Report on a Case by the Board of Ethical Review

Case No. 70-3

Unauthorized Use of Drawings of Other Firm

Facts:
Engineer A performed subdivision planning and design drawings for Client X in 1964. Client X developed only a small portion of the subdivision, using A for services during construction, and terminated the development. A was paid in full for the services performed.

In 1969 Client X sold the property to Client Y, who had also been a client of A in the past. Client Y advised A that he would be retained to perform the professional services needed to adapt the original plans to conform to the requirements for the revised project in conjunction with B. At a joint meeting between Client Y and A and B it was agreed that A would release the original drawings to B to make certain revisions. The revised drawings were to be returned to A for review before submitting the revised drawings to municipal authority and for construction bids.

During this process Client Y retained C for certain services without the knowledge of A. A had meanwhile contacted Client X for permission and consent to reuse the original drawings. Such consent was granted orally, but written confirmation was not forthcoming. Failing to receive written confirmation from Client X, A sought to recover the original drawings from B, but was not successful in this effort for a considerable period of time. When A did finally recover the original drawings from B, he learned that reproducibles reflecting revisions had been made and submitted by B and C to the municipal officials for approval. The drawings submitted by B carried the name and seal of A. The drawings submitted by C did not carry the name and seal of A. A immediately notified Client Y, B and C, and the municipal officials that the original drawings of A were being used without authorization. Neither of the other engineers responded to the notice from A. Meanwhile, the project proceeded to construction without the participation or agreement of A.

Question:
Under this set of facts, was it ethical for B and C to provide services to Client Y on the basis of the original drawings of A?

References:
Code of Ethics-Section 11- "The Engineer will not compete unfairly with another engineer by attempting to obtain employment or advancement or professional engagements by competitive bidding, by taking advantage of a salaried position, by criticizing other engineers, or by other improper or questionable methods."

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Section 12-"The Engineer will not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of another engineer, nor will he indiscriminately criticize another engineer's work in public. If he believes that another engineer is guilty of unethical or illegal practice, he shall present such information to the proper authority for action."

Discussion:
Under this set of rather complicated facts, the ethical question comes down to one engineer using the prior work of another engineer without all conditions of consent having been met.

It is evident that A initially knew of and consented to the use of his prior work by B with the stipulation that A had the right to review B's revisions. If C had knowledge that A was still involved in the project, it was incumbent on C to contact A and advise him of his retention and intended participation. Particularly, both B and C were out of the bounds of ethical propriety in filing the plan and proceeding with the construction without submitting the revised plans to A for review.

Section 11 of the Code of Ethics cites several instances of unfair competition between engineers which are not directly applicable, but it also includes the "wrap-up" phrase, ". . . or by other improper or questionable methods." We hold that the conduct of B and C was at best "questionable."

Likewise, Section 12 of the code speaks to an attempt to injure the practice of another engineer. As we read the facts, the conduct of B and C amounted to an injury to A, even if that was not the intention of the parties. Section 12 is not restricted to deliberate injury of another engineer; it applies as well to injury of an indirect nature.

It was particularly repugnant to ethical conduct for B to submit the work of A to governmental authority with the name and seal of A on the drawings. Assuming C knew of A's involvement in the project, it was equally repugnant for him to use A's original work without consent.

The basic principle to be derived from this case is that one engineer may not ethically use the work of another engineer without prior consent based on meeting all the conditions thereof.

Conclusion*.
It was unethical for B and C to provide services to Client Y on the basis of the original drawings of A under the conditions described.

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