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

**Case No. 84-4**

**Engineer's Dispute With Client Over Design**

**Facts**:
Client hires Engineer A to design a particular project. Engineer A develops what he believes to be the best design and meets with the client to discuss the design. After discussing the design plans and specifications, the client and Engineer A are involved in a dispute concerning the ultimate success of the project. The client believes Engineer A's design is too large and complex and seeks a simpler solution to the project. Engineer A believes a simpler solution will not achieve the result and could endanger the public. The client demands that Engineer A deliver over to him the drawings so that he can present them to Engineer B to assist Engineer B in completing the project to his liking. The client is willing to pay for the drawings, plans, specifications, and preparation but will not pay until Engineer A delivers over the drawings. Engineer A refuses to deliver the drawings.

**Question:**
Would it be ethical for Engineer A to deliver over the plans and specifications to the client?

**References:**
Code of Ethics -Section II.1.a. - "Engineers shall at all times recognize that their primary obligation is to protect the safety, health, property, and welfare of the public. If their professional judgment is overruled under circumstances where the safety, health, property, or welfare of the public are endangered, they shall notify their employer or client and such other authority as may be appropriate."

Section II.1.e. "Engineers having knowledge of any alleged violation of this Code shall cooperate with the proper authorities in furnishing such information or assistance as may be required."

Section III.1.b. "Engineers shall advise their clients or employers when they believe a project will not be successful."

**Discussion:**
The facts of the case presented to the Board, at first glance, appear to be fairly straightforward and easily addressed by the Code of Ethics. On its face we are presented with an engineer who has been retained by a client to design a project. However, both parties cannot agree as to the ultimate success of the project as developed by Engineer A. Thus, the client seeks to terminate the services of Engineer A, but wishes to obtain the drawings, plans, and specifications from Engineer A for a fee. Our discussion will be limited to the ethical rather than the contractual considerations of this case.

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Much of the language contained in the Code relates to the engineer's obligation to protect the public health, property, and welfare (Section II.1.a.). In the present case it appears that Engineer A had a strong concern for the protection of the public health and welfare. Nevertheless, it is the view of this Board that Engineer A could have delivered over the drawings to the client and his conduct would have been ethically proper.

While it is true that Engineer A has an ethical obligation under Section II.1.a., that obligation assumes that Engineer A is in possession of verifiable facts or evidence which would substantiate a charge that an actual danger to the public health or safety exists. In the instant case, Engineer A makes the overly broad assumption that if he were to deliver over to the client the drawings so that the client can present them to Engineer B to assist Engineer B in completing the project to the client's liking, Engineer B would develop a set of plans which would endanger the public health and safety. We think that such an assumption is ill-founded and is not based upon anything more than a supposition by Engineer A. Therefore, we are of the view that Engineer A should not have withheld the drawings on the basis of Section II.1.a.

In reviewing the conduct of Engineer A up until his refusal to deliver over the drawings to the client, we are of the view that Engineer A went as far as he was ethically required to go in preparing what he believed was the best design for the project and in informing the client of the dangers of proceeding with the client's simplified solution. Section III.1.b. is very clear in stating an "Engineer shall advise [his] client . . . when [he] believes a project will not be successful." We are of the view that, by conferring with the client and explaining his concerns over a proposed simplified solution, Engineer A had met his ethical responsibility.

In the event, however, that Engineer A does deliver over to the client the plans so that the client can present them to Engineer B for completion of the project to the client's liking, and thereafter Engineer A discovers that Engineer B developed plans which constitute a danger to the public, certain actions would then be required by Engineer A under the Code. Any verifiable conduct on the part of Engineer B which indicates that Engineer B's plans are a danger to the public, should be brought to the attention of the proper authorities, i.e., the responsible professional societies or the state engineering registration board.

**Conclusion**:
It would be ethical under the above circumstances for Engineer A to deliver over the plans and specifications to the client.

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