PROFESSIONAL ETHICS IN ENERGY

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AGENDA

Introduction: Professional ethics vs. business ethics and the value of both

Business ethics developments

Professional ethics issues in the energy industry
  • Landmen
  • Attorneys

Case discussions

What you should do to strengthen professional ethics in the energy industry
PROFESSIONAL ETHICS

• ABA Model Rules of Professional Conduct (for attorneys)

• American Association of Professional Landmen (AAPL) Code of Ethics (for landmen)

• American Association of Professional Landmen Standards of Practice (for landmen)
WHAT CONSTITUTES A PROFESSION

1. Standard, accepted body of knowledge
2. Formal process of certification/licensure
   - exam-based to ensure critical content is actual gained knowledge
3. Mandatory continuing education
4. Published *Code of Ethics*, whereby anyone can initiate a process by which the professional can lose license for professional misconduct
5. A formal, professional oversight body
BUSINESS ETHICS DEFINED

STANDARDS OF BUSINESS BEHAVIOR THAT INVOLVE ISSUES OF RIGHT AND WRONG

... stated another way

THE PROCESS BY WHICH BUSINESSPERSONS OPTIMALLY INTERACT WITH ONE ANOTHER
WHEN DOES A BUSINESS SITUATION HAVE AN ETHICAL ISSUE?

When:

a) Any stakeholder in the situation can be harmed or benefited by any decision option

b) Any stakeholder has a right, responsibility, duty, or obligation in the business situation

c) Any stakeholder can legitimately claim an issue of fairness and/or lack of justice

d) Any stakeholder can legitimately assert a violation of a professional standards of conduct or a corporate value
• Ethical Illusions
  • We overestimate our ability to forecast consequences of decision options

• Ethical fading
  • We remove ethics from decision-making processes

• Bounded Ethicality
  • We consider ourselves ethical persons, so we conclude that it’s not necessary to factor ethics into our decisions
  • We’re confused about what our priorities are (e.g., “please the boss” or “be a team player”)
“Dishonesty is often not an outcome of a deliberate cost-benefit analysis. Instead, we are likely to be guided away from honesty by hidden influences such as conflicts of interest, depletion, creativity, witnessing the dishonest act of others, caring about our colleagues, and revenge.”

“Dishonesty is a prototypical example of our irrational tendencies: on one hand, we want to view ourselves as honest people; on the other hand, we want to benefit from cheating. So as long as we cheat only a little, we can both benefit from our dishonest acts and still look at ourselves in the mirror.”
Paul Zak and the moral molecule (2013)
“Ethics” and “ethical” emphasized 26 times

Organizations should demonstrate their ethical culture at the first meeting with the SEC

“Misconduct is an outlier in a highly ethical culture”

Morgan Stanley case

2013 lifetime ban on portfolio manager who obstructed compliance officer

Compliance officers earning whistleblower awards where management is unwilling to remedy recommendations

New U.S. Examination Program initiative that assesses the organization’s ethical culture: results are a factor in how often organization is audited going forward
ISO 19600: COMPLIANCE MANAGEMENT SYSTEMS STANDARD

• Guidance standard (not a certifiable standard)

• Published December 15, 2014

• Primary sponsors include Australia and South Africa

• “Provides guidance for establishing, developing, implementing, evaluating, maintaining, and improving an effective and responsive compliance management system within an organization.”
PROFESSIONAL ISSUES FOR LANDMEN

• Deception (CBA Ethics Committee Formal Opinion 126—May 6, 2015)

• Pressuring a landowner or a notary

• Precluded from personal gain at expense of client/employer (i.e., taking a cut of a deal)

(John C. Heymann, Texas Bar Journal)
AAPL CODE OF ETHICS

A landman shall not betray his partner's, employer's, or client's trust by turning confidential information to personal gain.

The landman shall exercise the utmost good faith and loyalty to his employer (or client) and shall not act adversely or engage in any enterprise in conflict with the interest of his employer (or client). Further, he shall act in good faith in his dealings with industry associates.

The landman shall not represent himself to be skilled in professional areas in which he is not professionally qualified.
PROFESSIONAL ISSUES FOR LANDMEN

• Deception (CBA Ethics Committee Formal Opinion 126—May 6, 2015)

• Pressuring a landowner or a notary

• Precluded from personal gain at expense of client/employer (i.e., taking a cut of a deal)

• Offering legal advice (even if landman has a license to practice law)

(John C. Heymann, Texas Bar Journal)
Wyoming Bar Association Rule 7(c)2 ("The following are not prohibited:"")

- Acts historically performed by landmen relating to the lease, purchase, sale, or transfer of an oil, gas, mineral or mining interest or other interest incident to an oil, gas, mineral or mining interest in real property if:
  
  **A.** the acts are performed by a landman who does not hold himself or herself out as an attorney licensed to practice law in Wyoming or another jurisdiction;
  
  **B.** the acts are in conformance with regional best industry practice; and
  
  **C.** the landman is not a member of the Wyoming State Bar.
PROFESSIONAL ISSUES FOR ENERGY ATTORNEYS

• Offering business advice as opposed to solely legal advice

• Showing respect to landmen for the business role they play

• Standing one’s ground—not giving in to pressure from business clients/leaders

• Avoiding over-promising and under-delivering

• Admitting errors, and doing so quickly

(Paul G. Yale; Looper, Reed, & McGraw, P.C.)
COATS V. DISH NETWORK

• A 2013 opinion written by the Colorado Bar Association’s ethics committee determined that if lawyers give anything beyond basic advice to marijuana businesses, they are in violation of the rules of professional conduct, which could in turn lead to disciplinary action like disbarment.

• June 15, 2015

• The Colorado Supreme Court holds that under the plain language of section 24-34-402.5, 14 C.R.S. (2014), Colorado’s “lawful activities statute,” the term “lawful” refers only to those activities that are lawful under both state and federal law. Therefore, employees who engage in an activity such as medical marijuana use that is permitted by state law but unlawful under federal law are not protected by the statute. We therefore affirm the court of appeals’ opinion.

• Yes, Coats is Labor and Employment / Protected Activities but ... Does this affect the CBA Ethics Committee opinion?
Joe Paterno

- What is the limit of a professional’s responsibility?
- "My name ... I have spent my whole life trying to make that name mean something. And now it's gone."
- ABA Rule 8.3
- Maintaining the Integrity of the Profession: Reporting Professional Misconduct
“All that is necessary for evil to triumph is for good [persons] to do nothing.”

Edmund Burke