

Report on a Case by the Board of Ethical Review

Case No. 67-8

Contingent or Free Engineering for Indigent Client

Facts:

An injured workman is involved in a proceeding before a work men's compensation board relative to the amount of compensation to which he is entitled. The determination rests in large measure upon the conclusion of the board as to certain technical details related to the accident. The workman asks an engineer to appear before the board as an expert witness, but states that he is indigent and cannot afford to pay the engineer for his services. The engineer is willing to assist the workman, but asks whether he may ethically do so on:

- (1) A contingent arrangement, whereby he would be paid a percentage of the amount received by the workman, or
- (2) A free basis.

Question:

Is it ethical for an engineer to provide services as an expert witness for an indigent client on either a contingent or free basis?

References:

Code of Ethics-Section 9(a)- "He will not undertake or agree to perform any engineering service on a free basis, except for civic, charitable, religious, or eleemosynary nonprofit organizations when the professional services are advisory in nature."

Section 11(d)-"He shall not solicit or accept an engineering engagement on a contingent fee basis if payment depends on a finding of economic feasibility, or other conclusions by the engineer."

Discussion:

The question of providing expert services on a contingent basis was discussed in Case No. 66-11, in which it was concluded that it is not ethical for an engineer to provide technical advisory services or serve as an expert witness in a lawsuit on a contingent fee basis. This aspect of the instant case deals with the same issue, except that the proceeding is before a workmen's compensation board rather than a court and the fact that the client is indigent. We do not believe that these differences require a different result because the same objections apply as stated in the previous case:

". . . he could not ethically serve on a contingent fee basis because his conclusions might be influenced by the fact that he stood to gain financially by having his conclusions coincide with his personal interest in his remuneration, which is dependent upon his client being successful in the litigation. * * *

". . . and the engineer must not be in a position whereby his form of compensation might tend to prevent him from being completely impartial, or from rendering a full and complete report containing both favorable and unfavorable facts or conclusions."

If the engineer is so disposed, however, he may provide his services on a free basis because Section 9(a) of the Code permits free services for charitable purposes. By its terms, Section 9(a) applies only to "organizations," however, we believe that it is reasonable to interpret the language to include indigent individuals in addition to organizations. In these circumstances, it is traditional of all professions to serve without compensation or at reduced compensation.

The only other pertinent requirement of Section 9(a) is that the services be advisory in nature. We believe that, in this case, the services would be advisory to" the workmen's compensation board in the sense that the engineer would be trying to give the board a full and complete picture of the technical aspects to assist in the board's proper determination of the case.

Conclusion:*

It would not be ethical for an engineer to provide services as an expert witness for an indigent client on a contingent fee basis, but he may, if he desires, provide such services on a free basis.

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