Case One – Subverting of the Subconsultant

We were the Prime Consultant on a land development project. We had a Subconsultant who was engaged to perform certain tasks under our direction. The Client was well aware of the Prime/Sub relationship and the respective roles of each. At a certain point in the project the Client engaged the Subconsultant directly for additional services on the project without involving the Prime. The Client did this in an odd way. The Client called for a meeting with the Subconsultant at the Sub’s office to discuss some aspect of the project that they were working on. There was no prior notice to the Prime Consultant. In the course of the meeting the Client asked for a small “out-of-scope” task to be performed. He asked if he could wait while they performed the task. When they completed the task the Client pulled out his checkbook and insisted on paying them for the service on the spot!

Stakeholders:

- Client
- Prime Consultant
- Subconsultant

Relevant Issues:

- Should the Prime have been notified in advance of a project meeting and its agenda?
- Is it ever permissible for a professional engineer to have two clients on the same project? If so, under what circumstances?
- Should the Sub-Consultant have accepted direct payment for services from the Client?
- Should the Prime Consultant object to the actual events? If so, how?
- What course of action would you recommend to the Prime Consultant?

Case Outcome:
Case Two: To Terminate or Not To Terminate

When a Client began to subvert contractual arrangements (See Case One), became threatening (physical violence) and began telling lies (“I never even read the agreement”) we were faced with a strong motivation to terminate our agreement. Our agreement did have an unqualified, symmetrical termination clause.

Stakeholders:

• Client
• Prime Consultant
• Sub-Consultant

Relevant Issues:

• May we terminate an agreement if a Client becomes unruly?
• Are lies sufficient reasons to terminate an agreement?
• Do threats of physical violence constitute extortion – a criminal offence? Do we have any duty if we observe a crime? Does this justify termination?
• Do we want the reputation of a firm that terminates agreements?
• What about our contract? Do we have a duty to perform under any and all circumstances? If not, what circumstance(s) would allow us to terminate an agreement?
• If we terminate the agreement, how will the Client obtain the services he needs to complete his project? Is that a relevant concern?

Case Outcome:
Case Three: Potential Conflict of Interest

The City of Anytown, USA selected the firm I was working for to provide environmental impact, design and alignment studies for federally funded urban railroad relocation demonstration project. One thing that made our firm attractive to the City was that we had a good working relationship with the railroad company. We were engaged in a number of other federally funded projects affecting this particular railroad company. The railroad company was also our client for other engineered works on their system.

Stakeholders:

- City
- Railroad
- Federal Highway Administration
- State Department of Transportation
- Prime Consultant

Relevant Issues:

- Would we favor the railroad company in our dealings? After all, the City would only ever have one project of this sort, whereas the railroad would have numerous projects. Wouldn’t we naturally favor the railroad company?
- Didn’t we have a conflict of interest?

Case Outcome:

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Case Four: Recommending Husband’s Firm

We sought the recommendation of a firm we could work with for a project in another city. Because we had a client in that city we asked them. The client’s contact person, who is a registered professional, recommended three firms, naming the firms and the contacts. One of the firms recommended was owned by the husband of the person making the recommendation. The name of the firm did not disclose this, although the name of the contact person was a clue. There was no mention of the relationship at the time the recommendation was made.

Stakeholders:

• Us
• Recommending Person
• Recommended Firm
• Recommended Firm’s Employee – Husband of Recommending Person

Relevant Issues:

• Should a professional engineer disclose his interest (equity, relation by marriage or by blood) in a product or service that he recommends or specifies?

Case Outcome:

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Case Five: The Subconsultant Who Stopped Work

In a recent case we were engaged in an apartment development project and the Client was falling behind in their payments to us. A surveying firm was a Subconsultant to us. There were conversations with the Client about the need for everyone on the team to get paid. The surveyor finally reached the point where he felt that he had to act. He stopped work. We advised the Client. The project would be dead in its tracks until the surveyor started working again. The Client pushed us to get another surveyor to come in and finish the project.

Stakeholders:

- Prime Consultant - Us
- Subconsultant - Surveyor
- Client

Relevant Issues:

- Should WE pay the surveyor to keep him working while we all wait for payment from the Client?
- Can we ethically terminate our agreement with Surveyor #1 and engage Surveyor #2?
- Should we close ranks with the Surveyor and join in the work stoppage?
- To whom is our loyalty due? Is it to the Client? Is it to the Surveyor?

Case Outcome:

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October 6, 2003
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Case Six: Supplanting

We have been asked by an active Client to “take over” a project in the middle of the design process. The Client’s other professional services firm (Prior Consultant) had failed to obtain the approvals needed to get a building permit and, after many months and continued failure, the Client just wanted us to try to save the day. We had a relationship with the Client that began after the prior consultant’s relationship with the Client.

Stakeholders:

- Prior Consultant
- New Consultant - Us
- Client

Relevant Issues:

- Is this a potential supplanting case?
- How will we guide our client to help us avoid a charge that we supplanted the Prior Consultant?

Case Outcome:

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Case Seven: Ownership of Documents (Copyrights)

We were recently approached by a Client to use the plans for a prototype building on a project being assigned to us. The owner of the prototype drawings was the Original Architect.

Stakeholders:

- Original Architect
- New Consultant - Us
- Client

Relevant Issues:

- Who owns the drawings and the design concepts?
- If we insist on doing the right things will the Client give the contract to another firm?
- Is the Client’s potential response to our decision a relevant factor in our considerations?

Case Outcome:

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Case Eight: Theft of Plans, Plan Stamping and Professional Incompetence

In a recent case in Texas an engineer was disciplined by the State Board for copying, and placing his engineer’s seal upon, the plans of another engineer for a tennis court facility for use on a construction project. This is a clear violation of an ethical rule in Texas. One feature of the case against this engineer was the State’s finding that the engineer did not have the education, training or experience to prepare plans for a tennis facility. This adds “working beyond competency” to rule-breaking and theft.

Stakeholders:

- Copying Engineer
- Copied Engineer
- Client
- Tennis Playing Public
- Engineering Profession

Relevant Issues:

- Is it ever permissible to use the plans prepared by another engineer? If yes, under what circumstances?
- What does it mean to place my engineer’s seal and signature on a drawing or document?

Case Outcome:

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Case Nine: Justice or Mercy?

It is our company policy that no software or file may be installed or downloaded onto a company-owned computer for personal use, without prior company approval. This assures that there are no licensing violations (intellectual property rights). This also eliminates the problem of games, pornography or other diversions. A CD with pornographic materials was left in a company-owned laptop computer. An investigation found additional pornographic materials on the hard drive in a password-secured location. It appeared that the materials were most likely the responsibility of the employee to whom the secure drive was assigned. Further investigation revealed that the employee to whom this drive was assigned was indeed responsible for the images on the computer. The original CD was found and brought to our attention by a female employee – this raised the potential that sexual harassment might be a factor. The nature of the material was pertinent – under the law it was our responsibility to notify the police if any illegal (child pornography) materials were found.

Stakeholders:

- Employee(s)
- Employer

Relevant Issues:

- What company response is correct? Justice or mercy?
- Is the status of the employee a factor in the company’s discipline decision?
- Is termination of employment the right punishment? If not, why not? If so, why?

Case Outcome:

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