2005
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS (NSPE)
MILTON F. LUNCH ETHICS CONTEST

INVITATION
All current NSPE individual members, NSPE state societies, and NSPE chapters (including student chapters) are invited to participate in the 2005 NSPE Milton F. Lunch Ethics Contest. Match your wits with experienced professional engineers and engineering students throughout the country!

WHAT IS TO BE DONE?
NSPE’s Board of Ethical Review (BER) is furnishing you with a real FACT situation that involves a professional engineer who establishes a Web site and indicates that his company will seal engineering drawings for a standard prescribed fee per page. Given the FACTS, you are asked a QUESTION about the ethics of the engineer. Contestants are encouraged to read and discuss the FACTS of the case and answer to the QUESTION. Then you are to develop DISCUSSION AND CONCLUSIONS using the format of the NSPE Board of Ethical Review. You are also to give REFERENCES citing only specific sections of the NSPE Code of Ethics for Engineers. Other materials should not be cited. (A copy of the NSPE Code and a sample BER case (demonstrating the format) are attached for your reference. You may also want to check the following Web sites for additional cases decided by the BER: www.nspe.org and www.niee.org).

CONTEST RULES
All entries must be 750 words or less (DISCUSSION and CONCLUSION sections only) and received by Friday, April 15, 2005. (List NSPE Code REFERENCES also. However, NSPE Code REFERENCES are not counted in # of words). Mail, fax, or e-mail entries to:

2005 NSPE Milton F. Lunch Ethics Contest
NSPE Legal Department
1420 King Street, Alexandria, VA 22314
703/519-3763 - Fax • 703/684-2840 - Phone • mcannon@nspe.org – Email
www.nspe.org/ethics/eh01-test.asp

The winning entry will receive an award of $1,000 ($500 to the NSPE state society or NSPE chapter, and $500 divided among the authors) provided by the NSPE Educational Foundation, a certificate, and recognition in Engineering Times.

JUDGING CRITERIA
The judges will use the following criteria:

➢ Quality of the entry in form and presentation. (Clarity, composition, expression, etc. are important your writing should be a finished piece, ready to “go to press”).

➢ Demonstration of understanding of the implications concerning ethical or unethical behavior.

➢ Comprehensive analysis of the case and arguments supporting your conclusions. (This may include new thoughts about engineering ethics and professional practice).

Good luck, fellow professional engineers and student engineers!

Sincerely,

E. DAVE DORCHESTER, P.E., F.NSPE
Chair, NSPE Board of Ethical Review

About Milton F. Lunch – Milton F. ("Milt") Lunch, NSPE’s General Counsel from the 1940s until the 1980s was critical to the establishment of the NSPE Board of Ethical Review and the development of the NSPE Code of Ethics in the 1950s. During his tenure as NSPE General Counsel, Milt presented numerous papers and authored influential articles about the importance of licensure, ethics & professionalism. He passed away in 2001.
2005
NSPE MILTON F. LUNCH ETHICS CONTEST
(Fact Situation)

FACTS:
Engineer A, a professional engineer licensed in four states, establishes a Web site, www.engineerseals.com, that indicates that Engineer A’s company will seal professional engineering drawings for a standard prescribed fee per page. The information on the Web site states the following:

“Get your project approved! Engineerseals.com provides a convenient, cost effective, way for you to obtain sealed documents from a registered engineer to meet your local or state requirements. The on-line questionnaires and confirmation processes help us determine the specific services you need. We will provide direct engineering supervision, and depending on your project, we will

- Review and modify your plans, shop drawings, specifications, and calculations;
- Generate the necessary drawings, plans, specifications, and reports;
- Perform engineering investigation, evaluation, and consultation; or
- Perform site visits

Upon receipt of your information, we will contact you directly. Your responses help us to simplify the review process and ultimately help us customize the services to meet your needs. The next time you need plans reviewed for building construction codes and permit approvals, visit engineerseals.com. We’ll help you get your remodeling, renovation and new building projects from draft to development efficiently and professionally. The process is easy.”

QUESTION:
Was it ethical for Engineer A to develop a Web site in the manner indicated?

NSPE CODE REFERENCES: (To be submitted by the Contestant(s). Use NSPE Code of Ethics references only).

DISCUSSION: (To be submitted by the Contestant(s). Use the BER format as used in the attached sample case).

CONCLUSION: (To be submitted by the Contestant(s))

NOTE: In order to maintain anonymity for purposes of judging, the actual body of the entry should not include any reference to the state society, chapter, member, student, university, or any other individual group(s) which submitted the entry. However, be sure to provide the name(s), address(es), email address(es), and phone number(s) of (1) your NSPE chapter or state society, and (2) each of the individual(s) responsible for submitting the entry, on a separate cover sheet accompanying your entry. Submissions failing to include this information will be returned to submitter(s) and will not be eligible for the contest.
**Facts:**
Engineer A, a licensed professional engineer, is the CEO of Solico, an engineering firm that provides civil and geotechnical engineering and testing services, both for projects Solico designs and for projects designed by others. In performing services on behalf of Solico’s clients, Engineer A relies upon the information, data, and reports provided to him by Solico field technicians and testing employees.

Certain engineering firms in the area of Solico’s practice have recently recognized a local union to represent engineering firm and related testing firm field technician and testing personnel. The union local active in the area is now seeking to organize Solico’s field technicians and testing personnel into the same union local that represents the construction workers whose work Solico field representatives observe, test, and otherwise evaluate. The union local has a member disciplinary provision in its bylaws (the so-called “no-rat” provision) prohibiting any union members from making derogatory or disparaging remarks about any fellow union members or their performance.

**Question:**
Is it ethical for Engineer A to sign and seal reports that Engineer A receives from field technicians and testing employees who are members of a union with a member disciplinary provision in their bylaws prohibiting any union members from making derogatory or disparaging remarks about any fellow union members or their performance?

**References:**
- **Section I.1.** NSPE Code of Ethics: Engineers, in the fulfillment of their professional duties, shall hold paramount the safety, health and welfare of the public.
- **Section I.4.** NSPE Code of Ethics: Engineers, in the fulfillment of their professional duties, shall act for each employer or client as faithful agents or trustees.
- **Section II.1.b.** NSPE Code of Ethics: Engineers shall approve only those engineering documents that are in conformity with applicable standards.
- **Section II.2.b.** NSPE Code of Ethics: Engineers shall not affix their signatures to any plans or documents dealing with subject matter in which they lack competence, nor to any plan or document not prepared under their direction and control.
- **Section III.7.** NSPE Code of Ethics: 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.

**Discussion:**
Unionization and collective bargaining have long been an issue within the engineering profession. Until recent times, the NSPE Code of Ethics contained a provision relating to the collective bargaining activities of engineers. However, in February 2001, the NSPE Board of Directors approved a recommendation by the NSPE Board of Ethical Review to remove the following language from the NSPE Code:

"Engineers shall not actively participate in strikes, picket lines, or other collective coercive action."

The NSPE Board’s rationale for this recommended modification was that the issue of an engineer's membership in a union should not be a priori prohibited, since in certain regions and sectors, engineers may find themselves required to participate in a union as a condition of employment. However, the Board of Ethical Review recognizes that the issues of union membership and collective bargaining are legitimate issues of professional interest and concern and therefore NSPE should continue to maintain and refine its policies concerning these important matters.

*Sample Case*
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On the face of it, unionization puts the engineer's own self interest in conflict with two key service obligations of the professional—the duty to hold paramount the safety, health and welfare of the public and the duty to act for each employer or client as a faithful agent or trustee. While the NSPE Code does not require that engineers place themselves in positions of undue personal jeopardy, the Board has consistently and strongly held that engineers have a higher standard than self-interest alone.

Although the union activity described herein relates primarily to field technician and testing personnel, the question is asked from the perspective of Engineer A, and the emphasis on the obligations of the engineer to the client or employer and the protection of the public health and safety are points worthy of reinforcement in the present case. Engineer A's ultimate responsibility, as a professional engineer, is clearly to hold paramount the public health, safety, and welfare and a secondary issue is to guard and protect the interests of Engineer A's client or employer.

As a general matter, engineers typically perform these obligations through careful and prudent design and through their rendering of engineering services in a professional and ethical manner. However, careful and prudent design (including plans, specifications, drawings and testing) will not be effective and cannot be relied upon if they are not followed during the testing and construction process. Those processes can only be deemed safe for the public where the engineer can reasonably rely upon the technical reports provided by those under the engineer's responsible charge and under circumstances where those under the engineer's responsible charge are fully committed to serving the interests of good, sound engineering practice. The subject bylaw provision has the potential to compromise confidence in the oversight the field technicians and testing personnel may exercise on the results of the work performed by a fellow union member. If the bylaw were worded similar to Section 3 of the NSPE Code, then this concern would be alleviated. That commitment is not possible where individuals performing the technical reporting function are subject to conflicted loyalties, duress, or intimidation.

In this connection, the Board is convinced the objective of sound engineering practice will be compromised by the presence of the union disciplinary provision in its bylaws prohibiting any union member from making derogatory or disparaging remarks about any other fellow union member or their performance. The Board is concerned that unionized engineering firm field technicians and testing personnel will consider themselves bound by this union rule or at the very least intimidated by the rule and, therefore, may not in all cases effectively provide reliable technical information necessary for Engineer A to perform his services for his clients and to protect the public health and safety.

For the reasons indicated, the Board is of the view that under the circumstances described, it would not be ethical for Engineer A to sign and seal reports that Engineer A receives from the unionized field technicians and testing employees who are members of a union with a so worded member disciplinary provision in their bylaws.

Conclusion:
It would not be ethical for Engineer A to sign and seal reports that Engineer A receives from the unionized field technicians and testing employees who are members of a union with a member disciplinary provision in their bylaws prohibiting any union members from making derogatory or disparaging remarks about any fellow union members or their performance.

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Sample Case
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Code of Ethics for Engineers

Preamble
Engineering is an important and learned profession. As members of this profession, engineers are expected to exhibit the highest standards of honesty and integrity. Engineering has a direct and vital impact on the quality of life for all people. Accordingly, the services provided by engineers require honesty, impartiality, fairness, and equity, and must be dedicated to the protection of the public health, safety, and welfare. Engineers must perform under a standard of professional behavior that requires adherence to the highest principles of ethical conduct.

I. Fundamental Canons
Engineers, in the fulfillment of their professional duties, shall:
1. Hold paramount the safety, health, and welfare of the public.
2. Perform services only in areas of their competence.
3. Issue public statements only in an objective and truthful manner.
4. Act for each employer or client as faithful agents or trustees.
5. Avoid deceptive acts.
6. Conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.

II. Rules of Practice
1. Engineers shall hold paramount the safety, health, and welfare of the public.
   a. If engineers' judgment is overruled by circumstances that endanger life or property, they shall notify their employer or client and such other authority as may be appropriate.
   b. Engineers shall approve only those engineering documents that are in conformity with applicable standards.
   c. Engineers shall not reveal facts, data, or information without the prior consent of the client or employer except as authorized or required by law or this Code.
   d. Engineers shall not permit the use of their name or associate in business ventures with any person or firm that they believe is engaged in fraudulent or dishonest enterprise.
   e. Engineers shall not aid or abet an unlawful practice of engineering by a person or firm.
   f. Engineers having knowledge of any alleged violation of this Code shall report the same 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.
2. Engineers shall perform services only in the areas of their competence.
   a. Engineers shall undertake assignments only when qualified by education or experience in the specific technical fields involved.
   b. Engineers shall not affix their signatures to any plans or documents dealing with subject matter in which they lack competence, nor to any plan or document not prepared under their direction and control.
   c. Engineers may accept assignments and assume responsibility for coordination of an entire project and sign and seal the engineering documents for the entire project, provided that each technical segment is signed and sealed only by the qualified engineers who prepared the segment.
3. Engineers shall issue public statements only in an objective and truthful manner.
   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.
   b. Engineers may express publicly technical opinions that are founded upon knowledge of the facts and competence in the subject matter.
   c. Engineers shall issue no statements, criticisms, or arguments on technical matters that are inspired or paid for by interested parties, unless they have prefaced their comments by explicitly identifying the interested parties on whose behalf they are speaking, and by revealing the existence of any interest the engineers may have in the matters.
4. Engineers shall act for each employer or client as faithful agents or trustees.
   a. Engineers shall disclose all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services.
   b. Engineers shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.
   c. Engineers shall not solicit or accept financial or other valuable consideration, directly or indirectly, from outside agents in connection with the work for which they are responsible.
   d. Engineers in public service as members, advisors, or employees of a governmental or quasi-governmental body or department shall not participate in decisions with respect to services solicited or provided by them or their organizations in private or public engineering practice.
   e. Engineers shall not solicit or accept a contract from a governmental body on which a principal or officer of their organization serves as a member.
5. Engineers shall avoid deceptive acts.
   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.
   b. Engineers shall not offer, give, solicit, or receive, either directly or indirectly, any contribution to influence the award of a contract by public authority, or which may reasonably be construed by the public as having the effect or intent of influencing the awarding of a contract. They shall not offer any gift or other valuable consideration in order to secure work. They shall not pay a commission, percentage, or brokerage fee in order to secure work, except to a bona fide employee or bona fide established commercial or marketing agencies retained by them.

III. Professional Obligations
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.
2. Engineers shall at all times strive to serve the public interest.
   a. Engineers shall seek opportunities to participate in civic affairs; career guidance for youth; 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 shall endeavor to extend public knowledge and appreciation of engineering and its achievements.
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 products and 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.

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 seminars.

As Revised January 2003

“By order of the United States District Court for the District of Columbia, former Section 11(c) of the NSPE Code of Ethics prohibiting competitive bidding, and all policy statements, opinions, rulings or other guidelines interpreting its scope, have been rescinded as unlawfully interfering with the legal right of engineers, protected under the antitrust laws, to provide price information to prospective clients; accordingly, nothing contained in the NSPE Code of Ethics, policy statements, opinions, rulings or any other guidelines prohibits the submission of price quotations or competitive bids for engineering services at any time or in any amount.”

Statement by NSPE Executive Committee

In order to correct misunderstandings which have been indicated in some instances since the issuance of the Supreme Court decision and the entry of the Final Judgment, it is noted that in its decision of April 25, 1978, the Supreme Court of the United States declared: “The Sherman Act does not require competitive bidding.”

It is further noted that as made clear in the Supreme Court decision:
1. Engineers and firms may individually refuse to bid for engineering services.
2. Clients are not required to seek bids for engineering services.
3. Federal, state, and local laws governing procedures to procure engineering services are not affected, and remain in full force and effect.
4. State societies and local chapters are free to actively and aggressively seek legislation for professional selection and negotiation procedures by public agencies.
5. State registration board rules of professional conduct, including rules prohibiting competitive bidding for engineering services, are not affected and remain in full force and effect. State registration boards with authority to adopt rules of professional conduct may adopt rules governing procedures to obtain engineering services.
6. As noted by the Supreme Court, “nothing in the judgment prevents NSPE and its members from attempting to influence governmental action . . .”

Note:
In regard to the question of application of the Code to corporations vis-a-vis real persons, business form or type should not negate nor influence conformance of individuals to the Code. The Code deals with professional services, which services must be performed by real persons. Real persons in turn establish and implement policies within business structures. The Code is clearly written to apply to the Engineer, and it is incumbent on members of NSPE to endeavor to live up to its provisions. This applies to all pertinent sections of the Code.

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