BER Case 94-6

APPROVED
May 9, 1995

Preamble	-	Code of Ethics
Section III.1	-	Code of Ethics
Section III.3.	-	Code of Ethics
Section III.6.	-	Code of Ethics
Section III.7.	-	Code of Ethics
Section III.10	-	Code of Ethics

SIGNING & SEALING ANOTHER ENGINEER'S PLAN

FACTS:

Engineer A is retained by Client X to prepare plans and specifications in connection with a commercial facility to be constructed. Engineer A prepares the plans and specifications for Client X and delivers them to Client X who submits them to the public building authority for approval. Client X fails to pay Engineer A for the work performed. Thereafter, Client X sells the land upon which the commercial facility is to be constructed to Purchaser Y. Purchaser Y obtains a copy of the plans and drawings from the public building authority and then asks Engineer B to review, re-seal and resubmit the plans and drawings prepared by Engineer A for review and approval by the public building authority. Engineer B is aware that Engineer A was never paid for his services, but agrees to review, re-seal and resubmit the plans and drawings prepared by Engineer A for review and approval by the public building authority.

QUESTION:

Was it ethical for Engineer B to agree to review, re-seal and resubmit the plans and drawings prepared by Engineer A for review and approval by the public building authority?

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.

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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.

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.

Section III.6. - Engineers shall uphold the principle of appropriate and adequate compensation for those engaged in engineering work.

Section III.7. - Engineers shall not attempt to obtain employment or advancement or professional engagements by untruthfully criticizing other engineers, or by other improper or questionable methods.

Section III.10. - Engineers shall give credit for engineering work to those to whom credit is due, and will recognize the proprietary interests of others.

DISCUSSION:

This case presents a series of facts, some of which may be addressed by the Board, others that may not. It appears from the facts that certain wrongdoings were committed by a non-engineer. However, the Board of Ethical Review does not review the conduct of non-engineers with respect to the Code of Ethics. As we have noted in the past, non-engineers are not covered by the Code and therefore it would be a meaningless act for this Board to review the conduct of Client X or Purchaser Y in the facts presented above. Instead, it is the duty of the Board to focus upon the actions of Engineer B.

In BER Case 64-7, the Board interpreted Section III.10.a. (then Sections 14 and 14(a)) to mean that individual accomplishments and the assumption of responsibility by individual engineers should be recognized by other engineers. "This principle", said the Board, "is not only fair and in the best interests of the profession, but it also recognizes that the professional engineer must assume personal responsibility for decisions and actions." Although the facts of that case were somewhat different from those in the case at hand, BER Case 64-7 reflects the view that each individual engineer has an ethical obligation to recognize and give credit to the creative products of other

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engineers. At a bare minimum, that ethical obligation includes securing the consent of that engineer, indicating on any reproduction of that creation the identity of the engineer and in some cases providing the engineer with remuneration for his work depending upon the surrounding circumstances. Each case must be decided upon its individual facts, as no two cases are alike. However, certain basic obligations exist that must be recognized in all cases.

Similarly, BER Case 83-3 involved Engineer B who submitted a proposal to a county council following an interview concerning a project. The proposal included technical information and data that the council requested as a basis for the selection. Smith, a staff member of the council, made Engineer B's proposal available to Engineer A. Engineer A used Engineer B's proposal without Engineer B's consent in developing another proposal, which was subsequently submitted to the council. The extent to which Engineer A used Engineer B's information and data was in dispute between the parties. In determining that it was unethical for Engineer A to use Engineer B's proposal without Engineer B's consent in order for Engineer A to develop a proposal which Engineer A subsequently submitted to the council, the Board indicated that at a bare minimum, ethical obligation includes securing the consent of that engineer, indicating on any reproduction of that creation the identity of the engineer responsible for the work performed.

In the present case, Engineer B agreed to review, re-seal and resubmit the plans and drawings prepared by Engineer A for review and approval by the public building authority knowing that Engineer A had not been paid either by Client X or Purchaser Y for the service rendered. The plans and drawings included technical information and data that was not prepared by Engineer B. There does not appear to be any question or dispute as to the extent to which Engineer B used Engineer A's information.

However, the fact that Engineer B used the information in the manner that he did suggests a violation of Section III.10.a. of the Code of Ethics. Although it may be argued that the Code provision is meant to address those situations where a supervising engineer fails to give credit to an employee responsible for a particular design, and not under the facts of the present case, we are convinced that the Code may properly be read to imply use and thus proscribe the conduct of Engineer B. Engineer B had an obligation to (1) seek and obtain Engineer A's consent before using the plans as a basis for one's own services; (2) if granted consent, identify Engineer B in all cases of use of Engineer A's work; and (3) negotiate and pay Engineer A "fair and reasonable" compensation for using the work. By failing to fulfill any of those obligations, Engineer B clearly violated Sections III.10. and III.10.a. of the Code.

Fundamental precepts of the Code of Ethics, embodies in its Preamble, include "...services provided by engineers require... fairness and equity..." One must questions whether the use by Engineer B of Engineer A;s work product under the stated circumstances can be deemed either fair or equitable.

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Code Section III.1. states that Engineers shall be guided ... by the highest standards of integrity. Integrity includes "soundness of moral principles, as firm adherence to a code of moral values (Black's and Webster New Collegiate). Can being a knowledgeable party to such an unfair use of another's work be morally acceptable?

Code Section III.3. states that "Engineers shall avoid all conduct or practice that is likely to discredit the profession..." Engineer B's part in such an unsavory business cannot help but reflect most unfavorably upon the profession.

Code Section III.6. states that Engineers shall uphold the principle of appropriate and adequate compensation for those engaged in engineering work. Engineer B's rate here exemplifies the antithesis of this principle.

The actions of Engineer B suggest conduct unbecoming of a professional engineer. When offered the contents of Engineer A's work by Purchaser Y, Engineer B had an ethical obligation to refuse to accept the plans. Instead, Engineer B accepted and also used the material. Because of the decision to actually use the plans, we must further conclude that Engineer B violated Section III.7. of the Code by competing unfairly with Engineer A by attempting to "obtain advancement by improper or questionable methods." Although that Code provision is broad and leaves a good deal of room for interpretation, we are convinced that the use of the plans constituted unfair competition by improper and questionable methods. Whether there would have been a violation of Section III.7. had Engineer B not used Engineer A's plans but merely reviewed it before developing a set of plans is a speculative point. However, this Board is being asked to determine whether a violation occurred as a result of Engineer B's use of Engineer A's plans. We think that Engineer B's use under the present facts constitutes unfair competition by improper and questionable methods and hence a violation of Section III.7. of the Code.

CONCLUSION:

It was unethical for Engineer B to agree to review, re-seal and resubmit the plans and drawings prepared by Engineer A for review and approval by the public building authority.

BOARD OF ETHICAL REVIEW

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