



## ***Misleading Prospective Client - Uncompensated Design Services***

### **Questions**

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**Q1:** *Is it unethical to provide "free" design services for the purpose of securing a commission?*

**Q2:** *Under the facts presented here, did either architect intentionally or recklessly mislead the prospective client about the results that could be achieved through the use of the architect's services?*

### **Reference**

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*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.

The Code of Ethics and Professional Conduct applies to the professional activities of all Members, Associate Members, and Members Emeritus of the AIA.

### **Facts**

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Architect A is seeking a commission from a prospective client for an office building in competition with Architect B. The owner has never engaged an architect before. On the basis of information obtained in one

discussion with the owner, Architect A prepares and presents to the owner six unsolicited rough perspective drawings illustrating alternative design approaches to the project. The architect does not claim that the sketches are buildable design solutions; rather he presents them as ideas of directions that could be pursued in preparing a schematic design. Architect A is not compensated for this service.

In the course of an introductory discussion with Architect B, the owner requests the architect to submit drawings illustrating his ideas for the project. No fee is offered for this service. Architect B prepares plans, sections, elevations, perspective renderings and a model of a building for this site. The architect has only preliminary information as to the owner's program, schedule, budget and the limitations of the site. In presenting his work to the owner, the architect implies, without directly stating, that the particular design could be built, and does not tell the owner that significant further information would be required before any decision could be made to proceed to the design development phase on the particular design presented. The owner awards the commission to the Architect B.

### **Discussion**

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The initial question treated in this opinion concerns the offer of uncompensated design services as a method of soliciting work. It has never been considered unethical for an architect to provide gratuitous services for unselfish civic or charitable motives. However, prior to 1979 the Institute's Code of Ethics and Professional Conduct prohibited



# THE AMERICAN INSTITUTE OF ARCHITECTS

## *Code of Ethics and Professional Conduct Advisory Opinion No. 1*

the contribution of free design sketches, models or other architectural services for the purpose of securing a commission, except through design competitions. That code was withdrawn when it became clear that several of its provisions, including the rule against "free" services, were open to challenge as unlawful restraints of trade. The present Code contains no such prohibition on free services.

Federal law protects consumers, including purchasers of professional services, from unreasonable restraints on free and open competition among service providers. It is the view of those who enforce these laws that free sketches serve either to reduce the overall cost to the owner for the architect's services or to advertise the architect's abilities to a prospective client. These are lawful competitive reasons to provide free design services, so long as the prospective client is neither deceived nor misled as to what he is getting or can expect to receive if he retains the architect.

Under the facts stated above, it makes no difference that Architect A supplied sketches without being asked to do so while Architect B. acceded to a request from a prospective client. In either case, whether or not to supply any level of service without compensation is a business decision for individual architects to make. Under the present Code of Ethics and Professional Conduct, the nondeceptive use of free design services to procure a commission is not unethical.

The more difficult question presented by the facts here is whether Architect A or Architect B intentionally or recklessly misled the owner by the manner in which the free services were presented. Whether an architect's solicitation practices in any

particular case are unethical will depend on the facts involved. There is no bright line dividing conduct in this area that is fair and ethical from that which is deceptive and unethical. The inquiry must focus on the prospective client's probable understanding of the information provided to him considered in light of his sophistication and experience in selecting architects.

Turning to the specific circumstances set forth above, Architect A presented a variety of ideas, informal in nature, in a manner that would be unlikely to cause a prospective client to think that any of them was a specific design proposal. Moreover, the Architect was careful to make it clear that the drawings were simply ideas that could be pursued in preparing a schematic design.

Architect B, in contrast, prepared a single integrated design scheme in multiple drawings in addition to a model that obviously was the result of a considerable thought and effort. The client had no basis to understand that this may not have been an achievable design solution. The architect had no established course of dealing with the prospective client. Moreover, the client lacked experience working with architects and therefore had no basis to understand the level of knowledge about a project that an architect would require in order to properly prepare a schematic design solution.

A person who lacks experience in dealing with architects or the schematic design process would reasonably conclude that an elegant and detailed presentation of a single design scheme is intended by the architect to describe a building that meets the owner's requirements and can be built. The circumstances set forth here strongly indicate that Architect B intended for the owner to believe that the design the architect presented



# THE AMERICAN INSTITUTE OF ARCHITECTS

*Code of Ethics and  
Professional Conduct  
Advisory Opinion No. 1*

was an actual solution for the owner's project. The architect implied that the design could be built as depicted and did nothing to warn the owner that significant changes might have to be made. In this case, where that architect did not have the detailed information upon which to make reasonable judgments whether the project could be realized within the applicable constraints of budget, program, schedule, site limitations, regulatory and other conditions, the architect has an affirmative duty to so advise the prospective client. An architect acts recklessly if he leads a prospective client to believe that a presentation is a proposed design solution when he has insufficient information to determine whether his design is adequate.

*would be pertinent in another specific case. This opinion is for information purposes only and should not be construed as expressing any opinion on the ethics of specific individuals.*

June 30, 1987

## **Conclusion**

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**A1:** No. Neither Architect A nor Architect B acted unethically in providing uncompensated design services for the purpose of procuring work from the prospective client.

**A2:** Architect A did not act unethically in presenting alternative approaches to the project that he indicated were ideas that could be pursued to prepare schematic plans.

Architect B violated Rule 3.301 under the facts stated above by presenting what appeared to be a specific solution and implying that the particular plan could be built without having all the facts that would be required to prepare a viable schematic plan. The method of detailed presentation would likely mislead an unsophisticated client to conclude that a fully thought out plan was being proposed.

***Note:** This opinion is based on data submitted to the National Judicial Council and does not necessarily include all the facts that*