MISREPRESENTATION/MISAPPROPRIATION OF ANOTHER ENGINEER'S WORK

Case No. 00-1

Facts:

Engineer A, a CEO of a small engineering corporation, teams up with another small firm in the development and delivery of highway/rail intersection database management systems for various public and private enterprises. Engineer A is the co-author and the program is patented/copyrighted.

Engineer B in a private firm from State X calls Engineer A and informs Engineer A that State X's Department of Transportation (XDOT) is interested in the highway/rail system and has asked Engineer B to evaluate the system. Engineer B requests and Engineer A agrees to visit with Engineer B in State X. Prior to the visit, Engineer B requests that Engineer A prepare a project proposal which Engineer A submits. Later, at Engineer B's request, Engineer A visits Engineer B's offices and demonstrates the systems. Project managers, as well as programmers, from Engineer B's firm are present at the meeting. Engineer A describes in great detail the technical aspects of the system. Following the meeting, Engineer B requests that Engineer A prepare a new proposal with a detailed breakdown of all costs. Following the passage of time, Engineer A receives a phone call from a subordinate of Engineer B advising that Engineer B will not need Engineer A's firm's services because Engineer B's firm now has the capability to design their own system.

Question:

Was it ethical for Engineer B to obtain Engineer A's technology in the manner herein described?

References:

Section III.4.a.	-	*Code of Ethics:*	*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.*
Section III.4.b.	-	*Code of Ethics:*	*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.*
Section III.6.	-	*Code of Ethics:*	*Engineers shall not attempt to obtain employment or advancement or professional engagements by untruthfully criticizing other engineers, or by other improper or questionable methods.*
Section III.7.	-	*Code of Ethics:*	*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.*

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Section III.7.c.	-	*Code of Ethics:*	*Engineers in sales or industrial employ are entitled to make engineering comparisons of represented products with products of other suppliers.*
Section III.9.	-	*Code of Ethics:*	*Engineers shall give credit for engineering work to those to whom credit is due, and will recognize the proprietary interests of others.*
Section III.9.b.	-	*Code of Ethics:*	*Engineers using designs supplied by a client recognize that the designs remain the property of the client and may not be duplicated by the Engineer for others without express permission.*
Section III.9.c.	-	*Code of Ethics:*	*Engineers, before undertaking work for others in connection with which the Engineer may make improvements, plans, designs, inventions, or other records that may justify copyrights or patents, should enter into a positive agreement regarding ownership.*

Discussion:

The NSPE Board of Ethical Review (BER) has had occasion to consider issues involving engineers apparently misappropriating ideas and designs from other engineers. One example is BER Case No. 95-7, where Engineer C was employed by UVW Consultants, a major structural engineering firm, and is a project manager for a bridge. After completing his work on the bridge, Engineer C left the firm and associates with another structural engineering firm that had no relationship to the bridge project. As an employee of the new firm, Engineer C authored an article for an international structural engineering journal on the bridge project. Under the title of the article, Engineer C listed his name and identified his affiliation with his current firm. The only credit given to UVW Consultants is listed at the end of the article under "Engineer of Record." In reviewing the facts and circumstances involved, the Board noted that this case differed from these earlier cases in that, while giving prominence to his new firm by its identification at the title, Engineer C did list UVW Consultants as “Engineer of Record” *at the end of the article*. While it may be argued that the stated listings were not dishonest, the Board cannot accept that defense for something so potentially misleading and unfair. Consider -- had the author been a journalist or free-lance technical writer, surely UVW Consultants, the design firm, would have been recognized as material to the article and would have been clearly identified within the body of the article. Engineer C’s failure to include that relevant and material information is believed deliberate and less than forthright.

An earlier case involving the obligation of the engineer to give appropriate credit for others’ work was considered in BER Case No. 92-7 (which also dealt with responsibility to identify the source of data). In that case, 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

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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.

Turning to the facts in the present case, the Board is of the view that this case involves much more than a failure on the part of one engineer to give proper credit to another engineer for work performed. Instead, this case appears to suggest an outright misrepresentation and possible misappropriation on the part of Engineer B. Without addressing the copyright, patent, and other legal issues that are raised by the facts, it is clear that Engineer B appears to have carelessly or intentionally created the misimpression that Engineer B's firm was planning to use Engineer A's firm on the project in question. Moreover, it appears that Engineer B carelessly or intentionally induced Engineer A's cooperation and support in furtherance of this objective. In truth, the Board finds it difficult to believe that Engineer B's actions were careless since Engineer B solicited and received a project proposal from Engineer A for the project.

While it is clear that in today's highly competitive environment, engineering firms and companies need to be on guard and protective of trade secrets and other intellectual property that provide a competitive advantage, relations among engineers must continue to be based upon mutual trust and cooperation. Where one engineer is asked to cooperate with another engineer in an activity for their mutual benefit and the benefit of a client, the cooperating engineer should not have his support and good will be subjected to abuse and exploitation by the other engineer. As with other professions, engineering is a collegial enterprise based upon mutual respect and trust. A profession that fails to recognize this basic principle will cease to be a profession.

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Conclusion:

It was not ethical for Engineer B to obtain and share details of Engineer A's technology in the manner herein described.

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