BER Case 94-4

APPROVED
May 9, 1995

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

TESTIMONY RE: SAFETY STANDARDS

FACTS:

Engineer A provides forensic engineering services related to the design and manufacture of industrial equipment. Engineer A is retained by an injured industrial employee in connection with litigation involving the failure of a manufacturer to incorporate a safety guard into the design of an industrial tool. Under US law and design standards, the incorporation of the safety guard is not required. However, such a device is required under European safety standards. During preliminary trial motions, the trial court grants the defense's motion to suppress Engineer A's proposed testimony concerning European safety standards. At trial, Engineer A is called as an expert witness and despite the court's ruling, Engineer A offers testimony concerning the European safety standards. The court holds Engineer A in contempt of court.

QUESTION:

Was it ethical for Engineer A to offer testimony concerning the European safety standards contrary to the court's ruling that the testimony be suppressed?

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

DISCUSSION:

The Preamble requires that "...engineers must perform under a standard of professional behavior which requires adherence to the highest principles of ethical conduct." The Board does not believe that Engineer A's direct violation of the ruling of the court can be considered ethical conduct.

Further, the Board believes that Engineer A was also unethical under Section III.3. in his deliberate defiance of the court which constituted "conduct...likely to discredit the profession...".

Code of Ethics Section II.1.a. states ``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. "

In BER Case 65-12, the Board dealt with a situation in which a group of engineers believed that a product was unsafe, and determined that so long as the engineers held to that view they were ethically justified in refusing to participate in the processing or production of the product in question. Earlier, in BER Case 61-10 we distinguished a situation in which engineers had objected to the redesign of a commercial product, but which did not entail any question of public health or safety. On that basis we concluded that this was a business decision for management and did not entitle the engineers to question the decision on ethical grounds.

Here the Engineer A has fully notified the proper authorities (the court) of his testimony in connection with the safety standards in question and the court has made an official determination that the Engineer A's testimony should not be admitted. That being the ruling of the court, a proper authority, Engineer A has fulfilled his ethical and professional obligation and should abide by the judgment of the court. To ignore the court's substantive determination and to violate the court's procedure would both jeopardize the fairness of the proceedings and place the engineering profession in a bad light.

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In this type of situation, we feel that the ethical duty or right of the engineer becomes a matter of personal conscience, but we are not willing to make a blanket statement that there is an ethical duty in these kinds of situations for the engineer to continue his campaign, and make the issue one for public discussion. If an engineer feels strongly about a particular issue such as the one raised by this case, there are numerous other forums for the engineer to raise his concerns (within his professional society, in professional journals, etc.). However, a courtroom in which a legal proceeding is being held is not among the appropriate forums.

CONCLUSION:

It would be unethical for Engineer A to offer testimony concerning the European safety standards contrary to the court's ruling that the testimony should be suppressed.

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