

Curtailling ethical harassment

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Nearly all engineering and scientific codes of ethics proclaim that the overriding ethical obligation of a professional is to protect the public's safety, welfare and environment. The degree to which an engineer/scientist is capable of exercising this obligation will determine how close is the individual to attaining standing in society as a true "professional." I believe, based upon my personal professional experience of over 37 years in industry, that this goal has not been achieved and that an insidious practice of "ethical harassment" has existed for a long time.



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Most engineering professionals practice through an employer, such as a corporation, university or research laboratory. Usually, having no written contract, they are subject to what is called the "employment-at-will doctrine." Under this arrangement, at times the ethical principles of the professional clash with the employer's short-term business objectives. When this occurs, and the employer applies direct or indirect pressure (intimidation or outright coercion) upon the employee to deviate from his or her ethical principles so as to align with the intentions of the employer, this is one form of "ethical harassment." Other instances might involve issues of upholding public policy, financial honesty, giving proper credit for engineering work, environmental matters, etc. When such an issue or situation cannot be settled to the satisfaction of the employer, the result generally is the firing of the professional. Not many engineers pressured by managers to behave unethically are likely to find a co-worker with the fortitude and ability to intervene on their behalf.

REMEDIES. What should the courts, the IEEE, the profession and the practitioner do to prevent this from happening? In matters where litigation is not involved, the IEEE is empowered to provide several forms of support to its members. For example, the IEEE might attempt mediation with the employer and might use the powerful tool of publicity

via carefully written published reports.

When a matter does go to court, are there any legal or professional remedies one may turn to? In 1975 the IEEE took an historic step of establishing a legal precedent when it entered an *amicus curiae* (friend of the court) brief in the Bay Area Rapid Transit (BART) case in San Francisco. This involved a suit brought against the BART District by three engineers who had been fired for calling attention to unsafe aspects of the BART system design. These engineers were employed by a public entity and were engaged under the employment-at-will doctrine.

The IEEE *amicus curiae* legal brief presented these points to the court:

"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."

PRECEDENT. While the BART case was settled out of court, without the benefit of the judge making rulings or a jury rendering a decision, what the IEEE said to the court broke ethical practice silence in this area and set an IEEE precedent. Subsequently, many state courts have accepted the principles of the BART brief and ruled along its lines (and some have gone further by permitting tort actions).

In any matter of ethical harassment carried to a court case, the IEEE should exercise leadership for the profession by considering submitting an updated *amicus curiae* brief. Such action is authorized by IEEE Bylaw 112, Part 4.

It is my hope that a vigorous IEEE ethics support program will deter the practice of ethical harassment. However, if one is in need of support in any ethical harassment situation, they should contact the IEEE and request assistance. The IEEE Bylaws and Policy and Procedures documents spell out the proper procedures.

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