

## Q&A—Ethics

### **Does an arborist working as a tree care service provider have a different responsibility to his client than an arborist working as a consultant?**

Actually, the “responsibility” **SHOULD** be the same for both. This responsibility boils down to being honest with the client and the assignment and not offering opinions or proposals just to please the client. IOW, consultants as well as contractors should be servicing the tree(s), not the tree’s parents (tree owner). Just because Mrs. Gotrocks wants her trees fertilized and sprayed every year does not mean (in spite of this being quite lucrative) that this should be recommended and done.

—Lew Bloch, RCA #297

Unfortunately, I believe the answer is Yes; the responsibilities are different, though they should not be. The systems within which the arborist working for a tree care provider is employed typically apply pressure to sell something. He is typically paid commission and may be provided additional incentive for selling high margin services, such as fertilization. He doesn’t get paid or provide for his family unless he sells something. And very often, to keep his job, he must meet certain sales quotas. Therefore, the arborist working for a tree care service provider is there to get the tree owner to purchase. His primary responsibility, like it or not, is to the sell for the company he works for. That is his job. His role is sales. The client is not his boss. A consultant is primarily responsible directly to the tree owner and is generally paid directly

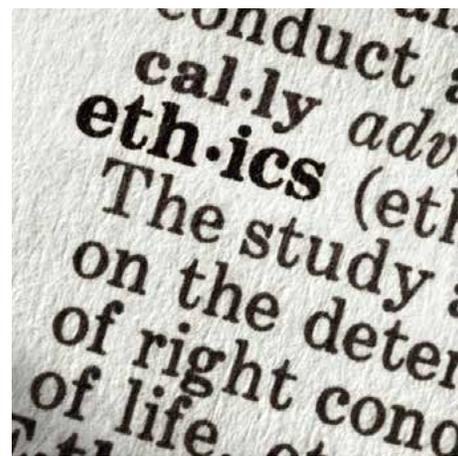
by them. He has no fiduciary obligation to generate business, sales, or profit for tree care services because he is paid for his time to consult. There is no attachment to the decisions of the tree owner and no need to press for any type of decision in regard to the trees. The owner can remove, treat, or do nothing without affecting the paid consultant whatsoever. The arborist working for the tree care service provider is obligated by the employer to push for a decision to purchase services from the company.

—Donald E. Zimar, RCA #446

Yes and no! A tree care provider has a responsibility to the client (rarely the “public”), but the responsibility of a Consulting Arborist can extend beyond that. For example, an appraisal may become public or become a part of litigation. A tree care provider as a tradesman is expected to provide services within a standard of the industry. A consultant’s opinions may be questioned by the client and/or others, and there is no standard of the industry on opinions. There are standard guidelines on methodology.

—Donald H. Godi, FASLA, RCA #444

While both the arboricultural consultant and the tree care service provider offer important services to their clients, the consultant is often asked to perform work that entails appraisal, mediation/arbitration, or forensic investigation at a much higher level of competence and depth of knowledge. Depending on the assignment, the duties and responsibilities of an arboricultural



consultant often involve communications for which there are fiduciary obligations to both the client and to the public, that go well beyond those contained in the roles and responsibilities of a tree care service company that is called upon to fulfill the specifications of a tree work contract.

If the consultant fails to fulfill an assignment in a competent, objective and independent manner, with the thoroughness that was agreed upon in the assignment, different kinds of liabilities can occur than, say, when a service company provides the same advice as part of an estimate to perform tree work. Although there is some overlap between the two, the general liability insurance carried by tree care service providers normally limits coverage when it comes to errors and omissions that pertain to consulting activities for which the consultant is paid for independent, objective and (when called for) impartial work. At the same time, general liability coverage is normally limited to damages that result from tree work-related activities (like cutting down the wrong tree or errors in workmanship).

Since the roles and responsibilities of either can be quite variable and significantly different from job to job for each, an arborist can serve as both a consultant and a service provider provided that he/she understands the difference in duty and responsibility and he/she knows where the lines are drawn. Also, there are times when a conflict of interest may arise, if an arborist is asked to serve as both a hired service provider to fulfill a tree work contract and as a consultant hired to form an independent objective

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*opinion. The consultant must avoid assignments where conflicts of interest may arise or assignments that will adversely affect independent, objective or (when called for) impartial judgments.*

—Martin A. Shaw, RCA #470

*No. I treat them both as clients. Typically, I suggest one or more options that would meet client objectives based on my job scoping and observations, and after listening carefully to the client’s description of their needs.*

*With my consultant’s hat on, I propose the work product that would be most useful based on identified client objectives, while stating that the result will be dependent on all the facts discovered (of course, this is spelled out in my limitations).*

*Wearing my tree care hat, I consider what the job is as described to me by the client, but may suggest additional work that could be done at the same time to decrease tree risk, increase aesthetics and tree health, and which would possibly cost less due to the savings in travel and set up time. I might even propose a different objective (e.g., remove vs. prune or the reverse) given my initial impressions of the tree. I will also propose that if it appears that the client would benefit from a consultation while gathering information for the tree work bid, I say so.*

—David M. Braun, Ph.D.

*There could be a big difference. The tree working arborist may only have training on how to climb, prune or remove a tree, thus the responsibility is to just do the work. If they are like my workers who have many years of experience, they may tell the client of concerns that they find with the tree(s).*

—David D. Hunter, RCA #408

*No. Qualified, competent arborists or Consulting Arborists have an obligation/responsibility to provide to their client proper*

*arboricultural methods and practices. If the arboricultural methods or practices carried out by the tree service have detrimental consequences to the tree’s health or the Consulting Arborist provides recommendations to a client that end up being detrimental to the tree’s health, both parties would face the same legal consequences.*

—David Wilby

*Yes. As explained to me, the differences lie in the definition of the assignment. A service (or tangible goods) responsibility ends upon delivery thereof, and is more properly referenced as a customer rather than a client. Responsibility is ongoing to a target end or solution, as the consultant continues representation of a client. When I started asking, “What if...” I was briskly told to get the basic concept down first. When the lumberyard truck delivers the lumber, the lumberyard responsibility to the customer ends. When the family (client) moves into the new house built from that lumber, the builder’s (consultant’s) responsibility to the client ends. Not before.*

—Lawrence T. Hoffmeier

*Well, actually, a consultant **is** a service provider, but I understand your point. To a certain extent, service providers are obligated to meet a client’s criteria regarding “good service.” Through proper communication, we are often able to persuade an errant client to “do the right thing” regarding their tree or landscape decision making, but not always. A consultant, however, must strive for 100% compliance with industry accepted protocols and practice, even when this conflicts with the client’s personal agenda.*

—David T. Ropes

**What are some considerations if you accept an assignment as a consultant and will subsequently bid on the resulting work as a tree care service provider?**

*The danger is a conflict of interest. One could argue that you cannot form independent and objective opinions about a tree that you have been hired to cut down, for example. Let’s assume that you would be well compensated for cutting the tree down. In that case, it would appear (and likely would actually be) that your opinion was swayed toward cutting the tree down. The arboricultural consultant is prohibited from making recommendations based on any forgone conclusion not based on reasonably prudent, professional knowledge, objective and independent methods, and cannot form any particular opinions or make judgments based on how much they are paid. The product of the arboricultural consultant must remain unbiased, without prejudice and must be based on facts and reasonably informed assumptions (ASCA SPP).*

—Martin A. Shaw, RCA #470

*There can be a real conflict of interest when a consultant becomes a tree care provider, or visa versa, on the same project. Any consulting opinions in such a case should be open to peer review before tree care begins.*

*Some considerations are: There can be problems with the slightest propriety of bias. Are other firms bidding on the tree care work? Is the consultant fee fair and reasonable, or slanted toward getting the future tree care work? What other conflicts might there be? How arm’s length is the “carrot” consultation when tree care follows? Does one task require a license?*

—Donald H. Godi, FASLA, RCA #444

*In my consulting report, I mention in my limitations section that my company offers services in each area. I explicitly state that the result of my consultation is in no way geared to a specific outcome, but instead is determined by the scoping of the assignment and facts of the case. I also state in my consulting report that I urge the client to get other bids for the tree work that I may*

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*propose in a separate bid document, if a bid is requested by the client.*

*In appraisals, I do not propose that I may provide a bid on recommended restoration work that may be a recommendation in the appraisal, as I consider this as a clear conflict of interest (this question has repeatedly come up in depositions, in the form of “Have you or do you plan to offer...” to which I have always answered No.*

*I believe that risk assessments do not provide the same grounds for a conflict of interest, because if performed properly, the recommendations would be similar among most consultants’ reports, because they typically come down to prune or remove, and thus are able to be performed by any qualified tree service. In contrast, I have found that appraisals on the same subject tree, trees, or landscapes are often quite different in observed fact patterns, appraisal methods chosen, and estimates of value arrived at, and may even be idiosyncratic and unique in the forensic approaches to gathering data and in the restoration treatments proposed; therefore, if the appraiser bids on a proposed restoration treatment, a conflict of interest may be suggested.*

—David M. Braun, Ph.D.

*The primary consideration is disclosure. To let the client know that is the interest. Be honest that you are in a position to prosper more greatly by doing the work than by prescribing it. Avoid the temptation to recommend any items that are not essential to the project and that are not consistent with the goals of the tree owner.*

—Donald E. Zimar, RCA #446

*Well, there are clearly situations where you should not bid on the work. For example, if you identify a tree as high risk and definitively recommend removal, but the client decides to keep the tree and asks you to prune it instead. But, if your assessment and advice are sound and defensible, and*

*the specifications for subsequent work are consistent with your recommendations, I don’t see an issue.*

—David T. Ropes

*I realize that I am in a minority in ASCA, being a full time consultant that does not do any contracting at all, and I also realize that there is more financial gain in the contracting business. At one time, when I was intentionally winding down my contracting business and building a consulting career, I did do both. I always told my consultant customer that if they retained me as a consultant, they could not use my contracting company to do the actual work. There were a few times that such a client would call me back and say that they had contacted other tree companies and would really prefer to deal with my company. If this happened, I would honor that position and perform the tree services for them. IMO, a consultant preparing specs, scope of work, etc., should NEVER bid on doing the contracting; a definite conflict of interest. It is no different than a building architect bidding on being the general contractor of his/her project and then actually being the inspector for the project as well.*

—Lew Bloch, RCA #297

*Be up front and open with every entity of interest, confirming that you are working both sides of the street. That may be all right with the other entities of interest. Neglect to disclose and you could end up with more than a little bit of egg on your face. People have been known to get free room and board for this kind of thing, compliments of the State. It’s something like insider trading.*

—Lawrence T. Hoffmeier

*The main consideration is that it would be a conflict of interest. For example, in 2012 my company was awarded a contract by a municipality to provide a tree report for pre and post construction for their engineering department. Based on my recommenda-*

*tions in my pre construction report, the engineering department put out a tender to approved contractors on their list; my company is on their list as an approved contractor. I was informed that my company could not bid on the scope of work as it would be a conflict of interest to do so.*

—David Wilby

*I try to avoid the conflicts of interest so that my work product as a consultant stays consistent.*

—David D. Hunter, RCA #408

**Is there a difference between a consultation you provide for free in order to generate a proposal for tree care services and one that you provide for fee as a consultant?**

*I don’t provide consultations for free, except to friends and family. I know many arborists that would not offer any different advice in either role. But there are also many occasions where the consultant there to provide services will simply recommend as many things as they can identify and then convince the owner to choose as many as they can afford—or worse, those who only focus on recommending the services their company provides or makes more money on. It can even be a very slick and high-pressure sales call that isn’t a consultation at all. On the other hand, the paid consultant should also avoid injecting his own biases into the consulting process and focus on the desires and objectives of the tree owner.*

—Donald E. Zimar, RCA #446

*The quality of the data should be the same. The level of detail and the manner in which the data is documented are where the differences lie.*

*Service proposals can and should serve as assessment documentation, and include key details and terminology that inform the potential client of the reasoning behind the*

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work specifications you have produced. If a tree with significant defects is to be retained with structural pruning or bracing, the client must be forced to acknowledge (by signing the contract) that they are accepting risk by retaining the tree.

But, not all “free” consultation results in a service proposal. In the “old days,” most free consultation was provided verbally. Nowadays, all communications should be documented in some manner, in my opinion. An e-mail message confirming the date of the communication and the outcome of the conversation, whether it was in person or on the phone, is a quick and easy way to document the communication. If there is a high-risk tree involved, it is a good idea to snail mail a letter, as well.

—David T. Ropes

The consultations are different, but any specific tree or landscape advice given would not be different. As long as there is no conflict of interest (actual or perceived) both of these consultations are acceptable. When I was a full time contractor I had a brochure that advertized for free consultations. Both this concept and the brochure were excellent sales tools.

—Lew Bloch, RCA #297

There is some overlap. I use a time limit—if I talk about signs and symptoms of defect or disease, or do a walk through that takes longer than 15 minutes, then I suggest that I provide a bid for the trees that prompted the call (or other trees of concern that I may notice) and suggest that the client hire me for a consultation, for which I provide an hourly rate and a bid range. I shorten my onsite bidding time by taking photos and written notes, and then prepare a bid in my office on a spreadsheet, unless the job is relatively small, in which case I leave a hard copy of a bid with the client using a carbonless copy field bid form.

—David M. Braun, Ph.D.

Yes. Generally speaking, if a tree service company is not paid a fee to provide a quote, there is no expectation for him/her to be independent, objective and unbiased. Providing quotes for the tree care service work means you will be paid for completing the work, not for the opinions you used in quoting that work. However, as an arboricultural consultant, you are being paid for your independent and objective opinions, conclusions, and recommendations alone, regardless of what those opinions, conclusions, and recommendations may be or how much it may cost to fulfill your recommendations.

—Martin A. Shaw, RCA #470

Consultations (real, written ones) should **never** be free, especially in order to get the tree care work. **If** a client needs a consultation, there should be a fee, and there should not be “carrots,” even if the consultation is an evaluation. This can be analogous to design/build work where the contractor offers “free” design, if given the construction. This provides a real chance for obvious conflict of interest **and** disrespect for the industry/profession.

—Donald H. Godi, FASLA, RCA #444

Free: this is for proposals in hope that I get the work. I try to educate the client but I do not provide consultation services for “free.”

—David D. Hunter, RCA #408

It is within a reasonable degree of probability that the question is of two entrenched parts. As such the response is Yes. It harkens back to our first question. The first part of this query is for a prospective customer as part of the JOB. While the second is the JOB for a client. Getting your head-wrapped around the customer vs. client definition can be a brainteaser.

—Lawrence T. Hoffmeier

**If your company provides both tree care services and consulting services, how do you communicate which “hat” you’re wearing at a particular point in the assignment?**

The short answer is easy: when my time is being paid for by a client to provide consulting services, I am wearing my consulting cap on top of my service provider cap. When I am being paid by my company to secure or perform service work, then the service provider cap is on top—but you can still see the consultant cap, kind of peeking out at the bottom.

The quandary between consultation and service is something most of us deal with every day. Still, if you build honest and thoughtful assessment into every contact, with both people and trees, it is relatively easy to wear both hats simultaneously.

—David T. Ropes

I really covered this in an earlier answer. It can sometimes be quite a problem if you do not communicate the differences at the very beginning of the process. As a full time consultant I do not have this “problem” anymore. It can be confusing and sometimes almost dishonest attempting to wear both “hats.”

—Lew Bloch, RCA #297

Tree services: I wear a consultation hat if I find tree problems or diseases. I try to educate my client that with hiring me you get both and buy only the services that you need.

—David D. Hunter, RCA #408

Verbally say so. Put it in writing as, when, and where applicable and appropriate. See my earlier answer. I had an old speech professor tell us that, “There are three primary and sequential steps to effective communications. The first is stand up to be seen. The second is speak up to be heard.” It was

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*not until the end of the semester that the professor told us the third one... "Shut up and be appreciated." Ah yes, sometimes KISS is difficult. You just have to get a feel for it as well as keeping it short and simple to gain the understanding you need.*

—Lawrence T. Hoffmeier

*General tree care estimates are free based on scope of work being visually needed such as pruning, cabling, fertilizing, spraying and removal; any other work outside this would fall under consultation.*

—David Wilby

*I communicate this by explicitly stating that I am performing a bid (free), or that I recommend that I return to do a consultation. I make a separate visit for a consultation because I usually need other tools, and usually don't have the time allotted to do it at that moment either. Sometimes I get an agreement for a consultation on the phone before I arrive.*

—David M. Braun, Ph.D.

*I am somewhat a hybrid. I do not own any trucks or chain saws...but I will subcontract services for some clients in some circumstances, at their option, to provide turnkey solutions on certain projects by teaming with a tree service provider. My clients know that I am their arborist providing information that is focused on their interest in their trees. I have established these relationships over many years. They have confidence in me. Mostly this comes from understanding their position in regard to the tree issues and helping them meet their goals by providing advice that will help them do that. I work for them, provide objective advice and let them make their decisions accordingly. It is not my job to convince them one way or another...only to provide the information they need to make their own decision. They appreciate that I am neither trying to sell them tree work nor trying to convince them to preserve a tree they might wish to*

*remove. They pay me for my time without complaint. I provide options and expected outcomes and consequences. They make their decisions and pay me, whether any tree care services are performed or not.*

—Donald E. Zimar, RCA #446

*If a client needs consulting work, I offer to do that. If they just need a quote for work they want done, I offer to help them find a good service provider—for a fee.*

—Martin A. Shaw, RCA #470 🌿

# CEU Deadline

## September 30<sup>th</sup>

You must submit 30 CEUs each reporting cycle to maintain your ASCA membership. The 2012–2013 reporting cycle runs from October 1, 2011 to September 30, 2013. Submit your CEUs online—go to [www.asca-consultants.org](http://www.asca-consultants.org) and visit the Members Only area.



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