familiar territory?

Familiar work?



■ Managing Client Expectations

Budgets

Communication, Communication, Communication
Client Expectations
Document, Document, Document
No good deed goes unpunished



Who knew...

...that your last invoice would be the subject of a negotiation?



Who knew...

...that your last invoice would be the subject of a negotiation?

Collecting Fees

- Don't invite a lawsuit
- Kiss your deductible away?
- What does your policy say about fee disputes?
- What are your obligations?

Contract Provisions

- Mediation
- Arbitration



Gray Matters



■ Gray Matters

Don't rely on design alone

Communicate-communicate-communicate

Set and exceed expectations

Use of Data/CAD/Copyright

Standard Contract Forms



Subpoenas

Do I have to drop everything?

How to comply with a subpoena and protect your interests

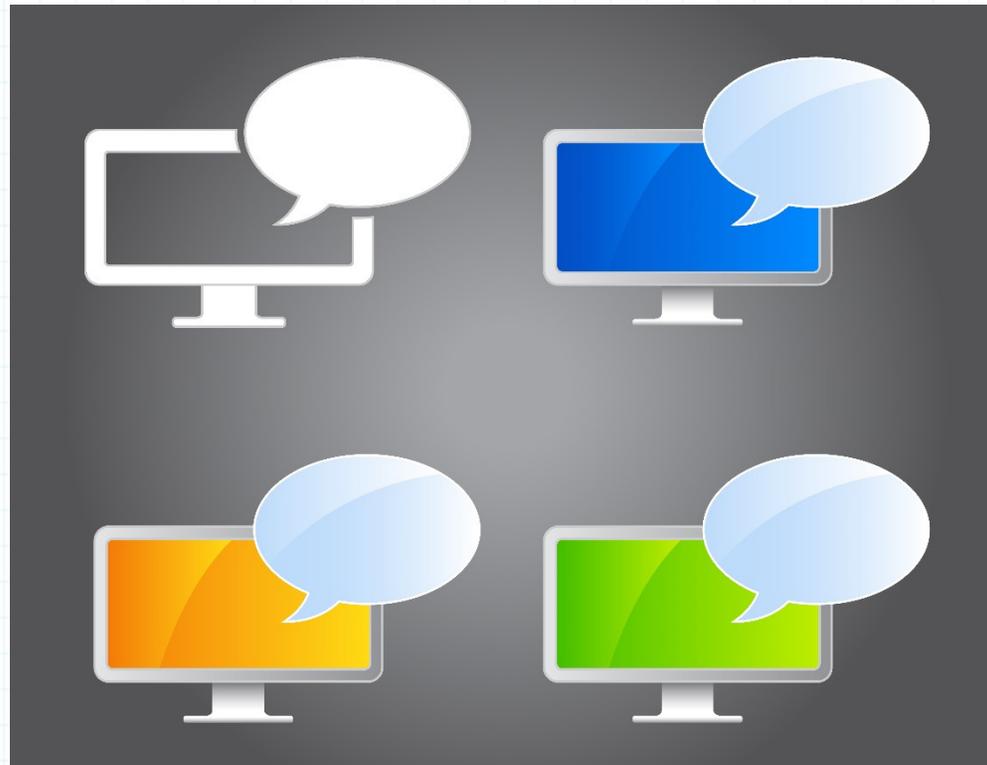


■ Social Media is Everywhere!

Linked **in**

Instagram

Pinterest



Twitter

facebook

Google+





Statistics

- More than 1.55 billion monthly active users
- 4.5 billion likes generated daily
- 1.01 billion people log in daily
- 1.39 billion mobile active users
- Like and Share buttons are viewed across almost 10 million websites daily
- 29.7% of users are 25 to 34, the most common age demographic
- Five new profiles are created every second
- **Highest traffic occurs midweek between 1 and 3pm**
- On Thursdays and Fridays, engagement is 18% higher
- There are 83 million fake profiles
- Photo uploads total 300 million per day

■ Social Media is Everywhere!

Firm Policies

Plain English

Incorporate your other policies

Require compliance with applicable laws

Define Confidential and Proprietary Info

Define that ALL work product and content (along with customers, clients, followers, walls, etc.) developed through social media are and remain company property.

Not too overbroad—can't trample the rights of others



■ Social Media is Everywhere!

Firm Procedures

Social Media Laws

Arkansas, California, Colorado, Illinois, Maryland, Michigan, Nevada, New Jersey, New Mexico, Oregon, Utah, Washington, Wisconsin

Restrict employer access to an APPLICANT or EMPLOYEE's Social Media account

No access to "personal accounts" used EXCLUSIVELY for:
Personal Communications
Unrelated to any business purposes of employer
Does NOT apply to "professional" accounts used for business purposes of employer



■ Social Media is Everywhere!

You ARE permitted to have policies governing an EMPLOYEE's electronic equipment including Internet, Social Networking, and email.

You ARE permitted to monitor usage of employees' equipment and email

You ARE able to obtain information that is available in the public domain.



■ Social Media is Everywhere!

Example: Wisconsin (April 2014)

Wisconsin **prohibits** employers from requiring or requesting prospective and current employees from disclosing user names and passwords

"Fail to Hire"

Prohibits employers from divulging whether an applicant has a social networking account.

Prohibits an employer from requiring an applicant or employee to **CHANGE** their privacy settings.



■ Social Media is Everywhere!

Risks

Lawsuits—Employers who screen Social Media may be providing rejected applicants with a basis for alleging disparate treatment.

Allegation that you only considered applicants with PUBLIC profiles.

Allegation that you only considered applicants with certain information on their pages



■ Social Media is Everywhere!

Social Media gives you access to factors you would NEVER request in an interview:

Race

Religion

Age

Sexual Orientation

Recreational Activities

Political Leanings/Speech



■ Social Media is Everywhere!

BEST PRACTICES

1. Evaluate limitation for personal use
2. Consider time limitations
3. Ensure rights are not restricted
4. Notify of monitoring and lack of privacy
5. Approval process for email addresses and handles
6. Post-employment obligations
7. Evaluate whether to define consequences and penalties
8. Written Consent
9. 3rd Party Investigation
10. Be consistent



■ The Weiner Rule

Assume that
EVERYTHING
you post online
is seen by
EVERYONE

■ NOW IT'S TIME FOR A T/F QUIZ!

- No contract is necessary on small projects
- A budget dispute will never lead to a lawsuit
- Res ipsa loquitur: your documents speak for themselves
- It is a good practice to combine your personal and professional social media accounts
- Your scope of service on a field visit during construction can be limited by contract





T/F QUIZ!

No contract is necessary on small projects

FALSE





T/F QUIZ!

A budget dispute will never lead to a lawsuit

FALSE





T/F QUIZ!

Res ipsa loquitur:
your documents speak for themselves

FALSE





T/F QUIZ!

It is a good practice to combine your personal and professional social media accounts

FALSE





T/F QUIZ!

Your scope of service on a field visit during construction can be limited by contract

TRUE





Thank you for your time!

QUESTIONS??

This concludes The American Institute of Architects
Continuing Education Systems Program

Barbara Sable, Assistant Vice President
Barbara.Sable@rlicorp.com

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