

EMPLOYEE'S FAILURE TO INFORM EMPLOYER OF NEW EMPLOYMENT WITH EMPLOYER'S VENDOR

Case No. 99-6

Facts:

Engineer A, a member of NSPE, is employed by the FGH Construction Company and works closely with Engineer B who is an employee of LMN Supplies. LMN Supplies sells construction materials and supplies. Part of Engineer A's responsibilities are to negotiate and approve bids by LMN Supplies that are submitted by Engineer B. LMN Supplies offers, and Engineer A accepts, an employment position with LMN Supplies. Engineer A submits his resignation and gives two weeks notice to FGH Construction Company and is not asked and does not mention that he will be employed by LMN Supplies. For the next two weeks before leaving FGH Construction Company, Engineer A continues to negotiate and approve bids submitted by LMN Supplies.

Question:

Was it ethical for Engineer A to fail to mention to FGH Construction Company that he will be employed by its vendor LMN Supplies?

References:

- Preamble* - Code of Ethics: *Engineering is an important and learned profession. As members of this profession, engineers are expected to exhibit the highest standards of honesty and integrity. Engineering has a direct and vital impact on the quality of life for all people. Accordingly, the services provided by engineers require honesty, impartiality, fairness and equity, and must be dedicated to the protection of the public health, safety, and welfare. Engineers must perform under a standard of professional behavior that requires adherence to the highest principles of ethical conduct.*
- Section II.3.a.* - Code of Ethics: *Engineers shall be objective and truthful in professional reports, statements or testimony. They shall include all relevant and pertinent information in such reports, statements or testimony, which should bear the date indicating when it was current.*
- Section II.4.a.* - Code of Ethics: *Engineers shall disclose all known or potential conflicts of interest which could influence or appear to influence their judgment or the quality of their services.*
- Section III.3.a.* - Code of Ethics: *Engineers shall avoid the use of statements containing a material misrepresentation of fact or omitting a material fact.*

Discussion:

It is not uncommon when an employee changes positions for conflicts of interest to arise in the performance of the engineer's professional duties. The subject of conflict of interest has been considered by the NSPE Board of Ethical Review on a number of occasions. For example, BER Case No. 75-10 involved Engineer A who was employed on a full-time basis by a radio broadcast manufacturer as a sales representative. In addition, Engineer A performed consulting engineering services to organizations in the radio broadcast field, including analysis of their technical problems and, when required, recommendation of certain radio broadcast equipment as may be needed. Engineer A's engineering reports to his client were prepared in form for filing with the appropriate governmental body having jurisdiction over radio broadcast facilities. In some cases, Engineer A's engineering reports recommended the use of broadcast equipment manufactured by his employer. After reviewing previous BER cases relating to conflicts of interest (see BER Case Nos. 72-9 and 74-4), the Board concluded that Engineer A may ethically provide consulting services as described only if there is full disclosure of all the facts and circumstances to his client. In reaching its conclusion, the Board noted that it would have been preferable if the client could rely on the technical judgment and recommendations of an engineer without any financial interests in the equipment of any manufacturer, but it is understood that under some circumstances, the client may wish to retain the services of an engineer with an apparent conflict of interest. In the later instance, the client must have full knowledge of all the circumstances -- otherwise the client has been defrauded.

The departure of an employee to an allied company can raise ethical concerns as can the situation when an employee moves over to a competing company. Although on the surface, the departure of the employee might provide both companies with benefits by allowing the two companies to strengthen their relationship and enhance communications between the two companies, there are also conflicts that can arise in the arrangement. The facts in this case identify a clear conflict, or at least the appearance of a potential conflict, faced by the employee involved in the transition.

Under the facts, Engineer A's primary obligation was to FGH Construction and not to LMN Supplies during the two-week period prior to his departure to LMN Supplies. Engineer A had a basic obligation to not do anything that would unduly prejudice the interests of either FGH Construction or LMN Supplies. However, by failing to provide full disclosure to FGH Construction, Engineer A's actions have the effect of prejudicing the interests of both FGH Construction and LMN Supplies.

By not informing FGH Construction, Engineer A's actions will most probably raise some doubt in the minds of the supervisors and perhaps owners of FGH Construction about whether Engineer A's continued negotiation and approval of bids submitted by LMN Supplies were somehow tainted and could have resulted in inflated costs to FGH

Construction or other unearned competitive advantages for the benefit of Engineer A's new employer, LMN Supplies. Also by failing to disclose the material conflict that exists concerning his new employment with LMN Supplies, Engineer A may have unwittingly planted "seeds of doubt" with FGH Construction and potentially damaged the goodwill that might have existed between FGH Construction and LMN Supplies. Based upon the facts as presented, FGH Construction might wrongly conclude that LMN Supplies somehow persuaded Engineer A not to disclose his new position with LMN Supplies during the two-week period in order to gain some advantages. Engineer A's failure to fully disclose his new position with LMN Supplies, and to continue to negotiate and approve LMN Supplies' bids to his current employer, was not in accordance with the spirit or the intent of the NSPE Code. His actions want for the highest standards of honesty and integrity expected of engineers, and were not circumspect.

Conclusion:

It was not ethical for Engineer A to fail to mention to FGH Construction Company that he will be employed by its vendor LMN Supplies.

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