Employment—Refusing to Return Copies of Work to Former Firm

Case No. 13-10

Facts:

Engineer A is an employee of Firm X. Engineer A prepares drawing, plans, reports, and specifications for Firm X clients. Engineer A maintains copies of drawings, plans, and specifications he has signed and sealed for his personal records in the event that Engineer A needs to refer to them at some point in the future (e.g., matters involving personal liability or professional liability). Thereafter, Engineer A leaves Firm X. Firm X learns of Engineer A's copies and demands that Engineer A return the copies to Firm X, claiming the drawings, plans, reports, and specifications are the property of Firm X. Engineer A refuses, claiming that he has a right to copies of his own work as illustrations of his work and in the event of future litigation or related matters.

Question:

Was it ethical for Engineer A to refuse to return copies of the work to Firm X?

References:

Section III.8.	-	*NSPE Code of Ethics:*	*Engineers shall accept personal responsibility for their professional activities, provided, however, that engineers may seek indemnification for services arising out of their practice for other than gross negligence, where the engineer's interests cannot otherwise be protected.*
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.*
Section III.9.a.	-	*NSPE Code of Ethics:*	*Engineers shall, whenever possible, name the person or persons who may be individually responsible for designs, inventions, writings, or other accomplishments.*
Section III.9.b.	-	*NSPE Code of Ethics:*	*Engineers using designs supplied by a client recognize that the designs remain the property of the client and may not be duplicated by the engineer for others without express permission.*
Section III.9.d.	-	*NSPE Code of Ethics:*	*Engineers' designs, data, records, and notes referring exclusively to an employer's work are the employer's property. The employer should indemnify the engineer for use of the information for any purpose other than the original purpose.*

Discussion:

Professional engineers are hired by employers or clients to prepare drawings, plans, and specifications which constitute intellectual property. Ownership and use of such property is often a critical issue in the relationship that exists between engineers, employers, and clients. How these issues are resolved sometimes raise ethical issues.

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In BER Case No. 06-9, the NSPE Board of Ethical Review examined three scenarios involving an employee who was in the process of departing from his employer. Engineer A, employed by ENJ Engineering, had recently accepted a position as an engineer with RFP Engineers, a competitor of ENJ Engineering. Engineer A had files in his office including the following: (1) client files, which included correspondence between Engineer A and various clients while employed by ENJ Engineering and project specific technical information; (2) technical information files, such as articles, publications, and external reports that Engineer A has personally received and saved during the course of his employment with ENJ Engineering to assist him in providing technical and professional services for clients; and (3) personal files, which included personal correspondence received from past and present clients acknowledging and expressing appreciation for Engineer A's work on various engineering projects and technical information obtained outside of his employment by ENJ Engineering.

In deciding that it would not be ethical for Engineer A to take the files under scenario (1) and (2) but it would be ethical for Engineer A to take the files under scenario (3), the Board noted that NSPE Code of Ethics Section III.9.d makes it clear that an engineer's designs, data, records, and notes referring exclusively to an employer's work are the employer's property and not the property of the engineer. Therefore, under the facts, the Board concluded that it would be unethical for Engineer A to remove client files from ENJ's offices. With regard to the corporate and technical files that did not refer exclusively to Engineer A's work on behalf of ENJ, the board determined that Engineer A should discuss with his supervisor in ENJ whether Engineer A could keep or at least make copies of the material contained in the technical files. Since the material was apparently generic in nature, not client specific but developed and prepared within ENJ's operations, the Board decided that a reasonable approach would be for Engineer A to offer to provide the technical files to ENJ but that Engineer A should first ask ENJ if he could maintain a copy of the material for Engineer A's professional records. Finally, with regard to personal files, the Board ruled that those files remain the property of Engineer A.

Turning to the facts in the instant case, the Board is of a similar view that while Engineer A has a legitimate interest in maintaining copies of drawings, plans, and specifications he has signed and sealed for his personal records in the event that Engineer A needed to refer to them at some point in the future (e.g., matters involving personal liability or professional liability), since this work was performed by Engineer A as an employee of Firm X, Engineer A and Firm X should first discuss and negotiate the terms and conditions of his departure, including the disposition of work prepared by Engineer A during his employment with Firm X. While it is true that Engineer A has legitimate interests in the work Engineer A signed and sealed, Firm X also has proprietary and other rights and interests that also should be respected by Engineer A.

In passing, the Board would note that that the ethical questions involved in this case and earlier cases involving the mutual responsibilities of parties at the time of an engineer's

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departure from employment can often be resolved by having in place a prior written employment or other agreement between the parties that outlines the duties and responsibilities of the parties at the point of termination of employment.

Conclusion:

It was unethical for Engineer A to refuse to return copies of the work to Firm X. Engineer A and Firm X should first discuss and negotiate the terms and conditions of his departure, including the disposition of work prepared by Engineer A during his employment with Firm X. While it is true that Engineer A has legitimate interests in the work Engineer A signed and sealed, Firm X also has proprietary and other rights and interests that should be respected by Engineer A.

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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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