



## **SERVICES - SAME SERVICES FOR DIFFERENT CLIENTS**

### **Case No. 00-3**

#### **Facts:**

Engineer A, a professional engineer, performs a traffic study for Client X as part of the client's permit application for traffic flow for the development of a store. Engineer A invoices Client X for a complete traffic study.

Later, Client X learns that part of the traffic study provided by Engineer A to Client X was earlier developed by Engineer A for a developer, Client Y, at a nearby location and that Engineer A invoiced Client Y for the complete traffic study. The second study on a new project for Client X utilized some of the same raw data as was in the report prepared for Client Y. The final conclusion of the engineering study was essentially the same in both studies.

#### **Question:**

Was it ethical for Engineer A to charge Client X for the complete traffic study?

#### **References:**

- |                 |   |                 |  |
|-----------------|---|-----------------|--|
| Section II.1.c. | - | Code of Ethics: | <i>Engineers shall not reveal facts, data or information without the prior consent of the client or employer except as authorized or required by law or this Code.</i>   |
| Section II.4.b. | - | Code of Ethics: | <i>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.</i> |
| Section III.1.  | - | Code of Ethics: | <i>Engineers shall be guided in all their relations by the highest standards of honesty and integrity.</i>   |
| Section III.3.  | - | Code of Ethics: | <i>Engineers shall avoid all conduct or practice which deceives the public.</i>  |

#### **Discussion:**

The obligations of the professional engineer to be guided by the highest standards of honesty and integrity and to avoid all conduct or practice that deceives the public are among the cornerstones of professional ethics. The NSPE Board of Ethical Review (BER) has had occasion to explore these issues in the past.

For example, in BER Case No. 92-7, Engineer B, a professor of civil engineering, conducted research and developed a paper based upon data obtained from professors in the chemistry department who did not reveal that the data was generated by Engineer A and XYZ Consultants. Engineer B published a paper. Engineer A's data was displayed prominently therein and the work of XYZ Consultants constituted a major part of the paper, no credit being given for either. After publication, Engineer B learned the actual source of

the data and finding. The question: Did Engineer B have an ethical obligation to clarify the source of data contained in the paper? In evaluating the case that the Board considered earlier in BER Case No. 75-11, it was made clear that the engineer must clearly and individually identify each source of data.

BER Case No. 92-1 also addressed whether it was ethical for an engineer to fail to give credit for another engineer's work. There, Engineer A, the prime professional contractor for the design of an elevated highway bridge, employed Engineer B for his special expertise to design a critical aspect of the bridge. Engineer A later entered the bridge in a national contest, winning the prize.

However, the entry failed to credit Engineer B for his part of the design. Following discussion of NSPE Code of Ethics Sections I.3., II.3.a., III.3., III.5.a., and III.10.a., the Board decided that it was not ethical for Engineer A to fail to give Engineer B credit.

The present case differs from these earlier cases in that the present case did not necessarily involve another engineer who was entitled to appropriate credit for the work performed. Instead, this case relates more to the direct obligations of truth and honesty that all engineers owe to their clients in the performance of their services. Under the facts presented, Engineer A was performing the same basic service for two separate clients and billing Client X for some data that Engineer A had already developed and billed Client Y. In this connection, the Board suspects that at some point, Client X, Client Y, or the local code officials would become aware of Engineer A's action and could ultimately reflect upon Engineer A and possibly the engineering profession in general. However, on balance, the Board does not believe that there is an ethical violation under the facts. The Board believes that an appropriate approach would have been for Engineer A to inform Client X that a similar study had been done for another client, and that Engineer A would contract to review the study to determine whether any modifications, updates, or other changes would be necessary and that Client X would be charged for full value of the report. Engineer A's intellectual property, expertise, knowledge, and professional judgment are contained in the contents of the report, and Engineer A had the ethical right to be fully compensated for such services. Such an approach would be in accord with the language and intent of the NSPE Code and demonstrate good will on the part of Engineer A.

Even though the facts in these cases are different, they illustrate the obligation that engineers have in their dealings with others, whether they are fellow engineers, clients, or members of the public. NSPE Code Section II.3.'s reference to the "public" is intended to include both the "general public" and the various "publics" that engineers deal with in the course of their practice, including clients, other engineers, other design professionals, contractors, and others.

## **Conclusion:**

It was ethical for Engineer A to charge Client X for a complete traffic study. It was unethical for Engineer A not to disclose the use of propriety data developed for another client.

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