

Objectivity and Truthfulness—Professional Reference Policy

Case No. 19-9

Facts:

Engineer A is a principal for XYZ Consulting Engineering. Engineer A establishes an XYZ Consulting Engineering firm policy. Under the firm’s policy, it would be improper for XYZ firm employees to provide or serve as a professional licensure reference for past XYZ Consulting Engineering employees.

Question:

Was it ethical for Engineer A to establish an XYZ Consulting Engineering firm policy under which it would be improper for employees to serve as professional licensure references for past employees of XYZ Consulting Engineering?

NSPE Code of Ethics References:

- Section I.3.* - Engineers, in the fulfillment of their professional duties, shall issue public statements only in an objective and truthful manner.
- Section II.3.a.* - 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.
- Section III.7.* - 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.

NSPE BER Case References: [99-12](#), [10-4](#), [14-3](#)

Discussion:

Over the years, the NSPE Board of Ethical Review has noted that it is not uncommon for ethical issues to arise when an employee leaves an employer. An employee’s departure to another company can raise ethical concerns, as can situations in which an employee could move to a competing company. The Board has examined this issue on numerous occasions.

For example, in [BER Case 99-12](#), Engineer A was a licensed professional engineer and a principal in a large engineering firm. Engineer B was a graduate engineer who works in industry and has also worked as a student in Engineer A’s firm during a summer. Although Engineer B was employed in Engineer A’s firm, Engineer A did not have direct knowledge of Engineer B’s work. Engineer B was applying for licensure as a professional engineer and requested that Engineer A provide him with a letter of reference testifying as to Engineer B’s engineering experience and that the engineer (Engineer A) was in direct charge of Engineer B. Engineer B was under the assumption that Engineer A had personal knowledge of

Engineer B's work. Engineer A inquired about Engineer B's experience from someone who had direct knowledge of Engineer B's experience. Based on the inquiry, Engineer A provided the letter of reference explaining the professional relationship between Engineer A and Engineer B.

In finding that it was ethical for Engineer A to provide the letter of reference for Engineer B testifying as to Engineer B's engineering experience, the Board of Ethical Review indicated it could certainly understand Engineer A's desire of to assist another engineer in enhancing career opportunities and becoming licensed as a professional engineer. The Board noted that such assistance should not come under misleading or deceptive circumstances. The Board continued by stating that engineers have an ethical obligation to be honest and objective in their professional reports, and such reports include written assessments of the qualifications and abilities of engineers and others under their direct supervision. "Engineers who are not in a position to offer an evaluation of the qualifications and abilities of other individuals should not provide such evaluations or prepare reports that imply that they are providing such evaluations," the Board said.

Later, in [BER Case 10-4](#), Engineer A served as an expert witness and frequently assessed causes for project failures for various clients. Client X, a frequent client of Engineer A, proposed a contract that included a clause that attempted to limit or restrict the types of companies for whom Engineer A could work. The clause did not appear to be based on any specific Client X confidential information, trade secrets, client knowledge, or project-specific information known to Engineer A. Engineer A suspected that Client X was attempting to prevent Engineer A from providing services to Client X's competitors.

In finding that it was unethical for Engineer A to enter into a broad agreement that limited or restricted the companies for whom Engineer A can work, the Board cited the well-recognized notion of "freedom of employment." This is an important concept to preserve because it protects the economic and professional independence and autonomy of individual engineers and engineering companies, preserves an engineer's role in protecting the public health and safety, and in the absence of some special circumstance is consistent with public policy in favor of free and open competition. The Board said: "In the absence of some overriding ethical concern (e.g., conflict of interest, protection of confidential or proprietary information, protection of the public health and safety, legally enforceable contractual covenant), it is generally advisable that engineers and engineering companies not agree to provisions that restrict their autonomy and independence as engineers. Such provisions, particularly where they are overly self-serving, do not reflect well upon the individuals or companies that enter into such agreements and could hamper the ability of engineers to freely practice their profession."

More recently, in [BER Case 14-3](#), Engineer A was employed full-time by the engineering firm ABC Engineering for 12 years. ABC Engineering was led by Engineer B. Engineer A decided to depart from the firm to work for another firm. While at the new firm, Engineer A decided to seek comity licensure in another state. Engineer A contacted Engineer B, seeking assistance with his comity application. Engineer

B responded to Engineer A's request and refused to submit the employment verification for Engineer A's comity application and sent Engineer A the following email:

“Considering the fact that after 12 years of employment with my company, you failed to provide a standard two-week notice of your departure (even though your termination letter specified you would do so), does not make us feel compelled to complete your verification. The only notice you provided was given about 10 minutes before the end of your last working day in which you stated you were leaving. In addition, you said there were things you would follow up on, but never called us back. You didn't even have the consideration to inform the president of the company you were leaving. Customarily, when someone requires their former employer to make any kind of recommendation, the person making the request should also have the common courtesy to call to make the request. Based on the above, we do not feel in any way obliged to support your application for your license in State X. Please contact me with any questions concerning the above.”

In deciding that it was unethical for Engineer A to fail to provide timely and sufficient notice as promised to ABC Engineering, the Board concluded that Engineer B has an ethical obligation to engage in conduct consistent with the codes, rules, and laws relating to the practice of engineering. Those codes, rules, and laws may compel Engineer B to cooperate with the engineering licensure processes, including the factual work verification of Engineer A's pending comity application. “Engineer B is not compelled to go beyond what is legally required in providing the employment verification, but Engineer B must, at a minimum, meet the legal and regulatory requirements and be factually accurate in all reporting and verification,” the Board said.

In the present case, taking each of these cases together, the Board believes that the policy of Engineer A's firm is inconsistent with the NSPE Code of Ethics. While the Board recognizes that competitive and employment pressures exist in the marketplace, basic considerations such as “freedom of employment,” objectivity and truthfulness in reporting as well as concerns relating to indirectly injuring the professional prospects of another engineer, raise important ethical principles that cannot be ignored. Importantly, today state engineering licensure board rules require references from former employers and related references for licensure and comity. Such a restrictive employment policy by an employer would constitute an obstacle to proper engineering licensure administration. Engineer A's action in establishing a broad policy to restrict all employees from sharing objective and truthful information, which interferes with employees' economic liberty and which materially harms the professional aspirations of present or former employees, cannot be aligned with the NSPE Code of Ethics.

Conclusion:

It was unethical for Engineer A to establish an XYZ Consulting Engineering firm policy under which it would be improper for all employees to serve as professional licensure references for past employees of XYZ Consulting Engineering.

Board of Ethical Review:

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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 of Ethics 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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