

Ethics: Issues When Replacing/Superseding a Consulting Engineer

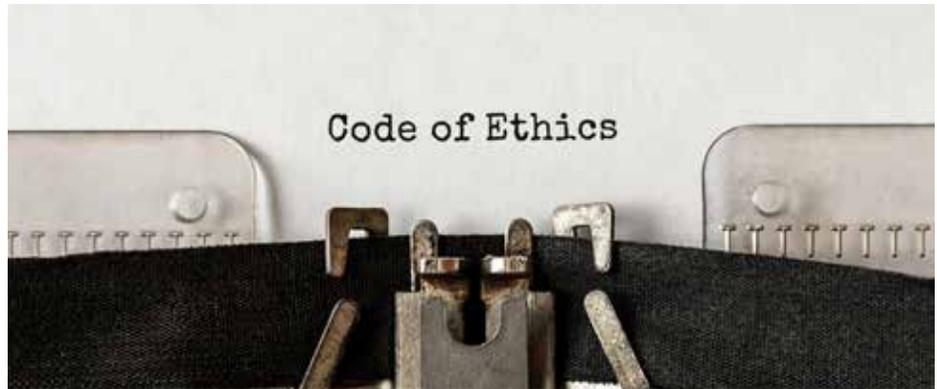
By Neil Wexler, Ph.D., P.E.

In consulting engineering practice, structural engineers face new ethical issues from time to time. One such occurrence happened recently when our firm was asked to take over a project started by another engineer. Unfortunately, taking over a project started by another engineer has legal and ethical implications, and my research found little written material on the subject.

A client may assign a project to a new consulting structural engineer for various reasons, including – expertise, manpower, production schedules, and project costs. There are also options for different engineers cooperating on a project, and engineers often prefer these options, but clients do not always agree. Therefore, how to replace/supersede an engineer who has been working on a project for some time while being ethical is uncharted territory for many and is discussed herein. Replacing or superseding an engineer also has legal implications, but they are not part of this writing.

Engineering Ethics is a field of moral principles; it sets the moral obligations of engineers to society, clients, peers, and their profession. It closely relates to philosophy, science, technology, history, and the humanities. The Code of Ethics for engineers is formulated by Boards of Ethics affiliated with professional organizations such as the *National Council of Structural Engineering Associations* (NCSEA), the *National Society of Professional Engineers* (NSPE), and the *American Society of Civil Engineers* (ASCE), etc. Ethics is being taught in engineering schools, yet some question the need, claiming that acting ethically is a moral obligation of every engineer and that ethical behavior is deeply engrained in the engineer's humane upbringing and cannot be learned. However, the competition of free markets sometimes places engineers on opposite sides and with contradictory interests, giving rise to moral and ethical dilemmas.

When an engineer is replaced/superseded, a perception is created about the engineer's abilities, competence, experience, etc. Therefore, for some engineers, being replaced/superseded is undesirable regardless of the stage of the contract or design. For some, it is a matter of pride and reputation; it is also a financial matter and a matter of



the assigned personnel and their morale. It is a matter of sound practice for some to stay on the job until the end. A project begun is a project completed, say some. Avoiding a project from the beginning is better than starting and abandoning it.

It is critical to ensure that replacing/superseding is properly executed ethically. But before ethical issues can be addressed, the following definitions need to be explained.

Code of Ethics

All engineering codes of ethics subscribe to a code of conduct that prescribes principles of public safety and honor, life, law, and the environment. But specifically, some codes state the following:

- Do not accept any engagement to review the work of another professional engineer for the same client except with that engineer's knowledge or where the connection of that engineer with the work has been previously terminated.
- Do not maliciously injure the reputation or business of another professional engineer.
- Do not attempt to gain an advantage over other members of the profession.
- Give proper credit for engineering work, and uphold the principle of adequate compensation for engineering work.

In summary, do unto others as you would have others do unto you—has been paramount in human behavior thru centuries, even millennia. It is also at the core of the engineering code of ethics. Therefore, this mantra must be respected when replacing or superseding an engineer on a project.

Entities

It is essential to understand that the engineer and the project (as considered herein) are *different* entities. The engineer is retained to help deliver a project by providing engineering services. The project has at least two parts (and possibly more). Part 1 includes the preparation of documents and specifications, calculations, etc., and Part 2 includes construction administration. Because the engineer and the project are different entities, part of the project may or may not be replaced by the owner; that is, an owner may consider replacing/superseding the engineer, but the owner may keep the project thus far advanced. When considering replacing or superseding, the decision is often affected by the stage of the project and how advanced the project is.

Engineer-of-Record

Among the various available definitions, the following was selected for this article: a professional engineer licensed in a respective state who is appointed by the owner and acceptable to the city; acting reasonably as the engineer responsible for the preparation, sign, seal, date, and issue (or file) documents related to design and construction.

Therefore, an engineer preparing designs becomes the engineer-of-record after signing, sealing, dating, and issuing (or filing) the documents. Before that, the engineer is not the engineer-of-record. When considering replace/supersede, it matters if the engineer is or is not the engineer-of-record.

Replacing/Superseding

Replacing and Superseding, as used herein, have different meanings. When an engineer is



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replaced with a new engineer, the old project is abandoned, and the new engineer produces a new project from the start. When an engineer is superseded, the old project remains, and the new engineer assumes it or its parts from where it is at the time of the change until its conclusion. When a project is in early development, an engineer can be replaced. When the project is well advanced, can the engineer be replaced? If he is superseded, the new engineer assumes responsibility for prior engineering designs, presumably with new calculations, drawings, etc. Thus the decision to supersede includes keeping the project as far as it has advanced and continuing it to its conclusion.

Discussion

It is a momentous decision for an owner to replace/supersede an engineer; this should be done with serious considerations and analysis to benefit the project.

The introduction and definitions of ethical requirements for replacing/superseding are discussed above. However, the case of replacing/superseding an existing engineer raises ethical and legal issues for consulting engineers. It is a client's option to replace or supersede an existing engineer with another. But engineers have the ethical duty to transition appropriately.

Generally, the following scenarios are common: the current engineer is notified of the client's intentions. Then the engineer is asked to conclude contract obligations on the project, stop work and submit all applicable invoices to date. The engineer is also asked to submit a statement of no-objection to be replaced/superseded by another engineer.

As mentioned, the engineer and the project are different entities and should be treated differently. If the project stage dictates replacing or superseding, then the procedure for replacing differs from the procedure required for superseding. Replacing can be done at any time because the project is also

replaced. However, replacement is no longer an option if the project is advanced and superseding is required. When superseding, the project remains and the superseding engineer continues it. When superseding, the following actions are recommended for the superseding engineer:

- 1) Always communicate with the client properly and truthfully. The client should be informed early of your ethical responsibilities to your fellow peers and the proper ethical path needed for superseding an engineer.
- 2) Do not opine on an existing project except after receiving affirmation from the current engineer.
- 3) Obtain a release from the current engineer, preferably in writing. Confirm that the engineer has been paid and that there are no unresolved contractual obligations.
- 4) As an engineer-of-record, designs and drawings must be developed under your supervision. Therefore, create or recreate drawings and calculations as needed.
- 5) Building Department filing needs to supersede prior filings, as needed.

Questions of drawings ownership and design rights are legal issues to be answered by legal departments. Additionally, circumstances may dictate variations that can affect all parties. Still, the emphasis herein is on the replacing/superseding engineer. All involved are responsible for making the transition ethically proper and communicating truthfully throughout the transition while maintaining the professional integrity of all parties. It is best to stay on the sidelines when in doubt and not compromise ethically.

Conclusions

Replacing or superseding an engineer on an ongoing project is difficult; for the transition to occur flawlessly, ethical and legal issues must be confronted and dealt with

professionally. The ethical duty to ensure a proper transition falls on all parties, but the replacing/superseding engineer must highlight the proper ethical transition method. You can find a list of the ethical requirements to be adhered to in the codes of ethics sponsored by various engineering organizations.

Code of Ethics – Quotations

- 1) NCSEA – National Council of Structural Engineers Associations
 - i. Give proper credit for structural engineering work to those contributing and recognize the propriety interests of others.
 - ii. Avoid procuring, copying, or otherwise using computer files, software, or intellectual property without the consent of the product or property owner.
- 2) ASCE – American Society of Civil Engineers
 - i. Engineers shall build their professional reputation on the merit of their services and shall not compete unfairly with others.
 - ii. Engineers shall act in such a manner as to enhance the honor, integrity, and dignity of the engineering profession.
- 3) NSPE – National Society of Professional Engineers
 - i. Engineers shall not promote their own interests at the expense of the dignity and integrity of the profession.
 - ii. Engineers shall not attempt to obtain employment or advancement or professional engagements by untruthfully criticizing other engineers or by other improper or questionable methods.
 - iii. 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.
 - iv. Engineers shall give credit for engineering work to those to whom credit is due and will recognize the propriety interests of others.■

A similar article will run in an upcoming SEAoNY publication.



Neil Wexler is President and Chief Structural Engineer, Wexler Associates, New York City.