Report on a Case by the Board of Ethical Review

Case No. 73-8

Solicitation of Business by Mail

Facts:
Engineer A recently opened his own practice to primarily serve architects in his area and field of practice. He sent a letter announcing his availability to all architects in private practice in his geographical area, the pertinent part of which read:

"Are you satisfied with your present engineering setup? If you are, then do not waste your time reading this letter.

"If, however, you have not been getting the kind of service you expected, for whatever reason lack of coordination, failure to meet deadlines, or plain negligence I think of only one remedy: Try someone else.

"Since I started my own engineering firm approximately five years ago I have made it a point to have the drawings coordinated and to meet the deadlines. I take pride in having succeeded.

"With over 20 years of personal experience in consulting engineering my firm offers the following engineering services for a wide range of small and medium sized projects in the residential, commercial, institutional and industrial areas:

"Heating and Ventilation, Air Conditioning, Refrigeration, Plumbing, Boiler Plants, Lighting, Power, Incidental Services."

Question:
Was Engineer A's letter of solicitation ethical?

Reference:
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."

Discussion:
This case could be treated on the basis of advertising of engineering services, or as a question of whether Engineer A was at tempting to improperly supplant other engineers, or both. How ever, we believe it would be more appropriate to treat this case solely on the broad language of Section 11, and particularly that portion which proscribes unfair competition by reason of criticizing other engineers, or by other improper or questionable methods.

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Taking those dictates in order, we consider the objection to seeking professional engagements by criticizing other engineers applies only to specific named other engineers, or whether the proscription extends generally to a group of engineers or the engineering fraternity in general. We believe that the latter is the proper interpretation. Taken in context, Engineer A was undertaking to advance his own cause by casting doubt on the ability and performance of his professional peers. It is a fair reading of Section 11 in totality to arrive at the belief that its broad thrust is to hold competition among engineers to a plane of dignity, respect and honor. Here those virtues were breached by a self-serving statement which tended to degrade the entire profession.

In holding in an earlier case that it was permissible for an engineer to promote his services through direct mail solicitation, we noted that ". . . the letter was dignified and circumspect. . . ." (Case 65-17.) That case was decided under the previous standard permitting "circumspect" advertising, but the quoted portion of that decision would be applicable even if we treated the case before us as an advertising case. Under these facts the letter of Engineer A was not dignified and circumspect.

The second related aspect of the rule against using "improper or questionable methods" is even less subject to pragmatic definition, but in context it warns the engineer to be wary of solicitation methods which offend the sensibilities of one's peers. The late Chief Justice of the United States, Charles Evans Hughes, put the principle of professional mutual respect about as well as it could be stated in a 1935 Supreme Court decision involving professional services:

". . . The community is concerned in providing safeguards not only against deception, but against practices which would tend to demoralize the profession by forcing its members into an unseemly rivalry which would enlarge the opportunity of the least scrupulous. What is generally called the 'ethics' of the profession is but the consensus of expert opinion as to the necessity of such standards." (Semler v. Oregon State Board, 294 U S 608).

It seems hardly necessary to pinpoint the objectionable features of the offensive letter sent by Engineer A. Its entire tone is derogatory, undignified and in bad taste. It seeks to gain an advantage for the sender by derogating the ability of others in his field of practice, even to the point of suggesting that others are negligent in performance while he is not. This is a flagrant case of self-interest overriding minimum standards of professional decency.

Conclusion:
Engineer A's letter of solicitation was unethical.

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