BER Case 91-4

APPROVED BY BER
November 1, 1991

Section II.3. - Code of Ethics
Section II.5. - Code of Ethics
Section III.1.f. - Code of Ethics
Section III.3.a. - Code of Ethics

MARKETING SURVEY BY ENGINEERING FIRM

FACTS:

Engineer A, a principal in a medium-sized consulting engineering firm is exploring various marketing approaches which can be used for both potential and existing clients. Among the techniques which Engineer A has developed is a survey/questionnaire which included questions relating to what the clients's expectations are from a consulting engineering firm, what factors the client considers in selecting a consulting engineer, and the client's opinion of past services provided by the firm. A sentence at the end of a cover letter accompanying the survey notes that the firm "appreciates the time the client has taken to complete the survey/questionnaire and that the client's efforts in completing the survey will benefit the entire engineering community."

QUESTIONS:

1. Was it ethical for Engineer A to conduct the survey?

2. Was it ethical for Engineer to state in the cover letter accompanying the survey that the client's efforts in completing the survey would benefit the entire engineering community?

REFERENCES:

Section II.3. -Engineers shall issue public statements only in an objective and truthful manner.

Section II.5. -Engineers shall avoid deceptive acts in the solicitation of professional employment.

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.

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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 or 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.

DISCUSSION:

In recent years, engineers have developed a variety of sophisticated marketing and sales techniques in an effort to maintain, as well as expand, their client base. This Board has had numerous occasions to discuss these techniques and approaches and the Board believes it would be helpful to examine earlier cases considered by this Board in order to better understand the philosophical issues involved.

One example is BER Case 83-5, in which a local landscape architect, through a network of contacts, was able to locate engineering projects throughout the state. The landscape architect contacted the engineer and proposed to refer these clients to the engineer in return for a fee over and above the value of the landscaping work which the landscape architect would presumably perform on these jobs. Generally, little landscaping work was required on the project. The engineer accepted the proposal. In finding it was unethical for the engineer to accept the landscape architect's proposal to refer clients to the engineer in return for a fee over and above the value of the landscape work which the landscape architect would presumably perform on each of the projects, the Board noted that under the facts of the case, it appeared that the architect was wearing two hats and was wearing those hats simultaneously. There, the landscape architect proposed to act as both a marketing representative for the engineer and, at the same time, was expected to perform services at an inflated rate in connection with the work that the landscape architect secured for the engineer. The Board noted that such conduct on the part of the engineer does not demonstrate the requisite good faith, integrity of dealing and honesty required by the Code of Ethics.

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More recently, the Board considered BER Case 87-5 involving solicitation through a complimentary seminar registration. There, a pipe company interested in becoming known within the engineering community and in particular to those engineers involved in pipe specification invited an engineer to a one-day complimentary seminar to educate engineers on current technological advances in the selection and use of pipe in construction. The company hosted all refreshments, a buffet luncheon during the seminar and a cocktail reception immediately following. In finding it was ethical for the engineer to attend the one-day complimentary educational seminar hosted by the company, the Board noted that while the Code of Ethics unequivocally states that engineers must not accept gifts or other valuable consideration from a supplier in exchange for specifying its product, here a material supplier was introducing information about pipe products to engineers in the community and had chosen the form of an educational seminar as its vehicle. While it was apparent that the company would seek to present its particular product in the most favorable light and point out their many advantages over others, a complimentary invitation to such a seminar would not reach the level that would raise an ethical concern. The Board concluded that the buffet luncheon and cocktail reception immediately following the seminar would fall within the minimal provisions noted in earlier BER cases .

Finally in BER Case 87-6, an engineer's firm was one of several being considered by a rural district government to design a sewage system. As part of the selection process, the district contacted former and current clients of the firms being considered and asked them to submit letters of reference to the selection board advising them of their experience with the top three. One of the engineers wrote a letter to former and current clients to reinforce the district's request for references. The engineer's cover letter was generally circumspect and dignified. The engineer also enclosed a form letter of reference that described, in a general way, a client's experience with the engineer in flattering terms. The engineer also suggested that the form letter be used as a guide. In ruling that it was ethical for the engineer to contact former and current clients in the district requesting letters of reference be sent to the selection board, but unethical for the engineer to enclose the form letter of reference, the Board noted, based upon the philosophy gleaned from earlier BER cases that it was proper for engineers to initiate efforts to provide potential clients with accurate information about their firms, such as the nature of their previous work, current volume of work, areas of specialization, and client lists. The Board indicated, for example, that under a qualifications-based selection procedure, it is crucial for a selection committee to possess all relevant information in the firm and all efforts directed at providing that information to a selection board are proper.

Taking these three BER cases into consideration, the Board believes the cases as well as pertinent provisions of the Code of Ethics demand from the engineer the obligation to act in a manner which enhances the image and dignity of the profession. Included in this obligation is the responsibility to provide information honestly and accurately, make certain that statements to clients or potential clients are truthful, and avoid deceptive or misleading actions which could harm the interests of clients and discredit the profession.

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Based upon the discussions contained in earlier BER cases, the Board is convinced that the use of a survey as a marketing tool is well within the ethical bounds of the Code. Unlike other types of marketing devices which could raise issues of conflicts of interest, quid pro quo, or overreaching, survey questionnaires if properly developed and analyzed hold out the possibility for better engineer-client communications and relationships, particularly as envisioned in BER Case 87-6. The Board therefore believes that it was ethical for Engineer A to conduct the survey.

However, the Board is of the belief that Engineer A's inclusion of the sentence in his solicitation letter that the results of the survey would "benefit the entire engineering community" was misleading, deceptive, improper and not consistent with the Code of Ethics. It appears that the true motivation behind the survey was not to benefit the entire engineering community but to create a marketing device in order to enhance the business opportunities for Engineer A's firm. It is unclear what may have prompted Engineer A to include a reference to the "entire engineering community" in his solicitation. The Board can only speculate that it was intended to create the erroneous impression that the survey was being conducted on behalf of, for example, a professional society and that the result would be shared with other engineers and engineering firms to enhance and benefit professional practice. However, even if the actual intention of Engineer A was less onerous or less deceitful, the Board believes Engineer A knew or should at least have known that the inclusion of this reference in the survey to clients would be misleading and deceptive.

CONCLUSIONS:

1. It was ethical for Engineer A to conduct the survey.

2. It was unethical for Engineer to state in the cover letter accompanying the survey that the clients efforts in completing the survey would benefit the entire engineering community.

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