

The 2012 NSPE Milton F. Lunch Ethics Contest

Submitted by

Richard H. Smith, P.E., #17894

6404 Brentford Terrace
Oklahoma City, OK 73132
405-553-8361
rsmith83@ieee.org

Oklahoma Society of Professional Engineers

Central/Southwest Chapter
201 NE 27th Street, Room 125
Oklahoma City, OK 73105-2789
405-528-1435
www.ospe.org

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Facts:

Engineer A works for Company X which is owned by Engineer B. Company X is currently experiencing financial problems and Engineer B recently created another company, Company Y.

Engineer A has learned that Engineer B recently advised clients of Company X to remit payments for work performed by Company X and its employees to Company Y.

Question:

What are Engineer A's ethical obligations under the circumstances?

References:

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| <i>Section II.1.d. - NSPE Code of Ethics:</i> | <i>Engineers shall not permit the use of their name or associate in business ventures with any person or firm that they believe is engaged in fraudulent or dishonest enterprise.</i> |
| <i>Section II.1.f. - NSPE Code of Ethics:</i> | <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> |
| <i>Section II.4 - NSPE Code of Ethics</i> | <i>Engineers shall act for each employer or client as faithful agents or trustees.</i> |
| <i>Section II.5. - NSPE Code of Ethics:</i> | <i>Engineers shall avoid deceptive acts.</i> |
| <i>Section III.1. - NSPE Code of Ethics:</i> | <i>Engineers shall be guided in all their relations by the highest standards of honesty and integrity.</i> |
| <i>Section III.9. - NSPE Code of Ethics:</i> | <i>Engineers shall give credit for engineering work to those to whom credit is due, and will recognize the proprietary interests of others.</i> |

Discussion:

The practice of engineering also involves the business of the practice. This naturally involves finances, which adds an additional dimension to the profession. But ethical obligations apply equally to all aspects of a practice for the professional engineer. While being in difficult financial straits is not unethical, it can put added pressure to justify crossing ethical boundaries. From the limited information, it appears that

Engineer B may have succumbed to those pressures, which has subsequently placed Engineer A in a position to make some choices regarding his own ethical duty.

This case primarily involves the issue of deceptive acts; and secondarily, of giving credit to whom credit is due. As recently as 2009, BER Case No. 09-2 concluded that it was an engineer's ethical duty to confront his employer of actions considered deceptive and fraudulent. In that case the engineer tested wafers for microprocessor chips that were purchased from another company. His supervisor asked him to alter testing procedures in such a way that the quality of the wafers appeared to be lower than they actually were. As a result, the engineer's company could purchase the wafers for a lower price. The engineer's objections were ignored and resulted in his dismissal from the company. The Board agreed that the engineer had a professional obligation to approach the officers of the company with the situation. Additionally, the Board stated that it would be "appropriate and ethical" for the engineer to advise the seller of the wafers if the officers did not act.

Engineer A in this case has the professional and ethical obligation to avoid being a participant in anything considered illegal or deceptive, as stated in Section II.1.d and Section II.5 of the NSPE Code of Ethics. His clients are being asked to make payments to Company Y for work performed by Company X. This deprives Company X of its legitimate income. Since Company X is already in financial trouble, this puts Engineer A and his fellow employees in jeopardy of losing their jobs if Company X fails. Engineer B is acting in a deceptive manner toward his clients as well as his employees.

Engineer B's actions also deprive Engineer A of receiving credit for his work as an employee of Company X, which violates Section III.9 of the Code. In BER Case No. 07-4 the Board ruled that Engineer B acted in an unethical manner by not including Engineer A in a company brochure that included pictures of award winning projects. Engineer A had primary design responsibility for the projects; yet the pictures included Engineer B and other engineers who had little responsibility for the jobs. The Board decided that Engineer A was not being given the credit that was due him. In this case, Engineer B, through Company Y, is taking credit for Engineer A's work.

Professional engineers have the ethical obligation to uphold the highest standards of honesty and integrity (Section III.1) in all aspects of their practice. Engineer A does have a responsibility to his employer, Engineer B, to act as a "faithful agent" per Section II.4 of the Code. But this loyalty does not require it to close its eyes to unethical actions. It does mean that, as a professional courtesy, he should first privately ask Engineer B to make appropriate changes consistent with the law and ethics. Engineer A runs the real risk of being ignored or even being dismissed from Company X. At that point, Engineer A must decide to follow the practice of Section II.1.f of the Code, which would involve taking the case up with the state board of engineering.

Conclusion:

Engineer A has an ethical duty to first approach Engineer B to share his concerns about the financial state of Company X as well as to confirm improper billing of clients. This provides Engineer B an opportunity to fulfill his own ethical responsibility as a professional engineer. If Engineer B corrects the situation, the practice as well as the relationship has likely been saved and no further action is needed. If Engineer B refuses to take proper ethical actions, it is the appropriate and ethical choice for Engineer A to disassociate himself from the company and report the circumstances to the state engineering board.