

Duty to Report Impaired Colleague

Case No. 09-9

Facts:

Engineer A and Engineer B are partners in the ABC Engineering Company. Recently, Engineer A has learned that Engineer B has missed certain deadlines in connection with the preparation and the filing of client documents before public authorities. This is not the first time Engineer B has missed deadlines. These failures have resulted in both inconvenience and cost to the clients. Engineer B was perceived to be impaired by alcohol during work on several occasions, a matter which Engineer A discussed with Engineer B in the past. Engineer B has responded that there is no alcohol problem and that he will correct the missed deadlines in the future. However, Engineer B continues to miss deadlines.

Question:

Does Engineer A have any ethical obligations under the circumstances?

References:

Section I.1.	-	NSPE Code of Ethics:	<i>Engineers, in the fulfillment of their professional duties, shall hold paramount the safety, health, and welfare of the public.</i>
Section I.6.	-	NSPE Code of Ethics:	<i>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.</i>
Section II.1.f.	-	NSPE Code of Ethics:	<i>Engineers having knowledge of any alleged violation of this Code shall report thereon to appropriate professional bodies and, when relevant, also to public authorities, and cooperate with the proper authorities in furnishing such information or assistance as may be required.</i>
Section II.2.	-	NSPE Code of Ethics:	<i>Engineers shall perform services only in the areas of their competence.</i>
Section III.7.	-	NSPE Code of Ethics:	<i>Engineers shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other engineers. Engineers who believe others are guilty of unethical or illegal practice shall present such information to the proper authority for action.</i>
Section III.8.a.	-	NSPE Code of Ethics:	<i>Engineers shall conform with state registration laws in the practice of engineering.</i>

Discussion:

The line between personal and professional conduct is at times a difficult line to draw in the area of engineering ethics. In many respects, one's personal and professional conduct, while separate, are interwoven at times. The Board has considered a limited number of cases involving the line between personal and professional conduct, but the facts of this case raise an issue never before considered by the Board.

For example, in BER Case 97-11, which involved the line between one client and what an engineer perceived to be an unrelated matter, an engineer was retained by Client B to perform design services and provide a Critical Path Method schedule for a manufacturing facility. The engineer prepared the plans, specifications, and the CPM schedule. During the rendering of services to Client B on this project, the state board of professional engineers contacted the engineer regarding an ethics complaint filed against him by Client C, relating to services provided that are similar to the services performed for Client B. Client C alleged that the engineer lacked the competence to perform the services in question. The engineer did not believe it was necessary to notify Client B of the pending complaint. Later, through another party, Client B learned of the ethics complaint and told the engineer that he was upset by the allegations and that he should have brought the matter to Client B's attention.

In deciding that it was ethical for the engineer not to report to Client B the ethics complaint filed by Client C, the Board was of the opinion that while an engineer clearly has an ethical obligation to act as a faithful agent and trustee for the benefit of a client, avoid deceptive acts, be objective and truthful, avoid conflicts, and so on, such obligations do not compel an engineer to automatically disclose that a complaint had been filed against the engineer with the state engineering licensure board. As noted by the Board, a complaint is a mere allegation and does not amount to a finding of fact or conclusion of law. Said the Board, "No engineer should be compelled to disclose potentially damaging allegations about his professional practice—allegations that could be false, baseless, and motivated by some malicious intent. Instead, the engineer should weigh all factors and, depending upon the nature and seriousness of the charges, take prudent action, which might include providing Client B with appropriate background information."

While the facts in Case 97-11 are somewhat different than the facts in the present case, Case 97-11 is instructive. Clearly in sensitive matters involving an engineer's personal and professional integrity, great lengths must be taken by all engineers to protect the professional reputation, prospects of another professional colleague, and to avoid exposing the colleague to unjust criticism and ridicule.

Having said that, it must also be acknowledged that where an engineer is perceived to be impaired, either through alcohol or substance abuse, and the engineer's conduct is interfering with their own and the employer's ability to effectively serve the interests of the client and the public, other engineers who observe this conduct must take appropriate steps to intercede. Performing professional services in an impaired state is a violation of state laws and state engineering licensure board rules in some jurisdictions. For an engineer to knowingly ignore the observed impairment out of a sense of loyalty, or to protect a professional colleague, endangers the client and the public. This could result in disciplinary action against both the impaired engineer and the engineer who, after observing the violation, failed to take appropriate action.

Today, many groups provide special outreach to professionals with alcohol and substance abuse issues. As with all professionals, engineers are not immune to these issues and should pursue constructive solutions to address these issues.

Conclusion:

Engineer A should contact an appropriate alcohol or substance abuse counseling group for professionals to assist in developing an outreach effort for Engineer B.

Board of Ethical Review:

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