APPROVED -- 12/17/96

II.3.a. - Code of Ethics: *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, which should bear the date indicating when it was current.*

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.*

III.3.a. - Code of Ethics: *Engineers shall avoid the use of statements containing a material misrepresentation of fact or omitting a material fact.*

ADVERTISING -- PROMOTIONAL REFERENCE TO WORK AND CLIENTS OF PREVIOUS EMPLOYERS

FACTS:

Engineer A is the principal in a new engineering firm that has been in existence for approximately 18 months. All of the engineers in the firm have come from other engineering firms. Engineer A develops a firm promotional brochure that contains the following: (1) a "list of clients" implying those companies on the list are clients of the firm; and, (2) a "list of projects of the firm" implying the projects were performed by the new firm. In fact, the client list is actually those companies who the firm's engineers have performed work for with their former firms, and not with the new firms. Similarly, the project list is a series of projects performed by the firm's engineers for their former firms.

QUESTION:

Was it ethical for Engineer A to produce a promotional brochure for his new firm that contains (1) a "list of clients" implying those on the list are current clients of the firm and (2) a "list of projects" implying the projects were performed by the new firm?

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DISCUSSION:

Over the years, the Board of Ethical Review has considered a variety of issues relating to the departure of engineers from an engineering firm and the ethical responsibilities of both the former employer and the former employee in connection with the transitional phases of this event. For example, the Board has considered the flip side of this case -- ethical responsibilities of an engineering firm when it is aware that an employee in the firm will be departing from the firm. Does the firm have an obligation to expeditiously correct firm promotional material so as not to mislead clients that an individual in the firm will continue in his or her present capacity with the firm? Similarly, the Board of Ethical Review has considered the ethical responsibility of engineers who hire engineers from other firms and any ethical responsibilities the principals of such firms have in relation to their professional colleagues with the other firm (see BER Cases 64-8, 69-5, 72-10, 77-11).

It is clear that these situations frequently present delicate and sometimes difficult situations, particularly where long-established business relationships exist between engineering firms, engineers, and their clients. Obviously, no engineer or engineering firm "owns" a relationship with a client, as clients are free to determine for themselves which engineer or engineering firm is appropriate for their present and future needs and requirements.

Under the facts, we are deeply troubled by the manner in which Engineer A undertook to promote his new engineering firm because we believe there was a clear effort on the part of Engineer A to engage in misleading and deceptive acts. To imply that certain companies are the "clients" of the new firm and to imply and take credit for projects that were performed in an entirely different context by other engineering firms is wholly improper. We cannot identify any context in which Engineer A could have accurately used the term "client" to describe the new firm's relationship with the companies listed on the brochure. A "client" implies some past or present business relationship between an engineer, the engineer's firm, and a company. To use the term "client" to refer to a relationship that existed between an engineer when he was employed in an entirely different context is misleading, deceptive, and a violation of the NSPE Code of Ethics. We cannot think of any clarification that could have been included in such a brochure that would have made the reference to "client" less misleading or deceptive (see Code Sections II.3.a., II.5.a., III.3.a.).

Similarly and for the same reasons, the reference to the "projects of the firm" is misleading, deceptive, and a violation of the NSPE Code of Ethics. Had the promotional brochure contained a clarification specifically stating that the projects identified were performed by current employees of the new firm when they were employed by the named firms, and depending upon all of the facts and circumstances, the Board may have reached a different result.

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CONCLUSION:

It was unethical for Engineer A to produce a promotional brochure for his new firm that contained (1) a "list of clients" implying those on the list are current clients of the firm and (2) a "list of projects" implying the projects were performed by the new firm.

BOARD OF ETHICAL REVIEW

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Donald L. Hiatte, P.E., Chairman

***** 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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