

- I.4. - *Code of Ethics:* Engineers, in the fulfillment of their professional duties, shall act for each employer or client as faithful agents or trustees
- III.4. - *Code of Ethics:* Engineers shall not disclose, without consent, confidential information concerning the business affairs or technical processes of any present or former client or employer, or public body on which they serve.
- III.7. - *Code of Ethics:* 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.
- III.8. - *Code of Ethics:* Engineers shall accept personal responsibility for their professional activities; provided, however, that Engineers may seek indemnification for services arising out of their practice for other than gross negligence, where the Engineer's interests cannot otherwise be protected.

REFUSING TO SIGN/SEAL CONSTRUCTION DOCUMENTS

FACTS:

Engineer A, employed by Firm X, left Firm X and goes to work for Firm Y, a competitor. A project on which Engineer A was in responsible charge was virtually completed, but Engineer A did not sign or seal the construction documents before leaving Firm X's employment. Engineer B, a principal in Firm X requests Engineer A to sign and seal the drawing. Engineer A refuses to sign or seal the construction documents unless Firm X pays Engineer A an additional fee.

QUESTIONS:

- Question 1: Was it ethical for Engineer A to refuse to sign or seal the plans?
- Question 2: Was it ethical for Engineer B to ask Engineer A to sign and seal the construction documents?
- Question 3: If additional work was required on the part of Engineer A, would it be ethical for Engineer A to request additional compensation?

DISCUSSION: The obligation of the engineer to take responsibility for professional services is a basic ethical principal contained in the NSPE Code of Ethics. As a general matter, engineers as professionals have the obligation to assume responsibility for professional services performed by them or under their direct personal supervision. Depending upon the nature of the work and other requirements, this may include work

performed for the benefit of a client, design work, reports, plans, specifications and work prepared by the engineer which will be submitted to a public authority for approval.

Engineers who work for one firm and then move on to another firm are not released from this professional responsibility. The work that they performed for their previous employer is no less their work because they no longer have a direct relationship with that firm. Once a professional renders professional services on behalf of a client, the professional is duty bound to make certain that the work is done in a responsible and professional manner and that the client's interests are protected and preserved.

This circumstance can become particularly sensitive where an engineer leaves a firm to go to work with a competing firm. This issue has been discussed by the BER on numerous occasions (see BER Cases 89-7, 92-6, 93-3, 93-7). Nevertheless, the fact that the two firms are in direct competition should have no bearing upon the responsibility of the engineer to assume responsibility for the work and take appropriate steps for the benefit of the client. It would seem not only the ethical course of action, but also an action which comports with the interests of all parties, including the interests of the new firm by which the engineer is now employed.

It is not entirely clear from the facts the full extent to which the work had been completed by Engineer A. However, it can be assumed by the facts and the use of the term "virtually completed" that the work had been completed in almost all respects and only minor ministerial detail remained to be performed. On that basis, it can be assumed that Engineer B would not be requested to perform an exhaustive or detailed review of the work, since it can be assumed that Engineer A was already intimately familiar with the work on the project for which he had been and continues to be responsible. In addition, it does not appear under the facts that because Engineer A is not employed by the original firm at the time he is being asked to sign and seal the drawings that he would be violating any ethical proscription contained in the NSPE Code of Ethics (see NSPE Code Section III.4.).

We are concerned by Engineer A's professional attitude concerning the firm's request that he sign and seal drawings. While we believe Engineer A may have legitimately been entitled to a small fee for performing additional professional services performed for his former employer, and as part of his accountability to his new firm, we are struck by Engineer A's refusal to sign and seal the drawings unless paid additional compensation. As we have discussed earlier, since Engineer A was primarily responsible for the work and had direct control and personal supervision over the work, Engineer A has a professional obligation to sign the work regardless of the how the compensation matter is resolved. It is unclear whether competitive pressures between the firms may have been a factor in Engineer A's position, but such factors should not come into play in a matter of this type by signing and sealing the drawings. (see NSPE Code Section III.8.).

Assuming as we have in this case that Engineer A was primarily responsible for the work and had direct control and personal supervision over the work, Engineer B was clearly justified in asking Engineer A to sign and seal the documents in question.

CONCLUSIONS:

Question 1: It was unethical for Engineer A to refuse to sign or seal the construction documents.

Question 2: It was ethical for Engineer B to ask Engineer A to sign and seal the construction documents.

Question 3: It would be ethical for Engineer A to request additional compensation.

BOARD OF ETHICAL REVIEW

James G. Fuller, P.E.

William W. Middleton, P.E.

Robert L. Nichols, P.E.

William E. Norris, P.E.

Paul E. Pritzker, P.E.

Jimmy H. Smith, P.E.

C. Allen Wortley, P.E. (Observer)

Donald L. Hiatte, P.E., Chairman

* Note -- In regard to the question of application of the Code to corporations vis-a-vis real persons, business form or type should not negate nor influence conformance of individuals to the Code. The Code deals with professional services, which services must be performed by real persons. Real persons in turn establish and implement policies within business structures. The Code is clearly written to apply to the Engineer and it is incumbent on a member of NSPE to endeavor to live up to its provisions. This applies to all pertinent sections of the Code.