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Unethical Competition?

A consultant agreed to be part of a team assembled to prepare a bid on a proposed job. As part of his participation, he discussed with the team leader the work to be performed on the proposed job and prepared a description of his proposed work on the project. The consultant also decided to independently submit his own bid for the project.

In preparing the competing bid, having agreed to be part of the team effort, did the consultant violate Standard 3.2 and Rule 3.2.1 of the AIPG Code of Ethics? Standard 3.2 of the AIPG Code of Ethics states, "Members should protect, to the fullest possible extent, the interest of an employer or client so far as is consistent with the public health, safety, and welfare and the Member's legal, professional, and ethical obligations." And Rule 3.2.1 states, "A Member shall not use, directly or indirectly, any confidential information obtained from or in the course of performing services for an employer or client in any way which is adverse or detrimental to the interests of the employer or client, except with the prior consent of the employer or client or when disclosure is required by law."

Have you encountered a similar situation? What did you do? What do you think AIPG should do?

Client Reports and Subpoenas

A member received a subpoena to give a deposition in a lawsuit and was asked to provide a copy of a report he had prepared for another client. The last time he'd spoken with the client for whom he'd prepared the report, he was told that the report had "been put on the shelf," and believed, on that basis, that the client was no longer interested in the report. I also should note that the member in question had only a day between receipt of the subpoena and his scheduled deposition. It turned out that the client for whom the report was prepared was not interested in having the report released and, on learning that it had been provided in response to the subpoena, moved to have the report suppressed and all testimony relating to it stricken from the deposition transcript. This result was both embarrassing to, and a real lesson for, the member involved.

Our professional reports are prepared for, paid for, and are therefore owned by our clients despite being our professional

work. Although retention of the final draft of reports is good practice in case the report is questioned in some way, our clients' interest in our reports must be recognized and protected. When a subpoena for a client's report is received, the client should be notified so that the client can assert any rights it chooses. If time is required to assert these rights, reasonable delays in production can usually be arranged.

Anyone with similar experiences is urged to share that experience for the benefit of all of us.

Should this Column Address Ethical and Moral Fundamentals?

A reader who asked to remain anonymous wrote to express his concern about the lack of fundamental ethical and moral education in this country and its affect on the ability of many to critically analyze the discussions in this column and other contributions on professional ethics. The perceived lack of fundamental moral and ethical training is commonly the topic of articles in various magazines and newspapers and discussions on radio and television.

I agree that a proper moral and ethical foundation is required to analyze particular cases. In my book review of *Fundamentals of Ethics for Scientists and Engineers for Geotimes* (May 2001, p. 34), I commented that a lack of an ethical or moral foundation constituted a major deficiency of the book, which was designed as a course text. Column 55 (June '00) contained a review of Bernard Gert's *Morality, its Nature and Justification* (1998, Oxford University Press), which provides an excellent foundation in common morality without specific religious or other societal overtones. (The problem with frequent calls for more attention to the *10 Commandments* are those commandments relating to specific religious beliefs. While most people in the U.S. identify themselves as Jews, Christians, or Muslims, all of whom recognize the *10 Commandments* (albeit with variations in wording and order), there are significant numbers of people with different religious beliefs or who are atheists. These latter groups are not any less moral as groups than are those who profess belief in one of the Abrahamic traditions.) I've referred to Gert's book or concepts from it in various columns.

Examination of most professional ethics codes, AIPG's included, reveals that they are generally organized by the relationship between the professional and other groups: the public's health, safety, and welfare; the employer or client; fellow professionals; employees; students; the profession; etc. While the statements in professional ethics codes do have a moral foundation, the relationship is not necessarily obvious. The common statement advocating honesty in professional ethics codes is perhaps the most obvious inclusion of a general moral principle. Others can be worked out.

The question remains however, is more discussion of fundamental concepts required in this column or somewhere else? Your comments and suggestions are welcomed.

Oregon's Licensing Law Challenged

A University of Oregon professor who does not have an Oregon Professional Geologist's license testified at a public hearing on a proposed sand and gravel quarry. During his testimony, the professor presented his reinterpretation of geologic data presented. Despite the fact that the professor's testimony was offered as that of a private citizen and no one engaged or paid the professor for his interpretation of the data, the Oregon State Board of Geologic Examiners believes the professor was practicing geology that related to the public welfare. The professor was offered a consent settlement in which proposed fines would be waived if the professor agreed not to represent himself as a professional geologist in future public hearings. The professor declined citing his rights of free speech. The case has not yet been resolved. (The information in this paragraph is based on an article by Alice Tallmadge, "Sand, gravel firm files complaint over geology professor," printed in the October 11, 2002 issue of the *Oregonian*, p. B1 and B6, that a colleague forwarded to me.)

This case strikes at the heart of what constitutes geologic practice before the public. The professor presented a professional opinion on geologic data at a public hearing. The professor believes that the fact that he was not paid for his testimony is critical and should provide the basis for exemption from the licensing requirements. I don't know that I agree. I suggest that many of us make professional contributions (papers, speeches, this column, etc.) for which we are not compensated. While one could argue that professors face "publish or perish" pressure and members of geologic surveys and other agencies are expected to make various professional contributions as part of their jobs, that is not true for those employed by private industry. Nor is it true of all contributions by government geoscientists or even some work by professors.

The issue of what constitutes practice before the public in a particular state can be an important question in some cases. But that is apparently not an issue in this Oregon case. Testifying using one's geologic knowledge, skills, and experience to give weight to one's statements at a public hearing clearly constitutes professional practice before the public. This differs from non-professionally based testimony. Had the professor testified that, for example, he was concerned about increased truck traffic in his neighborhood, such testimony would not be professionally based and would not violate a licensing law.

Discussions of this and similar cases and their resolution are welcomed. Do you believe that the issue of compensation is critical to determining whether professional practice occurred?

Proposed Changes in Engineering Licensing

Bill Siok, CPG, called my attention to an article in the November *Engineering Times*, "Ethics Testing for Engineering Licensing" by Michael J. Rabins and Thomas Stout, that notes a decline in the importance of engineering licensing stemming from exemptions from licensing among other reasons. It reports that to bolster the status of the PE license, the American Society of Civil Engineers has proposed a model licensing bill calling for applicants to have a master's degree and changes in the professional exam to focus more on engi-

neering ethics, business practices, codes, and professional standards. Canadian engineering practice is cited as a model for this testing focus. **Graham Closs**, CPG, frequently sends me articles from Canadian engineering journals supporting the relative importance of professional ethics in Canada.

President **Larry Cerrillo**, CPG, has commented on the fact that most engineers only have BS degrees compared with the graduate degrees commonly held by practicing geoscientists as a disparity between geoscience and engineering practitioners and wonders why engineers are given more credibility.

The article focuses most of its attention on testing procedures and whether ethics and other subjects can be handled with a multiple choice exam. It notes that current National Council of Examiners for Engineering and Surveying tests are strictly multiple choice and that the guidelines for questions state, among other things, "that questions must:

- have only one correct answer,
- use simple, direct language and be clear and unambiguous,
- have answers that are mutually exclusive and plausible, such as results of common errors or mistakes, and
- be independent, so that one erroneous answer does not lead to errors for subsequent questions."

The article notes that the advantage of multiple choice exams is ease of grading and objectivity. Grading essay exams requires more analysis and subjectivity. I agree that multiple choice exams have the advantages stated. I also recall one professor in particular whose multiple choice exams were among the most difficult exams I ever took. The distinctions between answers were subtle but critical and required mastery of the material in order to correctly answer the question. Clearly such questions and answers are harder to write but convinced me that a good multiple choice exam was possible.

Having expended a good deal of discussion in this column pointing out that critical changes in fact can affect how one views a particular ethical issue, can I still argue in favor of a multiple choice exam on ethical issues? I believe that I can. It involves careful construction of the question to set out facts so that the critical issues are addressed, thereby leading to a unique answer to the question. Doing so may not be easy but is not impossible.

Comments on this topic are welcomed.

Topical Index to the Professional Ethics and Practices Columns

I have prepared a topical index covering columns 1 through 81 that has been placed on the AIPG web site in the ethics section. The index is in PDF format. The original file is in Microsoft Excel format. If you would prefer the Excel file, send me an e-mail and I'll send it to you. I'll update this index periodically and post the new copy on the AIPG web site. If you have suggestions on organization, please let me know.

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