

Conflict of Interest – Review and Approval of Work by Subordinate

Case No. 15-10

Facts:

Engineer A, a professional engineer, works as the director of the local government building department. Engineer A also has a part-time sole engineering practice and prepares a set of structural engineering drawings for Client X. The drawings must be approved by the local building department. Engineer A does not participate in the review or approval of the drawings but Engineer A's assistant, Engineer B, a professional engineer, reviews and approves the engineering drawings prepared by Engineer A.

Questions:

1. Would it be ethical for Engineer A to provide the services in the manner indicated?
2. Would it be ethical for Engineer B to review and approve the engineering drawings prepared by Engineer A?

NSPE Code of Ethics References:

- Section I.5. - Engineers, in the fulfillment of their professional duties, shall avoid deceptive acts.*
- Section I.6. - Engineers, in the fulfillment of their professional duties, shall conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.*
- Section II.4. - Engineers shall act for each employer or client as faithful agents or trustees.*
- Section II.4.a. - Engineers shall disclose all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services.*
- Section II.4.d. - Engineers in public service as members, advisors, or employees of a governmental or quasi-governmental body or department shall not participate in decisions with respect to services solicited or provided by them or their organizations in private or public engineering practice.*
- Section III.1.c. - Engineers shall not accept outside employment to the detriment of their regular work or interest. Before accepting any outside engineering employment, they will notify their employers.*
- Section III.6.b. - Engineers in salaried positions shall accept part-time engineering work only to the extent consistent with policies of the employer and in accordance with ethical considerations.*
- Section III.6.c. - Engineers shall not, without consent, use equipment, supplies, laboratory, or office facilities of an employer to carry on outside private practice.*

BER Case References: 99-3; 10-2**Discussion:**

Over the years, the NSPE Board of Ethical Review has examined issues relating to engineers performing services outside of regular employment. The Board has focused much of its attention on the fact that outside work can lead to potential and actual conflicts between the interests of the employer and the interests of the individual employed engineer, as well as other ethical issues.

For example, in BER case, Case No. 99-3, Engineer A was employed by Company X. As a part of her job, Engineer A organized continuing education seminars (i.e., contacting speakers, making meeting arrangements). Company Y, a business competitor of Company X, was aware of Engineer A's track record in organizing effective and well-received continuing education seminars. Company Y requested that Engineer A organize a continuing education seminar for Company Y's architects, engineers, and surveyors, whereby Company Y would pay Engineer A personally for such services. Engineer A agreed to provide the services. Engineer A told her supervisor about establishing the continuing education business generally but did not mention the services she would be providing to Company Y, a competitor of Company X. Under these circumstances, Company X, did not object.

In deciding it was not ethical for Engineer A to agree to provide continuing education seminar services to the competing Company Y without the knowledge and consent of her employer, the Board recognized the merit in having engineers work to promote and expand engineering education opportunities for engineers and other design professionals consistent with the NSPE Code of Ethics. The Board noted that with the increasing interest in continuing professional competency, life-long learning, and other educational programs, there will undoubtedly be a great need for knowledgeable and experienced engineers and others to provide services for the benefit of the engineering profession. At the same time, the Board expressed concern about aspects of and the manner in which Engineer A pursued her activities in this area. The NSPE Code makes clear, said the Board, that before accepting outside employment, engineers have an obligation to notify their employer. This obligation is intended, among other reasons, to permit the employer to evaluate whether the added burden of outside employment will have adverse consequences on the engineer's ability to perform work on the employer's behalf, but it is also intended to allow the employer the opportunity to assess whether the employee's outside work activities will be in conflict or adverse to the interests of the employer. The Board noted that while it is true that Engineer A did notify her employer that she was establishing a continuing education business, Engineer A failed to fully disclose that she would be working for the benefit of a competitor of her employer. Her failure to provide this critical information did not allow her employer the opportunity to make an informed decision concerning her outside employment. The Board also noted that Company X will

most probably learn that Engineer A is providing services to Company Y, and in light of her failure to inform Company X of this fact, the consequences to Engineer A may be severe.

More recently, in BER Case 10-2, Engineer A worked as an employee for QRS Engineering on a full-time basis. Engineer A also had his own separate engineering practice in which he performed services that are also performed by QRS Engineering. Engineer A's work, including all client contacts, was done completely on his own time (evenings and weekends), using his own equipment and materials, and Engineer A did not attempt to lure existing QRS Engineering clients to his engineering practice. The QRS Engineering Employee Handbook had no specific policy that addressed performing outside work, and Engineer A did not advise the firm of his outside practice.

Noting that Engineer A was a full-time employee for QRS Engineering and, therefore, had full-time obligations to the company, the Board decided that it would be unethical for Engineer A to continue performing engineering services in his own engineering practice in the manner indicated without clearly and unambiguously advising his full-time employer QRS Engineering. The Board noted that the facts in the case raised a significant conflict of interest, which, at a minimum, required full disclosure to Engineer A's superiors in QRS Engineering. Engineer A's failure to advise QRS Engineering of his outside practice is not justified by the facts that all client contacts are performed completely on Engineer A's own time (evenings and weekends), using Engineer A's equipment and materials; that Engineer A does not attempt to lure existing QRS Engineering clients to his engineering practice; and that the QRS Engineering Employee Handbook contains no specific policy that addresses performing outside work.

In the current case, it is the Board's view that Engineer A did not fulfill his obligation to act as a faithful agent or trustee to his employer because he did not notify and obtain consent from his superiors within the local governmental building department. In addition, regardless of the fact that Engineer A did not personally approve the structural engineering drawings Engineer A prepared for Client X, Engineer A had supervisory authority over Engineer B, the engineer who was required to review and approved the drawings for the local governmental building department. Engineer B's role on behalf of the local building department could have easily been compromised by Engineer A decisions and actions under the circumstances.

Finally, the Board of Ethical Review would remind Engineer A, as the full-time director of the local building department, of his obligations under section III.1.c, which cautions against and conducting outside work to the detriment of the engineer's regular work. Furthermore, the Board of Ethical Review would caution Engineer A against using any equipment, supplies, laboratories, or office facilities without the knowledge and consent of the local building department.

Conclusions:

1. It would be unethical for Engineer A to provide the services in the manner indicated, even if he had obtained approval from his supervisor, because he cannot require his subordinates to approve his work.
2. It would not be ethical for Engineer B to review and approve the engineering drawings prepared by Engineer A.

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Each opinion is intended as guidance to individual practicing engineers, students, and the public. In regard to the question of application of the NSPE Code to engineering organizations (e.g., corporations, partnerships, sole proprietorships, government agencies, and university engineering departments), the specific business form or type should not negate nor detract from the conformance of individuals to the NSPE Code. The NSPE Code deals with professional services, which must be performed by real persons. Real persons in turn establish and implement policies within business structures.

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