



**Ethical Professional Obligations for Florida Professional Engineers**

**Course Number 0010135**

**Course Material and Final Exam**

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## Ethical Professional Obligations for Florida Professional Engineers

### Objectives of the Course:

1. Review the importance of continued education in ethics.
2. Identify the Professional Obligations of the NSPE *Code of Ethics for Engineers*.
3. Examine case studies in reference to violations of the Rules of Practice.
4. Apply the Professional Obligations to the daily practice of engineering.

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### Why Ethics?

The Florida Board of Professional Engineers requires all licensees to complete 1 hour of continuing education in ethics every license renewal biennium. (Rule 61G15-22.001 F.A.C.) Why does the Florida Board of Professional Engineers (FBPE) require its licensees to complete ethics continuing education? According to Florida rule 61G15-22.0105, the purpose of ethics continuing education is to provide the following:

- Code of ethics or other guidelines for ethical decision making as applied to the practice of engineering.
- The importance of ethics as a broad professional concern rather than a personal one.
- An engineer’s obligations to society, clients, and the profession.
- Ethical dilemmas encountered in engineering practice.
- The application of professional ethics to decision making through hypothetical or illustrative examples.

From this list it is clear the FBPE places high importance on licensees maintaining not only a solid understanding of ethics in their profession, but also incorporating these ethical standards in their daily practice.

This course will present essential principles from the 2019 Publication of the National Society of Professional Engineers' (NSPE) *Code of Ethics for Engineers*. The NSPE *Code of Ethics for Engineers* was selected for its broad scope which can be applied to all fields of engineering from electrical to mechanical to chemical. If licensees would like to read the full *Code of Ethics for Engineers*, this document can be found on the NSPE's website: <https://www.nspe.org/>

While this course will provide engineers with a proper review of ethical practice, it is ultimately the responsibility of every engineer who practices this profession to apply these principles to their daily work. Engineers must hold themselves to the highest ethical standard in order to protect their profession and do honor to themselves. Furthermore, abiding by a high standard of ethics does honor to fellow engineers and protects the welfare of the general public. When an engineer violates the standards of ethical practice, there are consequences which go beyond tarnishing the engineer's reputation. The law also punishes those who do not abide by these principles.

The following pages include case studies concerning professional engineers who did not adhere to ethical practice according to the NSPE Board of Ethical Review. These case studies will be examined in reference to the *Code of Ethics for Engineers* to highlight which behaviors violated ethical standards so that other engineers may learn from their colleagues' errors and not repeat the same mistakes. Each case study will demonstrate how the engineer in question broke away from one of the Professional Obligations of the *Code of Ethics for Engineers*. In many of these case studies the engineer will have violated several of the Professional Obligations. There are other cases referenced in these case studies and you can view those at <https://www.nspe.org/resources/ethics/ethics-resources/board-ethical-review-cases>. Below is the list of the Professional Obligations from the NSPE's *Code of Ethics for Engineers*:

## **Professional Obligations from the NSPE's *Code of Ethics for Engineers***

### **1. Engineers shall be guided in all their relations by the highest standards of honesty and integrity.**

- a. Engineers shall acknowledge their errors and shall not distort or alter the facts.
- b. Engineers shall advise their clients or employers when they believe a project will not be successful.
- c. Engineers shall not accept outside employment to the detriment of their regular work or interest. Before accepting any outside engineering employment, they will notify their employers.
- d. Engineers shall not attempt to attract an engineer from another employer by false or misleading pretenses.

e. Engineers shall not promote their own interest at the expense of the dignity and integrity of the profession.

f. Engineers shall treat all persons with dignity, respect, fairness, and without discrimination.

**2. Engineers shall at all times strive to serve the public interest.**

a. Engineers are encouraged to participate in civic affairs; career guidance for youths; and work for the advancement of the safety, health, and well-being of their community.

b. Engineers shall not complete, sign, or seal plans and/or specifications that are not in conformity with applicable engineering standards. If the client or employer insists on such unprofessional conduct, they shall notify the proper authorities and withdraw from further service on the project.

c. Engineers are encouraged to extend public knowledge and appreciation of engineering and its achievements.

d. Engineers are encouraged to adhere to the principles of sustainable development<sup>1</sup> in order to protect the environment for future generations.

e. Engineers shall continue their professional development throughout their careers and should keep current in their specialty fields by engaging in professional practice, participating in continuing education courses, reading in the technical literature, and attending professional meetings and seminar.

**3. Engineers shall avoid all conduct or practice that deceives the public.**

a. Engineers shall avoid the use of statements containing a material misrepresentation of fact or omitting a material fact.

b. Consistent with the foregoing, engineers may advertise for recruitment of personnel.

c. Consistent with the foregoing, engineers may prepare articles for the lay or technical press, but such articles shall not imply credit to the author for work performed by others.

**4. Engineers shall not disclose, without consent, confidential information concerning the business affairs or technical processes of any present or former client or employer, or public body on which they serve.**

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.

b. Engineers shall not, without the consent of all interested parties, participate in or represent an adversary interest in connection with a specific project or proceeding in which the engineer has gained particular specialized knowledge on behalf of a former client or employer.

**5. Engineers shall not be influenced in their professional duties by conflicting interests.**

a. Engineers shall not accept financial or other considerations, including free engineering designs, from material or equipment suppliers for specifying their product.

b. Engineers shall not accept commissions or allowances, directly or indirectly, from contractors or other parties dealing with clients or employers of the engineer in connection with work for which the engineer is responsible.

**6. Engineers shall not attempt to obtain employment or advancement or professional engagements by untruthfully criticizing other engineers, or by other improper or questionable methods.**

- a. Engineers shall not request, propose, or accept a commission on a contingent basis under circumstances in which their judgment may be compromised.
- b. Engineers in salaried positions shall accept part-time engineering work only to the extent consistent with policies of the employer and in accordance with ethical considerations.
- c. Engineers shall not, without consent, use equipment, supplies, laboratory, or office facilities of an employer to carry on outside private practice.

**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.**

- a. Engineers in private practice shall not review the work of another engineer for the same client, except with the knowledge of such engineer, or unless the connection of such engineer with the work has been terminated.
- b. Engineers in governmental, industrial, or educational employ are entitled to review and evaluate the work of other engineers when so required by their employment duties.
- c. Engineers in sales or industrial employ are entitled to make engineering comparisons of represented products with products of other suppliers.

**8. Engineers shall accept personal responsibility for their professional activities, provided, however, that engineers may seek indemnification for services arising out of their practice for other than gross negligence, where the engineer's interests cannot otherwise be protected.**

- a. Engineers shall conform with state registration laws in the practice of engineering.
- b. Engineers shall not use association with a nonengineer, a corporation, or partnership as a "cloak" for unethical acts.

**9. Engineers shall give credit for engineering work to those to whom credit is due, and will recognize the proprietary interests of others.**

- a. Engineers shall, whenever possible, name the person or persons who may be individually responsible for designs, inventions, writings, or other accomplishments.
- 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.
- c. Engineers, before undertaking work for others in connection with which the engineer may make improvements, plans, designs, inventions, or other records that may justify copyrights or patents, should enter into a positive agreement regarding ownership.
- 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.

## Case Study 1

In the first of these professional obligations, it states: "Engineers shall be guided in all their relations by the highest standards of honesty and integrity." The following case presents three distinct issues which, although not directly addressed by the Code of Ethics nor earlier Board of Ethical Review (BER) decisions, are extremely important regarding the integrity and honesty of intellectual work performed by university engineering faculty.

### Case Number: Case 85-1

#### **Facts:**

Engineer A and Engineer B are faculty members at a major university. As part of the requirement for obtaining tenure at the university, both Engineer A and Engineer B are required to author articles for publication in scholarly and technical journals. During Engineer A's years as a graduate student, he had developed a paper which was never published, and which forms the basis of what he thinks would be an excellent article for publication in a journal. Engineer A discusses his idea with Engineer B, and they agree to collaborate in developing the article. Engineer A, the principal author, rewrites the article, bringing it up to date. Engineer B's contributions are minimal. Engineer A agrees to include Engineer B's name as coauthor of the article as a favor in order to enhance Engineer B's chances of obtaining tenure. The article is ultimately accepted and published in a refereed journal.

#### **Question(s):**

1. Was it ethical for Engineer A to use a paper he developed at an earlier time as the basis for an updated article?
2. Was it ethical for Engineer B to accept credit for development of the article?
3. Was it ethical for Engineer A to include Engineer B as coauthor of the article?

#### **Discussion:**

The first issue relates to that of engineering faculty using material from previous work performed and modifying that material in order to satisfy a requirement to publish. This development has occurred in recent years as a result of the emphasis placed by various universities and colleges upon the importance of publication. With pressures being exerted upon faculty to write articles acceptable for publication, some faculty, as a result of time pressures and other factors, have sometimes "cut corners" in order to satisfy the requirement to publish.

While we stress the importance of performing new and innovative engineering research, we are not convinced that previous work of a high quality could not form the basis of updated research by engineering faculty. Quite often engineering students and faculty embark upon areas of research, and owing to a variety of factors, many beyond their control (time constraints, priorities, funding, etc.), make the decision to postpone the research being conducted. Later, for a number of reasons, they may decide to resume the research. Flowing out of the concluded research may be articles or reports suitable for publication in technical journals. As long as an

article is properly updated and the data verified and scrutinized in view of the time lapse, we are of the view that such publication would be entirely proper and ethical.

It may be suggested that because the earlier research was performed not as a faculty member but as an engineering student, the research was performed outside of the scope of the faculty member's current employment and therefore should not be credited as research performed as faculty for the purpose of tenure. We have trouble accepting such an inflexible view, particularly in view of the aforementioned variables that may impact upon the ability to perform research. We think the better course to take is to examine the relative quality of the individual's research rather than to question the chronology of the research. As long as the research is of a high-quality nature, we are satisfied that no ethical violation exists. In view of the fact that the article was brought up to date and was ultimately published in a refereed journal, we are convinced that no ethical problem has emerged.

Turning to a second issue in this case, as noted earlier, we are sensitive to the extremely difficult position in which many faculty members have been placed with regard to the so-called rule of "publish or perish." This Board finds it extremely difficult to sanction a situation whereby Engineer A permits Engineer B, for whatever reason, to share joint authorship on an article when it is clear that Engineer B's contributions to the article are minimal. We think that Section III.3.c. speaks to this point. This Board cannot excuse the conduct of a faculty member who "takes the easy way out" and seeks credit for an article that he did not author. The only way a faculty tenure committee can effectively evaluate tenure candidates is to examine the candidates' qualifications and not the qualifications of someone else. For this Board to decide otherwise would be to sanction a practice entirely at odds with academic honesty and professional integrity. (See Section III.1.)

Finally, the facts of the case raise the question of Engineer A's ethical conduct in agreeing to include Engineer B as coauthor of the article as a favor in order to enhance Engineer B's chances of obtaining tenure. However genuine Engineer A's motives may have been under the circumstances, we unqualifiedly reject the action of Engineer A. By permitting Engineer B to misrepresent his achievements in this way, Engineer A has compromised his honesty and forfeited his integrity. Engineer A is unquestionably diminished by this action.

While this Board is fervent in its view and wishes to stress the importance of those three points, we also feel compelled to acknowledge that certain "gray areas" do exist. Frequently, technical articles are written that contain the names of many authors or contributors. Often it is difficult to identify in an objective manner the qualitative contributions of the various authors identified. While we recognize that this practice is a proper means of accurately identifying actual authors contributing to an article, we tend to be somewhat skeptical in general of this practice. We recognize the importance of collaboration in academic endeavors; however, we think that the collaborative effort should produce and reflect a high-quality product worthy of joint authorship, and should not merely be a means by which engineering faculty expand their list of achievements.

**Conclusion:**

1. It was ethical for Engineer A to use a paper he developed at an earlier time as the basis for an updated article.
2. It was unethical for Engineer B to accept credit for development of the article.
3. It was unethical for Engineer A to include Engineer B as coauthor of the article.

**Case Study 2**

The obligation of professional engineers to be of constructive service to the community and serve the public interest has been a hallmark of professional engineering. Professional engineers contribute to communities by serving on public boards and civic groups, volunteering with not-for-profit community and youth groups, supporting and contributing to important public and private initiatives, and in many other ways. The following case study illustrates how violations of Professional Obligations 2 and 3 can easily occur:

- 2. Engineers shall at all times strive to serve the public interest.***
- 3. Engineers shall avoid all conduct or practice that deceives the public.***

**Case Number: Case 16-11****Facts:**

Engineer A is the owner of an engineering firm in a small town. Engineer A and his firm frequently perform engineering services for the town and also for other local agencies that are overseen by the town council. Recently Engineer A and his firm were selected by a local agency to design a major public project in the town. Following the firm's completion of the project, Engineer B, the town engineer who leads a panel that approves the selection of engineering firms performing services for the town and other local agencies, asks Engineer A and his firm to donate engineering services to design a playground on behalf of a local not-for-profit organization that the city council member is active in and supports. Before Engineer A has a chance to reply, Engineer B advises Engineer A that Engineer A's firm's design of the playground will "keep Engineer A and his firm in good graces" with Engineer B regarding future work with the town or other public work.

**Question(s):**

1. Was it ethical, under the facts, for Engineer B to ask Engineer A and his firm to donate engineering services to design a playground on behalf of a local not-for-profit organization that the city council member is active in and supports?
2. Would it be ethical for Engineer A to donate engineering services for the playground design under the circumstances?

**Discussion:**

In performing their professional services, professional engineers must be mindful that such service is personal in nature and a reflection of their values and commitment. Such service in many ways reflects who they are as professionals but should be viewed as separate and apart from what should be expected from them in their business relations with clients. To this point, it would be a mistake for either a professional engineer or a client to mix or confuse an individual's role in performing as a professional engineer and the individual's role in making contributions to the public. While these two roles may be complementary, there is a potential danger when the two are intermingled.

In the present case, a representative of a public client (Engineer B) has an expectation (and express authority) that a professional engineer (Engineer A) will donate engineering services which, while a public good (the design of a local playground) that will benefit the community, will also have the effect of enhancing the personal and political interests of the representative of the public client (Engineer B). In effect, Engineer A and his firm are under a degree of duress—the implicit promise of future work or the withholding of future work—if Engineer A does not accede to Engineer B's personal request to donate services.

In [BER Case 79-8](#), Engineer A, a principal in an engineering firm that had performed work for a local water district, gave Engineer B, the executive director of the water district, a hunting rifle. This fact was reported in the local newspaper, quoting other public officials in the community to the effect that it was improper for the executive director to keep the rifle in light of the relationship between the water district and Engineer A. One of the quoted officials commented that he did not object to small personal gifts, but it was “inappropriate” to keep an “expensive” rifle, noting that the executive director had “considerable influence” in the award of contracts. The cost of the rifle was not given, but local engineers who raised the question from the standpoint of engineering ethics estimated its retail value at \$500. The Board of Ethical Review concluded that it was not ethical for Engineer A to give a public official of an agency with whom he has had contractual relations a personal gift and that it was not ethical for Engineer B to accept the gift of Engineer A.

In more recent years, the NSPE Board of Ethical Review considered cases involving gifts to public officials, including state department of transportation employees. In BER Case 05-6, the BER was faced with a series of gift scenarios and in conclusion noted that engineers must be mindful of all rules and regulations that would apply to government employees and would ultimately govern. Engineers have an obligation to adhere to those rules and regulations, which may prohibit the receipt of such gifts. In addition, for parties contracting with state government, engineers may be barred from providing such gifts to government employees. In the present case, Engineer A may have had a desire to support this initiative separate and apart from Engineer B's request to support the playground project. However, Engineer B improperly entangled Engineer A and his firm's professional services with Engineer B's request for support for the playground project. Engineer A must clearly communicate with Engineer B—a party who has influence and authority over the selection of engineering firms to perform work for the town—that Engineer A has no intention of abiding by Engineer B's request to assist with the playground project as a condition for future work with the town or other public work.

Any other action would amount to an effort to make a contribution (in-kind services) to influence the award of a future contract.

**Conclusion:**

1. It was not ethical for Engineer B to ask Engineer A and his firm to donate engineering services for the design of a playground on behalf of a local not-for-profit organization that Engineer B is active in and supports.
  2. It would not be ethical for Engineer A to agree to donate engineering services for the design of the playground under the circumstance
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### Case Study 3

Engineers in private practice frequently face situations and circumstances where they must strike a balance in addressing the interests of their clients. Sometimes those interests may conflict with one another or with the engineer's interests and sometimes the engineer may become aware of facts involving one client which may impact upon the interests of another client. How to effectively navigate through those situations is among one of the many challenges of professional practice. This case study will cover the following professional obligations:

- 4. Engineers shall not disclose, without consent, confidential information concerning the business affairs or technical processes of any present or former client or employer, or public body on which they serve.***
- 5. Engineers shall not be influenced in their professional duties by conflicting interests.***

Each of the professional obligations from the *Code of Ethics for Engineers* is broad in scale. Due to the broadness, the NSPE provides subsections that elaborate on how these professional obligations can be applied to the daily practice of engineering. Following is the subsection that will also be reviewed in the following case study:

*III.4.b. Engineers shall not, without the consent of all interested parties, participate in or represent an adversary interest in connection with a specific project or proceeding in which the engineer has gained particular specialized knowledge on behalf of a former client or employer.*

#### Case Number: Case 13-8

**Facts:**

Engineer A is an environmental engineer and performs professional engineering services for Company A and Company B, two industrial companies that manufacture similar products and compete with one another. Over the years, in serving both clients, Engineer A has maintained confidentiality of all information received in his relationship with Company A and Company B.

Company A has a facility which has been permitted by a state agency as a result of the services provided by Engineer A. Recently Engineer A has learned that as a result of new and stricter regulations that will be going into effect, Company A's operations will no longer be in compliance with applicable state and federal environmental regulations that will be going into effect at a future date. Engineer A recommends that Company A agree to negotiate a new permit under which Company A (or any successor company) will agree to undertake certain operational changes to bring Company A into compliance with the new and upcoming regulations. Company A decides that it would not be prudent at this time to agree to Engineer A's recommendations because Company A has made a decision to cease its activities in this area of business and is currently in the process of negotiating an agreement with Company B for the purchase of the facility. Selling a facility not in compliance with the regulations going into effect in the future is not a violation of the law. Engineer A is still under contract to provide engineering analysis for Company B.

**Question(s):**

What are Engineer A's obligations under these circumstances?

**Discussion:**

The NSPE Board of Ethical Review has addressed some of these thorny issues in earlier cases. For example, BER Case No. 76-3 involved an engineer who had been under a retainer with a county for general advisory services and long performed extensive engineering services for it. While still on the retainer, the engineer was retained by a developer with the approval of county officials. The developer filed a petition with the county board to rezone a substantial area of the county for commercial purposes. The County Department of Public Works filed several engineering reports adverse to the zoning petition, recommending denial of the rezoning because the proposed construction would overload available water-sewer facilities. The developer called the engineer as an expert witness at the hearing and he testified in support of the rezoning petition.

In ruling that it was unethical for the engineer to appear for the development company while serving as an engineering consultant to the county, the Board noted that he was doing more than offering his expertise in engineering matters as an aid to a fuller understanding by the zoning board—he was in fact a paid advocate of a private interest in open conflict with the engineering opinions of the county engineers. The Board noted that the engineer was not required to agree with the county engineering staff or its reports, or even to support their position at the hearing. If the engineer chose to oppose that position on behalf of an adverse party he could ethically do so by first resigning from his role as adviser to the county.

In BER Case No. 85-6, a state retained an engineer to perform certain feasibility studies relating to the construction of a highway spur. After learning that the spur would go through an area adjacent to the community in which he resided, the engineer informed the state that the new spur might affect his residential property, fully disclosing the potential conflict with the state. The state did not object to the engineer's performing the work. He proceeded with his feasibility study and ultimately recommended that the highway spur be constructed, which was done. In deciding that it was not unethical for the engineer to perform the feasibility study despite the fact that his land may be affected, the Board noted that NSPE Code of Ethics Section II.4.a does not require the engineer to "avoid" any and all situations that may raise the specter of a conflict of interest. They noted that such an interpretation of the NSPE Code would leave engineers with neither any real understanding of the ethical issue nor any guidance as to how to deal with the problem.

Later, BER Case No. 87-3 involved Greenhill County, a county which employed individuals to perform building inspections. Dissatisfied with the services provided by in-house inspectors and as part of an effort to "contract out" certain county functions, the county decided to retain a private consulting engineering firm to perform building inspections. Greenhill County selected and retained Engineer A's firm. One of Engineer A's responsibilities was to inspect a building project developed by Enterprise Inc., a company for which she has regularly performed services in the past. Although she did not provide any services in connection with the building project in question, Engineer A and Enterprise Inc. anticipated that they will continue to work together in the future. In contract negotiations with the county, Engineer A disclosed this relationship with Enterprise Inc., and it became a matter of public record. In deciding that it would not be unethical for Engineer A to perform building-inspection services for the county in connection with the project developed by Enterprise Inc., the Board noted that unlike earlier cases it considered, the case did not involve a situation where an engineer was being retained as a paid "advocate" for a particular position or point of view on a pending matter in direct conflict with the engineering opinions of her county client. Nor was the Board faced with a situation where the timing of the retainer raised a question of propriety.

Rather, in BER Case No. 87-3, Engineer A was being asked to perform basic inspection services in connection with a building with which she has never previously been involved, but which was developed by a former and possibly future client. While the Board noted that Engineer A clearly had a professional obligation under NSPE Code Sections II.4 and II.4.a to disclose her relationship with Enterprise Inc. to the Greenhill County, the Board did not believe it would be necessary for her to decline to perform the inspection services. To prohibit Engineer A from providing building inspection services would be an unrealistic intrusion into her practice and would inhibit the county from utilizing a flexible method of delivering services consistent with the public health and safety.

Turning to the facts in the present case, it is the Board's view that Engineer A has mutual ethical obligations to Company A and to Company B since both are Engineer A's clients. As current clients, Engineer A's obligation to maintain the confidentiality of Company A's information has

the effect of causing Engineer A to take actions that are inconsistent with the interests of Company B, also a client of Engineer A. At the same time, if Engineer A disclosed what appears to be confidential information involving Company A to Company B, it would result in Engineer A breaching his confidentiality obligations to Company A.

In view of these facts, it is the Board's view that this case demonstrates that a servant cannot serve two masters—Engineer A can no longer effectively serve the interests of both Company A and Company B simultaneously. Engineer A must therefore resign from his relationship with one of his clients because of the specialized knowledge Engineer A obtained in his relationship with Company A.

**Conclusion:**

In view of the facts and circumstances involved in this matter, and the information to which Engineer A is privy regarding Company A's business decision to refrain from immediately addressing the environmental regulations that will be going into effect at a future date, Engineer A should resign from his relationship with Company B because the specialized knowledge Engineer A obtained in his regulatory review relationship with Company A created a conflict of interest.

## **Case Study 4**

Over the years, the Board of Ethical Review has noted that it is not uncommon for ethical issues to arise when an employee leaves an employer. The following case study demonstrate violations of Professional Obligations 6,7, and 8:

***6. Engineers shall not attempt to obtain employment or advancement or professional engagements by untruthfully criticizing other engineers, or by other improper or questionable methods.***

***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.***

***8. Engineers shall accept personal responsibility for their professional activities, provided, however, that engineers may seek indemnification for services arising out of their practice for other than gross negligence, where the engineer's interests cannot otherwise be protected.***

**Subsection:**

***III.8.a. Engineers shall conform with state registration laws in the practice of engineering.***

### Case Number: Case 14-3

#### **Facts:**

Engineer A was employed full-time by the engineering firm ABC Engineering for 12 years. ABC Engineering is led by Engineer B. Engineer A decides to depart from the firm to work for another firm. While at the new firm, Engineer A decides to seek comity licensure in another state. Engineer A contacts Engineer B seeking assistance with his comity application. Engineer B responds to Engineer A's request and refuses to submit the employment verification for Engineer A's comity application and sends Engineer A the following e-mail:

*"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."*

#### **Question(s):**

Were the actions of Engineer A and Engineer B ethical in connection with this employment matter?

#### **Discussion:**

The departure of an employee to another company can raise ethical concerns, as can the situation when an employee moves to a competing company. On the surface, the departure of the employee might provide both companies with benefits by allowing the two companies to strengthen their relationship and enhance communications between the two companies, but conflicts can arise in the arrangement. The facts in this case identify a clear conflict, or at least the appearance of a potential conflict, faced by the employee involved in the transition.

In BER Case 99-6, Engineer A, was employed by the FGH Construction Company and worked closely with Engineer B who was an employee of LMN Supplies. LMN Supplies sold construction materials and supplies. Part of Engineer A's responsibilities was to negotiate and approve bids by LMN Supplies that were submitted by Engineer B. LMN Supplies offered, and Engineer A accepted, an employment position with LMN Supplies. Engineer A submitted his resignation and gave two week's notice to FGH Construction Company and was not asked and did not mention that he would be employed by LMN Supplies. For the next two weeks before leaving FGH Construction Company, Engineer A continued to negotiate and approve bids submitted by LMN Supplies.

In deciding that it was unethical for Engineer A to fail to mention to FGH Construction Company that he will be employed by its vendor LMN Supplies, the Board noted that under the facts, Engineer A's primary obligation was to FGH Construction and not to LMN Supplies during the two-week period prior to his departure to LMN Supplies. Engineer A had a basic obligation to not do anything that would unduly prejudice the interests of either FGH Construction or LMN Supplies. However, by failing to provide full disclosure to FGH Construction, Engineer A's actions had the effect of prejudicing the interests of both FGH Construction and LMN Supplies.

By not informing FGH Construction, Engineer A's actions most probably raised some doubt in the minds of the supervisors and perhaps owners of FGH Construction about whether Engineer A's continued negotiations and approval of bids submitted by LMN Supplies were somehow tainted and could have resulted in inflated costs to FGH Construction or other unearned competitive advantages for the benefit of Engineer A's new employer, LMN Supplies. Also by failing to disclose the material conflict that existed concerning his new employment with LMN Supplies, Engineer A may have unwittingly planted "seeds of doubt" with FGH Construction and potentially damaged the goodwill that might have existed between FGH Construction and LMN Supplies. Based upon the facts as presented, FGH Construction might wrongly conclude that LMN Supplies somehow persuaded Engineer A not to disclose his new position with LMN Supplies during the two-week period in order to gain some advantages. Engineer A's failure to fully disclose his new position with LMN Supplies, and to continue to negotiate and approve LMN Supplies' bids to his current employer, was not in accordance with the spirit or the intent of the NSPE Code of Ethics for Engineers. His actions want for the highest standards of honesty and integrity expected of engineers, and were not circumspect.

While the facts in the present case are somewhat different than those in BER Case 99-6, there are elements in both cases that are instructive in the present facts: the importance of disclosure and the obligation to protect, and to not disregard, the interests of one's current employer or former employer. In the present case based on the facts, it appears that while Engineer A had been physically present within the offices of ABC Engineering, Engineer A may not have acted professionally in the weeks and days prior to departing by failing to provide the notice and communications expected. As a full-time employee of ABC Engineering, Engineer A had an obligation to devote his attention for the benefit of ABC Engineering. By failing to provide timely notice or to demonstrate a serious level of commitment to the interests of ABC Engineering prior to and after his departure, Engineer A appears to have acted unethically. At the same time, while the Board can understand Engineer B's disappointment in the manner that Engineer A behaved prior to and following his departure from ABC Engineering, the Board also believes 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. Certainly 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.

**Conclusion:**

1. It was unethical for Engineer A to fail to provide timely and sufficient notice as promised to ABC Engineering.
2. It was unethical for Engineer B or ABC Engineering to fail to meet the ethical, legal, and regulatory requirements, and be factually accurate in providing the necessary information, including employment verification, required for Engineer A's comity application.

**Case Study 5 – Professional Obligation 9**

The issues in the following case study are among some of the earliest issues examined by the NSPE Board of Ethical Review. The issue of giving credit (and responsibility) to the appropriate professional engineers involved in a project goes to the very heart of the professional issues relating to personal responsibility and individual accountability. Professional Obligation 9 states:

***9. Engineers shall give credit for engineering work to those to whom credit is due, and will recognize the proprietary interests of others.***

**Subsection:**

***III.9.a*** Engineers shall, whenever possible, name the person or persons who may be individually responsible for designs, inventions, writings, or other accomplishments.

**Case Number: Case 07-4****Facts:**

Engineer A, a licensed professional engineer, has 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 Web site depicts these two projects without Engineer A's name associated with either one and includes 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.

**Question(s):**

1. Was it ethical for Engineer B to fail to include Engineer A's name in association with the two projects?
2. Was it ethical for Engineer B to include photographs on the firm's Web site implying that Engineer B and other individuals were responsible for the projects?

**Discussion:**

As one example, BER Case No. 64-7 involved a professional engineer who was employed as an assistant sanitary engineer in a state health department. The engineer was responsible for the administration of certain programs which required approval of plans for proposed water supply and sewage treatment facilities and for the issuance of permits for such projects, as prescribed by state law. The engineer's immediate supervisor was the district sanitary engineer, also a professional engineer. The policy and practice of the office was that all approval of plans and issuance of permits were under the signature of the district sanitary engineer, although the assistant sanitary engineer performed the actual engineering review in the great majority of applications. The policy of the office also provided that when the district sanitary engineer was absent, the assistant sanitary engineer would review the plans and applications for permits and, after approval, sign the name of the district sanitary engineer, even though the district sanitary engineer had not seen or reviewed the documents. In deciding that it was not ethical for the assistant sanitary engineer to sign the name of the district sanitary engineer to engineering documents, the Board noted that the thrust of NSPE Code of Ethics is that individual accomplishments and the assumption of responsibility by individual engineers should be recognized by other engineers. This principle is not only fair and in the best interest of the profession, but it also recognizes that the professional engineer must assume personal responsibility for his decisions and actions. The Board noted that it is not unusual for the engineer in charge to sign his name and title to engineering documents which are prepared or reviewed by his subordinates under his supervision. There is no criticism of this practice, since it is based on the requirement that the engineer attaching his signature is familiar with and has checked the work involved. However, said the Board, in this case, the facts are that the assistant sanitary engineer on occasion reviewed the engineering documents on his own responsibility and without the supervision or verification of the district sanitary engineer. In that case, it is obvious that the assistant sanitary engineer took sole responsibility for the decision to approve the plans or authorize the issuance of a permit. On that basis, he alone should have signed the engineering documents.

The Board saw no objection, however, in the interests of clarity and continuity of authority, for the approval to indicate by stamp or printing the name of the district sanitary engineer, provided his name is followed by the name and signature of the assistant sanitary engineer. This will indicate that the approval is under the general authority of the district sanitary engineer and that the assistant sanitary engineer is acting within the scope of a delegation of authority to pass professional judgment on his own responsibility.

The Board noted that the matter of credit for engineering work is a factor in this consideration, but that this is secondary to the more important principle of a clear indication of professional responsibility.

We believe the NSPE Board of Ethical Review's treatment of this case is very instructive in the context of our consideration of the present case. Under the facts in the present case, there appears to be nothing to indicate any limitation on the ability of Engineer A to sign and seal the

engineering drawings and assume personal responsibility for the work in question. Again, as noted earlier and reinforced in BER Case No. 64-7, the salient ethical issue in both cases is the duty of the professional engineer to assume personal responsibility and be accountable for the work under his or her direct control and personal supervision. Issues related to credit given is considered a secondary matter.

At the same time, it should be stated that on the basis of fairness and equity, 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. Without attempting to get involved with specific personnel decisions, management prerogatives, or the unique circumstances that might be involved in this or similar matters, 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. This concept is clearly embodied in the language of the NSPE Code Section III.9.a.

The Board recognizes that companies and firms may have different methods of recognizing achievements and accomplishments for marketing, firm identity, and other purposes. However, the Board believes that the manner in which firms today assign credit and recognition should in some measure be connected to actual responsibility for the work. Where there is no reasonable connection between the actual responsibility/accountability for the engineering work and the credit/recognition provided, the Board is concerned that a misrepresentation could occur that would be detrimental to the interests of potential clients and ultimately the public. Unless there is some unique or compelling business reason to do otherwise, it is the Board's review that consistent with the NSPE Code of Ethics, credit and recognition should follow responsibility and accountability.

**Conclusion:**

1. In the absence of some compelling reason, it was unethical for Engineer B to fail to include Engineer A in association with the two projects.
2. In the absence of some compelling reason, it was unethical for Engineer B to include a photograph on the firm Web site implying that Engineer B and other individuals were responsible for the projects.

## Final Exam Questions

1. Which of the following are among the Professional Obligations stated in the *NSPE Code of Ethics for Engineers*?
  - a. Engineers shall at all times strive to serve the public interest.
  - b. Engineers shall not be influenced in their professional duties by conflicting interests.
  - c. Engineers shall give credit for engineering work to those to whom credit is due, and will recognize the proprietary interests of others.
  - d. All of the above
  
2. What year was the NSPE Codes of Ethics last updated?
  - a. 2019
  - b. 2018
  - c. 2007
  - d. 2006
  
3. Engineers shall acknowledge their \_\_\_\_\_ and shall not distort or alter the facts.
  - a. License
  - b. Errors
  - c. Company
  - d. Colleagues
  
4. Engineers shall treat all persons with:
  - a. Dignity
  - b. Respect
  - c. Fairness
  - d. All of the Above
  
5. The obligation of professional engineers to be of constructive service to the community and serve the public interest has been a:
  - a. Problem for most professional engineers
  - b. Hallmark of professional engineering
  - c. New commitment to the engineering profession
  - d. Perpetual problem for all engineers
  
6. Engineers in private practice \_\_\_\_\_ face situations and circumstances where they must strike a balance in addressing the interests of their clients.
  - a. Almost never
  - b. Do not
  - c. Frequently
  - d. Always

7. Professional Obligation 5 states, "Engineers shall not be influenced in their professional duties by \_\_\_\_\_."
  - a. Money
  - b. Seniority
  - c. Conflicting interests
  - d. Projected timeline of project
  
8. The Board of Ethical Review has noted that it is \_\_\_\_\_ for ethical issues to arise when an employee leaves an employer.
  - a. Uncommon
  - b. Not Uncommon
  - c. Highly unlikely
  - d. None of the above
  
9. One of the earliest issues examined by the NSPE Board of Ethical Review is:
  - a. Giving credit (and responsibility) to the appropriate professional engineers
  - b. Untruthfully criticizing other professional engineers
  - c. A professional engineer's deception of the public
  - d. Duties being influenced by conflicting interests
  
10. Which of the following rules requires all licensed Florida Professional Engineers to complete 1 hour of continuing education in ethics every license renewal biennium?
  - a. Rule 61G15-18.005 F.A.C.
  - b. Rule 61G15-20.100 F.A.C.
  - c. Rule 61G15-22.001 F.A.C.
  - d. Rule 61G15-21.009 F.A.C