

# SOIL, TOIL & TROUBLE: ENGINEERING AND THE LAW

## Engineers vs. Lawyers

## The legal perspective

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| <b>1 Understand what you can be sued for</b>                        | <b>How engineers think:</b><br>"I won't be sued if I do what I was hired to do."<br><b>How lawyers think:</b><br>"Be prepared to be sued on every project."   | Engineers generally face two grounds of liability: contract liability and professional negligence. You can be sued if you breach the terms of a contract or if your conduct falls below the expected standard of care. |
| <b>2 Always have a retainer agreement</b>                           | <b>How engineers think:</b><br>"I can trust these clients, I have worked for them before."<br><b>How lawyers think:</b><br>"An oral contract isn't worth the paper it's written on."                                | Retainer agreements establish your responsibilities in writing and can prevent misunderstandings that lead to lawsuits.  |
| <b>3 Limit your liability in your retainer agreement (see back)</b> | <b>How engineers think:</b><br>"It goes without saying that my opinion is subject to limits."<br><b>How lawyers think:</b><br>"The limits of your opinion must be clearly delineated."                              | Limitation of liability clauses and disclaimers help ensure that you are not held accountable for an opinion that you did not intend to give.  |
| <b>4 Always have insurance</b>                                      | <b>How engineers think:</b><br>"I have insurance coverage through my employer."<br><b>How lawyers think:</b><br>"We all know what happens when you assume..."   | Make sure your personal liability insurance coverage is up to date and applicable to each project you work on.   |
| <b>5 Have an up-to-date resume</b>                                  | <b>How engineers think:</b><br>"I know what my qualifications are."<br><b>How lawyers think:</b><br>"Keep track of every significant professional experience that you have."  | An up-to-date resume can speak to your competence and knowledge if you are sued for professional negligence or retained as an expert.  |
| <b>6 Avoid bias</b>   | <b>How engineers think:</b><br>"I'm not biased."<br><b>How lawyers think:</b><br>"Appearance matters."  | Your opinions and methodology must be honest, credible and impartial — whether preparing expert reports or appearing in court.   |
| <b>7 Keep thorough records</b>                                      | <b>How engineers think:</b><br>"Engineers are like elephants, they never forget."<br><b>How lawyers think:</b><br>"It's best to have notes that you can refer to in the event that your memory fails you."          | Notes and records that you keep during a project can be used to support your memories, defend your methodology and counter allegations against you.  |
| <b>8 Write expert reports yourself</b>                              | <b>How engineers think:</b><br>"I can delegate the task of writing/ editing."<br><b>How lawyers think:</b><br>"You must be comfortable standing by every word in your report."                                      | Every line of an expert report will be carefully scrutinized, so make sure that you write and edit reports yourself.   |
| <b>9 Maintain confidentiality</b>                                   | <b>How engineers think:</b><br>"I can have my report reviewed and edited before it is used in court."<br><b>How lawyers think:</b><br>"Run all ideas regarding reviewing and editing an expert report by a lawyer." | To avoid being sued for breach of confidentiality, always consult a lawyer before disclosing the contents of, or asking anyone to review or edit, a report that you have written.                                      |
| <b>10 Check your instruments</b>                                    | <b>How engineers think:</b><br>"I always check my instruments."<br><b>How lawyers think:</b><br>"Double check your instruments before you conduct the tests necessary to put together your report."                 | Always check your instruments in a manner consistent with manufacturer guidelines. This will help support your credibility as an expert.   |



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