Employment—Obligations of Engineer Concerning Employment Information

Case No. 08-6

Facts:

Engineer A is a Ph.D. student in systems engineering at the state polytechnic university. She interviews at Prestigious Engineering College for an assistant faculty position in the aero/astronautics department. Several weeks after the interview, while attending a conference at state polytechnic university, Engineer A is informed by Engineer B, who is a visiting professor at Prestigious Engineering College, that she "did not get the position." Engineer B thereafter, through his department, offers Engineer A a faculty position at his home university in Canada. Although flattered, after consideration Engineer A declines the offer and accepts a position at state polytechnical university. A month later, after putting a contract for the purchase of a house near state polytechnical university, Engineer C, dean of engineering at Prestigious Engineering College calls Engineer A and offers Engineer A the assistant faculty position, indicating that Engineer A was the Prestigious Engineering College's first choice.

Question:

Was it ethical for Engineer B to inform Engineer A that she did not get the position and thereafter offer Engineer A a faculty position at his home university in Canada?

References:

Section I.5.	-	*NSPE Code of Ethics:*	*Engineers, in the fulfillment of their professional duties, shall avoid deceptive acts*
Section II.3.	-	*NSPE Code of Ethics:*	*Engineers shall issue public statements only in an objective and truthful manner.*
Section III.1.d.	-	*NSPE Code of Ethics:*	*Engineers shall not attempt to attract an engineer from another employer by false or misleading pretenses.*
Section III.4.	-	*NSPE Code of Ethics:*	*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.*
Section III.7.	-	*NSPE 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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Discussion:
Ethical issues relating to employment-related matters have on occasion been the topic of NSPE Board of Ethical Review opinions. This may be because relationships in the employment setting tend to raise difficult professional and interpersonal issues. Moreover, employment issues, either between employees and supervisors or between professional peers, are often ripe with conflicts that raise issues under the specific language of the NSPE Code of Ethics.

One recent example of this type of issue is BER Case No. 01-12. In that case, Engineer A was an engineering educator who served as an evaluator on an ABET visitation team reviewing an engineering program at State X University. Due to a pending decision by Engineer B to depart for a position at another university, it became possible that State X University would have an opening in the position of chair of its chemical engineering department. Because it was unsure of Engineer B's decision, State X University did not advertise or announce the opening. Engineer A visited State X University with an ABET visitation team in October. During the ABET visit and interviews with the dean, department chairs, and engineering faculty, it became apparent to Engineer A and others on the ABET team that Engineer B might depart and a chemical engineering chair position might open up at State X University. Engineer A completed her evaluation and had no further influence on the report or the final action by ABET. In June, Engineer A formally learned of the chair position opening, applied for the position, was selected by a search committee, and accepted the appointment as chair of the State X University chemical engineering department.

In deciding that it was ethical for Engineer A to apply for the position of chair at State X University, the Board noted that Engineer A's actions may require scrutiny on a number of points. Among these include the questions of (1) whether Engineer A improperly gained specific information through her ABET visitation that gave her an unfair advantage in seeking the position and (2) whether such information could have influenced Engineer A's ABET program evaluation at State X University. The Board concluded that Engineer A did not improperly gain such information and was not influenced in the preparation of the report. Because nothing suggested that Engineer A engaged in any secretive or improper actions or was herself unduly influenced, the Board concluded that Engineer A's conduct in and of itself did not violate the NSPE Code. Said the Board, "To determine otherwise would be to conclude that engineers in any sphere, who observe business or professional opportunities, must ignore such opportunities or else suffer ethical challenges. The Board does not believe that this is the intent of the NSPE Code. Engineers are professionals involved in business activities and are not and should not be expected to ignore normal opportunities that present themselves in their professional lives."

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A related question examined by the Board was whether Engineer A should have resigned from the ABET team or disclosed her interest in the position. The Board decided that under the facts, Engineer A did not have any obligation to resign from the ABET team or disclose her interest in the position. The facts clearly indicated that although there were statements and comments about Engineer B's possible departure from State X University, it was not until after Engineer A had completed her evaluation that she formally learned of the chair position opening and thereafter applied for the position. The Board noted that the facts do not indicate that Engineer A gained specific information through her ABET visitation that gave her an unfair advantage in seeking the position or that such information, even if gained, influenced Engineer A's ABET evaluation of State University X. Under the facts and the timing of events, the Board concluded that the possibility that such information would have influenced Engineer A's ABET evaluation of State X University was extremely remote and not an issue of concern.

Turning to the facts in the current case, there is nothing to suggest that Engineer A's actions were in any way unethical since nowhere in the fact does it indicate that Engineer A improperly gained any specific information or used any information or knowledge in a way that may have compromised her position—either with Prestigious Engineering College or the polytechnic university as was highlighted in BER Case No. 01-12.

However, the Board is of the view that by his actions, Engineer B acted unethically. By virtue of Engineer B's inaccurate statement to Engineer A that she (Engineer A) did not get the position at Prestigious Engineering College, Engineer A was placed in an unusually difficult situation, both personally and professionally, since Engineer A accepted the state polytechnic university position thinking she had not gotten the Prestigious Engineering College position. In a sense, Engineer A's world was turned upside down as a result of Engineer B's regrettable comments. While it may also be true that it was Engineer A's ultimate responsibility to verify what Engineer B told her concerning the position with Prestigious Engineering College and not to rely upon the statement of Engineer B, it is also understandable that Engineer A might implicitly trust Engineer B, since Engineer B was a visiting full professor at Prestigious Engineering College and presumably became privy to confidential information about the search committee's activities.

It is not entirely clear what Engineer B's actual motivation was in providing misinformation to Engineer A, and the Board can only speculate as to Engineer B's intent. In view of the language of his comment to Engineer A, it is unlikely that Engineer B was engaging in conjecture or speculation in offering an opinion on the prospects of Engineer A gaining the position at Prestigious Engineering College. Instead, it would seem that Engineer B's statement was intentional and was driven either by some ill-conceived or devious intent or was part of a clumsy effort to recruit Engineer A to his

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home university in Canada. Clearly, Engineer B's actions constituted, at a minimum, a breach of confidentiality. In any event, Engineer B's actions were wholly inconsistent with the NSPE Code of Ethics.

Conclusion:
It was unethical for Engineer B to inform Engineer A that she did not get the position and, thereafter, offer Engineer A a faculty position at his home university in Canada.

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Each opinion is intended as guidance to individual practicing engineers, students, and the public. In regard to the question of application of the NSPE Code to engineering organizations (e.g., corporations, partnerships, sole proprietorships, government agencies, and university engineering departments), the specific business form or type should not negate nor detract from the conformance of individuals to the NSPE Code. The NSPE Code deals with professional services, which must be performed by real persons. Real persons in turn establish and implement policies within business structures.

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