



Brett Coleman
President/COO

www.profunderwriters.com
puimich@profunderwriters.com

248.553.8300
(fax) 248.553.8305

ProNetwork News

Risk Management Tools for the Design Professional

info@aepronet.org | www.aepronet.org

October 2018 | Vol. IX No. 5



Gary M. Prather, P.E., MS, MBA
President, Architects/Engineers
Dispute Resolution Group

Mr. Prather is founder and president of Architects and Engineers Dispute Resolution Group (A/E DR Group). Gary is a licensed design professional with extensive design-construction experience including design quality, risk management, loss prevention, construction management, general contracting, design-build, claims and management consulting. Mr. Prather works with design firms, attorneys and insurance companies to improve design management practices, increase operational performance, execute project turn-arounds and resolve complex construction disputes involving professional liability exposures. He is a recognized authority on contractual risk transfer and professional liability issues confronting design professionals and has served on the American Council of Engineering Companies (ACEC) national risk management and practice management committees. Mr. Prather writes and speaks on emerging industry trends and has worked with three leading insurers on improving the risk management practices of design professionals.

MBA
BS, Civil Engineering
MS, Civil Engineering
Licensed Professional Engineer.

Phone: (816) 510-8281
gary@ae-dr.com



a/e ProNet
Dave Johnston, Executive Director
info@aepronet.org

YOUR QUALITY PROGRAM - ASSET OR LIABILITY?

by Gary M. Prather, P.E., MS, MBA

Over time, almost all design firms develop documented programs in a sincere effort to improve design quality. Some programs are voluminous in their content. Others are simple checklists intended to guide the firm's efforts toward quality. The effectiveness of quality programs, however, does not succeed or fail based on page count or never-ending check lists but on day-to-day implementation. This is never more pronounced than when faced with a professional liability claim. Once a claim is filed, you can expect that opposing legal counsel will demand the production of your quality program. Then, and possibly only then, will you discover that your quality program may be more of a liability than an asset.

Lack of implementation arises out of numerous factors, some inherent in quality document deficiencies and others rooted in management's failure to manage. Below are some of the most common pitfalls in each of these categories.

QUALITY DOCUMENT DEFICIENCIES

The Quality Program Does Not Reflect Day-to-Day Practices – Quality programs are often developed in a vacuum that does not fit the firm's day-to-day practices into the firm's design process. In order to be most effective, quality programs must be drafted to realistically track with the firm's approach to design.

The Quality Program Does Not Assign Specific Accountabilities – Defining accountabilities for quality in terms like "the firm is committed to quality" or "the project team is responsible for implementing the quality program" is a recipe for failure. When everyone is accountable no one is accountable. Define specific accountabilities i.e. "the project manager is responsible" or "the executive vice president shall review quality records".

The Quality Program Does Not Provide for Documentation – Without quality documentation, there is no way to know if the quality program is being implemented – a plaintiff attorney's dream.

The Quality Program Is Treated as Overhead – It is more difficult to assure that quality activities are performed when they are not accounted for at the project level. Carrying quality activities as a general overhead expense makes it easier for the quality program to be discounted as something "that is not needed on my project". On the other hand, including line-item quality activities in both the project budget and the project schedule assures their execution.

This information is provided as a service of a/e ProNet, an international association of independent insurance brokers dedicated to serving the design profession since 1988. We are dedicated to representing the best interests of our design clients as a trusted and impartial source of information on professional liability insurance, risk management, loss prevention and continuing education. Please visit our website www.aepronet.org for additional information.

BROKER'S NOTES

Visit the a/e ProNet website today for more excellent resources:

PRONETWORK NEWS

Document Retention and Disposition: A Key Element of a Design Professional Quality Control Manual. Excerpted from "Guidelines for Developing Your Firm's Quality Control Manual" by Jacqueline Pons-Bunney and Peter Stacy of Weil & Drage, APC of CA, NV and AZ. [\(LINK\)](#)

BLOG

Document Retention: Rules Of Thumb For Design Professionals.
In this age of terabyte-sized digital memory banks and the seemingly infinite storage possibilities of "the cloud," understanding how long a design professional should retain project documents can be tricky. [\(LINK\)](#)

PRONET PRACTICE NOTES

The Keys to Keeping a Project on Track. In 1985, after five years prosecuting criminals as an assistant US attorney, I became deputy general counsel of The American Institute of Architects. On my very first day, I was introduced to civil law. In his gravelly voice, the general counsel explained to me that the key to success in my new position was to "think liability". [\(LINK\)](#)



a/e ProNet
Dave Johnston, Executive Director

info@aepronet.org
www.aepronet.org

The Quality Program Does Not Set Forth Specific Acceptance Standards – Quality programs that only generally address quality requirements are of little value. A quality provision requiring the project manager to "review the design for coordination problems" is far less effective than stipulating that "the project manager will schedule a coordination meeting with all consultants where construction drawings will be reviewed/coordinated."

MANAGEMENT'S FAILURE TO MANAGE

Management Does Not Lead the Quality Effort – Management must make quality a central theme in the firm's mission statement and vision of the future. Quality must be an agenda item for all project meetings and a talking point at every staff meeting.

Management Stresses Budget/Schedule Over Quality – There is nothing more detrimental to a firm's success than making budget and schedule more important than quality. When management uses the bid addenda process to justify the release of incomplete designs for bid, or endorses forgoing final quality reviews to save time/money, a strong message is sent to staff that quality is not important after all. Staff take their cues from management. If firm leadership views schedules and budgets as more important than quality, expect staff to follow their lead.

Management Fails to Provide Quality Oversight – Firm principals should conduct monthly design review meetings with all project managers, and design quality must be a standing agenda item for these meetings. Project managers should be required to present the quality records required by a firm's quality program.

Management Does Not Audit - Trust but verify. Management should conduct annual audits of the firm's quality program to assure that all elements are being effectively and consistently implemented. Deficiencies in implementation should be documented with corrective action plans, follow up and closeout to assure that problems are effectively addressed.

Use this checklist to measure the quality of your quality program:

Organization

The quality program must have the endorsement and support of senior management including the:

- ✓ Freedom to identify quality problems
- ✓ Freedom to recommend and initiate solutions to quality problems
- ✓ Freedom to verify implementation of quality requirements
- ✓ Sufficient independence from the pressures of production

Quality Program

The quality program must provide for policies, procedures that assign specific responsibilities

Client/Consultant Selection

The quality program must address the client selection process:

- ✓ Client type
 - Public
 - Private
 - Developer
 - LLC
- ✓ Leadership/culture
- ✓ Design-construction experience
- ✓ Financials
- ✓ Litigation history

GUEST ESSAYS

Indemnification: Limit it to Damages Resulting from "Tort" Claims

A recent court decision requiring an engineer to indemnify and defend its client, a project owner, against a routine contractor claim is a wakeup call to further clamp down on indemnification language so that only those damages resulting from tort claims against the indemnitee based on the negligence of the design professional will be indemnified, and that there will be no duty whatsoever to defend such claims.

[\(LINK\)](#)

- ✓ Decision making
- ✓ Project management skills
- ✓ Key People

□ **Project Selection**

The quality program must address the project risks:

- ✓ Project type (partial list)
 - Renovation vs. new
 - Commercial/office
 - Water/wastewater
 - Educational
 - Medical
 - Mixed use
 - Condominiums/condominium owners' associations
 - Residential/homeowners' associations
 - Apartments/multifamily
 - Other
- ✓ Renovation vs. new
- ✓ Firm /project management experience
- ✓ Project delivery
 - Design-bid-build
 - Design-build
 - Construction management agency
 - Construction management at risk
 - Fast-track negotiated price
 - Fast-track with guaranteed maximum price
 - Other
- ✓ Client consultants
- ✓ Project location
- ✓ Site risks (Partial list)
 - Geotechnical
 - Environmental
 - Topography
 - Existing/demolition vs. greenfield
 - Existing utilities
 - Other
- ✓ Project budget/schedule
- ✓ Contract form

□ **Design Control**

The quality program must include provisions to assure:

- ✓ Codes and standards are met
- ✓ Quality standards are defined in the construction documents
- ✓ A system is developed for controlling deviations and changes to the design documents
- ✓ Objective acceptance criteria for inspections and tests are an integral part of the design documents
- ✓ A system for checking design adequacy is implemented **by independent personnel**
- ✓ A system exists for controlling, interfacing and coordinating the organizations contributing to the design process

□ **Contract Document Control**

The quality program must:

- ✓ Provide for clearly-defined scopes of service with stated exclusions
- ✓ Address insurability including the professional standard of care
- ✓ Provide for the review of contractual risk transfer



a/e ProNet
Dave Johnston, Executive Director

info@aepronet.org
www.aepronet.org

- ✓ Evaluate the need for a limitation of liability provision
- ✓ Address flow-down provisions
- ✓ Ensure that appropriate codes and standards are addressed
- ✓ Provide for the generation of quality records
- ✓ Address the review/approval of contracts and contract changes
- ✓ Allow for the right to audit performance
- ✓ Other

□ **Procedures**

The quality program must include procedures that affect quality (partial list):

- ✓ Design calculations
- ✓ Code compliance
- ✓ Design schedule & budget
- ✓ Information management
- ✓ Design document coordination
- ✓ Design meetings
- ✓ Requests for information
- ✓ Submittals & shop drawings
- ✓ Change orders
- ✓ Pay requests
- ✓ Site visits/observation reports
- ✓ Pre-installation meetings
- ✓ Other

□ **Document Control**

The quality program must address the control of documents affecting quality including:

- ✓ The review and approval of documents
- ✓ The replacement of superseded documents
- ✓ Document changes reviewed/approved by the originating entity
- ✓ The listing/maintenance of the quality documents

□ **Test Control**

The quality program must address quality-related testing requirements

□ **Control of Measuring & Test Equipment**

The quality program must require that measuring/test equipment be covered by a calibration program:

□ **Corrective Action**

The quality program must provide for the:

- ✓ Identification of conditions which adversely affect quality
- ✓ Identification of the causes for the adverse conditions
- ✓ The action to be taken to eliminate the causes of the adverse conditions

□ **Quality Records**

The quality program must provide for consistent documentation and retention of quality records to satisfy owners and regulatory agencies

□ **Audits**

The quality program must provide for the audits to assure that quality is **being properly implemented**

Study after study of professional liability claims performed by A/E DR Group shows that the vast majority of design problems arise out of a broad range of quality issues. **There is not a short list of specific quality issues that drive claims.** A/E DR Group believes that improving overall quality goes beyond the development of impressive



a/e ProNet
Dave Johnston, Executive Director

info@aepronet.org
www.aepronet.org

three-ring binders full of procedures and page after page of checklists. A commitment to quality is every bit as important as client invoicing and making payroll. As Messrs. Bossidy and Charan similarly found, **execution is key:**

Strategies most often fail because they aren't executed well. Things that are supposed to happen don't happen. Either the organizations aren't capable of making them happen, or the leaders of the business misjudge the challenges their companies face in the business environment or both."

Execution

Larry Bossidy and Ram Charan

Copyright 2002

Crown Business, New York, New York



a/e ProNet
Dave Johnston, Executive Director

info@aepronet.org
www.aepronet.org

a/e ProNet is an international organization of insurance agents who specialize in Design Professionals. Membership is by invitation only. We are pleased to provide you with this newsletter. Professional Underwriters, Inc. is a member of a/e ProNet.