

Report on a Case by the Board of Ethical Review

Case No. 78-1

Name of Non-Engineer in Professional Corporation

Facts:

Two individuals, John Adams and Samuel Boone, formed a consulting engineering firm. In public announcements, Adams and Boone indicated the firm was to be known as "Adams, Boone & Associates." Adams is a registered professional engineer. Boone is not a registered professional engineer but is a certified engineering technician. At the insistence of the state board of engineering registration, because Boone was not a registered professional engineer the use of Boone's name in the firm was discontinued. A professional corporation was then formed for the firm using the firm name Adams & Boone, P.C. To meet the requirement of state law that only registered persons be shareholders of a professional corporation, Adams was the sole shareholder. The firm's letterhead indicates it is "A Consulting Engineering Firm" and Adams is listed on the letterhead as "John Adams, P.E., President." Boone is listed on the letterhead as "Samuel Boone, C.E.T., Executive Vice President".

Both Adams and Boone are full-time employees of the professional corporation, and both have contact with firm clients in carrying out the firm's consulting engineering business. According to state law, an employee or subordinate of a registered person is exempt from registration, provided his duties do not include responsible charge of engineering.

Question:

May Adams ethically associate with Boone in the manner indicated?

References:

Code of Ethics Section 13 "The Engineer will not associate with or allow the use of his name by an enterprise of questionable character, nor will he become professionally associated with engineers who do not conform to ethical practices, or with persons not legally qualified to render the professional services for which the association is intended."

Section 1 3(a) "He will conform with registration laws in his practice of engineering."

Discussion:

We first note in explanation that all states now have "professional association" (P.A.) or professional corporation" (P.C.) laws which in both instances permit the various professions to operate as corporations for tax purposes. The restrictions and conditions of these laws vary in detail regarding stock ownership, who may be officers or directors, the extent of practice in a particular profession, and restrictions on transfer of stock.

The particular state law in question permits the practice of the various professions under the "professional corporation" form and, presumably, on the basis of the facts submitted, does not require that all officers of the P.C. be registered in the particular profession. The designation of Boone as "executive vice president" clearly implies that he is an officer of the corporation, even though not a shareholder. We further note that the applicable state law provides that a P.C. . . . may render professional service only through officers, employees, and agents who are themselves duly licensed and otherwise legally authorized to render professional services within this state. But an "employee" not licensed in the particular profession may perform related services under the direct supervision and control of an officer, agent, or other employee who is licensed to render professional service to the public on behalf of the corporation.

Applying the conditions of the law in the state in question to this case, our concern is not with the legality of the form of practice or name of "Adams & Boone, P.C." That aspect is a legal issue for determination by the state legal authorities. Rather, our jurisdiction is to determine if the name of a non-engineer on the letterhead in this setting offends the last clause of 13. There can be no question that Boone is . . . not legally qualified to render the professional services for which the association is intended.

It is not uncommon for engineering firms to list the names of key officers or employees on the letterhead, usually followed by a designation of the individual's professional field, such as P.E. for professional engineer, L.S. for land surveyor, AIA for an architect, CPA for an accountant, etc. We do not perceive of any ethical problem in that type of listing because the public is not then misled into believing that all of those listed are professional engineers.

There are, of course, other variations for listing of names, such as showing P.E. after some names with no designation after other names. Again, it would be reasonably clear to the public that those without a designation are not professional engineers. A form of listing which would create an ethical concern would be a listing of names without any designations, in which case there would be an implication that all those listed are engineers if the letterhead indicated the firm to be one offering professional engineering services. The potential problem may be avoided altogether by not listing any individual names on the printed letterhead. In that case the individual signing a letter or other document would show under his signature the firm title and whatever professional designation might be appropriate.

Another aspect of this case is the meaning of "association" in the last clause of 13 within the context of these facts. When read in conjunction with the other parts of 13, however, we believe that the "association" is generally intended to refer to relations with other firms or clients; that is, that the thrust is external rather than internal. There may be other cases under other facts in which "association" may apply to the internal staffing or functioning of a firm, but we withhold determination on that point for another day.

A related facet of the "association" in this case, however, is the degree to which Boone's contacts with clients or prospective clients may be within the bounds of 1.3(a). We dealt with a related situation in Case 62-4 in which the circumstance was that a non-engineer was employed by an engineering firm to solicit engineering contracts for the firm. We held then, and repeat now, the opinion that it is permissible for a firm to employ a non-engineer as a representative to solicit engineering service contracts, provided, however, that the non-engineer representative may not enter into discussions of engineering aspects of an actual or proposed project with a prospective client. That function may be performed only by registered engineers. This comment would apply in this case to Boone's contacts on behalf of Adams & Boone, P.C.

Conclusion:

Adams may ethically associate with Boone in the manner indicated.

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