Milton F. Lunch Ethics Contest

NSPE

Barry McMenamin
PO Box 388
College Park, MD, 20741
barrypmcmenamin@gmail.com
443.354.0403
NSPE Member #[redacted]
Maryland 01: Annapolis Chapter
4/9/2012

FACTS

Engineer A works for Company X which is owned by Engineer B. Company X is currently experiencing financial problems and Engineer B recently created another company, Company Y. Engineer A has learned that Engineer B recently advised clients of Company X to remit payments for work performed by Company X and its employees to Company Y.

QUESTION

What are Engineer A's ethical obligations under the circumstances?

NSPE CODE REFERENCES

I. 4. Act for each employer or client as faithful agents or trustees.

I. 6. Conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.

II. 1. c. 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.

II.1.d. Engineers shall not permit the use of their name or associate in business ventures with any person or firm that they believe is engaged in fraudulent or dishonest enterprise.

II.1.f. Engineers having knowledge of any alleged violation of this Code shall report thereon to appropriate professional bodies and, when relevant, also to public authorities, and cooperate with the proper authorities in furnishing such information or assistance as may be required.

II. 4. Engineers shall act for each employer or client as faithful agents or trustees.

III. 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.

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.

DISCUSSION

When an employer is acting unethically, it puts the employee in quite a precarious position. While Engineer A has a commitment to Company X and Engineer B, he has a deeper commitment to society and the engineering profession as a whole. It is easy to see that deciding the proper course of action in such a situation could present a formidable task.

Similar situations have been brought to the BER before. In case 89-7, an engineer inspected a 60 year-old apartment building for structural integrity. He found it to be structurally sound, but the owner told him of some mechanical and electrical issues that were not in compliance with the relevant codes. While urging his client to address these issues, he took no further action regarding the problems. The board determined that by not alerting authorities to the building's code violations, the engineer acted unethically, placing loyalty to his employer above the health, safety and welfare of the buildings current and future occupants.

In case 97-12, an engineer noticed his firm was using software on multiple computers, while they had only paid the licensing fee to use the software on a single machine. Realizing this was illegal, the engineer called a hotline and reported his employer. While illegal, the act of using software with the wrong licensing agreement poses no threat to the health, welfare and safety of the public. In this case, the board decided that the engineer in question acted unethically by reporting his employer before attempting to resolve the situation in more amicable manner.

Whenever an individual engineer, or engineering company, acts unethically, it is damaging to the profession. However, when facts get distorted or misinterpreted, reputations of innocent people can be destroyed by false accusations. With this in mind, Engineer A must double check the facts to be sure that Engineer B is actually telling clients to pay Company Y for the work done by Company X. As a faithful agent of Company X, getting the facts straight should take the utmost priority. The best possible outcome is that the entire situation is nothing but a misunderstanding. If the facts are confirmed by Engineer A's personal inquiry, however, the investigation he performed leaves him ready to act, armed with the truth.

The next step is to decide whether this unethical behavior is posing a risk to the health, safety and welfare of the public. While creative accounting is most certainly unethical and very likely illegal as well, it does not endanger the health, safety and welfare of the public. Since precedent has been set, the course of action is clear. In accordance with sections I.4 and II.4, Engineer A must first go to his employer and address his concerns. As a faithful agent of Company X, in the employ of Engineer B, this is a necessary first step. If Engineer B agrees to cease this unethical activity and make any necessary restitution, there is no further action needed.

In the worst possible outcome, Engineer B denies the unethical activity is taking place, or refuses to discontinue this unethical activity. If this is the case, section II.1.f clearly states that Engineer A shall report the activity to the appropriate professional bodies as well as the authorities. Engineer A must report the activity to the BER, the IRS and possibly the SEC.

Finally, depending on the severity of the offense and its eventual resolution, Engineer A must decide if he can continue his association with the involved parties. Section II.1.d requires that the engineer not associate himself with companies or persons engaged in dishonest or fraudulent activities. If the violation had a positive resolution, with the cessation of unethical activities followed by the repair of any harms caused by such activities, there may be no problem in continuing employment with Company X. However, if there was no positive resolution, and the company continues the unethical practices, or continues to deny their occurrence, it is

Engineer A's ethical responsibility to withdraw from any further involvement with Company X, Company Y, and Engineer B.

CONCLUSION

Engineer A's ethical obligations are:

1. To double check the facts.
2. To let Engineer B know what they are doing is unethical, must be stopped and reparations, if necessary, must be made.
3. To report the activity to authorities if Engineer B doesn't agree to cease unethical activity and correct problems arising from it.
4. To eliminate further contact with Engineer B, Company X and Company Y if the situation has an unfavorable resolution.