Report on a Case by the Board of Ethical Review

Case No. 71-10

Supplanting Another Engineer Nonpayment

Facts:
Engineer A was retained by an architect for mechanical-electrical engineering services for a building being designed by the architect. Engineer A completed his design work, and construction of the building was started. Engineer A was engaged in providing inspection services during construction, but terminated those services when he was not able to obtain payment from the architect for any of his services, despite repeated attempts to obtain such payments. Subsequently, he learned that the architect had retained Engineer B to complete the inspection work. Engineer A, upon receiving this information, advised Engineer B of the facts, but Engineer B continued his services to completion of the project.

Question:
Was Engineer B unethical in providing services as described?

References:
Code of Ethics-Section 1- "The Engineer will be guided in all his professional relations by the highest standards of integrity, and will act in professional matters for each client or employer as a faithful agent or trustee."

Section 11(a)-"The Engineer will not attempt to supplant another engineer in a particular employment after be coming aware that definite steps have been taken toward the other's employment."

Discussion:
Although we have considered and acted upon a number of cases in the past involving one engineer supplanting another (59-2, 62-18, 64-9, 65-8) none of them have reached the primary point of this case-whether it is ethical for an engineer to take up an assignment on which another engineer has worked if the first-retained engineer has not been paid for his services. In Case 59-2, we said that an owner has a right to terminate the services of his engineer at his pleasure. And we added to that comment, ". . . that the engineer is entitled to proper compensation for the work he performed."

Does it follow then that an engineer has a corresponding right to terminate his services to an owner? We need not answer that question to dispose of the facts at hand because there can be little doubt that an engineer who has not been paid for his services in accordance with his agreement or at reasonable intervals during his services is not required to continue his services. We only note, however, that on general principles an engineer is not allowed the same freedom of termination of his services to his client under Section 1 of the code.

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Two members of the Board of Ethical Review dissented in Case 59-2, contending that the second retained engineer who supplanted the first-retained engineer should be considered unethical if the owner had, in fact, terminated the contract for unjust cause. We read the dissent in that case to express the principle that a second engineer, being aware of the reasons for the first engineer terminating his services, should not then accept and perform the balance of the work for the same owner. It would logically follow, if this is the correct rule, that the owner would not be able to obtain further engineering services from any ethical engineer and would thereby be required to pay or settle the rightful claim of the first engineer.

We are confronted with the problem, however, of knowing whether there is a rightful claim by the first engineer. It is not unknown that an engineer and his client may get into dispute over the amount of payment due, when it is due, whether the work performed for the client was satisfactory, and similar questions. We are not prepared, despite our general prejudice in favor of the engineer being paid for his services, to conclude in all cases and under all circumstances that the engineer is always in the right in the event of a fee dispute. Nor do we think that it is fair to require the second engineer to act as a judge by deciding if the first engineer has a proper claim against the client as a basis for his decision whether it would be ethically proper for him to undertake to complete the services required.

As a practical matter, Engineer B may well be wary of taking on the work left by Engineer A because of nonpayment, else Engineer B may find himself with the same problem. But we find nothing in Section 11(a) of the code which related to payment or nonpayment to determine whether one engineer has unethically supplanted another. In fact, the wording of Section 11 (a) is explicit in stating the idea that one engineer should not displace another. Here Engineer B did not displace Engineer A because Engineer A had terminated the engineer-client relationship prior to the entry of Engineer B into the situation.

Whether or not Engineer A has a valid claim against the client is for resolution by agreement with the client, arbitration (if provided for in the contract), or legal action for collection of the debt. Meanwhile, the client is entitled to engineering services from other qualified sources.

Conclusion*:
Engineer B was not unethical in providing services as described.

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