Report on a Case by the Board of Ethical Review

Case No. 77-11

Supplanting—Promotion of Work by Former Employees

Facts:
Four of the key engineering employees of a firm headed by Engineer A left the firm at the same time following disagreement on certain firm policies and promptly organized a new engineering firm, B, with the four engineers as the principals. Firm B promptly contacted the former clients of Firm A, including some former clients of Firm A which had projects under discussion with Firm A, but for which specific selection or negotiation had not taken place. In some instances one or more of the four engineers had been involved with the former clients of Engineer A while in his employ.

While Firm B was making these contacts to indicate the availability of the new firm for assignments from the former clients, Engineer A was also making contact with the former clients to indicate that his firm was still available for future commissions and retained its capacity to provide proper services despite the departure of the four engineers. Engineer A has protested the action of the four engineers on ethical grounds, alleging that they violated the rule against supplanting. Further, he was told by the clients that Firm B had cast doubt on the ability of A to provide quality services. In his discussions with the former clients Engineer A indicated doubt that Firm B was qualified to provide quality services.

Questions:
1. Did the four engineers who founded Firm B violate the Code of Ethics by seeking work from former clients of Engineer A?

2. Did the four engineers comprising Firm B act unethically in casting doubt on the ability of Engineer A to provide quality services?

3. Did Engineer A act unethically in casting doubt on the ability of Firm B to provide quality services?

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 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."

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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. 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:
We deal first with the question of the application of the supplanting rule (§11(a)) because in this set of circumstances and charges and counter-charges it is most readily resolved. We have often held that §11(a) is not to be interpreted to give an engineer or firm a right to prevent other engineers from attempting to serve former clients of other firms. As most recently stated in Case 76-5, "…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…" (See also, Cases 62-10, 62-18, 64-9 and 73-7.)

Under that concept, we take it from the submitted facts that Engineer A did not have an existing contract, nor was he engaged in negotiations for a particular project relative to the contacts made by Firm B with former clients of Engineer A. To that extent, and under those facts, the four engineers of Firm B had a right to seek assignments from the former clients of Engineer A.

A more difficult aspect of the case is the application of §7(a) with regard to the promotional efforts of the four former employees of A. As we understand the facts, however, the four engineers did not undertake the promotional efforts with the former clients of A while in his employ, nor did they engage in negotiations for work while in the employ of A. We may assume that the four engineers possibly discussed among themselves the idea of soliciting work of former clients of A while still in his employ, but under a literal reading of that part of §7(a) that degree of activity would not constitute a violation of the code.

It is not nearly so clear, however, with regard to the latter portion of §7(a), as related to practice in connection with a specific project for which the employed engineer has gained particular and specialized knowledge. We are told that in some instances one or more of the four engineers who left A had been involved with former clients of A while in his employ, and we interpret that statement of fact to apply to specific projects under consideration at the time.

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The charge and counter-charge by both A and B regarding the capability of the other to provide adequate or quality services are both affronts to §12. We do not entirely foreclose the right or duty of an engineer to offer adverse comments on the capacity of another engineer or firm to a prospective client in proper circumstances where the adverse comment is objective and not tinged by self-interest. In Case 75-15 we considered the meaning of "maliciously or falsely" in determining whether the criticism of another engineer offended the code. We commented then that "…we are constrained to avoid a narrow and legalistic interpretation (of those words) and conclude that those words are not a necessary element to find that §12 applies when the purpose…is clearly to prevent, hinder, or otherwise put obstacles in the path of (the other engineer)."

The facts in the present case leave little doubt that the motivation and intent of both A and the four engineers of Firm B were to injure the prospects of the other. It is easy to understand that in such a case where the "divorce" of A and the four engineers was on a note of disagreement, each interest felt compelled to react to the other's claims or statements. We cannot or do not enter into speculation as to which "threw the first stone." Both sides were in clear error by indulging in criticisms of the other when, as here, the aspersions were cast purely in terms of attempting to secure a personal benefit.

Conclusions:*

Q.1. The four engineers who founded firm B did not violate the Code of Ethics by generally seeking work from former clients of Engineer A, but they were in violation of the code with regard to projects for which they had particular knowledge while in the employ of A.

Q.2. The four engineers comprising Firm B acted unethically in casting doubt on the ability of Engineer A to provide quality services.

Q.3. Engineer A acted unethically in casting doubt on the ability of Firm B to provide quality services.

**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.

Board of Ethical Review

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