



Inaccurate Statement of Scope and Nature of Responsibilities in Connection with Work; Failure To Give Appropriate Credit

Summary

The National Ethics Council (“Council” or “NEC”) ruled that an AIA Member violated Rule 4.201 and Rule 5.301 of the Institute’s 2004 Code of Ethics and Professional Conduct (“Code of Ethics”) by listing on his firm’s Web site another of his firm’s architects as project manager for a project for which the Complainant had been the project manager. The NEC found no violation of Rule 4.201 or Rule 5.301 by three other AIA Members who were also architects in the firm.

The NEC imposed the penalty of admonition on the Member.

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

References

2007 Code of Ethics and Professional Conduct, Canon IV, Obligations to the Profession

Rule 4.201 Members shall not make misleading, deceptive, or false statements or claims about their professional qualifications, experience, or performance and shall accurately state the scope and nature of their responsibilities in connection with work for which they are claiming credit.

Commentary: This rule is meant to prevent Members from claiming or implying credit for work which they did not do, misleading others, and

denying other participants in a project their proper share of credit.

2007 Code of Ethics and Professional Conduct, Canon V, Obligations to Colleagues

Rule 5.301 Members shall recognize and respect the professional contributions of their employees, employers, professional colleagues, and business associates.

The Parties

The Complainant is an architect licensed to practice in the State and a former employee of the firm Residential Architects (the “Firm”).

Each of the four Respondents is licensed to practice architecture in the State. Respondent A, Respondent B, and Respondent C are principals of the Firm. Respondent D is an employee of the Firm.

The Complaint

The Complainant alleges that the Respondents violated Rule 4.201 of the Code:

- by allowing several pages of the Firm’s Web site to inaccurately depict roles of the Respondents on various projects of the Firm and
- by providing inaccurate information to third parties for publication or allowing them to publish inaccurate depictions of the Respondents’ roles on various projects of the Firm.



The Complainant alleges that Respondents violated Rule 5.301 of the Code by failing to recognize and respect his professional contributions:

- by failing to include the Complainant's name on the Firm's Web pages that showed various projects he had worked on and
- by misrepresenting Respondent B as the project manager on a particular project of the Firm for which the Complainant had served as project manager.

In his Complaint, the Complainant alleges that such activities occurred starting at some date unknown and continued to the time of the Complaint. Shortly after receiving the Complaint, the Firm changed the Web site to remove the names of individuals in project credits.

Findings of Fact

The Complainant had been an employee and, later, a principal of the Firm. The Complainant resigned from the Firm in order to start his own architectural firm, Hometown Architects, in August 2006. He informed the Firm in June 2006 of his upcoming departure.

The Complainant continued working for the Firm on a consulting basis for approximately 18 months after his employment with the Firm ended. This consulting relationship ended in approximately May 2008, at which time the Complainant first became aware of the details of the Firm's project Web pages. The Complainant testified that, at that time, he contacted Respondent A by telephone and expressed his concerns about the Firm's Web pages.

The Respondents are architect members of the AIA and perform in the roles of principals and managers of the Firm. Respondent A is the founder of the Firm

Respondents' Request for Dismissal

In their response to the complaint and their pre-hearing exchange documents, the Respondents request dismissal of the complaint based upon lack of timeliness pursuant to Section 3.1 of the NEC Rules of Procedure. Section 3.1 provides for a complaint to be filed within one year of the alleged violation unless good cause for delay is shown. Respondents argue that the Firm's Web site had been in its May 2008 condition more than one year prior to the date of the complaint and that Complainant has not shown good cause for the delay.

In response to questioning at the hearing, the Complainant testified that he first became aware of the project Web pages containing inaccuracies and omissions in May 2008. Prior to June 2006, the Firm's Web site was maintained by Respondent D; since then it has been maintained by another employee. The Respondents were unable to provide evidence that the Complainant had seen the Firm's disputed Web pages prior to August 2007, that is, more than a year prior to the date the complaint was filed. As a result, the National Ethics Council concludes that the Respondents' request for dismissal based on lack of timeliness should be denied.

Conclusions

Burden of Proof

Under Section 5.13 of the NEC 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 does not establish a violation, the Complaint is dismissed.

Rule 4.201

Rule 4.201 states:

Members shall not make misleading, deceptive, or false statements or claims



about their professional qualifications, experience, or performance and shall accurately state the scope and nature of their responsibilities in connection with work for which they are claiming credit.

Commentary: This rule is meant to prevent Members from claiming or implying credit for work which they did not do, misleading others, and denying other participants in a project their proper share of credit.

The Respondents denied all of the Complainant's allegations in the complaint with respect to making misleading, deceptive, or false statements, with the exception of admitting an inadvertent inaccuracy in listing Respondent B as the project manager of the Residence 1.

Respondent D: The Complainant's allegations are based on descriptions of this respondent's role on Residence 2 on the Firm's Web site and in two magazine articles. The Firm's Web site also listed Respondent D as the project manager for Residence 3 and Residence 4. At the hearing, Respondent D testified about his role on these projects and about the interviews he gave for the articles. The NEC finds no evidence that the Firm's descriptions of Respondent D as a "Project Manager" on the cited projects was inaccurate. Accordingly, the Complainant failed to demonstrate that Respondent D made misleading, deceptive, or false statements or claims about his experience or performance on Residence 2 or on the other referenced projects. Further, the Complainant failed to demonstrate that Respondent D inaccurately stated the scope and nature of his responsibilities on Residence 2 when he was interviewed for the magazine articles. The National Ethics Council concludes that this alleged violation should be dismissed.

Respondent A: The Complainant's allegations against Respondent A under Rule 4.201 are based, in part, on descriptions of his role described on the Firm's project Web pages and in information published by others about Firm pro-

jects. At the hearing, Respondent A testified about his typical role on Firm projects, including working with the "team through design, design development, and contract documents." Other witnesses also testified about his active participation in project work. The NEC concludes that the Complainant failed to demonstrate that Respondent A made misleading, deceptive, or false statements or claims about his own experience or performance, and the Complainant further failed to demonstrate that Respondent A inaccurately stated the scope and nature of his own responsibilities in connection with work for which he was claiming credit. The National Ethics Council concludes that this alleged violation should be dismissed with respect to statements about his own individual experience.

The Complainant's allegations against Respondent A under Rule 4.201 are also based on his responsibility for his Firm's Web site as it appeared in May 2008. The NEC has previously explained that a firm's principal who is responsible for the review, approval, and distribution of inaccurate marketing and promotional material may be held accountable under the Code of Ethics. (*See NEC Decision 2004-10.*) As the Firm's founder and senior principal, Respondent A testified at the hearing that he was not aware of the detailed content of the Firm's Web pages in early 2008. He testified that, for the past three or four years, he was the supervisor of the Firm's marketing staff employee who has had responsibility since 2006 for the form and content of the Firm's Web site. Respondent A acknowledged at the hearing that he was ultimately responsible for the Firm's Web site. Respondent A has admitted that listing Respondent B as project manager for Residence 1 was incorrect. The National Ethics Council concludes that Respondent A, in his capacity as senior principal and supervisor, made a false or inaccurate statement regarding Respondent B's experience and the scope and nature of his responsibilities on that project. Whether or not incorrectly listing Respondent B on that particular project was inadvertent, it apparently resulted from an inappropriate practice to identify



only one current employee of the Firm with each project. The National Ethics Council therefore concludes that Respondent A has violated Rule 4.201.

Respondent B: The Complainant's allegations are based on the Firm Web page listing Respondent B as project manager for Residence 1. The Respondents have admitted that this listing was incorrect and removed it. The NEC notes that, prior to May 2008, none of the Firm's principals (including the Complainant) was aware of the inadvertent listing of Respondent B as the project manager for this project. The NEC concludes that the Complainant failed to demonstrate that Respondent B made misleading, deceptive or false statements or claims about his experience or performance on, in particular, Residence 1 or on any other referenced project. The National Ethics Council concludes that this alleged violation should be dismissed.

Respondent C: The Complainant's allegations are based on the description of Respondent C's role described on the Firm's Web pages for Residence 5. At the hearing, Respondent C described his work on the project. He testified that he was involved in additional work on Residence 5 several years after its initial construction. The NEC concludes that the Complainant failed to demonstrate that Respondent C made misleading, deceptive or false statements or claims about his experience or performance on Residence 5. The National Ethics Council concludes that this alleged violation should be dismissed.

Rule 5.301

Rule 5.301 states:

Members shall recognize and respect the professional contributions of their employees, employers, professional colleagues, and business associates.

No commentary to this rule is contained in the Code.

Respondent D: The Complaint alleges that the Firm's Web site did not credit the Complainant's role on various projects although other individuals with the Firm were given credit, and that Respondent D was responsible for updating the Firm's Web site at the time the Complainant resigned from the Firm. The evidence presented indicates that the responsibilities of Respondent D for the Web site ended at about the same time that the Complainant left the firm, and no evidence was presented to show that Respondent D was responsible for any of the disputed project credits on the Web site. As a result, the Complainant did not demonstrate that Respondent D failed to recognize and respect the professional contributions of the Complainant. The National Ethics Council concludes that this alleged violation should be dismissed.

Respondent A: As described in the analysis of Rule 4.201, Respondent A was responsible for the content of his Firm's Web site. The Complainant has demonstrated that he had a significant role in several of the Firm's projects cited. While there are discrepancies between time records kept by the Complainant as compared to those kept by the Firm (which could not provide time records for the years 1993 or 1994), the Respondents did not deny that the Complainant played a significant role in the following Firm projects (all dates are approximate):

- Residence 6 (June 1995 through October 1997);
- Residence 7 (November 1998 through November 2000);
- Residence 2 (January 2001 through 2004);
- Residence 8 (March 2002 through June 2005);
- Residence 1 (October 2004 through June 2005).

The NEC concludes that Respondent A, in his capacity as senior principal and supervisor,



through his inactions associated with the Firm's Web pages, failed to recognize and respect the professional contributions of the Complainant with respect to the following projects:

- Residence 6, by listing himself alone as the Project Architect;
- Residence 7, by listing himself alone as the Project Manager;
- Residence 2, by listing only Respondent A, as the Project Manager;
- Residence 8, by listing himself alone as the Project Manager;
- Residence 1, by his acknowledged error in listing Respondent B as the Project Manager and by failing to refer to the role or contributions made by the Complainant even though another individual was listed.

The NEC notes that Respondent A and his Firm had no obligation to describe the Complainant's role on these projects except when other individuals were identified in connection with each project. Because other individuals were listed with projects for which the Complainant had significant responsibility, however, Respondent A failed to recognize the Complainant's professional contributions by omitting his name. The National Ethics Council therefore concludes that Respondent A has violated Rule 5.301.

Respondent B: The Complainant's allegations are based on the Firm Web page listing Respondent B incorrectly as project manager for Residence 1. For the reasons described with respect to the alleged violation of Rule 4.201 by Respondent B, the Complainant failed to demonstrate that Respondent B failed to recognize and respect the professional contributions of the Complainant. In particular, the NEC notes that the inaccurate listing was corrected immediately upon notice of the error. The National Ethics Council concludes that this alleged violation should be dismissed.

Respondent C: The Complainant's allegations are based on the description of Respondent C's role described on the Firm's Web pages for Residence 4 and Residence 5. The NEC finds no evidence that the Firm's Web page description of Respondent C as a "Project Architect" on Residence 4 and Residence 5 was inaccurate. The NEC concludes that the Complainant failed to demonstrate that Respondent C failed to recognize and respect the professional contributions of the Complainant. The National Ethics Council concludes that this alleged violation should be dismissed.

Summary: The National Ethics Council concludes that the Complainant did prove that Respondent A violated Rule 4.201 and Rule 5.301 of the Code of Ethics.

Penalty

Having found a violation of Rule 4.201 and Rule 5.301 of the Code of Ethics by Respondent A, the National Ethics Council imposes the penalty of admonishment.

Members of the National Ethics Council

Bill D. Smith, FAIA, Chair
Victoria Beach, AIA
Janet Donelson, FAIA
Melinda Pearson, FAIA
Michael L. Prifti, FAIA

The Hearing Officer, A.J. Gersich, AIA, did not participate in the decision of this case, as provided in the Rules of Procedure. Kathryn T. Prigmore, FAIA, a member of the Council, also did not participate in the decision.

June 11, 2009