



Inaccurate Statement of Scope and Nature of Responsibilities in Connection with Work; Failure To Give Appropriate Credit; Recklessly Misleading a Client about the Results That Can Be Achieved Through the Use of a Member's Services

Summary

The National Ethics Council (“Council” or “NEC”) ruled that an AIA Member violated Rules 4.201 and 5.301 of the Institute’s Code of Ethics and Professional Conduct (“Code”). The Council ruled that the Member violated Rule 4.201 by depicting his former employer’s projects in his own firm’s Web site and proposals without describing the scope of his responsibility for those projects. The Council also ruled that he violated Rule 5.301 by failing to list the former employer as the architectural firm responsible for those projects when depicted in his marketing material. The Council found no violation of Rule 3.301.

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

References*

2004 Code of Ethics and Professional Conduct, Canon III, Obligations to the Client

Rule 3.301 Members shall not intentionally or recklessly mislead existing or prospective clients about the results that can be achieved through the use of the Members’ services, nor shall the Members state that they can achieve results by means that violate applicable law or this Code.

Commentary: This rule is meant to preclude dishonest, reckless, or illegal representations by a Member either in the course of soliciting a client or during performance.

2004 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.

2004 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.



Findings of Fact

The Parties

The Complainant is an architectural firm with offices in several cities throughout the state.

The Respondent is an architect who was employed by the Complainant firm for 20 years and became a stockholder and partner of that firm. He also served as partner-in-charge of the firm's "Education Studio" beginning in the 1990s.

The Chronology

Soon after leaving the Complainant firm in 2003, the Respondent founded his own firm. By late 2005, the Respondent uploaded to the internet his first Web site for his new firm. He maintained virtually the same content on the Web site until contacted by the Complainant firm the following February.

In early 2006, the Respondent's firm submitted proposals to the Washington County Public Schools and the Jefferson Independent Schools for new elementary school projects (hereinafter "Washington" and "Jefferson"). The Complainant firm obtained copies of the Respondent's Washington and Jefferson proposals, which caused concern and led the firm's principals to examine the Web site of the Respondent's firm.

On Friday, February 11, 2006, through its attorney, the Complainant firm faxed and mailed a letter to the Respondent that described "misrepresentations and omissions" in the Washington and Jefferson proposals in connection with projects completed by the Complainant firm, claimed that the Respondent's Web site failed to give the Complainant firm appropriate credit for projects depicted, and claimed that the Web site made improper use of the Complainant firm's photographs. The February 11 letter stated that the Respondent had violated Rules 3.301, 4.201, and 5.301 of the AIA's Code of Ethics and that a complaint would be filed with the AIA's National Ethics Council unless a res-

ponse was received within three business days rebutting the claims.

On Monday, February 14, 2006, the Respondent received the fax. On Wednesday, February 16, 2006, the Respondent responded in a letter that he sent by fax and mail that he did not believe he had committed an ethical violation but that he would adjust his Web site and future marketing nonetheless.

Soon thereafter, the Respondent contacted his attorney for advice on how to change his Web site and made changes prior to learning of the Complainant's complaint filed with the National Ethics Council. The Complainant filed its complaint dated February 21, 2006 on or about that date.

Later that year, the Respondent's firm submitted a proposal to the Lincoln County Board of Education for an addition and renovation project for Jackson Elementary School (hereinafter "Jackson").

The National Ethics Council notified the Respondent in a letter dated June 8, 2006 that the Complainant had filed an ethics complaint against him.

Conclusions

Rule 3.301

Rule 3.301 of the Code of Ethics states:

Members shall not intentionally or recklessly mislead existing or prospective clients about the results that can be achieved through the use of the Members' services, nor shall the Members state that they can achieve results by means that violate applicable law or this Code.

The Commentary to this rule states: "This rule is meant to preclude dishonest, reckless, or illegal



representations by a Member either in the course of soliciting a client or during performance.”

The complaint alleges that the Respondent intentionally or recklessly misled prospective clients about the results that could be achieved through the use of his services in the following ways:

1. In the Respondent’s proposals and Web site, he positioned photographs of the Complainant firm’s projects in proximity to certain text, implying that the Respondent’s firm had completed them and therefore was able to complete similar projects itself.
2. In the Respondent’s proposals, he misstated the budget figures for various projects, creating the false impression that work of a given quality could be achieved with an inadequate budget.

Analysis of these claims requires consideration of several factors. First, with respect to the ability of the Respondent’s firm to complete projects similar to the Complainant firm’s projects depicted in its Web site and proposals: If the Respondent insinuated that his own firm completed the Complainant firm’s work, this does not, by itself, establish that his own firm did not have the capacity to achieve the same or similar results. This is especially true because those projects were executed by the Complainant’s Education Studio under the Respondent’s direction. The Complainant has not offered other evidence that the Respondent’s firm was not capable of producing such work.

Second, with respect to budget information about the Complainant firm’s projects presented by the Respondent in his firm’s proposals: The Complainant has not objected to the Respondent utilizing general budget numbers as a way to describe the scope of the Complainant’s projects but claims that the Respondent’s figures were not accurate. The Respondent claims to have repeatedly requested accurate budget information from the Complainant so that he could use the correct figures but never received it.

Following the hearing, the Complainant submitted project cost data that it claims show that the Respondent’s proposals were inaccurate. The information, which is not independently verifiable and was not subject to examination during the hearing, is set forth in a document made part of the record. Of the 12 projects for which the Complainant provided “final cost” amounts, the Respondent’s project descriptions in his proposals appear to understate the costs for eight projects by an average of seven percent and overstate the costs for four projects by an average of about six percent. Of the four projects for which the Complainant provided “base bid” amounts only, the Respondent’s proposals appear to understate the costs for one project by one percent and overstate the costs for three projects by an average of about eight percent. While these figures may indicate that the Respondent’s proposals were not consistently accurate, the size and pattern of the discrepancies do not support a conclusion that the Respondent was engaged in either intentional or recklessly misleading conduct.

Finally, Rule 3.301 applies to circumstances involving either “existing or prospective clients.” The record in this case does not show that any “existing” clients were misled because none of the disputed projects were for the Respondent’s current clients. The record also does not show that any “prospective” clients were misled, and none of the disputed projects were awarded to the Respondent by prospective clients. The Complainant did submit an affidavit from a client stating that he had been temporarily confused about which firm was responsible for projects included in proposals. That fact by itself, however, does not establish that the Respondent could not have achieved the client’s desired results.

The National Ethics Council concludes that the Complainant has not met its burden to prove that the Respondent violated Rule 3.301.



Rule 4.201

Rule 4.201 of the Code of Ethics 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.

The Commentary to this rule states: “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 complaint alleges that the Respondent made misleading, deceptive, or false statements about his experience and did not accurately state the scope and nature of his responsibilities on projects in the following ways:

1. He did not attribute sufficient credit to the Complainant for the projects he displayed in his proposals and Web site.
2. He did not properly describe his role specifically enough on the Complainant’s projects he displayed in his proposals and Web site.
3. He implied responsible involvement on the Complainant’s projects on which other employees of the Complainant firm worked substantially more of the project hours.

The NEC has previously explained that members “must disclose—for each project for which any credit is claimed—when the scope of their participation was less than full design responsibility.” (*See NEC Decision 1994-02 (applying prior Rule 4.107).*)

In this case, the Respondent’s depictions of the Complainant’s projects in his firm’s marketing materials were not accompanied by a description

of his role on those projects. Although the Respondent contributed to the projects shown, other Complainant firm staff and the firm itself also contributed. As described in the commentary to Rule 4.201, the Respondent claimed or implied credit for work that he did not do by omitting a description of the scope of his participation.

The National Ethics Council concludes that the Respondent violated Rule 4.201 by depicting the Complainant firm’s projects in his firm’s marketing materials without describing the scope of his responsibility for those projects.

Rule 5.301

Rule 5.301 of the Code of Ethics states:

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

The Complaint alleges that the Respondent did not recognize and respect the Complainant firm’s professional contributions in the following ways.

1. Many of the Web pages on his firm’s Web site display the Complainant firm’s projects, but that firm is not mentioned anywhere on the site.
2. His Washington and Jefferson proposals display the Complainant’s projects with asterisks corresponding to a credit statement elsewhere on the same page (“*Work completed while Partner with previous firm”) but do not mention the Complainant by name. The asterisks on the Wilson and Adams project pages correspond to the same credit statement, but the credit statement does not appear on the same page.
3. His proposals allude to experience with Complainant projects in the executive summary, firm overview, construction experience, and resume pages, but do not mention



the Complainant firm by name in any of those places, referring instead to “one of the state’s largest architectural firms,” “the state’s largest architectural firm,” “previous firm,” and the like.

4. His Jackson proposal, which was prepared after receiving the Complainant’s February 11, 2006 letter, contains only minor adjustments.)

Rule 5.301 imposes a positive obligation to actively recognize the work of others. At the time the Complaint was filed in February 2006, the Respondent’s Web site made no reference to, and therefore did not recognize, any other architectural firm, despite displaying images of the Complainant’s projects. The Complainant firm’s name does not appear in the Washington and Jefferson proposals in any form. Because the Complainant firm’s name appears in the Jackson proposal only by its acronym, the firm remains, to most readers, unrecognizable in that proposal as well.

The Respondent has not disputed the lack of the Complainant’s name but does dispute that this constitutes a lack of recognition. During the hearing, he argued repeatedly that an accurate recognition of his own role serves, by circumscription, as an accurate recognition of the role of others. He appears to believe steadfastly that as long as he did not claim more of a role than was his due, he was, by default, adequately acknowledging that the remaining roles belonged to others.

This confusion amounts to a conflation of Rule 4.201 and Rule 5.301, which are separately stated to ensure reliable representations not just of one’s own work but of the work of others as well.

The National Ethics Council concludes that the Respondent violated Rule 5.301 by failing to list the Complainant as the architectural firm responsible for the Complainant’s projects depicted in the Respondent’s Web site and proposals.

Penalty

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

Members of the National Ethics Council

A.J. Gersich, AIA, Chair
Melinda Pearson, FAIA
Michael L. Prifti, FAIA
Bill D. Smith, FAIA
Benjamin Vargas, FAIA

The Hearing Officer, Victoria Beach, AIA, did not participate in the decision of this case, as provided in the Rules of Procedure.

September 30, 2010

* The 2007 edition of the Code of Ethics would apply to allegations of conduct that occurred in or after December 2007. The referenced rules are the same in both the 2004 and 2007 editions of the Code, however, so it is unnecessary to determine which edition would apply to each allegation.