

Report on a Case by the Board of Ethical Review

Case No. 63-10

Subject: Improper Associations

Canon 8- Canons of Ethics; Canon 11-Canons of Ethics; Canon 19-Canons of Ethics; Canon 23-Canons of Ethics; Rule 19-Rules of Professional Conduct; Rule 25-Rules of Professional Conduct; Rule 45- Rules of Professional Conduct; Rule 55-Rules of Professional Conduct.

Facts:

Engineer "A", after having worked for the consulting firm of Roe & Doe for a number of years, is employed by the XYZ Manufacturing Company as project engineer on a construction job being built by the CBA Construction Company. During construction, Engineer "A" finds that the construction company is attempting to substitute products and materials inferior to those specified. The construction superintendent, upon being warned by Engineer "A", calls his home office, which sends Engineer "B", who is an employee of the construction company, to justify and defend the use of the inferior products and materials. After extensive argument, CBA provided satisfactory materials.

Subsequently, Engineer "A" learned that the CBA Construction Company had proposed to the MNO Chemical Company that CBA be engaged to design and build a structure for MNO. Such a contract was subsequently signed and CBA requested Roe & Doe, consulting engineers, to perform the engineering design. Engineer "A" informed his former employer, Roe & Doe, of his experience with CBA and advised Roe & Doe not to enter into any agreement with this construction company for engineering services because of its questionable practices. Nevertheless, Roe & Doe accepted the commission for design at their normal fee, but specifically excluded supervision of construction.

Question:

What are the respective ethical responsibilities of the engineers involved -in this situation?

References:

Canons of Ethics-Canon 8- "The engineer will act in professional matters for each client or employer as a faithful agent or trustee."

Canon 11-"He will guard against conditions that are dangerous or threatening to life, limb or property on work for which he is responsible, or if he is not responsible, will promptly call such conditions to the attention of those who are responsible. Canon 19-"The engineer will endeavor to protect the engineering profession collectively and individually from misrepresentation and misunderstanding."

Canon 23-"He will not directly or indirectly injure the professional reputation, prospects or practice of another engineer. However, if he considers that an engineer is guilty of unethical, illegal or unfair practice, he will present the information to the proper authority for action."

Canon 28-"He will not become associated in responsibility for work with engineers who do not conform to ethical practices."

Rules of Professional Conduct Rule 19-"He will insist on contractor compliance with plans and specifications." Rule 25-"He will not complete, sign, or seal plans and/or specifications that are not of a design safe to the public health and welfare. If the client or employer insists on such unprofessional conduct, he shall call building authorities' attention to the case and withdraw from further consulting business or service on the project."

Rule 45-"He will report unethical practices of another engineer with substantiating data to his professional or technical society, and be willing to appear as a witness."

Rule 55-"He will not use association with a non-engineer, a corporation, or partnership as a 'cloak' for unethical acts; but must accept personal responsibility for his professional acts."

Discussion:

Canon 8 and Rule 19 clearly imposed a duty on Engineer "A" to act as he did in insisting upon compliance with the plans and specifications. He is obligated to advise his employer, XYZ, of the situation. It is not indicated whether the use of inferior products or materials would possibly jeopardize public safety, but even the slightest such possibility would also bring into play Canon 11. In that event, Engineer "A" should go further in his objections by filing notice of the deficiencies with public authority if corrections were not made promptly by the construction company.

Engineer "B's" action is subject to severe criticism. While under Canon 8 he should seek to serve the interests of his employer, CBA, as a faithful agent, this does not condone or excuse a possible violation of Canon 11, Canon 19 or Rule 19. Rule 55 makes it clear that Engineer "B" cannot escape criticism simply because he was acting for his employer. As a professional engineer, he is personally responsible for compliance with the Canons.

Whether the construction company was legally entitled to offer or contract to perform engineering services is outside of our jurisdiction as an ethical matter. The state registration laws govern this question. Engineer "A" was entitled to alert his former employers regarding the questionable practices of the construction company in accordance with Canon 19. Canon 23 and Rule 25, although referring only to presenting information to "the proper authority" or "building authorities," can be construed to include

any and all of the engineering profession which might have some control or influence in the course of events.

Canon 28 prohibits association with unethical engineers, but read together with Rule 55, the prohibition extends to association with any person or organization who, or organization which, engages in improper or questionable practices. Being warned of the improper attitudes and practices of the construction company and Engineer "B", the consulting firm of Roe & Doe should avoid all relationship with them.

The unethical actions of Engineer "B" should also be reported to any professional or technical societies of which he might be a part in accordance with the provisions of Rule 45.

Conclusion:

Engineer "A" acted ethically and responsibly. Engineer "B" acted unethically with reference to defending the use of inferior products or materials. The firm of Roe & Doe is ethically obligated to avoid any relationship with the construction company.

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