



Wanton Disregard of the Rights of Others; Inaccurate Statement of Scope and Nature of Responsibilities in Connection with Work; Taking Copies of Photographs from a Previous Firm Without Permission

Summary

The National Ethics Council (“Council” or “NEC”) ruled that three AIA Members, who were principals of a firm, violated Rules 2.104 and 4.201 of the Institute’s Code of Ethics and Professional Conduct (“Code”) and that one of those Members also violated Rule 5.302. The Council found no violation of the referenced rules by an Associate Member who was employed by the same firm.

The Council ruled that Architects A, B, and C violated Rule 4.201 because their firm’s Web site displayed images of projects for whom no current personnel were responsible and, in one instance, without any attribution of credit to the firm responsible for the project. The Council ruled that Architect A violated Rule 5.302 by taking possession from his former firm of project photographs for which his new firm would have had no legitimate use at the time it was formed. The Council also ruled that he and Architect B violated Rule 2.104 by using those photographs on their new firm’s Web site without permission of the Complainant or the photographer.

The Council imposed the penalty of censure on Architects A and Architect B and the penalty of admonition on Architect C.

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

References

2007 Code of Ethics and Professional Conduct, Canon II, Obligations to the Public

Rule 2.104 Members shall not engage in conduct involving fraud or wanton disregard of the rights of others.

Commentary: This rule addresses serious misconduct whether or not related to a Member’s professional practice. When an alleged violation of this rule is based on a violation of a law, or of fraud, then its proof must be based on an independent finding of a violation of the law or a finding of fraud by a court of competent jurisdiction or an administrative or regulatory body.

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 5.302 Members leaving a firm shall not, without the permission of their employer or partner, take designs, drawings, data, reports, notes, or other materials relating to the firm's work, whether or not performed by the Member.

Findings of Fact

The Parties

The Complainant is a principal architect with an architectural firm in Florida.

The Respondents, Architects A, B, and C, and Intern Architect D, are each present or former employees of A&B Architects in California. Architect A and Architect B are principals of the firm, and Architect C is an associate principal of the firm. Intern Architect D is a former employee of the firm.

The Chronology

In or about 1998, the Complainant's firm opened a satellite office in California. In 2001, Architect A joined the firm to run the California office. He later became a partner of the firm.

In early 2003, the Complainant offered to sell the firm's California office to Architect A. The Complainant and Architect A signed an Asset Purchase Agreement dated June 15, 2003, under which Architect A acquired the California office from the Complainant. Architect A operated the office as Architect A Design until February 1, 2006, when the firm merged with Architect B Design to form A&B Architects.

In the spring of 2006, the first Web site of A&B Architects went online. The Web site was man-

aged by Architect B. Architect C and Intern Architect D were not involved in the Web site or other marketing activities of the firm. Architect A and Architect B spent minimal time on the Web site, which went virtually unchanged from early 2006 until the filing of this ethics Complaint.

Another architect, Architect E, had been a partner with the Complainant's firm during Architect A's employment with that firm. After Architect A formed Architect A Design in 2003, Architect E joined that practice in California and participated as a principal both in that firm and, after the merger, in A&B Architects. Architect E subsequently left A&B Architects some time in 2007, and returned to work in Florida, although not at the Complainant's firm. Architect A testified that Architect E was still with A&B Architects when the firm's Web site was launched. Some time between Architect E's departure and May 2009, the firm removed Architect E's name from its Web site and added a new employee's name.

The Complainant submitted as evidence in this case screen shots of the A&B Architects Web site as it existed on May 25, 2009. Architect A submitted electronic files that he stated were the original Web site files from 2006. These materials show that the A&B Architects Web site from 2006 to May 2009 had the following features:

- Projects that were completed by the Florida office of the Complainant's firm and overseen by Architect E were included on the Web site as representative of a partner's work.
- All but one of the images of the Florida projects depicted on the Web site were annotated with an asterisked project title just below the image. The asterisk referred to a separate credit page on the Web site (hereinafter "Credit Page"), which listed all the photographers and also included the following text:



*Work of Principals while at previous firm [Complainant's firm] in Florida.

Architect A has admitted that the omission of an asterisk on one project page was an oversight.

- Each page of the Web site, whether the page depicted projects or not, also included at the bottom of the page in a lighter font the following copyright notice (hereinafter "Copyright Notice"):

© 2006 A&B Architects. All Rights Reserved.

On May 25, 2009, the Complainant sent Architect A an e-mail asking him to remove certain project images from the A&B Architects Web site by May 30, 2009. Architect A responded to the Complainant within 15 minutes after receiving the e-mail and took down the disputed images within several days.

Also on May 25, 2009, the Complainant drafted the Complaint filed in this case. He included six pages excerpted from the Web site showing project images. On each of those pages, he drew arrows pointing to the name of the project and the Web site Copyright Notice and connected those two arrows with the comment: "This project done by the Complainant's firm and not A&B Architects." The Web site's Credit Page was not included in the Complaint.

Conclusions

*Rule 2.104 and Rule 5.302:
Ownership or Possession of Photographs and
Other Materials*

Rule 2.104 of the 2007 Code of Ethics states:

Members shall not engage in conduct involving fraud or wanton disregard of the rights of others.

Rule 5.302 of the 2007 Code of Ethics states:

Members leaving a firm shall not, without the permission of their employer or partner, take designs, drawings, data, reports, notes, or other materials relating to the firm's work, whether or not performed by the Member.

The Complaint in this case alleges that ownership rights in various images used on the A&B Architects Web site were disregarded in violation of Rule 2.104. The Complaint alleges that photographs of projects of the Complainant's firm belong solely to that firm and to the architectural photographer and were used on the A&B Architects Web site. This claim is asserted against all four Respondents.

The claimed violation of Rule 5.302, which is asserted against Architect A only, is founded on a similar allegation, which is that Architect A improperly took possession of the Complainant's firm's photographs and other material without that firm's permission.

Architect A was in charge of marketing the California office of the Complainant's firm. He had stored the disputed image files in the California office as part of his marketing efforts for the Complainant's firm and had the Complainant's permission to use them for this marketing.

At the hearing, the Complainant testified that his firm's rights in the photographs at issue were governed by contracts between his firm and the architectural photographer. He did not provide copies of those contracts but claimed that they would have precluded Architect A's firm from using the photographs. Architect A testified that he called the photographer when made aware of the issue and that the photographer asked only that the photographs be removed from the Web site.

The parties disagree about whether their Asset Purchase Agreement gave Architect A any rights in photographs of projects completed by the



Florida office of the Complainant's firm. At the time, however, Architect A would not have had any reason to use them because they did not show the work of anyone in his new firm. Taking possession of them at that time, together with later using them on the new firm's Web site without permission, is inconsistent with making the California office of the Complainant's firm independent under Architect A's name and ownership.

Architect B is also responsible for the use of these photographs on the Web site of A&B Architects. Because Architect C and Intern Architect D were not involved directly in the Web site, they cannot be held responsible for use of the photographs.

The National Ethics Council concludes that Architect A violated Rule 5.302 by taking possession of photographs of the Complainant's firm for which Architect A Design would have had no legitimate use at the time it was formed. The Council concludes that Architect A and Architect B violated Rule 2.104 by using those photographs on their new firm's Web site without permission of the Complainant or the photographer. The Council concludes that the Complainant has not met his burden to prove that the other two Respondents violated Rule 2.104 or Rule 5.302 based on these circumstances.

*Rule 2.104 and Rule 4.201:
Misleading Claims of Credit*

Rule 2.104 of the 2007 Code of Ethics states:

Members shall not engage in conduct involving fraud or wanton disregard of the rights of others.

Rule 4.201 of the 2007 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 Rule 4.201 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 all four Respondents violated Rule 4.201 because their "use of images on the A&B Architects Web site implies credit for work they did not do, misleading others, and denying the Complainant's firm and the architectural photographer their proper credit." The Complaint similarly alleges that the four Respondents violated Rule 2.104 by implying authorship of projects of the Complainant's firm. At the hearing, the Complainant stated that the purpose of the Complaint is not "to gain credit for his firm."

As long as they are properly credited, the use of images in print or electronic marketing is not, in itself, misleading—even if the images do not depict current or relevant work. The Complaint appears to assert that the use of the standard Copyright Notice on the A&B Architects Web site constitutes that firm's claim of credit for and copyright in the photographs and the architectural designs they depict. The Copyright Notice appears in the same way on every page on the firm's Web site, including those that do not have any architectural or photographic content. Taking the Web site as a whole, the Copyright Notice should be understood to refer to the Web site design, and not to individual images or their content. Using the Copyright Notice in this way is not a misleading, deceptive, or false statement or claim under Rule 4.201.

The Complaint omitted the Credit Page, where the photographers' names and the Complainant's firm's name (referenced by asterisk) are found. The Credit Page lists the Complainant's firm by name and notes that the firm's projects were the



work of “Principals” of A&B Architects. The latter part of this statement became untrue, however, once Architect E left A&B Architects. During the period between Architect E’s departure and removal of the projects from the Web site about the end of May 2009, A&B Architects was making a “false statement . . . about [its] professional . . . experience.” Similarly, the omission of the asterisk from one of the image captions was a misleading statement.

As principals of A&B Architects, both Architect A and Architect B bear responsibility for the accuracy of information published on their firm’s Web site. As an associate principal, Architect C also bears responsibility, although to a lesser degree. The Complainant did not present any evidence showing that Intern Architect D was anything but an employee of the firm.

The National Ethics Council concludes that Architect A, Architect B, and Architect C violated Rules 2.104 and 4.201 because their firm’s Web site displayed images of projects for whom no current personnel were responsible and, in one instance, without any attribution of credit to the firm responsible for the project. The Council concludes that the Complainant did not meet his burden to prove that Intern Architect D violated Rules 2.104 and 4.201 based on these circumstances.

Penalty

Having found a violation of Rules 2.104, 4.201, and 5.302 by Architect A, the National Ethics Council imposes the penalty of Censure.

Having found a violation of Rules 2.104 and 4.201 by Architect B, the National Ethics Council imposes the penalty of Censure.

Having found a violation of Rules 2.104 and 4.201 by Architect C, the National Ethics Council imposes the penalty of Admonition.

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