Report on a Case by the Board of Ethical Review

Case No. 61-4

Subject:
Association with Non-registered Engineers
Canon 11-Canons of Ethics; Canon 19-Canons of Ethics; Canon 23-Canons of Ethics; Canon 27 - Canons of Ethics; Canon 28-Canons of Ethics; Rule 15-Rules of Professional Conduct; Rule 53-Rules of Professional Conduct; Rule 54-Rules of Professional Conduct; Rule 55- Rules of Professional Conduct; Rule 61-Rules of Professional Conduct.

Facts:
Two individuals, A and B, neither of whom is a registered professional engineer, are in the process of forming a firm (partnership) to engage in engineering work- (consulting, surveying, and estimating). One of these men, A, is a graduate engineer who has been in the construction field for many years. A and B obtain a job and engage the services of two registered engineers, X and Y, to perform and certify certain phases of the work connected with this particular job.

X and Y are full-time staff members of a state university and engage in outside work of this nature only on a spare time basis. A and B explain their situation to X and Y and tell them that as soon as the firm is established another registered engineer, Z, is to be employed on a full-time basis and that X and Y's services would be required only until that time.

During this interim period, A and B complete the legal requirements for the formulation of their partnership, the firm is established, an office rented, and cards printed advertising the firm as engaging in civil engineering, surveying, and estimating work.

Z for some reason does not go to work for the newly formed company and X and Y are the only registered engineers connected with the firm. Their employment, however, is still on a part-time basis and since they both live and work in a city some distance from the firm's place of business, they can exercise no immediate control or direction over the practices and work done by the other members, of the engineering company.

According to the applicable state law, if a firm engages in the practice of professional engineering in the state at least one member or employee of the firm must be a registered professional engineer and all work done by the firm shall be carried on under his immediate responsible direction.

Question:
With the situation stated above, what is the ethical position of X and Y?

References:

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Canons of Ethics-Canon 11- "He will guard against conditions that are dangerous or threatening to life, limb or property on work for which he is responsible, or if he is not responsible, will promptly call such conditions to the attention of those who are responsible."

Canon 19-"The engineer will endeavor to protect the engineering profession collectively and individually from misrepresentation and misunderstanding."

Canon 23-"He will not directly or indirectly injure the professional reputation, prospects or practice of another engineer. However, if he considers that an engineer is guilty of unethical, illegal or unfair practice, he will present the information to the proper authority for action."

Canon 27-"He will not use the advantages of a salaried position to compete unfairly with another engineer."

Canon 28-"He will not become associated in responsibility for work with engineers who do not conform to ethical practices."

Rules of Professional Conduct-Rule IS-"He will associate himself only with projects of a legitimate character."

Rule 53-"An engineer will not use equipment, supplies, laboratory, or office facilities of his employer to carry on outside private practice without consent."

Rule 54-"He will conform with registration laws in his practice of engineering."

Rule 55-"He will not use association with a non-engineer, a corporation, or partnership, as a 'cloak' for unethical acts; but must accept personal responsibility for his professional acts."

Rule 6-"Any firm offering engineering services must, in conformance with the laws of the state in which it operates, have its operations under the direction and responsibility of registered professional engineers."

Discussion:
This case obviously raises legal questions beyond the competence or jurisdiction of this body. The professional engineers involved in it should note, however, their duty under Canon 23 to advise the proper authorities of any suspected illegal conduct.

Aside from the legal implications stated in the facts, there are evident serious questions of ethical conduct on the part of the registered engineers. Canon 27 and Rule 53 authorize the kind of part-time arrangement undertaken by registered engineers, subject to the stated restrictions. The facts do not indicate any violations of these conditions,

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and it is assumed that X and Y would perform engineering services within the bounds of the limitations stated in the Canons and Rules.

X and Y were retained on a part-time basis for only certain phases of one specific project and it does not appear that their names are used in the name of the firm, or otherwise listed in connection with the firm. Nevertheless, X and Y are associated with the firm to some extent and their status as registered engineers might be cited by the firm in discussions with clients or prospective clients, leaving the impression that the firm is operating under the direction of and with the services of registered engineers. Such a representation would place X and Y in an awkward position and deceive the public, the client or prospective clients, inasmuch as it is stated in the facts that X and Y are not in a position to exercise the direction of engineering activities of the firm as required by the state law.

Under these circumstances we believe that there would be a violation of Rule 61. As a result, there is a violation of Rules 54 and 55 by X and Y. Further, X and Y are "associated" with a venture which is of questionable legality and therefore run afoul of Rule 15 in continuing any type of affiliation or connection with the firm. X and Y may be charged with a violation of Canon 11 should the firm perform engineering services which endanger the public safety, even though not associated with the particular project, inasmuch as there is an implied threat to the public safety in the performance of engineering services by non-registered engineers. It becomes the duty of X and Y to notify proper authorities that the firm might perform engineering services without the direction of a registered, engineer. Under these conditions the engineering profession is exposed to misrepresentation and misunderstanding and X and Y must take appropriate action to protect the profession from these conditions, as stated in Canon 19. Finally, Canon 28 requires that registered engineers avoid any form of association with engineers who do not conform to ethical practices. There is more than sufficient evidence in the facts known to X and Y to raise a substantial question as to the ethical standards of the firm, to say nothing of its apparent illegal operation.

Conclusion:
As soon as it became apparent that the firm was practicing without the services of a full-time registered engineer directly responsible for the engineering work, X and Y were ethically obligated to withdraw their association with the firm and advise the proper state authorities of the facts of the situation. X and Y may ethically perform part-time engineering services for ethically-operated firms under the conditions and restrictions stated in the Canons and the Rules.

Board of Ethical Review L. R. DURKEE, P. E. PHIL T. ELLIOTT, P. E. A. C. KIRKWOOD, P. E. MARVIN C. NICHOLS, P. E. EZRA K. NICHOLSON, P. E. WYLIE W. GILLESPIE, P. E. PIERCE G. ELLIS, P. E. Chairman

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