Conflict of Interest – Father's Ownership of Property Adjacent to Client

Case No. 09-7

Facts:

Engineer A has been assigned by her engineering firm to work with a local developer on a commercial development project. While performing the work, Engineer A becomes aware that her father, an adjacent landowner, is participating with a community group in an appeal of a zoning board's decision to grant the developer a zoning reclassification of the developer's property in order to permit the building of commercial development. Engineer A's father has the adjoining property and is planning to build a new home.

Question:

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

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 II.4.a.	-	*NSPE Code of Ethics:*	*Engineers shall disclose all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services.*

Discussion:

Conflicts of interest and potential conflicts of interest situations, including those involving members of one's family, have been presented to this board in a variety of factual situations. Earlier Boards have noted that conflicts of interest present among the most classic and often the most challenging ethical dilemmas faced by engineers in their professional practice.

In BER Case No. 98-11, an engineer was asked by a firm to prepare specifications for an air compression system. The engineer made the firm aware that she was the president (and major shareholder) of a company that manufactures and sells air compression systems and that she had no problem with preparing a set of generic specifications. She also provided the firm with four other manufacturers that prepare air compression systems for bidding purposes, and she did not include her company as one of the four specified manufacturers. The board ruled that, although the engineer was the president and major shareholder in a company that manufactured and sold air compression systems, clearly she took all necessary and reasonable steps to disclose all potential conflicts of interest.

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By immediately disclosing the fact that she had a major interest in an air compression manufacturing company, by suggesting the name of four other alternative manufacturers, and by raising the issue before it surfaced as a result of possible appearances, the engineer acted consistently with the NSPE Code of Ethics. The Board also noted that unlike the previous versions of the Code that required the engineer to "avoid" conflicts of interest, the current Code acknowledges that conflicts do arise and impose upon the engineer the responsibility to take all reasonable steps to notify and advise the client—leaving it up to the client whether to proceed with the services of the engineer. It was the Board's view that her conduct was in keeping with the Code provision that engineers must disclose all known conflicts of interest that could influence or appear to influence their judgment or the quality of their services.

A year later in BER Case No. 99-9, an engineer was requested by Client Z to prepare specifications for a curtain wall system. The engineer immediately made Client Z aware that he was a minority shareholder in a curtain wall manufacturing company and that if Client Z agreed, Engineer A would be pleased to prepare a set of generic specifications for a curtain wall system. Client Z agreed but was silent on the point of having the engineer's firm submit a proposal. Later, the engineer provided Client Z with the names of three manufacturers that prepared curtain wall systems for bidding purposes. The engineer included the name of his firm among the three manufacturers, but did not include the full specifications and other supporting material about his curtain wall manufacturing firm with the bidding material provided to the client.

The engineer's reasoning was that he could answer any questions that Client Z might have about the curtain wall manufacturing system in his company. After evaluating the proposals solicited through documentation prepared by the engineer, and upon his recommendation, Client Z selected the engineer's company. In finding that it was not ethical for the engineer to prepare bidding criteria, bid, evaluate bids, and recommend his company for owner selection, the NSPE Board of Ethical Review noted that it was not entirely clear why and on what basis Client Z selected Engineer A to provide the curtain wall specifications on behalf of Client Z.

It could be that in the rendering of consulting services, the engineer performed professional services to the satisfaction of Client Z and this fact may have persuaded Client Z to select his curtain wall company to manufacture the required equipment. At the same time, the Board believed the early and complete disclosure by the engineer needed to be balanced against his later inclusion of his firm on the list of potential curtain wall manufacturers without the client's prior affirmative approval. The Board believed this point was instructive because it demonstrated his recognition of the potential for a conflict of interest in connection with the services provided to Client Z and the actions he took in regard to that potential conflict. In this connection, the Board was troubled by his conduct and lack of initial full disclosure in the face of Client Z's failure to expressly approve the engineer's actions.

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More recently (and possibly more relevant to the instant case), BER Case 06-10 involved another engineer, a quality assurance manager at Company C, who learned that the purchasing manager for Company C had contracted with a new supplier of precision plastic components. It turns out that the production manager at the new supplier is the quality assurance manager's spouse—a fact unknown to everyone at Company C. The quality assurance manager did not create the situation, and there was no effort to put pressure on any party in connection with the dealings between the parties.

In deciding that the NSPE Code of Ethics required the engineer to provide full disclosure to appropriate managers within his company that he is the spouse of a key employee of a vendor and that should circumstances arise, the engineer may be required to recuse himself from specific dealings with the vendor. The Board foresaw circumstances where as quality assurance manager, he would be in a position to evaluate the quality of the vendor's product and that should any questions arise concerning the product, he might find himself in a personally conflicted situation—between the interests of his employer and the interests of his spouse and her employer.

Looking at the present case, while there are certainly differences between this case and earlier cases, we do think there are common principles that apply. Familial relationships vary from family to family, and it is certainly not clear whether and to what extent an individual might be affected by a family member who may be seen as an adversary to the interests of a client. However, one issue is clear—at a minimum, the presence of a family relationship could easily create an appearance of a conflict of interest and for that reason, full, candid, and open disclosure to the employer and to the client is essential to ensure that there are no unmet expectations or misunderstandings involved. Both the employer, as well as the client, have an interest in reviewing the situation and determining the best way to proceed. It is possible that the client, for example, may conclude that Engineer A is the best person to assist the client on the development project notwithstanding her father's opposition to the development project. Nevertheless, that is a decision for the developer and the engineering firm to make.

Conclusion:
Engineer A has an ethical obligation to fully disclose this information to both the employer and developer client; it is for those parties to determine whether Engineer A should continue on this assignment.

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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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