Withholding Information Useful to Client/Public Agency

Case No. 09-10

Facts:

Engineer A is the owner of ABC Engineering in State P. Engineer X is the owner of XYZ Engineering in State Q. Engineer X is retained to provide engineering services for Client L located in State P for a project in State P. Client L is a former client of Engineer A's firm. Engineer A learns that XYZ Engineering does not have a current certificate of authority to practice engineering in State P.

Question:

What are Engineer A's ethical obligations under these facts?

References:

Section I.4.	-	*NSPE Code of Ethics:*	*Engineers, in the fulfillment of their professional duties, shall act for each employer or client as faithful agents or trustees.*
Section II.1.f.	-	*NSPE Code of Ethics:*	*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.*
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.*
Section III.8.a.	-	*NSPE Code of Ethics:*	*Engineers shall conform with state registration laws in the practice of engineering.*

Discussion:

While engineering is a profession, the practice of engineering, as with all professional pursuits, is also a business. As a business pursuit, engineers compete with one another for clients in order to maximize individual and firm profits.

Over the more than 50 years of existence, the NSPE Board of Ethical Review has examined a variety ethical matters relating to the business of engineering, including advertising, contingent fees, using an employer's facilities, firm names, ownership of design drawings, proprietary interests, remuneration, unfair competition, and other topics. In many of these cases, the Board has stressed the importance of exercising independent judgment and discretion in all business and professional areas. Included in this is the obligation to engage with other professionals in a collegial and cooperative manner, where appropriate.

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A good instructive example of the intersection between these sometimes competing ethical concerns is BER Case 96-8, where Review Engineer A served as a peer reviewer as part of an organized peer review program developed to assist engineers in improving their professional practice. When originally selected as a peer reviewer, Review Engineer A was asked to sign a "confidentiality agreement" whereby he agreed not to disclose confidential information involving peer-reviewed firms. As part of a peer review visit, Review Engineer A visited Engineer B's firm. Following a review of the technical documentation in connection with a series of recent design projects involving Engineer B's firm, Review Engineer A discovered that Engineer B's work may be in violation of state and local safety code requirements and could endanger public health, safety, and welfare.

The Board decided that if Review Engineer A determined that Engineer B's work is, or may be, in violation of state and local safety requirements and endangers public health, safety, and welfare, the appropriate action would be for Review Engineer A to immediately discuss these issues with Engineer B in an effort to seek clarification and early resolution of the issues. If they were unable to resolve the issue, Review Engineer A would have an obligation to inform Engineer B that as a professional engineer, Review Engineer A's only alternative is to notify and inform the proper authorities as indicated above (the Board also disposed of the confidentiality issue, noting that if in fact there was truly a violation that posed a serious danger to the public health and safety, the confidentiality issue would become a secondary matter).

While it is true that most state engineering licensure boards impose an obligation upon engineers to report violations of state engineering licensure laws or regulations to the state board, this duty does not require the engineer to do so immediately (unless there is an imminent public danger) or to refrain from taking steps to resolve what might otherwise be an oversight or misunderstanding by a professional colleague.

As illustrated in BER Case 96-8, when an engineer becomes aware of a violation of the state engineering licensure law, the engineer's first ethical obligation may be to refrain from jumping to conclusions. Instead, a more prudent approach—both from an ethical and a collegial perspective—would be to communicate with the potentially offending engineer to obtain clarification regarding the matter in question. Said the Board in Case 96-8, "assuming from the facts that Review Engineer A determined that Engineer B's work **may** be in violation of state and local safety code requirements and ***could*** endanger public health and welfare, a more appropriate action would be for Review Engineer A to expeditiously discuss these issues with Engineer B in an effort to seek clarification and early resolution of this issue." The Board also went on to say that if Review Engineer A and Engineer B were unable to resolve the issue, Review Engineer A must inform Engineer B that as a professional engineer, Engineer A's only alternative would be to cooperate with the proper authorities as indicated above.

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In the present case, part of the discussion between Engineer A and Engineer X would presumably include an explanation by Engineer A of the reasons for the certificate of authority requirement (e.g., identifying the professional engineers present in the state and their licensure status, office location(s), engineers in responsible charge) and that the failure by Engineer X to obtain the certificate of authority would impair Engineer X and his firm in their efforts to seek redress in the courts of State P, and might result in XYZ's inability to enforce its contracts and obtain payment for engineering services. Assuming Engineer X is a reasonable and prudent individual, we believe Engineer A's counsel to Engineer X would be all that would be necessary to convince Engineer X to take all appropriate steps to obtain the certificate of authority.

Inadvertent and unintentional violations of laws and regulations are not uncommon, and potential violators should first be advised of the potential violation especially when a professional colleague, albeit a competitor, becomes aware of the potential infraction. At some point down the road of professional practice, Engineer A may find himself in a similar circumstance and one can only suspect that Engineer A would value and appreciate a professional colleague steering him in the right direction.

Conclusion:

Engineer A should communicate with Engineer X to obtain clarification regarding the matter in question. If Engineer A is not sufficiently satisfied with Engineer X's explanation, Engineer A may be required to report this matter to the state engineering licensure board.

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