Report on a Case by the Board of Ethical Review

Case No. 72-4

Supplanting Another Engineer Employee Participation Registration Adverse Comments on Applicant

Facts:
John Adams, a registered engineer, had a formal agreement to perform preliminary design of a project for the ABC Company. Richard Edwards, a nonregistered engineer employee of Adams, performed a substantial part of the preliminary design. The working drawing phase of the project was to be performed only when and if authorized by the ABC Company. Prior to any decision being made on the working drawing phase. Edwards voluntarily terminated his employment with Adams and was immediately employed by George Barton, a registered engineer in private practice. Thereafter the ABC Company notified Adams that it did not desire him to proceed with the working drawing phase and paid him the fees due for the preliminary design work. Barton was retained within a few days thereafter to furnish the working drawing engineering services to the ABC Company and assigned to continue work on the project. Neither the ABC Company, Barton, nor Edwards contacted Adams regarding these arrangements and events subsequent to the cessation of the arrangement between Adams and the ABC Company. Adams alleged that Barton and Edwards had conspired to supplant him in this engagement with the ABC Company.

Questions:
1. Was Edwards unethical in transferring his services from Adams to Barton under the circumstances stated?

2. Was Barton unethical for participating in the arrangement to transfer the work to his firm?

3. If Edwards had acted unethically prior to obtaining his registration as a professional engineer, would it be ethical for a registered engineer to withhold his recommendation that Edwards be registered, and to submit unfavorable comments on Edwards' character to the state registration board?

References:
Code of Ethics Section 7(a)-While in the employ of others, he will not enter promotional efforts or negotiations for work or make arrangements for other employment as a principal or to practice in connection with a specific project for which he has gained particular and specialized knowledge without the consent of all interested parties.

Section 8-The engineer will endeavor to avoid a conflict of interest with his employer or client, but when unavoidable, the engineer shall fully disclose the circumstances to his employer or client.

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

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:
The facts presented to us suggest, but do not necessarily prove, that Barton and Edwards had entered into some form of prearranged relationship to shift the continued work on the project from Adams to Barton after the preliminary phase had been completed by Adams.

We have consistently held that an engineer does not have an exclusive right to perform engineering services for a particular client and that a client has a right to change from one consulting engineer to another (Case 62-10). In Case 62-18 we dealt in some detail with the supplanting question under circumstances in which several years had elapsed between the time of preliminary studies for a project by one engineer and the retention of another engineer for a new report and design of a project, concluding that there had not been any unethical act of supplanting. (See also Case 64-9 in which we distinguished a related situation and held that the second engineer had unethically supplanted the first.)

Assuming, as we do for the purpose of this case, that Barton and Edwards had conspired to have the work transferred from Adams to Barton by utilizing Edwards' intimate knowledge of the project based on his connection with and work during the preliminary design, we believe that both are in violation of the mandate of Section 11 and Section 11 (a) in that such action was an attempt to advance their respective interests by taking advantage of a salaried position (as to Edwards) and by supplanting Adams for the balance of the project (as to Barton). Edwards was also, by this arrangement with Barton, in violation of Section 7(a). Although that portion of the code refers to promotional efforts or negotiations for work "... as a principal " it also forbids ". . . practice in connection with a specific project for which he has gained particular and specialized knowledge without the consent of all interested parties." Adams was clearly an interested party. Section 8 is also cited because Edwards' conduct generated a conflict of interest with his employer. Adams. When the code language says that a conflict of interest may be tolerated when unavoidable, provided ". . . the engineer shall fully disclose the circumstances to his client or employer." it means that the disclosure must be made before the fact and not after the damage has been done, as in this case.

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As to the ethical duty of an engineer called upon or volunteering to comment on Edwards' qualifications for registration as a professional engineer. Section 12 imposes a duty on all engineers to advise the "proper authority" if he believes that another engineer has engaged in unethical acts. We can imagine no more clear-cut application of this duty than in these circumstances and conclude that an engineer having knowledge of the facts must disclose them to the state registration board. It is not necessary for an engineer to know as a certainty that an applicant for registration had acted unethically (that is a matter of opinion), but if, as in this case, there is a reasonable belief that an applicant for registration may have acted unethically, it is required that the basis for that belief be submitted to the registration board. Whether such action would constitute a sound basis for the registration board to refuse to register an applicant is within the discretion of the registration board in accordance with the qualification standards in the registration law and the interpretation of the facts under those standards.

Conclusions*:

1. Edwards was unethical in transferring his services from Adams to Barton under the circumstances stated, insofar as the transfer of his services was to improperly shift the work on the project from Adams to Barton.

2. Barton was unethical in conspiring with Edwards to supplant Adams.

3. It would be ethical for an engineer to withhold his recommendation that Edwards be registered and to submit unfavorable comments on Edwards' character to the state registration board.

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