



1996 Code of Ethics for Dispute Review Board Members

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If you have ever been asked by a client to assess the adequacy of work done by another design professional, you know how difficult it is and how few resources are available to help.

In 1994 American Consulting Engineers Council of New England (ACEC/NE) recognized the need to publish guidelines not only to protect engineers from damage they saw happening, but to teach them a better way to do it. So, in 1996, after much study and collaboration with other organizations, ACEC/NE adopted the "Code of Ethics for Dispute Review Board Members".

Even though your assignment may not have the formality of a Dispute Review Board (DRB) member, the following six canons (abbreviated version) may be helpful:

Canon One—Financial Separation

The members of a DRB should perform their duties while maintaining financial separation from both parties in accordance with the following framework:

- A DRB member should refrain from any financial or business dealings that may reflect adversely on his/her impartiality or involve him/her in business transaction with persons or businesses likely to be involved in disputes presented to the DRB.
- DRB members shall be compensated for the time and expenses incurred in the performance of their duties. DRB members should, however, avoid engaging in communications concerning compensation that create an appearance of impropriety. Likewise, DRB members should terminate their involvement if compensation is used in an attempt to compromise judgment.

Canon Two—Impartiality

A DRB member should be impartial, fair, and independent in accordance with the following guidelines:

- DRB members must disclose to all parties the existence of interests or relationships that are likely to affect their impartiality or that might create an appearance that they are biased against either party. Both parties have the freedom, however, to agree on whomever they choose as a DRB member. When the contracting parties, after full disclosure of a person's interests and relationships, nevertheless desire that individual to serve as a DRB member, then that person may properly serve.

A DRB member should disqualify him/herself from serving if he/she has:

- A personal bias or prejudice concerning a party.
- Personal knowledge of disputed evidentiary facts concerning the proceedings.
- A financial or property interest that could be affected by the outcome of the proceedings.

A DRB member shall not exhibit, in the performance of his/her duties, bias or prejudice including but not limited to that based on race, sex, religion, or others protected by law.

Canon Three—Confidentiality/Communications

A DRB member is in a relationship of trust to the contracting parties and should not use confidential information acquired during DRB proceedings for personal gain, to adversely affect the interest of another, or to damage the reputational interests of the parties.

The DRB should accord all persons the right to be heard in full accordance with the established DRB agreement. At no time, however, should a DRB member participate in private interviews or communications outside of an officially sanctioned DRB hearing.

DRB members should refrain from public discussion or publication of opinion and views as they may relate to specific issues, claims, or disputes pending before a DRB.

The ethical obligations of a DRB member begin upon acceptance of an appointment and continue even after a recommendation has been given to the parties.

Canon Four—Adherence to the Contract Documents

DRB members should act within the confines of their jurisdiction and issue recommendations based upon and consistent with the requirements of the contract document.

The DRB's source of authority to hear disputes and to issue recommendations derives from an agreement between the Owner and the Contractor. The contract document typically defines the process by which the respective contracting parties may assert claims or disputes and the procedures by which those claims or disputes shall be evaluated and adjudicated. DRB members should be mindful of the limitations placed upon their jurisdiction as expressed in the agreement empowering them. This admonition has two important dimensions:

- (1) the DRB should decide only those issues actually presented to it in accordance with the requirements of the contract document; and
- (2) the DRB should not supplant or otherwise interfere with the respective rights, authorities, duties and obligations of the Owner, the Designer, and the Contractor as defined in the contract document.

Canon Five—Conduct of Hearing

DRB members should attend to the conduct of a hearing as expeditiously as possible.

The DRB should facilitate the prompt accumulation and distribution of appropriate project records and should assemble to hear a dispute as quickly as possible.

To the greatest possible degree, the DRB should decide a claim on the basis of factual data and direct observation. DRB members are free to request additional information when it is felt that a dispute presented to the Board is incomplete. DRB members should not, however, attempt to assemble documents or conduct investigations relative to a dispute independently of the contracting parties.

Canon Six—Recommendations

DRB recommendations should be expressed in writing and in a manner which respects and acknowledges the DRB jurisdiction, acknowledges the respective positions of the parties and demonstrates fair and impartial consideration of the pertinent evidence.

A DRB recommendation should be clearly stated and succinct. As a minimum the recommendation should include the following: a statement of the issue(s) presented for resolution; a brief statement of the progression of the dispute so as to demonstrate that all conditions precedent to DRB consideration of the dispute have been satisfied; a recitation of the DRB's understanding of the respective parties' positions; an identification and description of the relevant evidence or information considered by the DRB; an evaluation of that evidence or information in the context of the specific dispute presented; and a clear and logical discussion of the DRB's reasoning supporting its recommendation.

In making a recommendation, the DRB should only consider information presented by the parties in the common reference documents, the parties' respective position papers, and/or observations or other information jointly obtained by and shared with all DRB members.

Requests for reconsideration of a recommendation should be sparingly entertained and granted only in those circumstances in which the petitioning party demonstrates that the existing recommendation disregarded relevant evidence; is inconsistent with the contract document; is based upon fraud or other misconduct of a party; and/or exceeds the jurisdiction of the DRB.