Report on a Case by the Board of Ethical Review

Case No. 84-3

Name of Firm—Use by Successor Principals

Facts:
Engineer A was the founding principal of a firm named "A-Engineering," and later Engineers B and C were employed by A-Engineering. In 1970, Engineers B and C bought the firm of A-Engineering from Engineer A. Engineer A stayed on as a consultant until 1975 when he retired. From 1970 until 1980, Engineers B and C continued to call the firm A-Engineering. During that entire period (1970-1980) while being considered for work, Engineers B and C, in promoting the firm, indicated to clients that the firm was responsible for certain projects done during the 1950s and 1960s. The truth is that Engineers B and C only joined the firm in 1960 and only worked on a few of the projects cited, but the firm did in fact perform the work that they claimed it had.

Questions:
1. Was it ethical for Engineers B and C to continue to call the firm A-Engineering after Engineer A was no longer a principal in the firm?

2. Was it ethical for Engineers B and C, in promoting A-Engineering, to indicate to the clients that the firm was responsible for certain projects done prior to their association with the firm?

References:
Code of Ethics - Section I.5. - "Engineers, in the fulfillment of their professional duties, shall: Avoid improper solicitation of professional employment."

Section III.3.a. - "Engineers shall avoid the use of statements containing a material misrepresentation of fact or omitting a material fact necessary to keep statements from being misleading; statements intended or likely to create an unjustified expectation; statements containing prediction of future success; statements containing an opinion as to the quality of the Engineers' services; or statements intended or likely to attract clients by the use of showmanship, puffery, or self-laudation, including the use of slogans, jingles, or sensational language or format."

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Discussion:
The facts of this case are not unusual and, in fact, are quite common, not only in the field of engineering, but also in the practice of law, architecture, and other professional fields. Frequently a firm name contains the name of a principal who is well respected, sought after, and thus extremely valuable to the firm. When this member of the firm ceases to be associated with the firm for one reason or another, the firm is faced with a choice. The firm may either remove the name from the firm name, in which case the prestige and the honor associated with it are lost, or the firm may continue to use the name, in which case there is a danger that the public might assume the individual is still associated with the firm.

There is the question of the promotion of the firm to indicate that the firm was responsible for work done prior to the current principals' association with the firm. These points will be addressed individually.

The Code of Ethics very clearly states that engineers should avoid the improper solicitation of professional employment (Section I.5.) or statements containing material misrepresentation of fact or omitting a material fact necessary to keep statements from being misleading (Section III.3.a.).

Taken as a whole these provisions provide engineers with a good deal of guidance with regard to the question posed by the facts in this case. An engineering firm is a group of professional engineers who have banded together to provide engineering services to clients. While it sometimes is true that certain individual members of the firm are so-called "movers and shakers," who are extremely valuable and add prestige to the firm, the name of the firm is generally associated more with the firm as a whole than with any of its individual members. The name or names contained in a firm's title, while very important, are for the most part a symbolic representation of the quality of services provided by that firm as a whole. While it is true that certain clients continue to choose a firm because of the continued presence of a member of the firm, it is also true that the quality of services rendered by a firm is generally a reflection of the firm team comprised of several members of the firm.

Applying this analysis to the facts present in this case, it appears that Engineers B and C were not acting improperly when they continued to use the name A-Engineering as the name of their firm. A-Engineering, while a direct reference to Engineer A, was also the name of a team of engineers of which Engineers B, C, and other engineers were a part. In the minds of the public and clients, A-Engineering represented an assortment of engineers and engineering services. When Engineers B and C purchased the firm, they purchased a "package" which included the identity and goodwill of the firm. It is our view that they acted ethically in calling the firm A-Engineering after Engineer A was no longer a principal in the firm.

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As to the second point, we are a bit more concerned as to the statements made by Engineers B and C concerning the work performed by the firm. While, as has just been stated, the firm is a symbolic representation of the quality of services rendered by a group, it is also true that the firm as currently constituted is owned and managed by individuals who were not responsible for the projects performed during the 1950s and 1960s. Nevertheless, it is the opinion of the Board that as long as Engineers B and C, in promoting A-Engineering, indicate to prospective clients that it was the firm, and not Engineers B and C individually, that was responsible for certain work done prior to their association with the firm, we conclude that such statements would be ethically proper. This recognizes that the firm is a continuous, ongoing, and living entity with a history and reputation, while at the same time acknowledges that particular individuals who are no longer associated with the firm may have been partially responsible for that history and reputation.

Conclusions:

Q1. It was ethical for Engineers B and C to continue to call the firm A-Engineering after Engineer A was no longer a principal in the firm.

Q2. It was ethical for Engineers B and C in promoting A-Engineering to indicate to clients that the firm was responsible for certain projects done prior to their association with the firm.

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Board of Ethical Review: F. Wendell Beard, P.E., Robert J. Haefeli, P.E., Ernest C. James, P.E., Robert W. Jarvis, P.E., James L. Polk, P.E., J. Kent Roberts, P.E., Alfred H. Samborn, P.E., chairman

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