

2008 NSPE BER Ethics Contest Cover Letter

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REFERENCES

- Section I.1. - Code of Ethics: Hold paramount the safety, health and welfare of the public.
- Section I.4. - Code of Ethics: Act for each employer of client as faithful agents or trustees.
- Section II.1.c - Code of Ethics: Engineers shall not reveal facts, data, or information without the prior consent of the client or employer except as authorized or required by law or this Code.
- Section II.3.b - Code of Ethics: Engineers may express publicly technical opinions that are founded upon knowledge of the facts and competence in the subject matter.

DISCUSSION

This year's case presents a classical ethical dilemma for the practicing engineer in the application of the Code. An Engineer is engaged to perform a specific scope of work, but in the execution of that assignment, is made privy to certain unrelated, but nevertheless troubling, Client information that raises ethical concern. Fortunately, the NSPE Code of Ethics and the BER Case File provides ample guidance in this situation as is presented below.

First let us review the key facts in the situation (1) the Engineer is engaged to provide drawings and plans for a "structure", (2) the Client "mentions" that an adjacent structure was built by him without the necessary permits or code approvals and (3) this adjacent property is "usually not intended for human habitation."

A reviewer of this situation need not proceed any further than the first Fundamental Canon of the Code (Section I.1) for general guidance, namely that the Engineer shall "hold paramount the safety, health and welfare of the public." Since this adjacent structure involves the possibility of human habitation, we have a potential life safety situation to address owing to the fact that the construction of the structure was never subjected to the regulatory permit and code review.

There is at the same time a conflict that the Engineer faces in the disclosure of this information. The Engineer is obligated to "act for each employer or client as faithful agents or trustees" (Section I.4). Case 90-5 provides us some parallels to today's situation. In that case, the engineer "discovered serious structural defects" in a building, but they were in areas outside of his scope of work. The engineer did not reveal this information to the proper authorities and the determination was that decision was

unethical, because per 90-5 engineers “not only have the right, but also the ethical responsibility, to reveal such facts to the proper persons.”

Case 90-5 does point out the “this conflict is a natural tension which exists within the code” referring to disclosure of information versus obligation to client information confidentiality. However, the “health and welfare” principle must be held “paramount” and certainly trumps any other obligation in today’s case. In addition, the manner in which the information was transmitted has a direct bearing on the client’s expectation of confidentiality. In this case, no such expectation was established by the Client. Where this case differs slightly, if not dramatically, from Case 90-5, is that here is no direct evidence of defects – only a presumption of a problem.

Today’s case is more similar to Case 97-13, where a bridge inspection engineer notices an “apparent defective condition” and “surmises” that it may have been a contributing factor in a wall failure. (The Case title captures the essence of the matter “Duty to Report Unrelated Information Observed during Rendering of Services.”) As 97-13 states, there is a distinction to draw when “the possibility of a defect is merely a matter of speculation and surmise.”

We have no facts describing the Engineer’s specific area of competence and no facts indicating that although the adjacent structure was built without permit or code approval, that it was built in sub-standard fashion. An engineer is only allowed under Section II.3.b to “express publicly technical opinions that are founded upon knowledge of the facts and competence in the subject matter”, so there is a constraint from that perspective. Additionally, it is not a scenario with direct parallels to Case 89-7, wherein a client “confided” in an engineer that the building “contained deficiencies in electrical and mechanical systems which violate applicable codes and standards.” There is nevertheless sufficient cause for concern for the engineer to exercise caution and some degree of latitude in his reporting of this situation in the interest of the public welfare.

Therefore, we conclude that the Engineer has an obligation to express his concern to the Client and per Case 97-13 “an obligation to follow through to see that correct follow-up action is taken by the public agency.” The exceptions for an engineer’s disclosure of information is allowed under Section II.1.c “as authorized by law or this Code.”

CONCLUSION

Engineer A’s ethical obligations are as follows:

1. Inform Client that he is concerned about the lack of code and permit approvals on the adjacent structure
2. Recommend that the Client disclose the situation to the public agency responsible for such code and permit approvals
3. Notify Client that he will be monitoring the situation to ensure that the proper follow-up is occurring