Report on a Case by the Board of Ethical Review

Case No. 84-1

Criticism of Another Engineer

Facts:
Engineer A is the president of a state engineering society. Engineer B is the president of a different engineering society in the same state. The two societies have engaged in a series of discussions with the objective of achieving a merger of the two organizations. These discussions led to disagreement on several key issues and reached an impasse.

Engineer A wrote an article in his society's magazine setting out the background of the discussions and offering his opinions on the various points of disagreement. In the course of his article, Engineer A included references and statements which were construed by Engineer B as impugning his good faith and conduct during the discussions. These included references in Engineer A's article as the deliberate issuance of incorrect minutes of the meetings on certain points, the intentional failure of Engineer B, or his organization, to take certain actions which had been agreed upon, and the improper procedural conduct of Engineer B during the discussions.

Engineer B has filed charges of unethical conduct against Engineer A.

Questions:
1. Were the statements of Engineer A subject to the Code of Ethics?

2. If so, did the statements of Engineer A violate the Code of Ethics?

References:
Code of Ethics - Section II.3. - "Engineers shall issue public statements only in an objective and truthful manner."

Section II.3.a. - "Engineers shall be objective and truthful in professional reports, statements, or testimony. They shall include all relevant and pertinent information in such reports, statements, or testimony."

Section III.1.f. - "Engineers shall avoid any act tending to promote their own interest at the expense of the dignity and integrity of the profession."

Section III.2.c. - "Engineers shall endeavor to extend public knowledge and appreciation of engineering and its achievements and to protect the engineering profession from misrepresentation and misunderstanding."

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Section III.8. - "Engineers shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other engineers, nor indiscriminately criticize other engineers' work. Engineers who believe others are guilty of unethical or illegal practice shall present such information to the proper authority for action."

Discussion:
We are confronted at the outset with the jurisdictional question of whether the Code of Ethics applies at all in the context of these facts. It may be that the Code does not apply because the allegations all relate to statements of a society president and not to the practice of engineering. It is true the wording of the Code is such that it primarily relates to the protection of the public health, safety, and welfare inherent to the practice of engineering. As such, it may be argued that in matters of administration of, and relationships between, engineering societies and their officers that do not involve engineering decisions, the Code is inapplicable.

While there is merit to the claim that the Code is primarily concerned with the work of engineers and relationships with clients, employers, and the public, it does not follow, in our view, that the Code is inapplicable to the conduct of engineers in other activities, particularly those that relate, in the larger context, to the engineering profession's interest in maintaining public confidence in the integrity of the profession, as it may be read into Sections III.1.f. and III.2.c.

There is a fine line in this regard; we do not say that the Code is applicable to all conduct of engineers in matters of a purely personal nature and which are unrelated to their status as engineers as part of the engineering community. In matters of a purely private nature in which the individual may have participated as a citizen independent of the fact that such individual happens to be an engineer, we would agree that the Code does not apply. On the other hand, if an engineer holds a position of trust and responsibility because of and related to engineering qualifications and status, the Code may well apply to certain conduct. In this case both parties held high office in the engineering community, were known as leaders in the affairs of the engineering profession, and acted in the matters in dispute in a real sense on behalf of what they perceived to be advancing the interests of all engineers.

Without attempting to draw a line as to when the Code may or may not apply in a given case, we conclude that under the circumstances and facts of this case the basic issues did involve in a significant way the interests of the engineering profession, and that the Code of Ethics is the proper authority to determine whether or not there was unethical conduct.

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Turning to the charges themselves, we have not attempted to distill from the material submitted every word and phrase in the article. It is sufficient for our purposes to note that several of the statements which gave rise to the charges are clearly expressions of opinion. For example, among the allegedly offensive words were reference to Engineer B's being "inefficient", and that Engineer B was "uncooperative." It is not within our ability to determine if these were "correct" or "incorrect" statements because they do not lend themselves to a factual test. At best, only those who were in attendance at the series of meetings could have an objective opinion as to the "truth" or "falsity" of statements of this type.

The other difficulty in evaluating the statements in the article relates to factual disagreements of exactly what was said or implied during the discussions. It is within the normal nature of negotiations that parties will make statements which may or may not be factually correct; and in the absence of physical presence at such discussions it is not possible to determine if the references in the article accurately reflected the factual situation on given points of disagreement.

Sections II.3. and II.3.a. of the Code are not intended to restrict vigorous and open debate between and among engineers; they are entitled as a matter of basic right to fully advance their opinions and to subsequently spell out their views for the evaluation of others. This is particularly true when an engineer holding a position of leadership in the engineering community has the responsibility to inform the members of the organization of his representation on their behalf.

It is perhaps regrettable that in the course of debate certain words or phrases are of a character that might be construed to cast aspersions on the motives of others. But this is a price which must be borne in favor of the higher principle of full discussion basic to democratic procedures. Having said this, however, we would observe that strong advocacy should be tempered expressions of opinion which are circumspect and devoid of undue emotionalism, and this is particularly important in a professional setting.

What we have said is akin to a degree to the well-established principle that those who hold public office may properly be subject to more stringent criticism for their actions than those who are involved only in the area of purely private enterprise. We do not say that the officers of an engineering society hold public office in its pure sense, but their status is roughly analogous to that of one who holds public office in the sense that they represent a constituency and not only themselves.

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The ultimate question, therefore, in the framework before us is whether the various published statements, no matter how strongly stated, are subject to ethical objection. Section II.8. guides us by its reference to proscribing statements which are maliciously intended to injure the professional reputation of other engineers. While some or all of the statements at issue may have been overboard, and may have represented poor judgment, there is no basis to conclude that they were made maliciously. The better assumption, we believe, is that they were made sincerely "in the heat of battle," as it were.

Conclusions:*

Q1. The statements of Engineer A are subject to the Code of Ethics.

Q2. The statements of Engineer A did not violate the Code of Ethics.

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