Report on a Case by the Board of Ethical Review

Case No. 88-4

Duty of Engineer To Provide Owner With Drawings

Facts:
Engineer A is retained by an architect to provide mechanical engineering services in connection with the design of a small office building. Engineer A performs her services and thereafter a dispute arises between Engineer A and the architect as to Engineer A's final compensation for her services. The issue is never finally resolved. Several months later, the owner, who retained the architect on the project, requests that Engineer A provide him with a copy of the final record drawings in order to perform certain work on the building which does not involve issues of safety or health. The owner offers to pay Engineer A the cost of reproduction and any administrative staff costs and to attempt to mediate the dispute between Engineer A and the architect. Engineer A refuses to provide the owner with a copy of the drawings and declines owner's offer to mediate the dispute.

Question:
Was it ethical for Engineer A to refuse to provide the owner with a copy of the drawings and to decline owner's offer to attempt to mediate the dispute between Engineer A and the architect?

References:
Code of Ethics - Section I.1. - "Engineers, in the fulfillment of their professional duties, shall hold paramount the safety, health and welfare of the public in the performance of their professional duties."

Section II.4. - "Engineers shall act in professional matters for each employer or client as faithful agents or trustees."

Discussion:
The facts presented in this case touch upon a sensitive ethical issue faced by engineers what are the third party ethical responsibilities of the engineer who is involved in a contract dispute? Case 88-4 The NSPE Code of Ethics is patently clear in Section I.1., but that language, standing alone, does not provide a significant amount of guidance to us in considering the facts before us. The language in Section II.4., on its face, does not provide much clarity to us in the context of this case because it is unclear whether the engineer has an ethical obligation to the owner who is neither an employer nor a client under the facts.

A relevant question which this Board must ask is whether the Code language in Section III.6. would be applicable to the case before us and, if so, whether Engineer A is fulfilling her ethical obligation under the circumstances.

Copyright © 1988 National Society of Professional Engineer (NSPE) www.nspe.org . All rights reserved.
To request permission to reproduce this NSPE Board of Ethical Review Case, please contact the NSPE Legal Department (legal@nspe.org).

While the Board has heretofore not addressed a case such as this, we have addressed at least one case that might provide us with some direction. In Case 67-3, Engineer X was retained by a municipality to prepare plans and specifications for a comprehensive sanitary sewer program. After approximately 80 percent of the total project was constructed in subsequent years, Engineer X's contract was terminated and he was paid in full for his services.

Ten years later, the municipality retained an other engineer to revise and update the plans and specifications prepared by Engineer X. The municipality requested Engineer X to provide it with originals or copies of the plans and specification which Engineer X had in his possession, offering to pay Engineer X the cost of reproduction. Engineer X refused to comply with the request. The original contract was silent as to ownership of the plans and specifications, but did contain a clause stating that: "If the City requires more than six complete sets of final plans, specifications and documents, the Engineers agree to provide any number of additional copies for no more that blueprinting, mimeographing and mailing costs."

In finding that Engineer X was ethically obligated to provide the originals or copies of the plans to the municipality, the Board noted that as a general rule in the absence of a contract provision on ownership of plans, the plans and contract documents are the property of the client. Moreover, we noted that Engineer X's refusal to cooperate will put the municipality to unnecessary additional expense to the extent that the second engineer would be required to expend additional time to investigate the work done under the earlier contract as related to the work to be performed. We noted that this situation would not be in accord with the mandate of the Code in 109 NSPE Board of Ethical Review that Engineer X was not regarding his duty to the public welfare as a paramount consideration. Of considerable note, the Board concluded by stating: "Under the (original) contract, Engineer X was obligated to furnish additional copies of the plans to the client upon request. The fact that the contract is now terminated, regardless of the legal position of the parties, should not be used by him as a means of technical avoidance of his ethical obligation to serve the interests of the client without any cost to Engineer X. The ethical duty is supported by the dictate Section 1 of the Code. "

Under the facts of the instant case, it is clear that Engineer A was retained by the architect and not the owner. From a purely technical stand-point, therefore, it was the architect and not the owner who was the "client" and arguably any potential ethical obligations owed by Engineer A to a "client" were owed to the architect and not to the owner. However, this preliminary conclusion has to be weighed against other circumstances which take into consideration other provisions of the Code of Ethics and the practical realities of professional relationships.

Copyright © 1988 National Society of Professional Engineer (NSPE) www.nspe.org . All rights reserved.
To request permission to reproduce this NSPE Board of Ethical Review Case, please contact the NSPE Legal Department (legal@nspe.org).

First, as we noted in Case 67-3 that as a general rule, in the absence of a contractual provision to the contrary, the drawings, plans, and specifications prepared by an engineer for a client are the property of the client. While we are mindful of our preliminary conclusion that technically, it was the architect and not the owner who was the "client" of the engineer, we believe the Code should be read flexibly, particularly where the service being rendered by the engineer is being incorporated into a larger design plan for the benefit of a client. In this larger context, the term "client" should be interpreted more broadly to encompass the owner the ultimate "beneficiary" of the services which Engineer A has been retained to provide, and the one who, however indirectly, has provided compensation for her services.

In addition, as noted in Case 67-3, there exists additional professional obligations of which Engineer A must be mindful. Engineer A's refusal to provide the owner with copies of the drawings until her dispute with the architect is resolved could potentially jeopardize the economic value of his building. Placing the owner's property in jeopardy in this manner would be in direct contravention of I.1. and II.4. of the Code of Ethics.

Finally, we are troubled by Engineer A's arbitrary refusal of the owner's offer to attempt to mediate the dispute between Engineer A and the architect. Neither Engineer A's interest in are solution of her dispute with the architect nor the owner's interest in obtaining a copy of the record drawings were well served by her refusal. Engineer A's refusal was neither within the letter nor the spirit of Section II.4. of the Code of Ethics.

Conclusion:
It was unethical for Engineer A to refuse to provide the owner with the drawings and to decline owner's offer to attempt to mediate the dispute between Engineer A and the architect.

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 Eugene N. Be champs, P.E., Robert J. Haefeli, P.E., Robert W. Jarvis, P.E., Lindley Manning, P.E., Paul E. Pritzker, P.E., Harrison Streeter, P.E., Herbert G. Koogle, P.E., L.S., chairman

Copyright © 1988 National Society of Professional Engineer (NSPE) www.nspe.org . All rights reserved.
To request permission to reproduce this NSPE Board of Ethical Review Case, please contact the NSPE Legal Department (legal@nspe.org).