APPROVED -- 12/17/96

III.7. - Code of Ethics: Engineers shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of other engineers. Engineers who believe others are guilty of unethical or illegal practice shall present such information to the proper authority for action.

COMMENTS BY ONE ENGINEER CONCERNING ANOTHER

FACTS:

Engineer A practicing in State X requires the services of a structural engineer in State Y. Engineer A contacts Engineer B, who is the secretary of the State Y Society of Professional Engineers, to request the name of an appropriate engineer in State Y to perform the required structural engineering work. Engineer B suggests
Engineer C , who Engineer A then decides to retain. Not satisfied with the services provided by Engineer C, including Engineer C's lack of regular communication with Engineer A, Engineer A later contacts Engineer B and tells Engineer B of his general dissatisfaction with Engineer C, but does not first communicate this displeasure to Engineer C. Engineer A also remarks to Engineer B that he is interested in retaining the services of another structural engineer for the project. Soon thereafter, Engineer C contacts Engineer A and expresses his strong displeasure toward Engineer A for the comments he made to Engineer B.

QUESTIONS:

Question 1: Did Engineer A act ethically under the circumstances?

Question 2: Did Engineer B act ethically under the circumstances?

Question 3: Did Engineer C act ethically under the circumstances?

DISCUSSION:

As a general matter, the NSPE Code of Ethics places the obligation on all engineers to respect the reputation of all other engineers in their professional endeavors. Engineers should be honest and direct in their communications with their colleagues in all professional affairs. Frequently, individual engineers have both a professional and a business relationship with their professional colleagues which requires the use of appropriate judgment and discretion (see NSPE Code Section III.7.).

The Board of Ethical Review has not had any occasion to address any cases of the type specifically described in the facts presented in this matter. BER Case 84-1 addressed the issue of public criticism by one engineer of another, but the facts were quite different in that case. As the Board understands the facts, Engineer A required the services of a structural engineer in another jurisdiction and sought the advice of a colleague in that

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jurisdiction, Engineer B. This is entirely appropriate and certainly not inconsistent with the Code. It would appear that the only questionable action on the part of Engineer A was that when confronted with the less than satisfactory professional performance of Engineer C, Engineer A made note of this fact to Engineer B. While Engineer A's communication with Engineer B may be an appropriate method of providing feedback, Engineer A should have also directed his comments about Engineer C to Engineer C. If Engineer A had a difficult time getting into contact with Engineer C, he could have explored other avenues of direct contact. It may be that due to his frustration with the inability to receive a response from Engineer C, Engineer A intentionally made his views known to Engineer B in order to "put the heat" on Engineer C.

Turning to the second question, we do not believe Engineer B engaged in any inappropriate conduct. First, based upon the facts, we assume that Engineer B referred Engineer A to Engineer C in good faith and did not have any knowledge of any history on the part of Engineer C of dilatory conduct. Second, based upon the facts, we do not believe Engineer B's disclosure to Engineer C of Engineer A's displeasure was a breach of Engineer A's confidences. In fact, as we have already noted, there appears to be some indication that Engineer A intended for Engineer B to make Engineer A's displeasure known to Engineer C.

While the facts do not provide sufficient details, we believe that Engineer C had a professional responsibility to communicate more directly with Engineer A about the status of the project. However, we do not believe Engineer C's actions were in violation of the Code of Ethics.

Finally, while it appears that Engineer C would be well advised to improve his practice, the facts of the case do not demonstrate that Engineer C was unethical.

CONCLUSIONS:

Question 1: Engineer A acted ethically in communicating with Engineer B, but acted unethically by not communicating with Engineer C.

Question 2: Engineer B did act ethically under the circumstances.

Question 3: Engineer C did act ethically under the circumstances.

BOARD OF ETHICAL REVIEW
James G. Fuller, P.E.
William W. Middleton, P.E.
Robert L. Nichols, P.E.
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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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