

Employment—Transitioning From One Employer to a Competing Employer

Case No. 17-2

Facts:

Engineer A is a licensed professional engineer in State X. Engineer A is employed by ABC Engineering. Engineer A's main responsibility at this firm is to manage three clients and their projects. One of the three clients is a major client for the office in which Engineer A works. The approximate annual fees received by ABC Engineering from this significant client is in excess of \$500,000, and Engineer A has been managing the client for more than 15 years.

Engineer A is considering leaving ABC Engineering to work for another local engineering firm, XYZ Engineering, which is a direct competitor of ABC Engineering. If Engineer A joins XYZ Engineering, Engineer A will not be performing the same services as Engineer A does at ABC Engineering. XYZ Engineering is currently performing other services for the major client; however, Engineer A never signed a noncompete agreement with ABC Engineering. Engineer A is not an officer of ABC Engineering and Engineer A will not be an officer of XYZ Engineering. Engineer A is unaware as to whether XYZ Engineering plans to market more of its services to this significant client, including services that Engineer A is presently performing.

Engineer A would like to depart from ABC Engineering on good terms. If Engineer A decides to leave ABC Engineering and join XYZ Engineering, Engineer A is planning to provide ABC Engineering in excess of two week's notice, assuming ABC Engineering wants Engineer A to stay for a transition period.

Question:

Are Engineer A's proposed actions consistent with the NSPE Code of Ethics?

NSPE Code of Ethics References:

- Section I.4. - *Engineers, in the fulfillment of their professional duties, shall act for each employer or client as faithful agents or trustees.*
- Section I.6. - *Engineers, in the fulfillment of their professional duties, shall conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.*
- Section II.4. - *Engineers shall act for each employer or client as faithful agents or trustees.*
- Section III.1.e. - *Engineers shall not promote their own interest at the expense of the dignity and integrity of the profession.*
- Section III.4.a. - *Engineers shall not, without the consent of all interested parties, promote or arrange for new employment or practice in connection with a specific project for which the engineer has gained particular and specialized knowledge.*

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 Reference: 06-9

Discussion:

A variety of potential ethical issues often surface when professional engineers consider departing from their employer. These potential issues include the ongoing obligations and responsibilities to the current employer, staff, and clients as well as new obligations and responsibilities to the new employer, staff, and potential future clients. Since its inception in 1958, the NSPE Board of Ethical Review has had many opportunities to consider and explore these issues.

In BER Case 06-9, Engineer A, employed by ENJ Engineering, recently accepted a position as an engineer with RFP Engineers, a competitor of ENJ Engineering. Engineer A had files in his office including the following:

1. Client files, which included correspondence between Engineer A and various clients while he was employed by ENJ Engineering as well as project-specific technical information;
2. Technical information files, such as articles, publications, and external reports, that Engineer A had personally received and saved during the course of his employment with ENJ Engineering to assist him in providing technical and professional services for clients;
3. Personal files, which included personal correspondence received from past and present clients acknowledging and expressing appreciation for Engineer A's work on various engineering projects and technical information obtained outside of his employment by ENJ Engineering.

In BER case 06-9, the NSPE Board of Ethical Review considered the following three questions:

1. *Would it be ethical for Engineer A to take the client files with him when he terminates his employment with ENJ Engineering?*
2. *Would it be ethical for Engineer A to take the technical information files with him when he terminates his employment with ENJ Engineering?*
3. *Would it be ethical for Engineer A to take the personal files with him when he terminates his employment with ENJ Engineering?*

Following extensive discussion and analysis, the BER determined the following:

1. It would not be ethical for Engineer A to take the client or project-specific files with him when he terminates his employment with ENJ Engineering.
2. It would not be ethical for Engineer A to take the corporate or technical information files that pertain to the employer's business without the employer's permission.
3. It would be ethical for Engineer A to take personal files, which include personal correspondence received from past and present clients acknowledging and expressing appreciation for Engineer A's and ENJ Engineering's work on various engineering projects, and technical information obtained outside of his employment by ENJ Engineering.

The BER's consideration and analysis of the facts and the NSPE Code of Ethics in BER Case 06-9 indicated that the Code must be interpreted in a balanced and measured way. The Board noted that an engineer's designs, data, records, and notes referring exclusively to an employer's work are the employer's property and not the property of the engineer. This point is important in the context of the current case in that there is no indication under the facts that there is any effort on the part of Engineer A to remove any of ABC Engineering's designs, data, records, and notes that refer exclusively to ABC Engineering's work. Likewise, there is no indication under the facts in the present case that Engineer A is attempting to take corporate or technical information files that pertain to the employer's business without the employer's permission.

In sum, it would appear that the only ethical constraint Engineer A would have would be not to use any proprietary information, intellectual property, or other firm- or client-owned work or property from ABC Engineering in Engineer A's work for XYZ Engineering (or any other future employer) and not to improperly take credit or improperly imply responsibility for any work performed for ABC Engineering.

Engineer A's effort to provide more than sufficient notice of resignation may not be received well by ABC Engineering because of business concerns, security, and productivity issues; thus ABC Engineering may choose to release the employee sooner than the proposed termination date. The earlier release may backfire on Engineer A's desire to address potential ethical issues that could surface with ABC Engineering and XYZ Engineering, even though the offer demonstrates that Engineer A is being thoughtful and attentive to ethical and professional practice concerns.

Conclusion:

Engineer A's actions are consistent with the NSPE Code of Ethics.

Board of Ethical Review:

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NOTE: The NSPE Board of Ethical Review considers ethical cases involving either real or hypothetical matters submitted to it from NSPE members, other engineers, public officials, and members of the public. The BER reviews each case in the context of the NSPE Code and earlier BER opinions. The facts contained in each case do not necessarily represent all of the pertinent facts submitted to or reviewed by the BER.

Each opinion is intended as guidance to individual practicing engineers, students, and the public. In regard to the question of application of the NSPE Code to engineering organizations (e.g., corporations, partnerships, sole proprietorships, government agencies, and university engineering departments), the specific business form or type should not negate nor detract from the conformance of individuals to the Code. The NSPE Code deals with professional services, which must be performed by real persons. Real persons in turn establish and implement policies within business structures.

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