APPROVED - 12/17/96

I.5. - Code of Ethics: *Engineers, in the fulfillment of their professional duties, shall avoid deceptive acts.*

II.5.a. - Code of Ethics: *Engineers shall not falsify their qualifications or permit misrepresentation of their, or their associates' qualifications. They shall not misrepresent or exaggerate their responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint venturers or past accomplishments.*

MISREPRESENTATION OF A BUSINESS RELATIONSHIP

FACTS:

Engineer A is starting out as a consulting engineer. Engineer A is the first to respond to a notice in the newsletter of a local chapter of an engineering society asking for volunteers to help organize a consultant's referral network. Engineer B, a society officer, asks Engineer A to help organize the network as well as others who express interest.

Some time later, Engineer B calls to ask Engineer A if Engineer A would look at an engineering problem. Engineer A goes to Engineer B's office expecting to get the particulars of a referral, since some members of the developing network are in the habit of giving one another referrals. Engineer B then accompanies Engineer A to the potential client's office, but because the referral process is new, Engineer A does not discuss arrangements with to Engineer B. In the middle of the client's description of the engineering problem, the client asks about the contractual relationship. Engineer B replies that Engineer A will subcontract to Engineer B on the project.

QUESTIONS:

Question 1: Was it ethical for Engineer B to indicate that Engineer A will subcontract to Engineer B on the project?

Question 2: What were Engineer A's ethical obligations under the circumstances?

DISCUSSION:

It is not unusual in the practice of engineering for one engineer to associate with another engineer by providing business referrals in professional practice. Engineers become familiar with the capabilities, competencies and expertise of one another as they begin to work together and see the nature of the engineering work each provides. Associations and referrals of this type serve the interests of the engineer and the client. Engineers benefit financially from referrals as such referrals generate contacts and future business. Clients gain the expertise of an engineer who is generally familiar with those individuals and firms that may provide quality services for the benefit of the client and the public.

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Sometimes the mechanism used for the referral can raise ethical issues (see NSPE Code Sections I.5 and II.5.a). For example, the code specifically refers to the type of mechanism that should be used by an engineering firm when seeking work from clients. In addition, it is important that both the engineer that is doing the referring and the engineer being referred have a full understanding of the nature of the referral and the circumstances and conditions under which a referral is being made. Engineers making the referral should make clear to the engineer being referred the general nature of the work if known, information about the client, and any other information known about the conditions that might exist relating to the referral. The engineer receiving the referral should inquire about the referral and request any detailed information that might exist about the referral. In other words, there should be as much full disclosure between the parties as possible, depending upon all of the facts and circumstances. Such full disclosure will help avoid any miscommunication, misunderstandings, unmet expectations between the parties, and will best serve the interests of the client.

In the case at hand, Engineer B's notification to Client that Engineer A would be subcontracting from Engineer B appears to have been caused by a misunderstanding or miscommunication, or an absence of communication that occurred between Engineer B and Engineer A. It is not clear from the facts what the nature of the referral was. It is possible that Engineer A may have been under the impression that Engineer B would merely be providing Engineer A with an introduction to a client and that Engineer A would simply "take it from there." However, it is evident from the facts that a contractual relationship between Engineer A and Engineer B was discussed. In view of the fact that Engineer A was a new engineer starting out as a consultant, it may be argued that Engineer A should have expected that Engineer B would play a significant role in the work being performed. However, a burden of responsibility falls on Engineer B to more clearly define his role with the client. For that reason, Engineer B was deceptive in using the chapter referral network as a means of enhancing his personal business interests. In addition, it is critical that all of these factors be balanced with the interests of the client.

As we noted earlier, this apparent unmet expectation could have been minimized had Engineer A and Engineer B had a more open discussion concerning the referral, etc. As noted under the facts, the referral program sponsored by the local engineering society chapter was new and dependent upon volunteers, and therefore it is possible that many of the details of the program would be worked out over time. Nevertheless, under a plain reading of the facts, it appears that there was cause for ethical concern over the actions of Engineer B. Engineer A had an ethical obligation under the facts to make certain that there are clear and open lines of communication in the future

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CONCLUSIONS:

1. It was unethical for Engineer B to indicate that Engineer A will subcontract to Engineer B on the project without prior knowledge of Engineer A.

2. Engineer A's ethical obligations under the circumstances was to advise the client that final arrangements have not been completed.

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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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