



Withholding Copies of Photographs

Summary

The Council finds that there is no violation of the Code of Ethics in a refusal to provide to a former employee, who had been gone from the firm for eighteen months, copies of photographs of projects on which the employee had worked. The Council dismisses the complaint against a member principal of the firm because the facts fail to establish a violation of Rule 5.203.

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

Reference

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

Rule 5.203: Members shall not unreasonably withhold permission from departing employees to take copies of designs, data, reports, notes, or other materials relating to work performed by the employees in the members' service which are not confidential.

Facts

The evidence supports the following findings of fact in the hearing report. An associate member of the AIA worked as a member of the design team on several projects while employed by a firm in which a member of the AIA is a principal. When the projects were complete, the firm commissioned professional photographers to take photographs that the firm used for marketing purposes. The associate member left the firm and eighteen months later requested copies of some of

the firm's photographs of projects on which he had worked. The firm declined to provide the copies on the ground that they were proprietary marketing materials of the firm not available for the personal use of any employee or former employee. The associate member alleges that the member is in violation of Rule 5.203 of the Code of Ethics for unreasonably refusing to provide copies of materials relating to work he performed.

Discussion

There are two questions of interpretation to be decided in this case. The first is whether an employee who does not make a request for copies until eighteen months after leaving employment is still a "departing" employee within the meaning of the Rule. The second question is whether the rule requires employers to provide copies of photographs of the kind requested here. For the reasons indicated below, we think the answer to both of these questions is no.

As to the first point, the Rule plainly applies only to the requests of employees who are "departing" a member's service. The hearing report and the complainant both recommend a broad construction of the word departing to include requests from former employees if made within a reasonable time after leaving. The argument is that employees should have some latitude in the timing of their requests for copies. The hearing report suggests that a rule that requires all such requests to be made at the time the employee leaves, and no later, would be too harsh.

If we were free to rewrite the rule, complainant's interpretation could be considered, but we don't have that authority. The ordinary meaning of the word "departing" is to be engaged in the process of leaving. Once an employee has left a firm he



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Professional Conduct
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is no longer "departing," he has departed. This rule, like all the rules of the Code, requires interpretation, but it would be unfair to amend a rule in the guise of interpreting it. We believe that a fair reading of the rule that is faithful to its language as written requires us to find that a request for copies some eighteen months after leaving is not the request of a departing employee.

We note that while it is not unethical to refuse requests from former employees for copies of their work, members certainly are permitted, and encouraged, to go beyond the minimum requirements of the rules in respecting the professional aspirations of their colleagues. We hope members will exercise discretion in accommodating such requests when they are reasonable.

We also note that it is advisable for members to review in an exit interview with departing employees what materials they may take with them and whether they can get copies in the future. In this case, the firm did conduct an exit interview but did not discuss whether the employee could have photographs of the projects on which he had worked. This brings us to the second interpretation issue in this case: whether photographs commissioned by a firm for use as marketing materials must be copied for departing employees.

Rule 5.203 lists several items that employers may not unreasonably refuse to copy for departing employees. The list does not explicitly include photographs. The question then is whether one or more of the terms in the list includes photographs. We think not.

The hearing report recommends a broad interpretation of the term "other materials" to include photographs and any other tangible depiction of an employee's work. We think this goes too far. Photographs are of a different character from any of the other items in the list. The photographs at issue here were not design materials since they were commissioned after the

projects were completed. Moreover, the taking of photographs for record and marketing purposes is a well-established part of architectural practice. If the Convention that adopted this Code of Ethics had intended to include photographs, it would have done so explicitly. We think that it stretches the language of the rule too far to find that professionally commissioned photographs not taken by the employee himself must be supplied by an employer to his departing employees.

Conclusion

We do not disagree with the findings of fact in the hearing report. We do, however, take a different view as to the appropriate interpretation of Rule 5.203. As we interpret the rule, the member here is not in violation of the Code of Ethics and Professional Conduct because the complainant was not a departing employee and the photographs requested are not within the terms of the rule. Accordingly, the complaint is dismissed.

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The hearing officer, Glenn A. Buff, FAIA, did not participate in the decision of this case, as provided in the Rules of Procedure.

May 22, 1989