

Misrepresentation—Claiming Credit for Work of Former Employer

Case No. 19-12

Facts:

Engineer A is a professional engineer and owner of ABC Engineering. Engineer A recently learned that Engineer B, a former employee of ABC who recently started his own firm (EFG Engineering), is claiming “extensive project experience.” The EFG Engineering website references a list of “past clients” and “past projects.” In fact, Engineer A was the Engineer of Record and it was Engineer A’s company (ABC Engineering) that was responsible for the design of the “past projects” referenced for “past clients.” On none of the projects Engineer B lists on the EFG website was Engineer B the Engineer of Record. Engineer B was an engineer-intern for most of Engineer B’s tenure with ABC Engineering. While Engineer B performed tasks for the referenced clients and on “past projects,” Engineer B’s role was as a junior member of the design team.

Question:

What are Engineer A’s ethical responsibilities?

NSPE Code of Ethics References:

- Section II.1.f.* - Engineers having knowledge of any alleged violation of this Code shall report thereon to appropriate professional bodies and, when relevant, also to public authorities, and cooperate with the proper authorities in furnishing such information or assistance as may be required.
- 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.

NSPE BER Case References: [96-11](#), [07-4](#), [17-12](#)

Discussion:

The issue raised by this case appears to have become an increasing concern within the engineering profession. In recent years, the NSPE Board of Ethical Review has seen an increase in the number of cases and questions surrounding this issue.

As the Board of Ethical Review recently noted in [BER Case 17-12](#), 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 had 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.

More recently, in the earlier referenced [BER case 17-12](#), the Board continued to examine the ethical issues relating to claiming credit for engineering work. In that case, 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 had established her own firm, Firm Y, and wanted to include some of her work for Firm X on the Firm Y website. Engineer A had 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 had questions regarding whether Engineer B, the owner of Firm X, should credit Engineer A for the work Engineer A had performed for Firm X as an employee.

Following an examination of the facts, the Board determined that Engineer A must not engage in any actions that would be implicitly or explicitly misleading or deceptive. The Board concluded that 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. In addition, the Board determined that Engineer B should credit Engineer A for Engineer A's contributions to the work of Firm X—even after Engineer A has departed from Firm X. The Board opined that 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.

Turning to the facts in the instant case, unlike the previous cases considered by the NSPE Board of Ethical Review, the Board believes the facts here present a much more clear-cut case of ethical impropriety on the part of Engineer B. Under the facts, Engineer B improperly claimed unqualified credit for the actual work performed by Engineer A and ABC Engineering and failed to acknowledge or credit Engineer A and ABC Engineering.

While it is clear that Engineer B's conduct is inconsistent with the NSPE Code of Ethics, there remains the question of what may be Engineer A's ethical obligation in light of Engineer B's violations. Clearly, in the face of such action by Engineer A, Engineer A cannot and should not ignore such action. It is beyond the scope of the Board of Ethical Review, as an ethics body, to speculate on any legal recourse Engineer A may pursue regarding what appears to be Engineer B's intentional misrepresentation.

At the same time, it would appear that among the appropriate steps Engineer A should explore are (1) send a letter to Engineer B, noting the fact that Engineer B and Engineer B's firm are improperly and falsely claiming credit for work for which they were not responsible or in which Engineer B played a minor role; and (2) demand that Engineer B and Engineer B's firm cease and desist from including the subject references on their website.

Conclusion:

Engineer A should consider (1) sending a letter to Engineer B, noting the fact that Engineer B and Engineer B's firm are improperly and falsely claiming credit for work for which they were not responsible or in which Engineer B played a minor role; (2) demanding that Engineer B and Engineer B's firm cease and desist from including the subject references on their website; and (3) where appropriate, Engineer A shall report Engineer B to the state board of professional engineers.

Board of Ethical Review:

Vincent P. Drnevich, Ph.D., P.E., F.NSPE
Mark H. Dubbin, P.E., LEED AP
Jeffrey H. Greenfield, Ph.D., P.E., F.NSPE
Kenneth L. McGowan, P.E., F.NSPE
Craig N. Musselman, P.E., F.NSPE
Hugh Veit, P.E.
Susan K. Sprague, P.E., F.NSPE (Chair)

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