BER Case 90-2

APPROVED BY BER
November 9, 1990

Section III.8. - Code of Ethics

EXPERT WITNESS - ACCUSATION OF UNPROFESSIONAL CONDUCT

FACTS:

Engineer A works for a forensic engineering firm and is asked to serve as an expert witness in a case involving the professional services rendered by a manufacturing company which employs Engineer B as the director of engineering. During the trial, Engineer A, who possessed expertise in safety engineering, testified that the manufacturing company's safety practices were inadequate and may have contributed to the injuries suffered by certain employees. Several months later, Engineer B makes comments to engineers and others accusing Engineer A of acting unprofessionally and unethically, alleging that Engineer A was biased because he ignored important information in his testimony and only focused upon circumstances which were helpful to his client. Engineer B offers no substantive support for his allegation.

QUESTION:

Is it unethical for Engineer B to accuse Engineer A of acting unprofessionally and unethically because Engineer A testified in the manner described.

REFERENCES:

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 untruthfully 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:

Basic to the cooperative peer relations that exist among any professional groups is the mutual respect and consideration that one professional shows toward his or her peers. The engineer's obligation in this regard is identified in various provisions of the Code of Ethics. One important example is Section III.8 which clearly admonishes engineers to refrain from injurious, malicious or false comments, either expressed or implied concerning one's peers. The provision also identifies an appropriate procedure through which engineers may express their concerns about the improper conduct of other engineers.

Copyright © 1990 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).

In recent years, the Board has had the opportunity to review cases involving criticism by one engineer of another. In BER Case 79-2, Engineer A, the town engineer, and Engineer B, a consulting engineer retained by a town council, collaborated on an assignment to make studies and determine final contours for an existing sanitary landfill, taking into account final land use and environmental concerns, surrounding land use and topography. Engineer A and B jointly determined that the existing landfill space would be exhausted at present rate of use in three years, or soon thereafter. The town council had sought an alternative disposal location, but had not been able to locate one. It then requested Engineers A and B to submit new designs for the existing site at higher final contours in accordance with state environmental laws. After several designs were not accepted, the town council requested Engineers A and B to prepare a new design which resulted in an accepted solution, incorporating minimum setbacks and maximum allowable slopes. This design provided for a hill more than 100 feet higher than originally proposed. Engineer C, a resident of the town, publicly contended that the higher level design concept would be environmentally unsound because methane gas from the landfill would move into adjacent private property and that would pollute nearby groundwater. The issue stirred up public controversy. Engineer C publicly questioned whether Engineers A and B should have agreed to the higher intensity use of the site.

In ruling that Engineer C acted ethically in publicly challenging the design approach adopted by Engineers A and B, the Board noted that these decisions in the public arena are subject to open debate and resolution by appropriate public authority. We found that Engineer C was acting within the intent of the Code in raising his concern. However in such a matter of important public policy, if, after due consideration of his views and those of others, the decision should be to proceed with the proposed design of the expanded landfill, all involved should accept that each engineer had acted in conformance with the Code. That there are conflicting public views between engineers in this case should be of no concern. Citing BER Case 63-6, the Board noted:

"There may...be honest differences of opinion among equally qualified engineers on the interpretation of the known physical facts...It is not unethical for engineers to offer conflicting opinions on the application of engineering principles, or to criticize the work of another engineer, at hearings on a engineering project, in the interest of the public, provided such criticism is offered on a high level of professional deportment."

More recently, in BER Case 81-6, an engineering school hired a new department head from another engineering institution. Some ten months later engineers of the department met and prepared a memorandum of grievances against the new department head. That followed a series of attempts by individual faculty members to resolve grievances by personal contact with the department head. When those efforts failed, several of the faculty members told the department head they intended to take up the issue with the dean. Each of the 22 faculty members signed the memorandum and submitted it to the dean of engineering. The dean then confronted the department head with the memorandum. The department head submitted a statement rebutting the various allegations and, in turn, accused the faculty members of maliciously injuring his professional reputation. The aggrieved faculty members, after reviewing the department head's memorandum, and at the request of the dean, prepared a 20-page detailed statement expanding on their grievances.

Copyright © 1990 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).

In finding that the engineer members of the faculty acted ethically in submitting their grievances to the dean, the Board stated:

"Human nature being what it is, we have to recognize that there will be clashes of personality and of policy issues. We believe that the overall purpose and intent of the kind of professional relationships contemplated by the Code require the highest level of effort to resolve such disputes, but when this is unavailing, the aggrieved engineers must be allowed to take their case to a higher authority."

Another recent case involving criticism of another engineer was BER Case 84-1 which involved Engineer A the president of a state engineering society and Engineer B the president of a different engineering society in the same state. The two societies had 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 to 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 filed charges of unethical conduct against Engineer A.

In ruling that the statements of Engineer A did not violate the Code of Ethics, the Board concluded by noting:

"Section III.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 over broad, and may have represented poor judgment, there is no basis to conclude that they were made maliciously."

Turning to the facts of the present case, we do not believe that Engineer B's comments can be justified in the same manner as those described in BER Cases 79-2, 81-6 or 84-1. Unlike those cases, this case does not appear to involve matters in the public policy forum, educational policy or matters of profession-wide concern. The sole issue which concerned Engineer B was the actions of Engineer A in testifying as an expert witness in the manner described.

We believe Engineer B acted unethically in making unqualified public statements calling into question the professional and ethical conduct of Engineer A under the circumstances described. As various Board of Ethical Review cases have suggested, on matters of professional practice, reasonable engineers may differ reasonably. To suggest otherwise is to assume that engineering is an exact science in which determinations may be made with absolute precision and accuracy. Engineering, as with all other professions, is to a large degree more of an "art" than a "science" in which methods of practice are employed to find solutions. Each problem must be confronted on a case-by-case basis. Disagreement on a technical or professional question, even if it might not be in complete harmony with conventional wisdom, does not necessarily mean that the one advocating the position is acting unethically or unprofessionally.

Copyright © 1990 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).

We presume Engineer B was sincere in his view that Engineer A acted improperly, but Engineer B's sincerity cannot justify the injury he may have caused to Engineer A's reputation. In addition, we note that Engineer B had several alternative courses of action to follow to address his concerns. Among these included meeting with Engineer A and discussing his concerns in a frank and honest manner. This may have had the effect of either clarifying the points at issue or more definitively crystallizing Engineer B's concerns over Engineer A's testimony. In the latter case, if after discussing the matter with Engineer A, Engineer B still believed Engineer A acted improperly, Engineer B would have an obligation to bring this matter to the attention of the appropriate engineering society or state engineering board.

CONCLUSION:

It was unethical for Engineer B to accuse Engineer A of acting unprofessionally and unethically because Engineer A testified in the manner described.

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

John F. X. Browne, P.E.
William A. Cox, Jr., P.E.
Herbert G. Koogle, P.E.-L.S.
Paul E. Pritzker, P.E.
Harrison Streeter, P.E.
Otto A. Tennant, P.E.

Lindley Manning, P.E., Chairman

Copyright © 1990 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).