Statements—
Client Misrepresentation of Scope of Engineering Services

Case No. 08-7

Facts:

Engineer A begins work reviewing Facility X for approval in accordance with an American National Standards Institute standard. Engineer A, a mechanical engineer, refers the client to Engineer B, a civil engineer, to assist with the same project in an area of technical practice in which Engineer B has expertise. Later on, Client represents and claims to potential customers that the work Engineer A is performing on the Facility X is applicable to all past and future facilities being developed by the client. As a result, Engineer A ceases to provide services to Client because he is concerned that he will be held liable for any failure that might occur in connection with Client's past or future facilities. Engineer A writes a strong letter to Client clearly stating that the engineering services performed for Client are only applicable to Facility X and to no other facility. Client does not make final payment to Engineer A and contacts Engineer B to request a recommendation for a mechanical engineer to review and complete Engineer A's work. Engineer B contacts Engineer C and other local engineers, who express no interest in performing a review of Engineer A's work. Engineer B specifically tells Engineer C that if Engineer C does not perform the review, Engineer B will not refer work to Engineer C in the future. Unable to obtain a review of Engineer A's work, Client pays Engineer A.

Questions:

1. Was it ethical for Engineer A to cease performing work for Client?

2. Was it ethical for Engineer B to tell Engineer C that if Engineer C does not perform the review, Engineer B will not refer work to Engineer C in the future?

References:

Section I.6.	-	*NSPE Code of Ethics:*	*Engineers, in the fulfillment of their professional duties, shall conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.*
Section II.4.	-	*NSPE Code of Ethics:*	*Engineers shall act for each employer or client as faithful agents or trustees.*
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:

Disputes and conflicts between engineers and their clients are a side of the professional practice of engineering that should be avoided as much as possible. Disputes and conflicts do not generally reflect well upon the engineers or their clients and they generate distrust and suspicion and often cause the parties to terminate their relationship—sometimes with significant legal consequences and the resulting costs both in terms of time and money. Engineering is—and should always be viewed—as an enterprising, creative, and productive endeavor. Disputes and conflicts work against that enterprising and productive effort.

However, disputes and conflicts inevitably do occur sometimes between clients and engineers. On occasion, the NSPE Board of Ethical Review has addressed such conflicts in the past. For example, in BER Case No. 84-4, Client hired Engineer A to design a particular project. Engineer A developed what he believed to be the best design and met with the client to discuss the design. After discussing the design plans and specifications, Client and Engineer A became involved in a dispute concerning the ultimate success of the project. Client believed Engineer A's design was too large and complex and sought a simpler solution to the project. Engineer A believed a simpler solution would not achieve the result and could endanger the public. Client demanded that Engineer A deliver over to him the drawings so that he could present them to Engineer B to assist Engineer B in completing the project to his liking. Client was willing to pay for the drawings, plans, specifications, and preparation, but would not pay until Engineer A delivered over the drawings. Engineer A refused to deliver the drawings. In finding that it would be ethical under the above circumstances for Engineer A to deliver over the plans and specifications to Client, the Board noted that while it is true that Engineer A had an ethical obligation under NSPE Code Section II.1.a., that obligation assumes that Engineer A was in possession of verifiable facts or evidence that would substantiate a charge that an actual danger to the public health or safety existed. However, the Board pointed out that Engineer A made an overly broad assumption that if he were to deliver over to Client the drawings so that Client could present them to Engineer B to assist Engineer B in completing the project to Client's liking, Engineer B would develop a set of plans that would endanger the public health and safety. The Board concluded that such an assumption was ill-founded and was not based upon anything more than a supposition by Engineer A. Therefore, the Board concluded that Engineer A should not have withheld the drawings on the basis of NSPE Code Section II.1.a. The Board also noted that if Engineer A delivered over to Client the plans so that Client can present them to Engineer B for completion of the project to Client's liking, and thereafter Engineer A discovered that Engineer B developed plans that constitute a danger to the public, certain actions would then be required by Engineer A under the Code. The Board noted that any verifiable conduct on the part of Engineer B that indicates that Engineer B's plans are a danger to the public should be brought to the attention of the proper authorities, i.e., the responsible professional societies or the state engineering licensure board.

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In BER Case No. 88-4, Engineer A was retained by an architect to provide mechanical engineering services in connection with the design of a small office building. Engineer A performed her services and thereafter a dispute arose between Engineer A and the architect as to Engineer A's final compensation for her services. The issue was never resolved. Several months later, the owner who retained the architect on the project requested that Engineer A provide him with a copy of the final record drawings in order to perform certain work on the building that did not involve issues of safety or health. The owner offered to pay Engineer A the cost of reproduction and any administrative staff costs and to attempt to mediate the dispute between Engineer A and the architect. Engineer A refused to provide the owner with a copy of the drawings and declined the owner's offer to mediate the dispute. In finding that it was unethical for Engineer A to refuse to provide the owner with the drawings and to decline the owner's offer to attempt to mediate the dispute between Engineer A and the architect, the Board acknowledged that it was clear that Engineer A was retained by the architect and not the owner. From a purely technical standpoint therefore, it was the architect, and not the owner, who was the "client" and arguably any potential ethical obligations owed by Engineer A to a "client" were owed to the architect and not to the owner. However, the Board indicated that this preliminary conclusion had to be weighed against other circumstances that take into consideration other provisions of the NSPE Code of Ethics and the practical realities of professional relationships. First, the Board noted the general rule that in the absence of a contractual provision to the contrary, the drawings, plans, and specifications prepared by an engineer for a client are the property of the client. While the Board was mindful of its preliminary conclusion that technically, it was the architect and not the owner who was the "client" of the engineer, the Board indicated that the NSPE Code should be read flexibly, particularly where the service being rendered by the engineer is being incorporated into a larger design plan for the benefit of a client. In this larger context, said the Board, "the term 'client' should be interpreted more broadly to encompass the owner the ultimate 'beneficiary' of the services which Engineer A has been retained to provide, and the one who, however indirectly, has provided compensation for her services." In addition, said the Board, there exists additional professional obligations of which Engineer A must be mindful. Engineer A's refusal to provide the owner with copies of the drawings until her dispute with the architect is resolved could potentially jeopardize the economic value of his building. Placing the owner's property in jeopardy in this manner would be in direct contravention of NSPE Code Sections I.1. and II.4. The Board was also troubled by Engineer A's arbitrary refusal of the owner's offer to attempt to mediate the dispute between Engineer A and the architect. Said the Board, "Neither Engineer A's interest in a solution of her dispute with the architect nor the owner's interest in obtaining a copy of the record drawings were well served by her refusal."

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In the current case, it is the Board's position that the facts are distinguishable from the earlier Board decisions in BER Case Nos. 84-4 and 88-4. Unlike the earlier cases, in the present case, the facts indicate that the client has taken actions that placed the engineer at risk of additional liability and professional responsibility. As is often the case in situations involving dispute and conflict, each party elevates its responses toward the other party, which results in a breach in the relationship between the parties. Here, in response to Client's actions, Engineer A withheld performing work prior to completion and sent a letter of clarification to Client. In response, Client withholds payment to Engineer A and requests Engineer B to identify other engineers to review and complete Engineer A's work. Engineer B attempts to apply pressure on Engineer C to assist in the review or risk retaliation by Engineer B. While the Board believes each party had some degree of responsibility for the downward spiral of their relationship, the Board must conclude from the facts that it was Client's unfortunate communication to customers attempting to expand Engineer A's scope of liability that was the most direct cause of the conflict under the facts presented. While the Board accepts the spirit embodied in Case Nos. 84-4 and 88-4, the Board cannot conclude under the facts that Engineer A was unethical in ceasing to perform work for Client.

Regarding the second question, the Board can find no ethical basis for Engineer B's telling Engineer C that if Engineer C did not perform the review, Engineer B would not refer work to Engineer C in the future. Aside from the obvious "stab in the back" to Engineer A (it was Engineer A who brought Engineer B into the project in the first instance), and in light of Client's aforementioned actions, which may influence Engineer A's future liability, the Board has tremendous difficulty understanding Engineer B's basis or rationale for attempting to place pressure on other engineers to perform the review requested by client, other than the possibility of financial and other benefits that would accrue to Engineer B as a result of a heightened standing with the client. However, in truth, Engineer B's actions do nothing more than lower the standing, honor ,and reputation of the engineering profession. When an engineer dishonors the profession and its members, it diminishes all engineers and the profession of which they are a part.

Conclusions:

1. It was ethical for Engineer A to cease performing work for Client.

2. It was not ethical for Engineer B to tell Engineer C that if Engineer C does not perform the review, Engineer B will not refer work to Engineer C in the future.

Board of Ethical Review:

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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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