

Arthur E. Schwartz's Commentary on "Obligation to Client or Employer?"

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In my opinion, Joe Engineer clearly has an ongoing obligation to honor his obligations both to his former employer and the private client. Joe Engineer cannot disclose, participate or represent the state's interest in connection with this proceeding unless Joe Engineer first obtains the permission/consent of Joe Engineer's former private firm employer and also the client. In light of the facts and circumstances, it is doubtful that such permission/consent would be granted by either party. By refraining from becoming involved in this matter for the state, Joe Engineer is not "representing the client" (as the facts suggest) or providing any services to the client. Joe Engineer is merely remaining silent.

The NSPE Code of Ethics (and the codes of other engineering societies) make it clear that "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." The Code also states that "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."

Joe Engineer should be assigned other duties by the state remain isolated from the State's water rights case involving Joe Engineer's former employer and its client -- and the state should recognize and respect Joe Engineer's ethical obligations in this matter. Any involvement by Joe Engineer in the state's case could potentially compromise the interests of all parties - the former employer, the private client, and the state - as Joe Engineer's dual role and his professional opinion/judgment - as an employee of the private firm and now as a state employee -- could be called into question -- by one of the parties, the public, the media, etc.