



NATIONAL SOCIETY OF
PROFESSIONAL ENGINEERS

BOARD *of* ETHICAL REVIEW



CASE REVIEW:

Duty to Report Misconduct

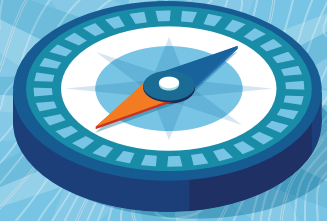
CASE NO. 22-04
APPROVED MAY, 2023

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FACTS:

Engineer A works in a metropolitan area bordering on two states, and designs bridges and culverts as an employee of ABC Consultants, working in both State Q and State Z. ABC's competitors, XYZ Engineers, hired a new project manager, Engineer B, with extensive experience in responsible charge of projects in another region, and began to market bridge and culvert designs in both states. Engineer B's projects completed while in previous employment did not involve proprietary design concepts, and the capabilities of project team members on those projects were within Engineer B's areas of expertise.

XYZ Engineers' qualifications statements accompanying their project proposals clearly indicate their projects in the body of the proposal. In addition, at the beginning of an individual qualification section, Engineer B's projects for a different firm are identified as a part of Engineer B's experience, identifying the prior employer and the associated client for each project. However, while this notice appears to indicate an intent to provide transparency, this notice was not included in all paragraphs of the lengthy individual descriptions of those projects.

Engineer A questions whether this proposal/marketing practice is misleading to clients and unethical. Engineer A decides to review the NSPE Code of Ethics and the engineering licensing board law and rules of professional conduct in both states. The State Q Licensing Board Rules, patterned after the NCEES Model Rules, indicate in relevant part that "presentations incidental to the solicitation of employment shall not misrepresent facts concerning employers, employees, associates, joint ventures or past accomplishments".

Engineer A finds that the Rules in State Z, which have a long and unique legislative history, are much more specific, indicating in part that "a licensee who has been an employee of another design firm may not claim unconditional credit for design projects contracted for in the name of a previous employer", and that "any list of such projects must include, next to the specific project listing, detailed information naming the previous firm and the licensee's specific involvement in the project". The Rules in both states require a licensee who has knowledge or reason to believe that a person or firm has violated those Rules to report such knowledge or belief to the Board of Licensure in writing.

Engineer A considers whether this proposal/market-

ing practice is unethical in accordance with the NSPE Code of Ethics and whether Engineer A has an obligation to report to the two licensing jurisdictions.

QUESTION:

1. Are the proposal techniques of Engineer B ethical with respect to the NSPE Code of Ethics?
2. Does Engineer A have an obligation to report a violation to the Engineering Licensing Board in State Q? In State Z

NSPE CODE OF ETHICS REFERENCES:

Rule II. 5. Engineers shall avoid deceptive acts.

Rule II.5.a. Engineers shall not falsify their qualifications or permit misrepresentation of their or their associates' qualifications. They shall not misrepresent or exaggerate their responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint venturers, or past accomplishment.

Professional Obligations III.7. 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.

Professional Obligations III.8.a. Engineers shall conform with state registration laws in the practice of engineering.

Professional Obligations. III.9. Engineers shall give credit for engineering work to those to whom credit is due, and will recognize the proprietary interests of others.

Professional Obligations. III.9.a. Engineers shall, whenever possible, name the person or persons who may be individually responsible for designs, inventions, writings, or other accomplishments.

NSPE BER CASE REFERENCES:

[76-4, 02-11](#)

DISCUSSION:

[BER Case 76-4](#) addressed the duty to report likely environmental damage to appropriate regulatory authorities. Engineer Doe was retained by an industry to evaluate whether a proposed change in their manufacturing process would result in meeting minimum water quality standards. Doe concluded that the change would not meet minimum standards and apprised the client of that decision. The client terminated Doe's contract and asked Doe not to write a report. Subsequently, another engineer unaware of factors that Doe had recognized, presented the view at a public hearing that the industry would meet minimum standards. The BER concluded that Doe had an obligation to report Doe's observations to the applicable regulatory authority.

In [BER Case 02-11](#), Engineer A had provided an anonymous complaint to the engineering licensing board regarding the misconduct of Engineer B. The BER was tasked with evaluating whether filing the complaint anonymously was unethical. The BER concluded that Engineer A had a clear obligation to report information on misconduct to the engineering licensing board. On the matter of an anonymous complaint, the BER considered that a signed complaint would have been better to facilitate the licensing board's investigation, and fairer to the complainant, but concluded in this case that an anonymous letter was better than no letter at all and was ethical.

Turning to the current case, XYZ Engineers' proposal clearly indicated that Engineer B was in responsible charge of certain listed projects while in the previous employment of another firm. That qualifier was not repeated within the specific descriptions of each of those projects. Under the NSPE Code of Ethics, did this constitute "misrepresentation...of qualifications" as referenced in II.5.a? That might be dependent upon how noticeable the "in previous employment" description was in the body of the proposal. With respect to giving credit to proprietary interests as referenced in Professional Obligation III.9, Engineer B's previous projects were not technically proprietary and Engineer B gave credit to both the previous firm and the clients. The overall ethical question posed in this case is whether or not that credit necessarily needs to be specifically stated in each paragraph where such a project is mentioned. Ethical practice would guide Engineer B to be as clear as possible in the differentiation of the two firms' project responsibilities.

There is an obligation under the NSPE Code of Ethics to report others who "are believed to be guilty" of unethical or illegal practice to the appropriate authority, in this case, the engineering licensing board in the ap-

plicable state. With respect to the obligation to report to the engineering licensing board in State Q, the language presented in the case regarding State Q's Rules of Ethics appears very similar to the language in the NSPE Code of Ethics. Did Engineer B's and XYZ Engineers' presentation "misrepresent facts concerning...past accomplishments"? Based on the information presented in the case, the information probably could have been clearer, but did it rise to "misrepresentation"? The BER concludes that it would not rise to misrepresentation, and that Engineer A did not have an obligation to report to the engineering licensing board in State Q.

The situation in State Z is different. State Z's rules in this regard are very clear, and require that next to the specific project listing, the previous firm be named and that Engineer B's specific role on that project be clearly described. The presentation by Engineer B and XYZ Engineers did not meet the specifics of this Rule and, accordingly, under that Rule, constituted misconduct on the part of both the individual and the firm. The BER concludes that Engineer A has a clear obligation to report the misconduct to the engineering licensing board in State Z.

A key message from this case is that, when considering reporting the unethical practices of others vis-à-vis state licensure law, engineers need to look to the specific Rules of Professional Conduct of the individual engineering licensing jurisdiction in which the others are practicing since those rules vary by jurisdiction.

CONCLUSIONS:

1. The proposal practices of Engineer B and XYZ Engineers were not unethical from the perspective of the NSPE Code of Ethics.



2. Engineer A does not have an obligation to report Engineer B's proposal/marketing practices to the engineering licensing board in State Q.
3. Engineer B's proposal/marketing practices would constitute professional misconduct per licensure law in State Z, and Engineer A has a clear obligation to report to the engineering licensing board in State Z.

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Each opinion is intended as guidance to individual practicing engineers, students, and the public. In regard to the question of application of the NSPE Code of Ethics to engineering organizations (e.g., corporations, partnerships, sole proprietorships, government agencies, and university engineering departments), the specific business form or type should not negate nor detract from the conformance of individuals to the Code. The NSPE Code deals with professional services, which must be performed by real persons. Real persons in turn establish and implement policies

within business structures.

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