Advertising—Inclusion of Material on Web Site from Former Employment

Case No. 10-6

Facts:

Engineer A, a licensed professional engineer in private practice, designs low-voltage electrical systems for commercial buildings and other facilities. Recently, Engineer A started his own consulting engineering firm. Engineer A would like to include on his firm's Web site several projects that Engineer A designed over the years, including some work that Engineer A designed while employed with other consulting firms. All Web content would be original and the content would be non-confidential. The content would include a picture of the project building and a short, generic narrative of the work performed. Work performed by Engineer A while under employment with the other firms would be described accordingly. Engineer A would claim credit for the design work only and would not state or imply that clients of other consulting firms are a client of Engineer A. None of the subject projects are covered by any employment agreements with any of Engineer A's previous employers.

Question:

Is it ethical for Engineer A to reference previous projects he has worked on for other employers on his Web site in the manner indicated?

References:

Section I.3.	-	*NSPE Code of Ethics:*	*Engineers, in the fulfillment of their professional duties, shall issue public statements only in an objective and truthful manner.*
Section II.5.a.	-	*NSPE Code of Ethics:*	*Engineers shall not falsify their qualifications or permit misrepresentation of their or their associates' qualifications. They shall not misrepresent or exaggerate their responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint venturers, or past accomplishments.*
Section III.3.	-	*NSPE Code of Ethics:*	*Engineers shall avoid all conduct or practice that deceives the public.*
Section III.9.	-	*NSPE Code of Ethics:*	*Engineers shall give credit for engineering work to those to whom credit is due, and will recognize the proprietary interests of others.*

Discussion:

The promotion and marketing of engineering services and the material utilized in promoting and marketing those services can sometimes raise sensitive ethical issues. Including or excluding certain information and material in those promotional and marketing efforts can often raise ethical concerns both because of what is and is not

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communicated. The obligations of an engineer to be objective and truthful and to not falsify qualifications or engage in misleading or deceptive activities are fundamental to appropriate ethical conduct by engineers involved in these matters.

The issue of credit and attribution for engineering work has been the subject of past NSPE Board of Ethical Review opinions. In BER Case No. 96-11, Engineer A was the principal in a new engineering firm that had been in existence for approximately 18 months. All of the engineers in the firm came from other engineering firms. Engineer A developed a firm promotional brochure that contained the following: (1) a "list of clients," implying those companies on the list are clients of the firm; and (2) a "list of projects of the firm," implying the projects were performed by the new firm.

In fact, the client list was actually those companies who the firm's engineers had performed work for with their former firms, and not with the new firm. Similarly, the project list was a series of projects performed by the firm's engineers for their former firms. In deciding that it was unethical for Engineer A to produce a promotional brochure for his new firm that contained (1) a "list of clients" and (2) a "list of projects," the Board noted that the facts suggested a clear intent on the part of Engineer A to engage in misleading and deceptive acts.

To imply that certain companies were the clients of the new firm and to take credit for projects that were performed in an entirely different context by other engineering firms was wholly improper in the Board's view. The Board went on to note that it could not identify any context in which Engineer A could have accurately used the term "client" to describe the new firm's relationship with the companies listed on the brochure. The term "client" implied some past or present business relationship between the engineer, the engineer's firm, and a company, said the Board. To use the term "client" to refer to a relationship that existed between an engineer when the engineer was employed in an entirely different context was misleading, deceptive, and a violation of the NSPE Code of Ethics.

More recently, in BER Case No. 07-4, Engineer A, a licensed professional engineer, worked for Engineer B, the owner of a geotechnical/construction materials firm for 10 years. Over the 10-year period with the firm, Engineer A achieved two engineering excellence awards for projects for which Engineer A had primary design responsibility and signed and sealed the engineering documents. The firm's Web site depicted these two projects without Engineer A's name associated with either one and included photographs of Engineer B and other engineers in the firm beside the project—implying, but not specifically stating, that these individuals were responsible for the projects.

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The Board decided that in the absence of some compelling reasons, (1) it was unethical for Engineer B to fail to include Engineer A in association with the two projects and (2) it was unethical for Engineer B to include a photograph on the firm Web site implying that Engineer B and other individuals were responsible for the projects. The Board recognized that companies and firms may have different methods of recognizing achievements and accomplishments for marketing, firm identity, and other purposes. However, the Board indicated that the manner in which firms assign credit and recognition should in some measure be connected to actual responsibility for the work. Where there is no reasonable connection between the actual responsibility/ accountability for the engineering work and the credit/recognition provided, the Board expressed the concern that a misrepresentation could occur that would be detrimental to the interests of potential clients and ultimately the public. Unless there is some unique or compelling business reason to do otherwise, it was the Board's decision that, consistent with the NSPE Code of Ethics, credit and recognition should follow responsibility and accountability.

Turning to the facts in the present case, the Board believes both BER Case Nos. 96-11 and 07-4 are instructive to understanding the ethical issues involved in the present case. Taken together, the cases illustrate the need for mutual respect and fairness between the employer and the employee in the context of recognizing and crediting the contributions of individuals and firms and not engaging in misrepresentations concerning the contributions of individuals or firms.

Balancing those considerations, the Board is of the view that in the present case, Engineer A may include the referenced materials and photographs provided there is no misrepresentation or misleading information either expressed or implied and provided there is full disclosure and attribution accorded to the former employer engineering firm. In addition, the Board is of the view that any references to Engineer A's services either in a resume or on the Web site should also describe the scope and limits of Engineer A's contributions and provide appropriate credit/acknowledgements of Engineer A's former employer (e.g., include a brief synopsis or summary of the nature of the project) so that the former employer is accorded appropriate recognition and Engineer A's contributions are placed in proper context.

Conclusion:

It would be ethical for Engineer A to use his work while under employment with the other firms in the manner indicated provided there is no misrepresentations or misleading information either expressed or implied and provided there is full disclosure and attribution accorded to the former employer engineering firm. In addition, any references to Engineer A's services either in a resume or on the Web site should also describe the scope and limits of Engineer A's contributions and provide appropriate credit/acknowledgements of Engineer A's former employer (e.g., include a brief synopsis or summary of the nature of the project) so that the former employer is accorded appropriate recognition and Engineer A's contributions are placed in proper context.

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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