Report on a Case by the Board of Ethical Review

Case No. 75-5

Personal Misconduct

Facts:
Example 1—Engineer A was charged with the criminal offense of theft in the first degree and pleaded guilty. He was sentenced to a short jail term and five years of supervised probation and to make restitution. During his period of probation he was employed as an engineer by another firm and while so employed he engaged in the writing and cashing of fraudulent checks.

Example 2—Engineer B was charged with, tried and convicted of the offense of filing fraudulent income tax returns to the Internal Revenue Service. The newspaper accounts of the case noted that he was an engineer.

Question:
Is personal misconduct of the types described a violation of the Code of Ethics?

References:
Code of Ethics—Preamble—"The Engineer, to uphold and advance the honor and dignity of the engineering profession and in keeping with high standards of ethical conduct:

- Will be honest and impartial, and will serve with devotion his employer, his clients, and the public;
- Will strive to increase the competence and prestige of the engineering profession;
- Will use his knowledge and skill for the advancement of human welfare."

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 3—"The Engineer will avoid all conduct or practice likely to discredit or unfavorably reflect upon the dignity or honor of the profession."

Discussion:
In Case No. 62-14, dealing with the disbarment of an engineer by the United States Patent Office for advertising to solicit patent business in violation of the rules of the Patent Office, we held that the engineer's action was a violation of the then-prevailing language of the Canons of Ethics, and which is now §3 of the Code of Ethics. However, we noted in that case: "We do not consider at this time whether this application would hold if the violation pertained to conduct not related to engineering practice."

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Later, in Case No. 68-7, we similarly considered a case in which an engineer was discharged by his employer for intoxication while in the performance of his duties. But again we noted that: "We do not deal in this case with the question of whether personal misconduct separate and apart from the performance of professional services would be a violation of the code. That would raise a somewhat different issue and would require a determination of whether such personal misconduct reflected upon the honor and dignity of the profession." The case before us directly raises the issue previously reserved in the earlier cases.

It may be argued that a code of ethics of any profession is only intended to relate to conduct which prejudices or may tend to prejudice the performance of professional services, and accordingly personal misconduct unrelated to such performance should be left to other proper authority. But counter to this approach should be a recognition that the basic purpose of a code of ethics is to so regulate and direct the activities of professional practitioners that the public they serve may have confidence in their integrity, honesty and decorous behavior. Thus it is that the NSPE Code of Ethics embraces language similar to that found in the codes of other professions to the effect stated in §3. Likewise, § 1 of the code speaks to ". . . the highest standards of integrity . . ." And the preamble enjoins the engineer". . . to uphold and advance the honor and dignity of the profession . . . ."

It would be incongruous if these kinds of moral imperatives were construed so as to ignore the type of personal behavior which is bound to bring disrepute to the entire profession for the acts of a few without any attempt to impose whatever corrective action is possible so that the public may know that the profession recognizes its obligations to justify public confidence in the profession.

This concept is recognized in the laws governing professionals. The state engineering registration laws similarly follow these precepts in authorizing the state registration board to discipline a registrant upon conviction for any felony or any crime involving moral turpitude. This broad authority, including suspension or revocation of license, is intended to go beyond transgressions related to the practice of engineering because another part of the state board authority provides for reprimand, suspension or revocation of license for "misconduct in the practice of his profession."

We are therefore of the view, and are now prepared to state, that personal misconduct of the kind indicated in this case is subject to the Code of Ethics and may be dealt with accordingly under the code in addition to whatever action may be appropriate by legal authorities.

Needless to say, professional societies with disciplinary authority must be careful and judicious in dealing with personal activity unrelated to professional services and must not unde take to control or decide purely personal habits or conduct or individuals. But when the conduct has been determined by proper legal authority to be beyond the pale of

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activity sanctioned by society the professional society may take note of such official findings and act accordingly to protect the good name of the profession.

Conclusion:*
Personal misconduct of the types described is a violation of the Code of Ethics.

***Note**-
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