

Section II.1.c.	- Code of Ethics
Section II.4.	- Code of Ethics
Section III.4.	- Code of Ethics
Section III.8.a.	- Code of Ethics

**APPROPRIATE NOTIFICATION AND REVIEW
OF ANOTHER ENGINEER'S WORK**

FACTS:

Engineer A is retained by an major franchiser to provide engineering design services for a chain of stores throughout the United States. After several years, the franchiser decides to terminate its relationship with Engineer A and provides Engineer A of notice of its intent not to renew its contract with Engineer A's firm. In order to maintain continuity and before the contract expires, the franchiser begins discussions with Engineer B and retains Engineer B to provide immediate review of design concerns that are pending in connection with the design of several franchise facilities throughout the US. Prior to the review, franchiser specifically tells Engineer B not to disclose to Engineer A, Engineer B's relationship with franchiser. Nevertheless, Engineer B reviews the design information the following week and following his review, notifies Engineer A of his relationship with franchiser and the preliminary results of his review. Several weeks later, Engineer A's agreement with the franchiser expires and the franchiser retains Engineer B as its design engineer.

QUESTIONS:

1. Was Engineer B's act of notifying Engineer A of his relationship with franchiser consistent with the Code?
2. Was it ethical for Engineer B to proceed with the review at that time?

REFERENCES:

Section II.1.c.	-Engineers shall not reveal facts, data or information obtained in a professional capacity without the prior consent of the client or employer except as authorized or required by law or this Code.
Section II.4.	-Engineers shall act in professional matters for each employer or client as faithful agents or trustees.
Section III.4.	-Engineers shall not disclose confidential information concerning the business affairs or technical processes of any present or former client or employer without his consent.

Section III.8.a. -Engineers in private practice shall not review the work of another engineer for the same client, except with the knowledge of such engineer, or unless the connection of such engineer with the work has been terminated.

DISCUSSION:

One of the more challenging areas of engineering ethics issues involves the everyday relations among engineers. At one time, the Code had strict provisions regarding relations among engineers. However, with the passage of time, these strict provisions have been carefully modified to reflect the needs of clients and the evolving nature and realities of engineering practice.

As with any provision of the Code of Ethics, provisions regarding relations among engineers must be carefully balanced with the needs and requirements of the individual client as well as the particular facts and circumstance of the case. It is not always possible to draw fine distinctions in this area, however certain general ethical principles as enunciated in the Code of Ethics provide guidance in the resolution of these issues.

As has been noted on several occasions by the Board, the question of one engineer reviewing the work of another engineer has long been a subject of inquiry by the Board. Section III.8.a. admonishes engineers against reviewing the work of another engineer for the same client except with expressed knowledge of the engineer or unless the original relationship between the first engineer and the client has been terminated.

In BER Case 79-7, an engineer was asked to inspect mechanical and electrical engineering work performed seven years earlier. The Board concluded that the engineer notified the former engineer that the engineer was being retained to perform review and inspection services and that the review would entail a review of the original design. Said the Board: "It may be helpful for future guidance to again point out that the purpose of Section 12(a) (now Section III.8.a.) is to provide the engineer whose work is being reviewed by another engineer an opportunity to submit...comments or explanations for...technical decisions, thereby enabling the reviewing engineer to have the benefit of a fuller understanding of the technical considerations in the original design in framing comments or suggestions for the benefit of the client." We believe the reasoning cited by the Board in BER Case 79-7 are as cogent today as they were when the Board issued its opinion.

At the same time, Code Section II.4 places the obligation upon engineers to act in professional matters for clients as "faithful agents or trustees." An "agent" is generally defined as a "person authorized by another to act for him or one entrusted with another's business." A "trustee" is generally defined as one who stands in a fiduciary or confidential relationship to another. However, as noted in Black's Law Dictionary (Fourth Edition):

"Trustee" is also used in a wide and perhaps inaccurate sense, to denote that a person has the duty of carrying out a transaction, in which he and another person are interested, in such manner as will be most for the benefit of the latter, and not in such a way that he himself might be tempted, for the sake of his personal advantage, to neglect the interests of the other..."

Frankly , it is not clear from a plain reading of the Code whether the original drafters intended that the term "trustee" embrace the fiduciary and confidentiality relationship or whether it was the intent of the drafters to express a more general duty of loyalty and fair dealing. However, in view of the fact that drafters of the Code included separate provisions specifically addressing the obligations of engineers to not disclose confidential information (See Code Sections II.1.c., III.4. and III.4.a & b.), we interpret the term "trustee" to refer to the more general duty of loyalty and fair dealing.

The facts in this case present the Board with two conflicting provisions of the Code of Ethics: (1) the obligation of the engineer to provide appropriate notice to another engineer in connection with his reviewing the work of that engineer, and (2) the general duty of the engineer as "faithful agent and trustee." In light of the facts and consistent with BER Case 79-7, we are persuaded that Engineer B acted unethically in notifying Engineer A of Engineer B's relationship with the client. Engineer B had an obligation not to notify Engineer A once Engineer B was told by client not to tell Engineer A about Engineer B's relationship with the client.

Finally, we are troubled by the fact that Engineer B took this project without first exploring the reason why the client wanted Engineer B not to disclose his relationship with the client. We believe this issue should first be clarified.

Our conclusion is based upon the rationale cited above in BER Case 79-7 but is also based upon an analysis of the countervailing argument that Engineer B had an obligation as "faithful agent and trustee" to not to tell Engineer A of his relationship with the client. As we noted earlier, the general duty of loyalty and fair dealing denotes that a person has the duty of carrying out a transaction, in which he and another person are interested, in such manner as will be most for the benefit of the latter, and not in such a way that he himself might be tempted, for the sake of his personal advantage, to neglect the interests of the other. A review of the facts in this case makes clear that Engineer B did not appear to be motivated by personal advantage in informing Engineer A of his relationship with client. We surmise that Engineer B's disclosure of his relationship with client constitutes a neglect of the interests of his client and we believe that on balance that the benefits to be derived by Engineer B's disclosure for all parties involved did not outweigh detriments that may be suffered by the client.

Finally, in passing, we would note that Engineer B's delay in informing Engineer A of his relationship with client and the preliminary results of his review was not a violation of Section III.8.a. We interpret Section III.8.a. to require disclosure within a reasonable period of time following the establishment of the relationship and the review. We find nothing to suggest that Engineer A's rights were prejudiced by the short delay. In view of all of the facts and circumstances involved in this case, we believe the one week delay is not unreasonable and consistent with Section III.8.a.

CONCLUSIONS:

1. Engineer B's act of notifying Engineer A of his relationship with franchiser was not consistent with the Code.
2. The Board was split on the second question and could not reach agreement.

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Note:In regard to the question of application of the Code to corporations vis-a-vis real persons, business form or type should not negate nor influence conformance of individuals to the Code. The Code deals with professional services, which services must be performed by real persons. Real persons in turn establish and implement policies within business structures. The Code is clearly written to apply to the Engineer and it is incumbent on a member of NSPE to endeavor to live up to its provisions. This applies to all pertinent sections of the Code.