

Conflict of Interest—Selected as Conference Speaker by Former Employer

Case No. 17-1

Facts:

Engineer A works for Firm X. Firm X is contacted by an engineering association that is seeking a speaker with expertise in a technical area for an upcoming conference. Engineer B, a principal with Firm X, discusses the invitation sent to Engineer B by the engineering association with Engineer A and asks Engineer A if Engineer A would be willing to speak at the conference, which will take place in 11 months. Engineer A agrees to speak at the conference. Five months after Engineer B assigns the speaking engagement to Engineer A, Engineer A is offered a position with Firm Y, which also performs work in the same technical area as Firm X. Engineer A decides to accept the position with Firm Y. Although transitioning to Firm Y, Engineer A would still like to make the presentation at the engineering conference but is uncertain whether to discuss this with his current employer, the engineering association, or his prospective employer.

Question:

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

NSPE Code of Ethics References:

- Section II.3.c. - Engineers shall issue no statements, criticisms, or arguments on technical matters that are inspired or paid for by interested parties, unless they have prefaced their comments by explicitly identifying the interested parties on whose behalf they are speaking, and by revealing the existence of any interest the engineers may have in the matters.*
- Section II.4.a. - Engineers shall disclose all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services.*
- Section III.1.e. - Engineers shall not promote their own interest at the expense of the dignity and integrity of the profession.*
- Section III.2.c. - Engineers are encouraged to extend public knowledge and appreciation of engineering and its achievements.*
- Section III.3.c. - Consistent with the foregoing, engineers may prepare articles for the lay or technical press, but such articles shall not imply credit to the author for work performed by others.*
- Section III.4.b. - Engineers shall not, without the consent of all interested parties, participate in or represent an adversary interest in connection with a specific project or proceeding in which the engineer has gained particular specialized knowledge on behalf of a former client or employer.*
- Section III.9.e. - Engineers shall continue their professional development throughout their careers and should keep current in their specialty fields by engaging in professional practice, participating in continuing education courses, reading in the technical literature, and attending professional meetings and seminars.*

NSPE BER Case References: 83-1, 99-5

Discussion:

The ethical obligations of professional engineers who depart or are in the process of transitioning from one employer to another employer, particularly in areas where the employers compete with one another, can raise significant ethical issues. Conflicts of interest, duties of loyalty, protection of proprietary information, and other issues often come to the surface during these transitions, particularly in a tight and competitive job market. The NSPE Board of Ethical Review (BER) has had occasion to examine some of these issues in earlier BER cases relating to an engineer moving from one employer to another employer, as well as the solicitation of employees among employers.

In BER Case 83-1, Engineer B, who employed Engineer A, notified Engineer A that Engineer A was going to be terminated due to the lack of work. Engineer A thereupon notified clients of Engineer B that Engineer A was planning to start another engineering firm and would appreciate being considered for future work. Meanwhile, Engineer A continued to work for Engineer B for several additional months after the anticipated termination date. During that period, Engineer B distributed a previously printed brochure listing Engineer A as one of Engineer B's key employees, and continued to use the brochure with Engineer A's name in it well after Engineer A was terminated. The Board concluded that (1) it was unethical for Engineer A to notify clients of Engineer B that Engineer A was planning to start a firm and would appreciate being considered for work while still in the employ of Engineer B; (2) it was not unethical for Engineer B to distribute a previously printed brochure listing Engineer A as a key employee provided Engineer B apprised the prospective client during the negotiation of Engineer A's pending termination; and (3) it was unethical for Engineer B to distribute a brochure listing Engineer A as a key employee after Engineer A's actual termination.

The BER noted that (1) Engineer A's actions in notifying clients of Engineer B while still employed by Engineer B constituted improper promotional activities under the NSPE Code of Ethics; (2) Engineer B's distribution of the previously printed brochure that included references to Engineer A, while not improper, should have been clarified immediately upon Engineer A's actual termination; and (3) the continued distribution by Engineer B of the promotional brochure containing references to Engineer A was clearly misleading and deceptive.

In BER Case 99-5, Engineer A's firm was attempting to increase its staff capacity and, after publishing a series of advertisements in local and national job classified publications, decided to send out recruitment postcards to engineers in the local and state engineering community. Using the state board registry of professional engineers, the firm sent the unsolicited postcards out to individual engineers at the address listed in the directory announcing Engineer A's firm's interest in recruiting new engineer employees. Such mailings were not prohibited by the state board. Many of the cards were sent to the individual engineers at the firm's address. In deciding that it was ethical for Engineer A's firm to send postcards out to individual engineers in the manner described, the BER noted that it did not believe this type of solicitation crossed a line or rose to a level that allowed the employer's place of business to be used as a "staging ground" for the "raiding" of its employees.

Turning to the facts in the present case, it would appear that Engineer A is faced with a classic dilemma—the duty to the current employer versus the duty to the future employer. In addition, Engineer A also appears to have an obligation to the engineering association to whom Engineer A has made a professional commitment—to speak at the upcoming engineering conference on a technical area with which Engineer A has some level of expertise.

The facts indicate that the original invitation to speak at the conference was sent to and received by Engineer B at Firm X. In the BER's opinion, the invitation to speak at the conference belongs to and is within the discretion of Firm X. Had the invitation come directly to Engineer A, the circumstance would have been different. Because the invitation was sent to and received by Engineer B, Engineer A has an ethical obligation to first discuss the invitation with Engineer B to resolve the matter. In addition, since the invitation to speak at the engineering conference was sent to and received by Engineer B and Firm X, Engineer B should communicate with the engineering association regarding Engineer A's speaker status. However, since Engineer A has knowledge of and interest in the conference, Engineer A could discuss with Firm Y the possibility of speaking opportunities at the conference.

Conclusion:

Engineer A had an ethical obligation to first discuss the invitation with Engineer B to resolve the matter. In addition, since the invitation to speak at the engineering conference was sent to and received by Engineer B, Engineer B should communicate with the engineering association regarding Engineer A's speaker status.

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