Employment—Duty to Inform Employer of Outside Practice

Case No. 10-2

Facts:

Engineer A works as an employee for QRS Engineering on a full time basis. Engineer A also has his own separate engineering practice in which he performs services that are also performed by QRS Engineering. Engineer A's work, including all client contacts, is done completely on his own time (evenings and weekends), using his own equipment and materials. Engineer A does not attempt to lure existing QRS Engineering clients to his engineering practice. The QRS Engineering Employee Handbook has no specific policy that addresses performing outside work, and Engineer A does not advise the firm of his outside practice.

Question:

Would it be ethical for Engineer A to continue to perform engineering services in his own engineering practice in the manner indicated?

References:

Section I.5.	-	*NSPE Code of Ethics:*	*Engineers, in the fulfillment of their professional duties, shall avoid deceptive acts.*
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.*
Section III.1.c.	-	*NSPE Code of Ethics:*	*Engineers shall not accept outside employment to the detriment of their regular work or interest. Before accepting any outside engineering employment, they will notify their employers.*

Discussion:

The ethical issues involved in engineers performing services outside of regular employment has been an ongoing question for many years. There is a strong possibility that as a result of outside work, potential and actual conflicts could arise between the interests of the employer and the interests of the individual employed engineer, as well as ethical issues.

The NSPE Board of Ethical Review has had occasion to address some of these issues over the years. A recent BER case, Case No. 99-3, was one such case. In that case, Engineer A was employed by Company X. As a part of her job, Engineer A organized continuing education seminars (i.e., contacting speakers, making meeting arrangements). Company Y, a business competitor with Company X, was aware of Engineer A's track record in organizing effective and well-received continuing education seminars. Company Y requested that Engineer A organize a continuing education

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seminar for Company Y's architects, engineers, and surveyors, whereby Company Y would pay Engineer A personally for such services. Engineer A agreed to provide the services. Engineer A told her supervisor about establishing the continuing education business generally but did not mention the services she would be providing to Company Y, a competitor of Company X. Under these circumstances, Company X, did not object.

In deciding it was not ethical for Engineer A to agree to provide continuing education seminar services to the competing Company Y without the knowledge and consent of her employer, the Board recognized the merit in having engineers work to promote and expand engineering education opportunities for engineers and other design professionals consistent with the NSPE Code of Ethics. The Board noted that with the increasing interest in continuing professional competency, life-long learning, and other educational programs, there will undoubtedly be a great need for knowledgeable and experienced engineers and others to provide services for the benefit of the engineering profession.

At the same time, the Board expressed concern about aspects of and the manner in which Engineer A pursued her activities in this area. The NSPE Code makes clear, said the Board, that before accepting outside employment, an engineer has an obligation to notify their employer. This obligation is intended, among other reasons, to permit the employer to evaluate whether the added burden of outside employment will have adverse consequences on the engineer's ability to perform her employment on the employer's behalf, but it is also intended to allow the employer the opportunity to assess whether the employee's outside employment will be in conflict or adverse to the interests of the employer.

The Board noted that while it is true that Engineer A did notify her employer that she was establishing a continuing education business, Engineer A failed to fully disclose that she would be working for the benefit of a competitor of her employer. Her failure to provide this critical information did not allow her employer the opportunity to make an informed decision concerning her outside employment. The Board also noted in passing that Company X will most probably learn that Engineer A is providing services to Company Y, and in light of her failure to inform Company X of this fact, the consequences to Engineer A may be severe.

In Case No. 99-3, the Board was not certain of all of the facts and details involved in Engineer A's decision not to inform her employer of her relationship with Company Y. It may have been as simple as the fact that Engineer A believed that Company X would have objected to this relationship; therefore, she decided not to fully disclose this fact to Company X because she wanted to pursue the opportunity. Or, Engineer A might have had plans to depart from Company X and establish her own business and decided to let her ties to Company X gradually diminish. Whatever her motivation, the Board believed that her actions were not consistent with the NSPE Code.

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The Board believes the reasoning in Case No. 99-3 can easily be applied to the present case. Engineer A was a full-time employee for QRS Engineering and, therefore, had full-time obligations to the company. At the same time that Engineer A was a full-time employee for QRS Engineering, Engineer A also owned a separate engineering practice that performed services that were also performed by QRS Engineering. These facts alone raise a significant conflict of interest which, at a minimum, requires full disclosure to Engineer A's superiors in QRS Engineering.

The facts that all client contacts are performed completely on Engineer A's own time (evenings and weekends), using Engineer A's equipment and materials; that Engineer A does not attempt to lure existing QRS Engineering clients to his engineering practice; and that the QRS Engineering Employee Handbook contains no specific policy that addresses performing outside work do not establish a basis to justify Engineer A's failure to advise QRS Engineering of his outside practice. Many of the same considerations in Case No. 99-3 may have been at work in the present case and it is clear that in the present case, Engineer A's obligation was to clearly and unambiguously advise QRS Engineering of his outside activities.

Conclusion:
It would be unethical for Engineer A to continue to perform engineering services in his own engineering practice in the manner indicated without clearly and unambiguously advising his full-time employer QRS Engineering.

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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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