**Report on a Case by the Board of Ethical Review**

**Case No. 79-10**

**Taking Over Clients of Former Employer**

**Facts:**
Engineer A was employed by Engineer B, a consulting engineer, and was assigned as the project engineer in charge of several projects. During the course of work on these projects Engineer B decided that he would terminate his general consulting practice in order to specialize in another field of engineering in another location. Engineer B asked Engineer A if he would be willing to enter into an arrangement whereby Engineer A would complete the work on the projects on the basis of a division of the profits on those projects, and thereafter Engineer A would continue the general practice on his own behalf and responsibility under the continuing firm name of Engineer B with a division of profits for future work.

Following discussions between Engineers A and B over the details of the proposed arrangement, the parties were not able to reach agreement on a number of details, such as the division of profits on the existing or future projects, assumption of potential liability on those projects, and the transfer of equipment and facilities of Engineer B. Upon the breakdown of those negotiations, Engineer A then proposed that if Engineer B did in fact close his office, abandon the local projects, and open an office in another location for a different type of practice that he (Engineer A) would open an office in his own name and offer his services to the clients to complete the projects. Engineer B questions whether Engineer A may ethically assume the completion of the projects without his concurrence.

**Questions:**
1. Would it be ethical for Engineer B to abandon the projects under way?

2. Would it be ethical for Engineer A to offer his services to complete the projects under his own responsibility and risk without the concurrence of Engineer B?

**References:**
Code of Ethics - 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 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."

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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 taking advantage of a salaried position, by criticizing other engineers, or by other improper or questionable methods."

**Discussion:**
This is a case involving a mixture of business practices and ethical concerns, and we confine our discussion to the latter aspects only.

It should first be noted that aside from the situation between Engineer A and Engineer B, in any event it would be necessary for the clients for the projects to agree to a transfer of responsibility to an engineer other than the engineer with whom they had contracted. We are not advised whether the projects were covered by written owner-engineer agreements, and, if so, whether those agreements contained the clause usually found in professional service contracts that they are not assignable without the consent of the client. But even if there were no written agreements with that type of clause, it would be ethically required under 7(a) that the clients agree to have Engineer A assume the responsibility for the completion of the projects.

We do not construe the broader aspect of 7(a) as barring Engineer A from taking the step he contemplates if the clients should agree to it. The thrust of that aspect of 7(a) is that an engineer will not initiate self-promotional efforts to take over projects in which he had been involved while in the employ of others. Here, however, Engineer A did not initiate the idea of taking over the work of the projects; the idea was set in motion by Engineer B's proposed action. Accordingly, Engineer A would not be considered as attempting to compete unfairly under the principles embodied in 11. However, he should not enter into negotiations nor make substantive offers of services while the agreement with Engineer B is still in force.

Engineer B may not, of course, ethically abandon the projects and leave the clients "high and dry" with uncompleted projects. Under 1 he must act on behalf of the clients as a "faithful agent." Thus, if Engineer B is not in a position, or is unwilling, to make other appropriate arrangements to complete the work on those projects under his agreements, he would be ethically obligated to seek to negotiate a termination of the agreements with the clients in order that they might obtain the necessary engineering services from other sources. Engineer A, having the specialized knowledge and background on those projects, would be the most likely possibility for the clients to consider for new agreements. As a practical matter, it would appear that Engineer B has little real choice but to conclude an arrangement with Engineer A on the best terms he can negotiate. But if for any reason such an orderly transfer is not arranged and Engineer B leaves the work uncompleted (exposing him, of course, to liability claims) Engineer A is not barred from offering his services to the clients.

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**Conclusions:***

1. It would not be ethical for Engineer B to abandon the projects under way.

2. It would be ethical for Engineer A to offer his services to complete the projects under his own responsibility and risk without the concurrence of Engineer B, provided Engineer B's agreements are no longer in force.

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