Report on a Case by the Board of Ethical Review

Case No. 76-5

Supplanting—Use of Second Engineer After Bankruptcy of Client

Facts:
The XYZ Development Company retained Engineer A for engineering services related to a subdivision project. During the course of the work by Engineer A the XYZ Development Company was declared bankrupt and underwent bankruptcy proceedings. Engineer A filed a claim for payment for work done along with other creditors and was paid a proportion of the amount due him in accordance with the bankruptcy procedure. The PDQ Development Company bought up the property and plans to develop it with some major changes from the original development plan. Engineer A contacted PDQ to offer a continuation of his services.

During the negotiations between Engineer A and the PDQ firm, Engineer A claimed that under the agreement with PDQ he should be paid for his original work for the XYZ firm over and above the amount received from the bankruptcy proceeding. The PDQ firm refused this condition and negotiations were terminated. The PDQ firm then retained Engineer B to proceed with the engineering services to complete the revised development plan. Engineer A contends that Engineer B was unethical by his action in taking the assignment under these circumstances.

Question:
Was Engineer B unethical in taking the engineering assignment under the circumstances?

Reference:
Code of Ethics-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."

Discussion:
In previous cases we have made it abundantly clear that §11(a) does not give an engineer an exclusive right or claim on a particular client or for a particular project. As we said as early as Case 62-10, and affirmed in Case 73-7, "there can be no question but that the client has a right to change from one consulting engineer to another." And we have also noted that the "supplanting" rule cannot apply when the client has terminated the services of the engineer before retaining another (Case 62-18). Also, in Case 64-9 we restated the principle that for the "supplanting" standard to apply the facts must demonstrate that the complaining engineer either had a contract for the work, or had been selected for negotiation by the client for the particular work, citing a similar result in Case 62-18. (For other supplanting instances see Cases 59-2 and 65-8.)

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Applying these same observations to the facts at hand, it is clear that when Engineer B entered the scene, Engineer A had no contract with PDQ and negotiations had been terminated. Thus, the client was free to turn to another engineer.

It is not material to the ethical question that Engineer A had not received full payment for his previous services. In Case 71-10 we made the point that nothing in §11(a) expresses the idea that the ethical standard should turn on whether or not the engineer had been paid his full fee. Even if that standard were to be applied (as contended by two dissenting members in Case 59-2 if the owner terminated the engineer for unjust causes) the rationale would not apply here because Engineer A had been paid "in full" to the extent that the law provided. In other words, the very purpose of the bankruptcy proceeding is to wipe out all debts by whatever amounts can be recovered and paid from the assets of the bankrupt.

Accordingly, Engineer A did not in fact have any further legal claim against the original client, nor certainly did he have any legal claim against the PDQ firm, never having had a contract with it. He was free, of course, to endeavor to have the PDQ firm pick up the part of his fee which was wiped out by the bankruptcy, but when that effort failed he had no further standing to prevent the PDQ firm from proceeding with a new engineer for its purposes.

Conclusion:*
Engineer B was not unethical in taking the engineering assignment under the circumstances.

***Note**: This opinion is based on data submitted to the Board of Ethical Review and does not necessarily represent all of the pertinent facts when applied to a specific case. This opinion is for educational purposes only and should not be construed as expressing any opinion on the ethics of specific individuals. This opinion may be reprinted without further permission, provided that this statement is included before or after the text of the case.

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