BER Case 93-4

APPROVED
October 21, 1993

Preamble	-	Code of Ethics
Section II.3.a.	-	Code of Ethics
Section II.4.	-	Code of Ethics
Section III.1.	-	Code of Ethics
Section III.3.	-	Code of Ethics

ENGINEER'S DUTY AS INTERPRETER OF CONTRACT DOCUMENTS

FACTS:

Engineer A is retained by an Owner to provide both design and construction phase services. Following the commencement of construction, a dispute arises between the Owner and the General Contractor concerning the acceptability of a concrete pour by the Contractor. Engineer A, seeks to remain impartial in the dispute, citing a provision in his contract with the Owner stating that the engineer is the initial interpreter of the requirements of the contract documents and judge of the acceptability of the work. The Owner and the Contractor ask Engineer A to review the dispute. Following his review, Engineer A agrees with the Contractor's position, noting that the Owner had approved certain changes in the work and that the Contractor complied with those changes. Owner accepts Engineer A's interpretation, but also criticizes Engineer A, claiming that because of Engineer A's ethical duty of loyalty to the Owner, Engineer A should have found in Owner's favor.

QUESTION:

Did Engineer A owe an ethical duty to the Owner to find in the Owner's favor?

REFERENCES:

Preamble	-Engineering is an important and learned profession. The members of the profession recognize that their work has a direct and vital impact on the quality of life for all people. Accordingly, the services provided by engineers require honesty, impartiality, fairness and equity, and must be dedicated to the protection of the public health, safety and welfare. In the practice of their profession, engineers must perform under a standard of professional behavior which requires adherence to the highest principles of ethical conduct on behalf of the public, clients, employers and the profession.

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Section II.3.a. -Engineers shall be objective and truthful in professional reports, statements or testimony. They shall include all relevant and pertinent information in such reports, statements or testimony.

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

Section III.1. -Engineers shall be guided in all their professional relations by the highest standards of integrity.

Section III.3. -Engineers shall avoid all conduct or practice which is likely to discredit the profession or deceive the public.

DISCUSSION:

Code Section II.3.a. imposes upon engineers the ethical obligation to be objective and truthful in professional reports, statements or testimony. In BER Case 85-5, the Board said it was unethical for an engineer to fail to include certain unsubstantiative data in a report. There, the engineer was performing graduate research. Engineer compiled a vast amount of data pertaining to the subject of his report. The majority of the data as well as prior conclusions strongly supported the engineers conclusions as well as prior research performed by others. However, a few of the aspects of the data were at variance and not fully consistent with the conclusions contained in the engineer's report. Convinced of the soundness of his report and concerned that inclusion of the ambiguous data would detract from and distort the essential thrust of the report, the engineer decided to omit reference to the ambiguous report. While the facts in BER Case 85-5 are quite different than those in this case, the Board's discussion of the issues are quite relevant. Said the Board in BER Case 85-5, "the challenge...is not to develop consistent or precise findings that one can identify and categorize neatly, nor is it to identify results that are in accord with one's basic premise. The real challenge...is to wrestle head-on with the difficult and sometimes insoluble issues that surface and try to gain some understanding of why they are at variance with other results." The Board's discussion in BER Case 85-5 was therefore largely focused on the need for engineers to overcome bias, attempting to be objective and seeking resolution of issues through careful analysis and evaluation of the available information and data. Clearly, that discussion is pertinent to the Board's inquiry in the present case.

We believe Engineer A owed a general duty of loyalty to the Owner and we also believe that in acting impartially under the terms of the contract, Engineer A fulfilled that ethical obligation to the Owner. By acting in an impartial, neutral and objective manner as the initial interpreter of the requirements of the contract documents and judge of the acceptability of the work, Engineer A fulfilled his legal and ethical responsibility under the terms of the agreement. Engineer A's action provided the Owner with a candid and straightforward interpretation of the issues involved in the claim, expedited the claim and avoided further delays and a potential for further misunderstandings between the parties. Engineer A's action also complied with the terms of the agreement and avoided a charge that the Owner and Engineer A may have "colluded" against the Contractor. Finally, we find it somewhat incongruous that the Owner should complain because the Engineer was complying with the terms and conditions of a contract that the Owner presumably read and understood before signing.

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CONCLUSION:

It would be unethical for Engineer A to have found in the Owner's favor, contrary to his considered professional findings in this matter.

BOARD OF ETHICAL REVIEW

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Note: In regard to the question of application of the Code to corporations vis-a-vis real persons, business form or type should not negate nor influence conformance of individuals to the Code. The Code deals with professional services, which services must be performed by real persons. Real persons in turn establish and implement policies within business structures. The Code is clearly written to apply to the Engineer and it is incumbent on a member of NSPE to endeavor to live up to its provisions. This applies to all pertinent sections of the Code.

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