Report on a Case by the Board of Ethical Review

Case No. 68-2

Fee For Second Use Of Plans

Facts:
John Jones, who is a principal in an architectural-engineering (A/E) firm, retains Sam Brown who is engaged in private practice, to design one phase of a fairly large project. They agree that Brown will be compensated for his work on an hourly basis Subsequently, the project was built, and all parties were paid. After the project was completed the Owner contacted Jones, and requested he duplicate the building for another location. Jones was well qualified in the field of design which had been executed by Brown for the original project, and made the few minor changes required to adjust the original de sign to fit the new site. He did not contact Brown.

The standard agreement in force between the A/E firm and the client dictated that the second project be executed for a reduced fee. Brown maintains that he should be paid for the use of plans which he prepared originally, for use on the duplicated project.

Question:
Is Jones ethically obligated to compensate Brown in connection with the duplicated project?

Reference:
Code of Ethics-Section 9- "The Engineer will uphold the principle of appropriate and adequate compensation for those engaged in engineering work."

Discussion:
In Cases 62-13 and 65-6 we dealt with the ethical questions arising from the performance of engineering services at reduced fees, the former involving fees regularly below those contained in a recommended fee schedule followed by the profession in the area (held to be unethical), and the latter relating to a fee for repetitive work substantially below that indicated in a state society fee guide (held to be ethical if the fee was adequate for the services). In neither of these discussions, however, did we consider the right of an engineer to compensation for a second use of his original plans.

Section 9 of the Code, while in point, gives us little real guidance m the context of this case "Appropriate" and "adequate" are general words and have significance only in relation to some criteria which are generally accepted It is a generally accepted premise in the engineering profession that plans and specifications are instruments of service for a particular project, and that such plans and specifications or other engineering documents remain the property of the engineer who prepared them. A provision of this

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type is found in the NSPE contract documents and in the contract documents of other societies.

Using these criteria as a point of comparison to define "appropriate" and "adequate" we believe that Brown is entitled to compensation for a second use of his plans, and, in fact, should have been contacted for permission to use them a second time.

The fact that Brown was retained by Jones on an hourly basis is of no consequence in reaching this conclusion. His status was that of an engineer providing services to a client (in this case his client was Jones), and the principle enunciated would be the same had he been retained on a per diem, lump sum, cost-plus-a-fixed-fee or other basis. The only pertinence in noting that Brown was retained on an hourly basis would be to contend that his status was more nearly akin to that of an employee of Jones, in which case what we have said would not apply because the work of an employee becomes the property of the employer. In this case, however, the facts are clear that Brown was retained as an independent con- tractor, having the same relation- ship in this regard as occurs when an architect retains an engineer or an engineer retains an architect for a portion of the work It may be argued that Brown should not be considered as an independent contractor because by his hourly rate method of compensation he took no risk as to adequacy of his remuneration. The same argument might be advanced if Brown had worked on a per diem or cost-plus-a-fixed fee basis.

The method of compensation for services rendered is not a criterion for the establishment of Brown's status as an independent contractor. The pertinent criteria for establishment of Brown's status fall into the area of Brown's control of design decisions and the responsibility therefor.

Conclusion:*
Jones was ethically obligated to compensate Brown in connection with the duplicated project.

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