

"Why A State P.E. Board Should Enter an Amicus Curiae Brief in a 'Wrongful Discharge' Case" Working Draft

**Walter L. Elden,
P.E. (Retired) IEEE Life Senior Member IEEE Member Conduct
and Ethics Committees**

w.elden@ieee.org

Synopsis

This paper presents a strong argument as to why, in cases where a terminated licensed Professional Engineer alleges 'wrongful discharge' in a suit against a former employer, his/her State or National P.E. Licensed Board should enter an Amicus Curiae (Friend of the Court) legal brief in the case. The basic premise is the obligation of the P.E. Board to 'protect the public', and not necessarily the P.E. directly. The author shows, however, that by a P.E. Board taking such Pro Active legal action, the result is the protection of the proper practice of engineering, thus 'protecting the public', with an indirect benefit to the P.E.

Wrongful Discharge for Upholding Code of Ethics

The IEEE Member Conduct and Ethics Committees are seeing increasing requests from IEEE members for 'ethical support' by having the MCC recommending to the IEEE Executive Committee that IEEE should enter an Amicus Curiae in suits the engineer has brought against a former employer, for alleged 'wrongful discharge'. This termination generally has resulted from the engineer engaging in actions aimed at 'protecting the public' from the improper application of engineering design or technology, by following his/her professional society's Code of Ethics. Some of these members are also licensed Professional Engineers, having been licensed by his/her public Board of P.E. Regulation to 'protect the public' from the improper practice of engineering.

IEEE Ethical Support and Amicus Curiae Policies

The IEEE, under By-Law 112, has had a policy for nearly 20 years to offer 'ethical support' in situations as described above. Further, as part of this policy, the IEEE provides for the providing of an 'Amicus Curiae', restricting it to matters of ethical principal, in ethical support requests. Policy 7.13 provides for the preparation of the Amicus Curiae, when approved by the IEEE.

In January 1975, the IEEE entered its first and only Amicus Curiae, in a 'wrongful discharge' ethics matter, in the Bay Area Rapid Transit (BART) case. This involved 3 IEEE engineers, who brought suit against the BART District entity for their 'wrongful discharge' for actions they took to 'protect the public' in matters of engineering design of the automated train control system. Essentially, the IEEE legal brief made these statements of law to the court, in this case:

"In any charge to the jury herein, this court should instruct the jury that if it finds, based upon the evidence, that an engineer has been discharged solely or in substantial part because of his bona fide efforts to conform to recognized ethics of his profession involving his duty to protect the public safety, then such discharge was in breach of an implied term of his contract of employment."

The IEEE brief said that not only should this apply to Public employment bodies, but to private employers too.

What About National/State P.E. Licensing Boards?

Above, we have seen where the IEEE, as a leading international engineering professional society, has had as its policy for the past nearly 20 years, to offer 'ethical support' and an 'Amicus Curiae' to engineers who request it in alleged 'wrongful discharge' court cases. It was shown that in 1975, the IEEE did in fact enter one in the BART case. Now, what about National/State P.E. Licensing Boards? What is their policy and history in similar cases to offer Amicus Curiae legal briefs in suits brought by their P.E.s to correct 'wrongful discharge' treatment?

The author recently conducted a survey of all State P.E. Boards in the USA which had E-Mail addresses listed for them, asking if they had ever had been requested to or actually did enter an Amicus Curiae in alleged 'wrongful discharge' cases, involving licensed P.E.s. Many replies were received from these contacted P.E. Boards. Of those who responded, there was not one which had ever entered an Amicus Curiae in such cases. Several contacted their State Attorney General's office to have research done to find out the answer to this question.

One reply was found to be of particular interest to the author. This P.E. Board official who responded offered that in their opinion, 'it was not the purpose of the State P.E. Board to protect the P.E. but rather to 'protect the public'', and therefore, it did not deem it appropriate for them to enter an Amicus Curiae in such cases brought by the P.E. licensed by their Board.

After giving this considerable thought, the author responded with the following argument:

The State P.E. Board licenses an engineer as a P.E. to 'protect the public'. The P.E. is held legally accountable to know the P.E. law, its Code of Professional Conduct, and to practice in accordance with such Code, to 'protect the public'. Further, if the P.E.'s actions happen to result in being in conflict with the P.E. law or its Code of Professional Conduct, the State may bring charges against the P.E. and discipline him/her. This is done for the sole purpose of 'protecting the public' from the improper practice of engineering.

Now, when a circumstance occurs when a P.E. is terminated from employment (alleged 'wrongful discharge') for practicing in accordance with his/her State P.E. law or Code of Professional Conduct, and brings suit against the former employer, why shouldn't the State P.E. Board enter an Amicus Curiae legal brief in this case, to advise the court that such actions of the P.E. as alleged, if provable, were done for the purpose of 'protecting the public' and as such, the proper and ethical practice of engineering by a P.E. should be afforded the protection of the law, in order that the proper practice of engineering be enforced, to 'protect the public'. The reasoning here is the view that by protecting the

proper practice of engineering by a licensed P.E., this action would result directly in the State P.E. Board and the court acting to 'protecting the public'. It is true, that by taking such protective actions, the court and the P.E. Board's actions may benefit the P.E. in a favorable outcome of his/her suit. But this would not be the primary reason for the P.E. Board or the court to take such action.

After this argument was conveyed to the State P.E. Board official, the author, as yet, has not received a reply to this argument.

Conclusion

While the IEEE has had for nearly 20 years a policy to enter an 'Amicus Curiae' in alleged 'wrongful discharge' cases, the current practice of State P.E. Licensing Boards in the USA appears not to be the same. By entering such legal briefs in this type of case, however, it has been argued by the author that this would in fact result in the P.E. Board and the court acting to uphold the proper practice of engineering, and thus 'protecting the public'. The end result here is that National and State P.E. Licensing Boards ought to rethink their practice in this area and move towards a more 'pro active' position of applying legal protections to the practice of engineering, thus achieving the sole purpose for such regulatory Boards, that being to 'protect the public'.