



NATIONAL SOCIETY OF  
PROFESSIONAL ENGINEERS

# BOARD of ETHICAL REVIEW

CASE REVIEW

## Community Engagement for Infrastructure Projects

Case No. 24-4

NSPE.ORG



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### Facts

Engineer M is retained by the City as the lead engineer on a major public infrastructure project to upgrade a highway system that runs through Community P, a historically underserved, underrepresented, and overburdened neighborhood. During the planning phase, the City requires a series of public engagement sessions to gather input from the affected community. Engineer M's firm partners with an engineering consultant, Firm DBA, to coordinate public outreach and conduct these sessions. Firm DBA has a department within its corporate structure that specializes in communications and public relations. It is this department that is directly charged with providing these services on behalf of Firm DBA. Firm DBA has licensed professional engineers in charge or in supervisory roles of all departments in the firm as well as in Firm DBA ownership.

Firm DBA organizes meetings at times and locations that are difficult for Community P residents to attend, such as during work hours at venues far from the area and not easily accessible via public transit. Further, Firm DBA's outreach and notices do not provide for a method for community members to submit written comments. Finally, no virtual meetings are held to gather feedback from interested persons.

The area in which Firm DBA holds the public outreach sessions, Community Q, is an alternate route for the major public infrastructure project. Few Community P members participate, and those who do express concerns about the project's potential to displace residents and disrupt local businesses. Many comments are received that support the upgrade through the historically underserved, underrepresented, and overburdened neighborhood (Community P) and not through Community Q.

Engineer M expresses concern to Firm DBA about the public outreach and session locations, but Firm DBA states that these practices are consistent with prior projects undertaken for the City. Further, Firm DBA states that City leaders, citing economic, political, and social considerations, specifically instructed Firm DBA to perform the public engagement sessions in the way that Firm DBA completed them. Despite Engineer M's concerns, Firm DBA prepares a carefully-framed report, omitting details about where the sessions were held and at what time of day the sessions were held, including not identifying that written comments were not accepted. Firm DBA submits a report claiming Community P's support for the project, citing a lack of significant opposition and comments in support of the project.

## Questions

1. Should Engineer M challenge the validity of Firm DBA's report?
2. Should Engineer M raise any concerns with the City, as the client, and, if so, how?
3. Are Firm DBA's actions ethical? Even though Firm DBA is not providing engineering services, are they required to abide by NSPE's Code of Ethics?

## Code of Ethics References:

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| <p><b>I.1</b> Hold paramount the safety, health, and welfare of the public.</p> <p><b>I.3</b> Issue public statements only in an objective and truthful manner.</p> <p><b>I.5</b> Avoid deceptive acts.</p> <p><b>II.1.d</b> 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.</p> <p><b>II.1.f</b> 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.</p> <p><b>II.3.a</b> Engineers shall be objective and truthful in professional reports, statements, or testimony. They shall include all relevant and pertinent</p> | <p>information in such reports, statements, or testimony, which should bear the date indicating when it was current.</p> <p><b>III.1.b</b> Engineers shall advise their clients or employers when they believe a project will not be successful.</p> <p><b>III.3.a</b> Engineers shall avoid the use of statements containing a material misrepresentation of fact or omitting a material fact.</p> <p><b>III.7</b> 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.</p> |
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## BER CASE REFERENCES:

[BER Case 60-3](#); [BER Case 88-6](#); [BER Case 98-2](#); [BER Case 09-10](#); [BER Case 21-7](#)

### Discussion

The overriding issue for the Board of Ethical Review (BER) to consider in this case is that of the actions of Firm DBA. The ethical requirements of Firm DBA must be clarified before establishing what actions are required by Engineer M. As stated, Firm DBA provided a report that omitted details about where the sessions were held and at what time of day the sessions were held, including not identifying that written comments were not accepted. Additionally, Firm DBA's report claimed Community P supported the project, without any evidence to support that claim. These actions likely violated the NSPE Code of Ethics ( Code) regarding issuing statements in an objective and truthful manner, deceptive acts, misrepresentation of fact, and omitting a material fact

However, does the Code apply to Firm DBA? If the individuals most heavily involved in the project at Firm DBA are Certified Public Relations Professionals, they would be held to a code of ethics that provides for honest and truthful conduct. However, the BER will not comment on these potential obligations, as it is beyond the BER's duties to review other codes. In [BER Case 60-3](#), the facts indicated that an engineering firm was providing sub-professional services and, because of that, the firm was not required to abide by the provisions of the Canons of Ethics and Rules of Professional Conduct. The conclusion by the BER in [BER Case 60-3](#) was that

the Canons and Rules did not apply.

However, the Code has been revised since that time. The most fundamental and primary Canon of the Code is to hold paramount the safety, health, and welfare of the public. The facts in this case state that Firm DBA has licensed professional engineers in charge or in supervisory roles of all departments in the firm as well as ownership. It would be difficult to believe that through their duties as licensed professional engineers, the Code would be irrelevant to the Firm's business dealings simply because the services being provided were not engineering from a design, calculation, or engineering judgment perspective but were confined to communication and public relation services. The Preamble of the Code of states that professional behavior requires adherence to the highest principles of ethical conduct. Therefore, the Code applies to Firm DBA.

[BER Case 98-2](#) addressed the ethical concerns of an international NSPE member that encountered separate and conflicting legal and ethical issues working in a county other than the U.S. In that case the BER determined that the engineer was bound by the Code and stated that "it would be a major error for NSPE to apply one standard of conduct to one set of NSPE members and another standard of conduct to another set of NSPE members." Although that case was based on geographical concerns rather than the type of

services provided, it was determined that the Code applied to members universally.

In [BER Case 88-6](#), Engineer A had the responsibility for a city's waste disposal plant and is also directly responsible to City Administrator C. Engineer A informed City Administrator C of the inadequacy of the disposal plant in a certain potential scenario. City Administrator C told Engineer A to discuss this matter only with him and, subsequently, removed Engineer A from responsibility of the disposal plant. Engineer A took no further action. The critical scenario did, in fact, happen and a release of partially-treated wastewater occurred. The BER found that Engineer A did not fulfill ethical obligations of holding paramount the safety, health, and welfare of the public. As in this case, Engineer M, therefore also has a duty to hold paramount the safety, health, and welfare of the public.

In [BER Case 09-10](#), Engineer A owned ABC Engineering in State P. Engineer X owned XYZ Engineering in State Q. Engineer X was retained to provide engineering services for Client L located in State P for a project in State P. Client L was a former client of Engineer A's firm. Engineer A learned that XYZ Engineering did not have a current certificate of authority to practice engineering in State P. The question to the BER was to evaluate what Engineer A's ethical obligations would be under these facts. The BER found that Engineer A should communicate with Engineer X to obtain clarification regarding the matter in question. The BER further found that if Engineer A was not sufficiently satisfied with Engineer X's explanation, Engineer A may be required to report this matter to the state engineering licensure board.

In [BER Case 21-7](#), the question put to the BER was as follows: should an Engineer include information about the utility generation mix and

rolling blackouts in the report to an organization? The BER found that as a registered professional, that Engineer was obliged to include relevant and pertinent information in a report to the organization. A report that does not contain relevant information will not help stakeholders make an informed decision and does not protect public safety, health, and welfare. Likewise, in this case, pertinent information was missing from the report.

By this reasoning, Engineer M not only has the right to challenge the validity of the DBA report but also must consider their involvement in the project as they 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 as stated in Code section II.1.d. The result of going forward with the project could also have disastrous consequences. If the facts come out later that relevant information was not disclosed in the report, the impact of such could be very negative. Again, Engineer M has an additional obligation to advise their clients or employers when they believe a project will not be successful as stated in Code section III.1.b.

As to a course of action, the BER recommends Engineer M to confer immediately with Firm DBA. Engineer M should state their objections with Firm DBA and express all ethical obligations under the Code. The licensed professional engineers of Firm DBA, because of their supervisory and ownership roles, should be involved in these discussions as they have the ultimate responsibility to see that ethical practices are followed.

Should Firm DBA acknowledge their ethical obligations after being confronted by Engineer M, a more immediate resolution to the issues may be realized and Firm DBA could correct the

discrepancies. A more unfavorable result would be anticipated if Firm DBA takes the position that it performed the work under the direction of the City and are, therefore, unwilling to make the corrections.

Should Firm DBA choose not to correct the discrepancies, Engineer M would need to also confer with the City (with the knowledge and potential presence of Firm DBA) and have a discussion of the ethical obligations of all involved. After this meeting, if the City decided to do nothing, Engineer M must decide whether to report Firm DBA's actions to the state's engineering licensure board. Although seemingly extreme, reporting Firm DBA to the state's engineering licensure board may be necessary to prevent similar situations from happening in the future.

## Conclusions:

1. Engineer M should challenge the validity of Firm DBA's report as Firm DBA did not abide by the Code in a number of instances.
2. Engineer M should first confer with Firm DBA to correct all discrepancies in the report. If no agreement can be made going forward, Engineer M should confer with the City to outline the ethical obligations. Engineer M should also consider any obligations they may have to report to the state licensure board.
3. The actions of Firm DBA are not ethical under the Code as the services provided were under the supervision and ownership of licensed professional engineers.



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