

## **Credit for Engineering Work—Establishing Own Firm—Material on Website**

### **Case No. 17-12**

#### **Facts:**

Engineer A was responsible for all engineering designs, project and team management, and oversight in her role as vice president at her previous employer, Firm X. Engineer A has established her own firm, Firm Y, and would like to include some of her work for Firm X on the Firm Y website. Engineer A has a series of questions regarding the crediting of work for Firm X, including crediting Firm X and the individual employees of Firm X who were involved. In addition, Engineer A has questions regarding whether Engineer B, the owner of Firm X, should credit Engineer A for the work Engineer A performed for Firm X as an employee.

#### **Questions:**

1. What are Engineer A's ethical obligations under the circumstances?
2. What are Engineer B's ethical obligations under the circumstances?

#### **NSPE Code of Ethics References:**

- Section II.4.* - *Engineers shall act for each employer or client as faithful agents or trustees.*
- Section II.5.a.* - *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.*
- Section III.9.* - *Engineers shall give credit for engineering work to those to whom credit is due, and will recognize the proprietary interests of others.*
- Section III.9.a.* - *Engineers shall, whenever possible, name the person or persons who may be individually responsible for designs, inventions, writings, or other accomplishments.*
- Section III.9.b.* - *Engineers using designs supplied by a client recognize that the designs remain the property of the client and may not be duplicated by the engineer for others without express permission.*
- Section III.9.d.* - *Engineers' designs, data, records, and notes referring exclusively to an employer's work are the employer's property. The employer should indemnify the engineer for use of the information for any purpose other than the original purpose.*

#### **NSPE BER Case References: 96-11, 07-4**

#### **Discussion:**

When a professional engineer departs from an engineering firm, either to work for another engineering firm or establish a new firm, it is not unusual for ethical issues to emerge. Ethical questions relating to ownership of engineering work, appropriate credit to those responsible for engineering designs and other work, and related issues often come to the surface and sometimes result in conflicts and concerns.

These issues can become very sensitive, both for the former employee professional engineer, the engineer's former employer, and the engineer's current employer.

Over the years, the NSPE 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 a firm employee will be departing. 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 has considered the ethical responsibility of engineers who hire engineers from other firms and the ethical responsibilities the principals of such firms have related to their professional colleagues with the other firm. 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; clients are free to determine for themselves which engineer or engineering firm is appropriate for their present and future needs and requirements.

In BER Case 96-11, Engineer A was the principal in a new engineering firm that had been in existence for approximately 18 months. All of the firm's engineers had come from other engineering firms. Engineer A developed a firm promotional brochure that contained the following: (1) a “list of clients,” implying those companies on the list were 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 was made up of those companies that the firm's engineers had performed work for with their former firms, and not with the new firm. Similarly, the project list was a series of projects performed by the firm's engineers for their former firms. Finding Engineer A's actions unethical, the BER decided that using the term “client” to refer to a relationship that existed between an engineer when he was employed in an entirely different context was misleading, deceptive, and a violation of the NSPE Code of Ethics.

In BER Case 07-4, Engineer A, a licensed professional engineer, had worked for Engineer B, the owner of a geotechnical/construction materials firm for 10 years. Over the 10-year period with the firm, Engineer A achieved two engineering excellence awards for projects for which Engineer A had primary design responsibility and signed and sealed the engineering documents. The firm's website depicted these two projects without Engineer A's name associated with either one and included photographs of Engineer B and other engineers in the firm beside the project—implying, but not specifically stating, that these individuals were responsible for the projects. The Board ruled that (1) it was unethical for Engineer B to fail to include Engineer A in association with the two projects; and (2) it was unethical for Engineer B to include a photograph on the firm website implying that Engineer B and other individuals were responsible for the projects. The Board noted that it would seem reasonable and justified that an engineer who has primary design responsibility and signed and sealed the engineering documents should be given due and

appropriate recognition for the engineer's contributions to the work. The BER decided that it would seem that Engineer B would want to provide appropriate, visible recognition for Engineer A's achievements and accomplishments for the benefit of the firm's clients. Such recognition is clearly embodied in the language of NSPE Code Section III.9.a. The Board recognized that companies and firms may have different methods of recognizing achievements and accomplishments for marketing, firm identity, and other purposes. However, the Board believed that the way firms assign credit and recognition should, in some measure, be connected to actual responsibility for the work. When there is no reasonable connection between the actual responsibility/accountability for the engineering work and the credit/recognition provided, the Board was concerned that a misrepresentation could occur that would be detrimental to the interests of potential clients and ultimately the public. The Board's view was that, unless there was a unique or compelling business reason to do otherwise, credit and recognition should follow responsibility and accountability, consistent with the NSPE Code of Ethics.

Turning to the facts in the present case, in view of the BER's earlier examinations of the issues under consideration, it is the Board's view that while it would not be inappropriate for Engineer A to include references to her work with Firm X in her promotional material for Firm Y, Engineer A must not engage in any actions that would be implicitly or explicitly misleading or deceptive. All promotional material must make clear that the work was performed under the auspices of Firm X and should also include references to those key individuals within Firm X who made substantive contributions to the design and related services on each project. Similarly, it is the BER's view that Engineer B should also credit Engineer A for Engineer A's contributions to the work of Firm X—even after Engineer A has departed from Firm X.

In conclusion, to avoid misunderstandings, inaccuracies, and potential conflicts relating to an employed professional engineer's departure from a firm, it is generally recommended that issues of this type be candidly discussed by the engineer, the engineer's former employer, and the engineer's current employer. Each will have a perspective on this issue that should be shared and hopefully resolved in the interest of both parties.

**Conclusions:**

1. Engineer A must not engage in any actions that would be implicitly or explicitly misleading or deceptive. All promotional material must make clear that the work was performed under the auspices of Firm X and should also include references to those key individuals within Firm X who made substantive contributions to the design and related services on each project.
2. Engineer B should credit Engineer A for Engineer A's contributions to the work of Firm X and NSPE Code of Ethics—even after Engineer A has departed from Firm X.

**Board of Ethical Review:**

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