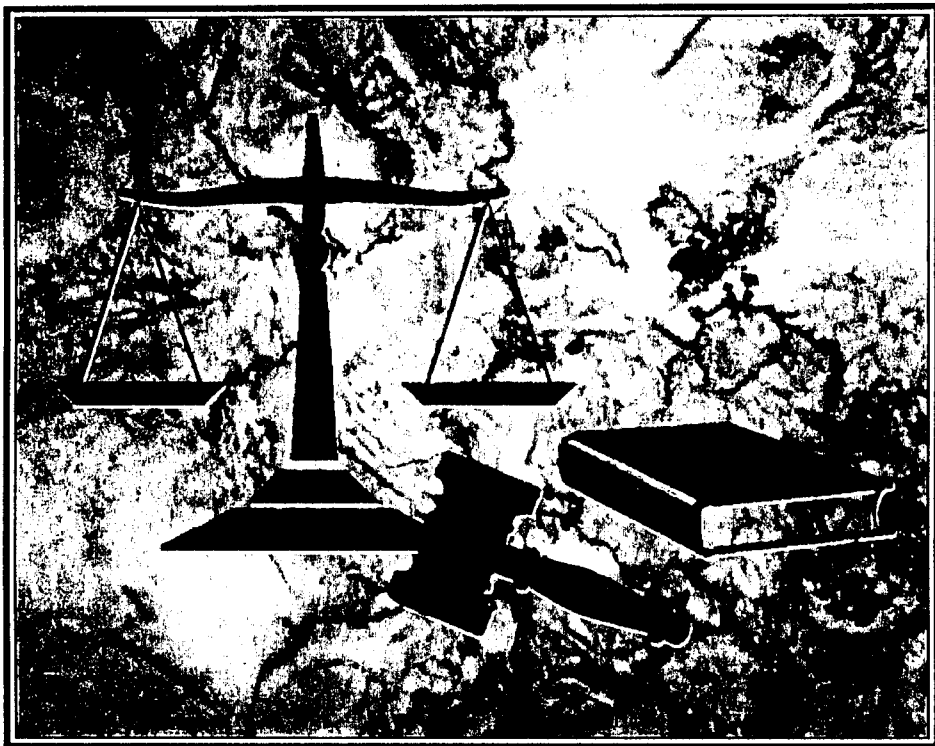


NSPE 1998 BER Ethics Contest



Missouri Society of Professional
Engineers Ozark Chapter

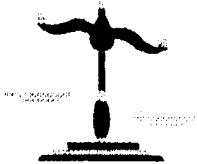
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

1998 BOARD OF ETHICAL REVIEW

ETHICS CONTEST

MISSOURI SOCIETY OF PROFESSIONAL ENGINEERS

OZARK CHAPTER



THE 1998 NSPE BER ETHICS CONTEST

FACTS:

Pat Smith, a professional engineer, has been employed for many years by the Engineering Services Consulting Group. Engineering Services was retained by First Contractors to perform a delay analysis on a defaulted First Contractors project. Pat was assigned to do the delay analysis and subsequent services for which First Contractors paid Engineering Services. While performing the work, First Contractors suggested to Pat the possibility of having another construction firm bid and bond the completion of the defaulted project and use First Contractors to perform the bulk of the remaining work. Thereafter, Pat arranged a meeting between First Contractors and a competing construction firm, Followon Construction, Inc. Pat attended this meeting and offered to provide professional services to schedule and coordinate the project completion in the event that First and Followon reached agreement under the arrangements proposed by First. After several meetings, an agreement could not be reached, and the negotiations between the contractors ceased.

Approximately one week after the contractors failed to reach an agreement, Engineering Services terminated Pat under unrelated circumstances. Pat had declined the firm's offer to relocate to another branch office of the firm in a different city. Subsequently, Followon Construction obtained a contract from the bonding company to finish First Contractors' defaulted project.

Followon contacted and hired Pat to coordinate and schedule the completion. Pat advised First Contractors of this and invited their participation as earlier discussed with Followon. First Contractors refused, reiterating its inability to successfully negotiate a contract with Followon. The work proceeded and was successfully completed by Followon Construction, Inc., under Pat Smith's scheduling and coordination services.

QUESTION:

Was Pat Smith, P.E., ethical in providing the scheduling and coordinating of engineering services to Followon Construction, Inc., as described above?

REFERENCES:

II. Rules of Practice

4. Engineers shall act for each employer or client as faithful agents or trustees.
 - b. Engineers shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.

III. Professional Obligations

1. Engineers shall be guided in all their relations by the highest standards of honesty and integrity.
4. 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.
 - a. Engineers shall not, without the consent of all interested parties, promote or arrange for new employment or practice in connection with a specific project for which the engineer has gained particular and specialized knowledge.
 - 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.

DISCUSSION:

Smith's actions appear to be innocent and without deceit, yet the veil of his changed employment does not justify his services to Followon. The implications and perceptions of Smith's actions must be considered.

Section II, item 4 of the Code requires Smith to act as "faithful agent or trustee" for First. By accepting employment with Followon with whom First Contractors could not agree, Smith was unfaithful to First. He did not protect the project information entrusted to him. Furthermore, item 4.(b) disallows Smith to accept compensation from Followon - unless First is aware of and agrees to the arrangement. Smith should have advised First prior to entering the Followon agreement. This is magnified by First as an "interested party" not agreeing to the belatedly disclosed circumstances.

Section III, item 1 includes Smith's relationship with Followon by virtue of the words "all --- relations." Even though he did exercise some measure of honesty by advising First of his Followon relationship, the inherent unfair advantage from his previous employment by First demonstrates less than the highest standards of integrity.

As a new paradigm for engineering ethics that may push the "envelope" of feasibility, we argue "highest standards" to be interpreted that engineers be "guided away from" actions that could be perceived to lack integrity. Though Smith was "up front" with clients, and the facts do not demonstrate his actions were intentional or devious, they could be perceived that way. Knowledge of an unsuccessful project could be used to gain work from a competing client - and, in fact, was. Allowing this would set precedent for others to take the same actions with more premeditated motivations.

Section III, item 4 of the Code speaks directly to this case. As the assignee for First's delay analysis, Smith was, in effect, a "business affair or technical process" of his "former client." It would be difficult or impossible to not disclose "confidential information" concerning First. First did not "consent" to involvement with Followon which implies disapproval of Smith's Followon relationship. Since the project defaulted, Smith would have to at least indirectly advise Followon of mistakes First made in the project to prevent repeating them. First's mistakes, undoubtedly, "business affairs and technical processes," would be considered confidential.

Item a. addresses Smith's "new practice." His delay analysis constitutes "particular and specialized knowledge." First, as most interested party, did not consent to his new practice. The failed negotiations with Followon could have been premeditated. Followon possibly did not negotiate in good faith. Smith may have unknowingly abetted potentially unscrupulous plans. This illustrates another perspective that the Engineering Code of Ethics protects the public and adhering engineers.

Finally, Item b. reinforces previous arguments; Followon is considered an "adversary interest in connection with the "specific project" by virtue of the failed negotiations. It prohibits Smith's representation of Followon based on his "particular specialized knowledge on behalf of his former client," First. The fact of his changed employment does not excuse his personal responsibility as a professional engineer.

CONCLUSION:

It was unethical for Smith to provide scheduling and coordinating of engineering services to Followon Construction, Inc. The fact that his employment changed does not justify his use of specialized knowledge from a former client in connection with an adversary. By working with the "competing team" (Followon), after gaining knowledge of First's failed "game plan," Smith did not exercise wise stewardship of the entrusted knowledge from his former client, First. A change in the "uniform color" (employer) does not excuse responsibility for the rules of the "league" (profession) you "play" in. He should not have accepted compensation or employment without consent of his former client. He would have to reveal confidential information concerning First's processes. Ultimately, he didn't follow the guidance of the highest standards of honesty and integrity. Smith violated the "Rules of Practice" and the "Professional Obligations" of the NSPE Code of Ethics.