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September 13, 2009

APA Ethics Office
750 First Street, NE
Washington, DC 20002-4242

Attn: Standards 1.02 and 1.03

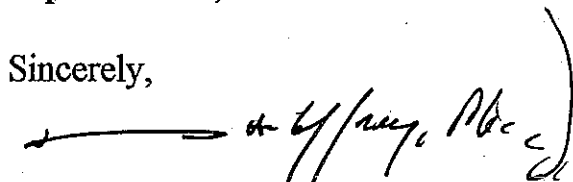
Dear Sir and/or Madam:

You are doubtless receiving truckloads of advice on APA Council's mandate that the captioned standards be re-worded.

In the face of this plethora of input from the field, may I suggest an at least temporary FALL-BACK position you can assume should no actual RE-wording be imminently agreed upon?

Agree, temporarily, simply to drop the second sentence of 1.02. Such a deletion will immediately remove the "Nuremberg" nature of this section of the code. And it will allow ample time for future re-wording, or other improvements, on same.

Sincerely,



Thomas A. Caffrey, Ph.D.
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SEP 17 2009

COLI Response to Call for Language Amending Ethical Standards 1.02 and 1.03

Approved by the Ad Hoc Committee on Legal Issues on 9/24/2009

The *Ethical Principles of Psychologists and Code of Conduct* (2002) addresses conflicts between ethics and law in two separate sections: the Introduction and Applicability (I&A) Section of the *Ethical Principles of Psychologists and Code of Conduct* (2002) and the Ethical Standards.

Discussion

Within the I&A Section, there are three sentences that address conflicts between ethics and the law (see Table 1). We refer to these as the **affirmative clause** (i.e., it affirms the primacy of "the higher ethical standard"), the **resolution clause** (i.e., it instructs psychologists to take steps to resolve conflicts between law and ethics), and the **permissive clause** (i.e., it permits psychologists to follow the law when attempts at resolution fail).

Conflicts between ethics and the law are referenced in two of the Ethical Standards. Standard 1.02 contains a **resolution clause** and a **permissive clause**, and Standard 1.03 contains a **resolution clause** (see Table 1).

Table 1
Comparison of Existing Language Related to Resolution of Conflicts Between Law & Ethics
In the APA Ethics Code

	Affirmative Clause	Resolution Clause	Permissive Clause
I&A	If this Ethics Code establishes a higher standard of conduct than is required by law, psychologists must meet the higher ethical standard.	If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to this Ethics Code and take steps to resolve the conflict in a responsible manner.	If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing authority in keeping with basic principles of human rights.
1.02	No comparable clause exists in Standard 1.02.	If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to the Ethics Code and take steps to resolve the conflict.	If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing legal authority.
1.03	No comparable clause exists in Standard 1.03.	If the demands of an organization with which psychologists are affiliated or for whom they are working conflict with this Ethics Code, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and to the extent feasible, resolve the conflict in a way that permits adherence to the Ethics Code.	No comparable clause exists in Standard 1.03.

In the "Call for Language Amending Ethical Standards 1.02 and 1.03," the I&A Section is referred to as "aspirational," whereas the Ethical Standards are referred to as "enforceable sections." COLI agrees that

the Ethical Standards represent obligations on the part of psychologists and form the basis for imposing sanctions; however, we disagree with the characterization of the I&A Section as "aspirational." As noted in the *Call for Language*, "The discrepancy in language between the aspirational and enforceable sections of the Ethics Code has been the subject of extensive focus by APA governance." Consequently, we think it important to address this point.

The first paragraph of the I&A Section states, "The Preamble and General Principles are aspirational goals to guide psychologists toward the highest ideals of psychology. Although the Preamble and General Principles are not themselves enforceable rules, they should be considered by psychologists in arriving at an ethical course of action. The Ethical Standards set forth enforceable rules for conduct as psychologists." However, the I&A Section is not a part of either the Preamble or the General Principles. In our view, referring to the I&A Section as "aspirational" is erroneous and confuses it with the two sections that follow it.

Notwithstanding this difference of opinion, we concur that the I&A Section's statements concerning conflicts between ethics and the law, taken as a whole, do not square with the language used in the Ethical Standards. We also agree that bringing the language of these two sections into symmetry is valuable, but principally because the I&A Section is *not* aspirational and, therefore, should not differ in any substantive way with any portion of the Ethics Code.

We believe the chief imbalance of language between the I&A Section and the Ethical Standards results from (1) material differences in the three *resolution clauses*, and (2) a logical contradiction between the *I&A affirmative clause* and the two *permissive clauses*.

Material Differences in the Resolution Clauses

The *I&A resolution clause* states, "If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to this Ethics Code and take steps to resolve the conflict in a responsible manner (underscoring added for emphasis). In contrast, the resolution clause contained in Ethical Standard 1.02 reads almost identically except for the underscored language. (N.B. The 1992 version of Standard 1.02 included this precise clarifying language but was removed in the 2002 revision.) We believe the clarifying language is material inasmuch as it instructs psychologists that the nature of the resolution is at least as important as reaching resolution. The *affirmative clause* in the I&A Section, in combination with the Preamble and General Principles, help to guide psychologists to a "responsible" resolution. Ethical Standard 1.03 contains similar clarifying language by instructing that the resolution occur "in a way that permits adherence to the Ethics Code." Thus, the imbalance results from the absence of any similar clarifying language in the *ES 1.02 resolution clause*.

Logical Contradiction Between I&A Affirmative Clause and Permissive Clauses

The *I&A affirmative clause* states, "If this Ethics Code establishes a higher standard of conduct than is required by law, psychologists must meet the higher ethical standard." *Ipso facto*, the Ethical Standards trump the law whenever the former constitute a "higher standard of conduct." However, this assertion is contradicted by the sentence that follows: namely, that in such a conflict, when efforts to resolve it responsibly have failed, the psychologist "may adhere to the requirements of the law." Logically, it matters not whether that adherence is "in keeping with basic principles of human rights" (c.f., *I&A permissive clause*) or not if, as premised, the law and the higher ethical standard are opposed, since we are instructed in such circumstances *not* to follow the law but rather the "higher standard of conduct." Thus, the imbalance between the I&A Section and *ES 1.02 permissive clause* is not produced, in our opinion, by Standard 1.02 simply omitting the eight additional words found in the *I&A permissive clause*, but rather by **both** permissive clauses standing in logical contradiction to the *I&A affirmative clause*.

COLI has previously cautioned against the insertion into the enforceable Standards of any language that references "basic human rights" or "basic principles of human rights" as a criterion for ethical behavior, and we affirm that position here. However, we also are concerned that the *permissive clause* in the I&A Section provides a potential safe harbor for psychologists whose actions adhere to the law but violate higher ethical standards. Indeed, in circumstances where higher order ethical standards are involved (e.g., confidentiality, publication credit, accuracy in teaching), actions that are "in keeping with basic principles of human rights" may very well be too low of a bar.

Recommendations

COLI recommends the following (see Table 2):

1. Delete from Standard 1.02 the sentence that reads, "If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing legal authority." This will have the benefit of removing any doubt about the primacy of the Ethics Code in circumstances where the ethical standards and the law are in opposition.
2. Add to the first sentence of Ethical Standard 1.02 the words, "in an appropriate manner consistent with a reasonable psychologist," and add to the *I&A resolution clause* the words, "consistent with a reasonable psychologist." This will bring the language of the I&A Section and the Ethical Standards into symmetry, while also providing an appropriate legal standard against which a psychologist's ethical conduct will be judged in any adjudicative forum.

Note: The "reasonable person" is a "hypothetical person used as a legal standard, especially to determine whether someone acted with negligence" (*Black's Law Dictionary*, Ninth Edition). This standard plays a prominent role in tort and administrative law and, therefore, is suitable for judging whether or not a psychologist in a particular circumstance has resolved a conflict *in an appropriate or responsible manner*. *Black's Law Dictionary* goes on to define a "reasonable person" as one "whose notions and standards of behaviour and responsibility correspond with those generally obtained among ordinary people in our society at the present time, who seldom allows his [or her] emotions to overbear his [or her] reason and whose habits are moderate and whose disposition is equable. He [or she] is not necessarily the same as the average [person]—a term which implies an amalgamation of counterbalancing extremes."

3. Consider deleting the *permissive clause* in the I&A Section. This would ensure that the *affirmative clause* in the I&A Section is undiminished in its assertion of the "higher ethical standard" as the proper objective when resolving conflicts between the law and ethics. As noted in the discussion above, setting the ethical bar at "basic principles of human rights" may be too low of a standard to adequately protect higher order ethical interests.

Table 2
Recommended Changes to Language Related to Resolution of Conflicts Between Law & Ethics
In the APA Ethics Code

	Affirmative Clause	Resolution Clause	Permissive Clause
I&A	No change proposed.	Add the italicized text: If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to this Ethics Code and take steps to resolve the conflict in a responsible manner <i>consistent with a reasonable psychologist</i> .	Consider deleting this clause: If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing authority in keeping with basic principles of human rights.
1.02	n/a	Add the italicized text: If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to the Ethics Code and take steps to resolve the conflict <i>in an appropriate manner consistent with a reasonable psychologist</i> .	Delete this clause: If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing legal authority.
1.03	n/a	No change proposed.	n/a

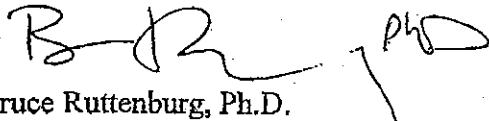
September 29, 2009

APA Ethics Office
Fax: 202-336-5997

To Whom It May Concern:

Psychologists should not violate others' human rights, and should have a duty to report human rights violations that they observe. I am in agreement with the proposals offered by Steven Reisner on behalf of the Coalition for an Ethical Psychology, and urge the Committee to institute those recommendations (that include rescinding the "Nuremberg Defense" in our Ethics Code 1.02 and 1.03).

Sincerely,

A handwritten signature in dark ink, appearing to read 'B. Ruttenburg', followed by a vertical line and the letters 'PhD'.

Bruce Ruttenburg, Ph.D.

SEP 30 2009

Comments from the Sponsors of the new APA Council Resolution**Regarding Ethics Committee Recommendations for Standards 1.02 and 1.03**

Judith Van Hoorn (Div. 48)

Laurie Wagner (Div. 39)

Corann Okorodudu (Div. 48)

Allen Omoto (Div. 9)

Bill Strickland (Div. 19)

Martha Banks (Div. 45)

Beth Wiggins (Div. 41)

Jennifer Kelly (Georgia)

We are Council and former Council members from six divisions/associations that represent a diverse range of constituencies. We are writing as the Sponsors of the new APA Council Resolution calling for changes to Ethical Standards 1.02 and 1.03 which is the impetus for the Ethics Committee's Call for Comments. This resolution specifies three directives: (1) that the discrepancy between the language of the Introduction and Applicability Section of the Ethical Principles of Psychologists and Code of Conduct and Ethical Standards 1.02 and 1.03 be resolved; (2) that the language proposed clearly communicate that Ethical Standards 1.02 and 1.03 can never be interpreted to justify or as a defense for violating basic human rights; and (3) that a formal recommendation by the Ethics Committee for changes to the Ethics Code regarding 1.02 and 1.03 be made in time for Council's action at its February 2010 meeting.

We thank the Ethics Committee for its commitment to making this clarification and revision process transparent, including issuing this call for comments and the posting of relevant materials on the Ethics Office website. Below we provide specific recommendations for changes to Ethical Standards 1.02 and 1.03 and to the Introduction and Applicability section. Additionally, we suggest that the Ethics Committee consider incorporating clarifying language on the definition of "conflict" in the Ethical Principles and Code of Conduct.

We look forward to the Ethics Committee's report of its October meeting, to the Committee's distillation of the recommendations and comments it receives in response to this call for comments and the planned follow-up call, and to continued discussion between the Ethics Committee and the Sponsors of the Resolution.

Considerations in Recommending Changes to Ethical Standards 1.02 and 1.03

We believe there are a number of possible ways to accomplish the changes to the Ethics Code that fulfill the directives of the Resolution. We are encouraged by many of the suggestions posted. In particular, we are in full agreement with suggestions to delete the second sentence of Standard 1.02, which was added in 2002. That sentence reads: "If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing legal authority." We believe this deletion is essential in order to ensure that Standard 1.02 can never be used to justify or defend violations of human rights. Furthermore, we do not believe that adding wording, such as

“in keeping with principles of basic human rights” at the end of this particular sentence is sufficient to ensure that 1.02 cannot be used to justify or defend human rights violations.

We believe that a Standard addressing conflicts between ethics and laws, regulations and other governing legal authority must find a position between the two extremes of giving outright permission to break the Ethics Code by following the law and requiring breaking the law by following the Ethics Code. A conflict addressed by this Standard occurs when psychologists cannot follow both the Ethical Code and the law, regulation or governing legal authority. Resolving such a conflict requires a deliberative process in which psychologists examine and weigh their ethical and legal obligations and commitment to uphold basic principles of human rights. We think this point bears emphasizing in a Standard involving conflicts between ethics and laws (i.e., 1.02). The same principle and thinking applies to Standard 1.03 regarding conflicts between ethics and organizational demands.

We offer the following:

- I. Suggestions for rewording current Standards 1.02 and 1.03;
- II. An alternative approach to fulfill Council’s directive to ensure that Standards 1.02 and 1.03 can never be used to justify or defend violating human rights by adding a new Standard to the Ethics Code; and
- III. Additional action required to fulfill Council’s directive to resolve the discrepancy between the aspirational and enforceable portions of the Ethics Code so that the Introduction and Applicability section is mutually consistent with revised or new Standards.

I. Suggestions for rewording Standards 1.02 and 1.03

A. One suggestion for changing the wording of Standards 1.02 and 1.03:

--1.02 Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority

If psychologists’ ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and take reasonable steps to resolve the conflict consistent with the Ethics Code and its General Principles. Under no circumstances may this Standard be used to justify or defend violating human rights.

--1.03 Conflicts Between Ethics and Organizational Demands

If the demands of an organization with which psychologists are affiliated or for whom they are working are in conflict with this Ethics Code, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and take reasonable steps to resolve the conflict consistent

with the Ethics Code and its General Principles. Under no circumstances may this Standard be used to justify or defend violating human rights.

B. Another suggestion for changing the wording of Standards 1.02 and 1.03:

--1.02 Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority

If psychologists' responsibilities under the Ethics Code conflict with law, regulations, or other governing legal authority, psychologists engage in a thoughtful process of resolving the dilemma. This process generally includes clarifying the nature of the conflict, consulting with knowledgeable colleagues, making known the psychologist's ethical and legal obligations, examining the psychologist's commitment to uphold basic principles of human rights, and working to resolve the conflict in accordance with the Ethics Code. Under no circumstances may this Standard be used to justify or defend violating human rights.

--1.03 Conflicts Between Ethics and Organizational Demands

If the demands of an organization with which psychologists are affiliated or for whom they are working are in conflict with this Ethics Code, psychologists engage in a thoughtful process of resolving the dilemma. This process generally includes clarifying the nature of the conflict, consulting with knowledgeable colleagues, making known the psychologist's ethical and legal obligations, examining the psychologist's commitment to uphold basic principles of human rights, and working to resolve the conflict in accordance with the Ethics Code. Under no circumstances may this Standard be used to justify or defend violating human rights.

II. An alternative approach to fulfill Council's directive to ensure that Standards 1.02 and 1.03 can never be used to justify or defend violating human rights by adding a new Standard to the Ethics Code

As an alternative to having both Standards 1.02 and 1.03 end with "Under no circumstances may this Standard be used to justify or defend violating human rights" we suggest creating a new Standard to address this issue.

The new Standard could be placed at the end of the "Resolving Ethics Issues" section of the Ethics Code. It could read:

"1.09 Proper Use of the Ethics Code

Under no circumstances may any Standard of the Ethical Code, including Standards 1.02 and 1.03, be used to justify or defend violating human rights."

III. Additional action required to fulfill Council's directive to resolve the discrepancy between the aspirational and enforceable portions of the Ethics Code so that the Introduction and Applicability section is consistent with revised or new Standards

In light of the Council directive for consistency across the Introduction and Applicability section and (revised) Standards 1.02 and 1.03, it also becomes clear that current wording in the Introduction and Applicability section will need to be changed. Specifically, the following language will need to be modified. One suggestion would be to delete the bracketed material from current language while retaining "and in keeping with basic principles of human rights" at the end of the phrase "in a responsible manner." "If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to this Ethics Code and take steps to resolve the conflict in a responsible manner. [If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing authority] in keeping with basic principles of human rights."

Thus, the suggested rewording for the Introduction and Applicability Section is: "If psychologists' ethical responsibilities conflict with law, regulations or other governing authority, psychologists make known their commitment to this Ethics Code and take steps to resolve the conflict in a responsible manner in keeping with basic principles of human rights." We would also concur with rewording this section of the Introduction and Applicability by adding wording taken from the two suggested changes to Standards 1.02 and 1.03 that we offered above.

Beyond these suggestions, we encourage the Ethics Committee to review the way that other professional organizations address conflicts between ethics and law, with special focus on the processes outlined for resolving these conflicts. In particular, we suggest examining the Ethics Codes of the Canadian Psychological Association, American Medical Association, and American Psychoanalytic Association, all of which have wording that could be useful to consider including in our own Ethical Code.

Additionally, we suggest that the Ethics Committee consider clarifying the definition of "conflict" in the Introduction or elsewhere in the Ethics Code. It appears to us that the meaning of conflict has been a source of confusion for many, as seen in some of the responses to the Committee's Call for Comments last spring. For example, some comments suggested that the current wording for Standard 1.02 was needed to cover instances such as obeying a court order to release records even though this appears to be addressed by Standard 4.05. We particularly like the explanation of the meaning of "conflict" provided by the Ethics Committee in its June 2009 report.

As a group we remain committed to our long-standing work on this issue and look forward to continuing that work in cooperation with the Ethics Committee, the Council of Representatives, and all interested APA members.



MEMORANDUM

TO: APA Ethics Office

FROM: Mary G. Hardiman, Director of Board Operations
Governance Operations, Practice Directorate

RE: Call for Language Amending Ethical Standards 1.02 and 1.03

DATE: Thursday, October 01, 2009

In response to the Ethics Committee request for specific language and accompanying rationale for revising Standards 1.02 and 1.03 of the Ethical Principles of Psychologists and Code of Conduct (2002) by October 1st, 2009, we offer the following response from the Board of Professional Affairs, as follows:

The Board of Professional Affairs (BPA) would like to respond to the APA Ethics Committee's Call for Language Amending Ethical Standards Comments 1.02 and 1.03.

As the Board of the Practice Directorate, BPA has followed these issues closely regarding the implications of the current language in the 2002 Ethical Principles for Psychologists and Code of Conduct, and the potential impact on practitioners in various practice settings.

To summarize our Fall 2008 Consolidated Meeting minute, BPA expressed concern "that the term 'basic principles of human rights' was not clearly defined, and could be used against psychologists in cases such as child custody and other evaluations unrelated to the issue of torture". BPA reaffirmed the language in the amended APA resolution that emphasized the Associations strict prohibition against torture or other forms of cruel, degrading or inhumane treatment.

In response to this Call for specific language recommendations, we suggest the following changes for the Ethical Standards:

Standard 1.02: "If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to the Ethics Code and take steps to resolve the conflict. If the conflict is unresolvable via such means, psychologists take reasonable steps to follow the prevailing professional judgment of psychologists engaged in similar activities in similar circumstances.

Standard 1.03: If the demands of an organization with which psychologists are affiliated or for whom they are working conflict with this Ethics Code, psychologists clarify the nature of the conflict, make known their

commitment to the Ethics Code, and to the extent feasible, resolve the conflict in a way that permits adherence to the Ethics Code according to the prevailing professional judgment of psychologists engaged in similar activities in similar circumstances.

Rationale: in 1.02 we have suggested the removal of "psychologists may adhere to the requirements of law, regulations, or other governing legal authority" and substitute language which mirrors the language in the I & A which refers to responsibility and the definition of "reasonable". We felt reasonableness could best be defined by psychologists who are working in similar circumstances.

We wish to note that although there is no request in the Call for Comment regarding changes in the aspirational language of the I & A section, BPA does have concern that there is an apparent inconsistency between encouragement that "psychologists must meet the higher ethical standard" and two sentences later where "psychologists much adhere to the requirements of the law....."

BPA concurs with the Ethics Committee's June 2009 analysis that adding "in keeping with basic principles of human rights" to the enforceable sections of the Code of Conduct may create a mandate for civil disobedience rather than allowing a permissive criteria. While BPA understands the importance of recognition of basic principles of human rights, further detail would need to be included within the Code in order to allow interpretation of this term in multiple settings.