



2018 NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS MILTON F. LUNCH ETHICS CONTEST

INVITATION

Match your wits and knowledge of engineering ethics with experienced professional engineers and engineering students throughout the country! All current [NSPE individual members](#) through their NSPE state societies and NSPE chapters (including [student chapters](#)) are invited to participate in the 2018 NSPE Milton F. Lunch Ethics Contest.

NSPE state societies and local chapters are encouraged to consider utilizing this contest as a state or chapter activity to encourage member discussion and spur greater interest in engineering ethics.

HOW TO PARTICIPATE

NSPE's Board of Ethical Review is furnishing you with two different fact situations to choose from regarding the ethics of engineers or, **new this year, you can submit your own case!** Please choose any one out of the two situations (or use your own case) and develop an essay, video, photo essay, poster, or PowerPoint presentation which could include embedded videos/sound, etc. to demonstrate your understanding of the facts and the NSPE Code of Ethics.

Contestants are asked to read the facts of the case, then develop a discussion and conclusion to respond to the included question(s). Contestants should also provide references, citing specific sections of the NSPE Code of Ethics for Engineers. A copy of the [NSPE Code](#) is attached for your reference. Contestants may also want to check the NSPE Board of Ethical Review's [Web site](#) for additional cases decided by the BER.

CONTEST RULES

All entries must be received by [Friday, April 27, 2018](#). E-mail or mail entries to:

2018 NSPE Milton F. Lunch Ethics Contest
NSPE Legal Department
1420 King Street
Alexandria, VA 22314
E-mail: legal@nspe.org

This year the winning entry will receive an award of \$2,000 to the author provided by NSPE, a certificate, and recognition in [PE magazine](#).

JUDGING CRITERIA

The judges will use the following criteria:

- Quality of the entry in form and presentation. (Clarity, composition, expression, etc. are important. Your essay, video, photo essay, poster or PowerPoint should be a finished piece and "ready to go.")
- Demonstration of understanding the implications concerning ethical or unethical behavior.
- Comprehensive analysis of the case and arguments supporting your conclusions. (This may include new thoughts or other expressions about engineering ethics and professional practice.)

Good luck, fellow professional engineers and student engineers!

Sincerely,

Francis "Frank" J. Stanton, Jr., P.E., F.NSPE
Chair, NSPE Board of Ethical Review

Milton "Milt" F. 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, and professionalism. He passed away in 2001.

1/25/18

2018
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS
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FACT SITUATIONS

Choose only ONE of the following fact situations to prepare your submission

OR

Submit your own case using the BER Opinion format relating to the topic of unlawful practice of engineering (including unlawful activities both by either professional engineers and those that are not licensed as professional engineers).

FACT SITUATION #1

Employment—Transitioning from One Employer to a Competing Employer

Facts:

Engineer A is a licensed professional engineer in the State X. Engineer A is employed by ABC Engineering. Engineer A's main responsibility at this firm is to manage three clients and their projects. One of the three clients is a major client for the office in which Engineer A works. The approximate annual fees received by ABC Engineering from this significant client is in excess of \$500,000, and Engineer A has been managing the client for more than 15 years.

Engineer A is considering leaving ABC Engineering to work for another local engineering firm, XYZ Engineering, which is a direct competitor of ABC Engineering. If Engineer A joins XYZ Engineering, Engineer A will not be performing the same services as Engineer A does at ABC Engineering. XYZ Engineering is currently performing other services for the major client, however, Engineer A never signed a non-compete agreement with ABC Engineering. Engineer A is not an officer of ABC Engineering and Engineer A will not be an officer of XYZ Engineering. Engineer A is unaware as to whether XYZ Engineering plans to market more of its services from this significant client including services that Engineer A is presently performing for this significant client.

Engineer A would like to depart from ABC Engineering on good terms. If Engineer A decides to leave ABC Engineering and join XYZ Engineering, Engineer A is planning to provide ABC Engineering in excess of two-week's notice, assuming ABC Engineering wants Engineer A to stay for a transitioning.

Question:

Are Engineer A's proposed actions consistent with the NSPE Code of Ethics?

NSPE CODE REFERENCES

To be submitted by the contestant. Use NSPE Code of Ethics references only.

DISCUSSION

To be submitted by the contestant.

CONCLUSIONS

To be submitted by the contestant.

***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 who submitted the entry. NSPE reserves the right to edit any submission to comply with copyright, privacy, and other rights. However, be sure to provide the name, address, email address, phone number, and current NSPE member number of (1) your NSPE chapter or state society, and (2) each of the individuals responsible for submitting the entry, on a separate cover sheet accompanying your entry. Submissions failing to include this information will be returned to submitter and will not be eligible for the contest.*

FACT SITUATION #2

Public Health, Safety and Welfare—Discovery of Structural Defect Affecting Subdivision

Facts:

Engineer A is a professional engineer and a registered architect with extensive design and forensic engineering experience. In performing a forensic engineering investigation for an insurance company, Engineer A is asked to look at a beam that had been burned, as a result of arson in a residence that was at the time of the arson under construction. Following the initial arson investigation, Engineer A learns that the construction contractor determined that the beam could be reused on the project. Engineer A examines the 15-foot long beam and determines that the beam was slightly charred and was located next to a dining room with a 2-story ceiling. On the other side, the beam supported a second-floor bedroom, a wall, and (on both sides of the beam) a significant amount of roof of the residence. Engineer A initially observed that aside from the slight fire damage, the beam looked too light to provide adequate structural support. Engineer A measured the tributary area of roof, floor, and wall bearing on the beam and ran a series of structural calculations. Following his review, Engineer A determined that the beam was seriously under-designed. Engineer A observed that since the house was a tract home, there were other identical designs in the subdivision. Engineer A wrote his report and identified the design defect, and expressed his larger concern regarding the possibility that an inadequate structural member was used in other houses in the subdivision. Engineer A submitted his report to the insurance company that retained Engineer A. Engineer A, still concerned with his obligation to the public beyond just informing the insurance company, called the State Board of Professional Engineers, apprised them of the situation, and asked what more could and should Engineer A do about this situation. The Board's response was that Engineer A had fulfilled his professional obligation by notifying the insurance company, in writing, of the defect.

Question:

Did Engineer A fulfill his ethical obligations by providing the report to the insurance company that retained Engineer A under the NSPE Code of Ethics?

NSPE CODE REFERENCES

To be submitted by the contestant. Use NSPE Code of Ethics references only.

DISCUSSION

To be submitted by the contestant.

CONCLUSIONS

To be submitted by the contestant.

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 who submitted the entry. NSPE reserves the right to edit any submission to comply with copyright, privacy, and other rights. However, be sure to provide the name, address, email address, phone number, and current NSPE member number of (1) your NSPE chapter or state society, and (2) each of the individuals responsible for submitting the entry, on a separate cover sheet accompanying your entry. Submissions failing to include this information will be returned to submitter and will not be eligible for the contest.

FACT SITUATION #3

Submit your own case using the BER Opinion format relating to the topic of unlawful practice of engineering (including unlawful activities both by either professional engineers and those that are not licensed as professional engineers).

FACTS:

To be submitted by the contestant.

QUESTION:

To be submitted by the contestant.

NSPE CODE REFERENCES

To be submitted by the contestant. Use NSPE Code of Ethics references only.

DISCUSSION

To be submitted by the contestant.

CONCLUSIONS

To be submitted by the contestant.

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 who submitted the entry. NSPE reserves the right to edit any submission to comply with copyright, privacy, and other rights. However, be sure to provide the name, address, email address, phone number, and current NSPE member number of (1) your NSPE chapter or state society, and (2) each of the individuals responsible for submitting the entry, on a separate cover sheet accompanying your entry. Submissions failing to include this information will be returned to submitter and will not be eligible for the contest.

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. Engineers' judgment is overruled under 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 the unlawful practice of engineering by a person or firm.
 - f. Engineers having knowledge of any alleged violation of this Code shall report thereon to appropriate professional bodies and, when relevant, also to public authorities, and cooperate with the proper authorities in furnishing such information or assistance as may be required.
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 be reasonably 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 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 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 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 development¹ in order to protect the environment for future generations.

3. Engineers shall avoid in conduct of 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. Inconsistent with the foregoing, engineers may advertise for recruitment of personnel.
 - c. Inconsistent 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 of technical processes they present to former client or employer, or public body to 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 special profit for which the engineer has gained particular and special knowledge.
 - b. Engineers shall not, without the consent of all interested parties, participate in or represent an adversary interest in connection with a special profit or proceeding in which the engineer has gained particular special 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.
- Engineers shall accept personal responsibility for their professional activities, provided, however, that engineers may be indemnified 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.
- 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.
- Note 1 "Sustainable development" is the challenge of meeting human needs for natural resources, industrial products, energy, food, transportation, shelter, and effective waste management while conserving and protecting environmental quality and the natural resource base essential for future development.

"The order of the United States District Court for the District of Columbia, former Section 11 of the 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 Code of Ethics, policy statements, opinions, rulings or 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 11, 1997, 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 see 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 the and its members from attempting to influence governmental action . . ."

With 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.