Clients are sometimes confused about the standard of care applicable to the services of design professionals. The law recognizes that professional services are based on reasoned judgment and that there is no one correct course of action. A client may want a precise definition of services and the ability to judge performance based on specific criteria. However, such exactness is not possible due to the unique characteristics of each project and the latitude allowed under law for the application of professional skill and experience. The use of a standard of care provides an objective measurement of the design professional’s services.

The common law standard of care applied to the performance of professional design services has been described as a “duty to exercise the degree of learning and skill ordinarily possessed by a reputable design professional practicing in the same or similar locality and under similar circumstances.” It is this common law standard that is imposed on a design professional if the contract for professional services is silent on the matter.

The standard documents published by The American Institute of Architects (AIA) and Engineers Joint Contract Documents Committee (EJCDC) clearly indicate that meeting a professional standard of care is a contractual obligation. The standard of care that is applicable to the services of an architect is stated in Section 2.2 of AIA B101-2007, and is further defined through the description of services to be provided. Paragraph 6.01A of EJCDC E-500 (2008 edition) describes the standard of care applicable to the engineer’s performance of services. Paragraph 6.01A also disclaims the existence of any implied or express warranty in connection with the engineer’s services.

Agreeing to a Higher Standard for Services Is Possible

While it is not unreasonable for a client who selects a design professional on the basis of a special expertise or demonstrated competence to ask that a higher standard of care be met, the raised standard must be something that is attainable. Design professionals can increase their duty to the client and still avoid the problem of unfulfilled expectations by carefully crafting contract language that reflects a standard of care applicable to the type of project. For instance, if a firm holds itself out as having an expertise in a specific project type, the applicable standard of care may be that of a similar subset of firms with the same expertise. Agreeing in a contract to meet this higher standard of care should not create either a management or coverage problem.

Clients sometimes seek to change the standard of care by requiring that the design professional perform to higher, yet unspecified, standards. At times, clients who are unaware of the duty of a professional to provide services in a non-negligent manner attempt to include vague or absolute language such as a reference to meeting “highest professional standards” even though such standards cannot exist. Other clients, knowing full well that a vague standard such as the “highest” or “best” can never be met, include the language so that the design professional is held to an unachievable standard. Proving that the firm breached its contractual obligation to be absolutely better than any other firm is simpler than proving negligence.

Educating the Client Is Essential

When clients seek to change the standard of care, a discussion with the client is essential to examine the practicality of a modified performance measure. If the client selects and compensates a design professional for special skills, experience, or talent, the definitional uncertainty of “highest” should be replaced with a measurable
standard of care based on the qualifications used to select the design professional. If the client is attempting to force the design professional into a situation in which the design professional cannot perform services without being in breach of the contract, the design professional sacrifices many protections otherwise provided by common law and could be in jeopardy of assuming a contractual obligation outside the scope of coverage provided by professional liability insurance.

Clients should understand that the U.S. legal system recognizes that a design professional cannot guarantee a perfect result, and that professional liability insurance only provides coverage for damage caused by the design professional's breach of a standard of reasonable care. Contractual provisions that demand perfection essentially place design professionals outside their normal legal liability and insurance coverage.

The standard of care for professional and related services performed or furnished by the design professional should be modified only with caution. If a client demands a level of performance beyond that consistent with due professional skill and care, the standard should be measurable and the design professional should receive compensation related to the increased services and risk assumed under such an agreement.