



Failure To Demonstrate a Consistent Pattern of Reasonable Care and Competence and Technical Knowledge and Skill

Summary

The National Ethics Council (“Council” or “NEC”) ruled that an AIA Member violated Rule 1.101 of the Institute’s 2004 Code of Ethics and Professional Conduct (“Code of Ethics”) by showing a consistent pattern of lack of care, lack of technical knowledge and skill, and lack of professionalism while providing architectural services for an addition to a home. The NEC imposed the penalty of censure on the Member.

All initials, names, dates, places, and gender references in this decision have been changed.

References

2004 Code of Ethics and Professional Conduct, Canon I, General Obligations

Rule 1.101 In practicing architecture, Members shall demonstrate a consistent pattern of reasonable care and competence, and shall apply the technical knowledge and skill which is ordinarily applied by architects of good standing practicing in the same locality.

Commentary: By requiring a “consistent pattern” of adherence to the common law standard of competence, this rule allows for discipline of a Member who more than infrequently does not achieve that standard. Isolated instances of minor lapses would not provide the basis for discipline.

Rule 1.401 Members shall not discriminate in their professional activities on the basis of race, religion, gender, national origin, age, disability, or sexual orientation.

Findings of Fact

The Parties

The Complainant is a private citizen who hired the Respondent and the architectural firm owned by the Respondent. The Respondent is an architect providing architectural services through his firm.

The Zoning Variances

In June 2005, the Complainant obtained zoning variances from the City to construct a deck and addition to his residence. The 50-foot setbacks from a lake that border the rear yard were reduced to 42 feet to the deck and 43 feet to the enclosed addition. The variances that would be required were determined by the Complainant’s contractor and were approved after the zoning board members visited the property.

The Contract

In May 2006, the Complainant contacted the Respondent about providing architectural services for the project, and the parties met at the site that month. The Respondent followed up by submitting a written proposal dated the following day that the Complainant signed in early June. Under the parties’ agreement, the Respondent’s firm was to provide architectural services on a two-story addition and deck on the



Complainant's home in the City. The services included "final drawings . . . consisting of: Floor plans, Elevations, Site Plan sketch showing addition fits within setbacks only. . . ."

The Drawings

When they initially met, the Complainant provided the Respondent the zoning variance and a copy of the survey completed several years before when the Complainant bought the property. The Complainant also gave the Respondent the original site plan that had been submitted to the City and that showed the new setbacks, but the Respondent lost that document. The Respondent claims that he did not receive the variance at that time but that he obtained it later from the City when he went to the building official to discuss the setback.

The Respondent completed working drawings dated June 18, 2006 for the project. No revisions or revision dates are noted on the drawings, so it is difficult to conclude what changes, if any, were made during the design process. Near the end of July 2006, the Respondent delivered to the Complainant the completed plans. The Complainant immediately saw that the drawings were incorrect in various ways, such as showing the existing patio in "completely the wrong shape and design."

The day after receiving the plans, the Complainant faxed a letter to the Respondent expressing dissatisfaction and giving him three days to deliver the correct plans. By that deadline, the Respondent delivered revised plans to the Complainant, and together they reviewed these drawings. The Complainant again noticed that the deck design was different from what the Complainant wanted and the City had approved. The Respondent replied that "the City doesn't care about that" and, if they wanted him to change it, he would change it. Upon repeated questioning, the Respondent assured the Complainant that the plans would be acceptable to the City.

In early August, the Complainant went to the City's offices and learned from the City that:

- the plans must be submitted exactly as the variance had been approved,
- the variance had expired,
- the Complainant forfeited the money he had paid in escrow funds, and
- reapplication for a variance must start at the beginning.

The Complainant called the Respondent to advise him that the plans did not meet the City's requirements and was told:

You don't know how to listen. You must be from another country. You can take those drawings and your \$1,900 and stick them up your ass. I've been in business 42 years and you're the worst customer I've ever had.

The Respondent contends that he "went to the zoning woman" and "got the resolution" of the matter.

In mid-August, the Respondent sent the Complainant a letter, including the Variance Application Summary, which shows an August 2006 date. This shows that the Respondent had the Variance in his possession, where Resolution 24-2005 noted the granting of "rear yard and wetlands setback variances for additions to an existing residential dwelling" of a proposed 42' setback for the deck and 43' setback for the new addition. The attached site plan shows the 42' and 43' setbacks.

Then, in early October 2006, the Respondent sent a letter to the Complainant stating the rear yard setback was 20 feet.



Conclusions

Burden of Proof

According to Section 5.13 of the Council's Rules of Procedure, the Complainant has the burden of proving the facts upon which a violation may be found. In the event the Complainant's evidence regarding a referenced Rule does not establish a violation, the Complaint is dismissed with respect to that Rule. (*See NEC Rules of Procedure, Section 5.13.*)

Rule 1.101

Rule 1.101 of the Code of Ethics states:

In practicing architecture, Members shall demonstrate a consistent pattern of reasonable care and competence, and shall apply the technical knowledge and skill which is ordinarily applied by architects of good standing practicing in the same locality.

The commentary to this Rule states:

By requiring a "consistent pattern" of adherence to the common law standard of competence, this rule allows for discipline of a Member who more than infrequently does not achieve that standard. Isolated instances of minor lapses would not provide the basis for discipline.

The Complainant claims that the Respondent violated Rule 1.101 by losing the drawing showing the allowed setbacks, by insisting that drawings be submitted for a building permit without showing the setbacks or their effect on the design, and by repeatedly delivering drawings late. The Council agrees that this conduct by the Respondent violated the standards set by Rule 1.101.

The National Ethics Council concludes that the Respondent violated Rule 1.101 by showing a

consistent pattern of lack of care, technical knowledge and skill, and professionalism.

Rule 1.401

Rule 1.401 of the Code of Ethics states:

Members shall not discriminate in their professional activities on the basis of race, religion, gender, national origin, age, disability, or sexual orientation.

There is no commentary to this Rule.

The Complainant contends that the Respondent violated this Rule by discriminating on the basis of national origin when the Respondent told the Complainant that:

You don't know how to listen. You must be from another country. You can take those drawings and your \$1,900 and stick them up your ass. I've been in business 42 years and you're the worst customer I've ever had.

No previous decisions published by the NEC provide direct guidance in the deliberation of this alleged violation. Previous cases have considered other forms of discrimination, but none have been based on national origin.

In Decision 2001-20, the National Ethics Council looked to federal and state law for guidance on the type of conduct that constitutes discrimination based on gender. The NEC believes it is also appropriate to look to federal law in this case to determine what constitutes discrimination based on national origin.

As a general matter, federal laws prohibit discrimination based on a person's race, gender, religion, disability, familial status, or national origin. Laws prohibiting national origin discrimination make it illegal to discriminate because of a person's birthplace, ancestry, culture, or language. What this means is that individuals cannot be denied equal opportunity because they (or



their family) are from another country, have a name or language (or speak with an accent) associated with a particular ethnic group, have customs or manners associated with an ethnic group, or are married to or socialize or associate with people of a certain ethnicity.

A finding of discrimination requires that someone has been treated less favorably based solely on unlawful discrimination. Generally speaking, for an ethnically derogatory statement to be direct or circumstantial evidence of discrimination, the statement must be made in the context of an act or decision that prevents or hinders someone from enjoying certain rights or privileges or from obtaining or being offered equal opportunity to goods or services.

In this ethics case, the Complainant has not shown that the Respondent discriminated based on national origin. There is no indication that the Respondent denied the Complainant any benefits of their contract because the Complainant was from another country. Unlike ethnic slurs, a statement describing someone as being “from another country” is not by itself a derogatory statement. While the Respondent’s remarks that included a reference to the Complainant’s country of origin may have been insensitive and even inflammatory, they do not rise to the level of discrimination.

The National Ethics Council concludes that the Complainant did not prove that the Respondent violated Rule 1.401.

Penalty

Having found a violation of Rule 1.101 of the Code of Ethics by the Respondent, the National Ethics Council must impose an appropriate penalty.

Based on the sufficiently serious violation by the Respondent in this case, the National Ethics Council imposes the penalty of censure.

Members of the National Ethics Council

Bill D. Smith, FAIA, NEC Chair
Victoria Beach, AIA
Janet Donelson, FAIA
A.J. Gersich, AIA
Michael L. Prifti, FAIA
Kathryn T. Prigmore, FAIA

The Hearing Officer, Melinda Pearson, FAIA, did not participate in the decision of this case, as provided in the Rules of Procedure.

March 20, 2009