



## ***Failure of One Joint Venture Partner to Properly Credit Another Joint Venture Partner In a Subsequent Statement of Qualifications***

### **Summary**

---

The Council found violations of R. 4.107, R. 4.201, and R. 5.201--failure to accurately represent the scope and nature of responsibilities in connection with work for which the firm was claiming credit, making misleading statements about the firm's professional experience, and failing to recognize the professional contributions of a business associate. The penalty imposed is Censure. Censure is a public reprimand, in which the member's name is published in **MEMO**, along with a synopsis of the decision of the Council. A record of the Censure is also placed in the architect's AIA membership file along with the decision of the Council. The facts of the case, as well as the Censure of the member, become matters of public record.

### **Reference**

---

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

R. 4.107 Members shall accurately represent their qualifications and 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 work that they did not do, misleading others, and denying other participants in a project their proper share of credit.*

R. 4.201 Members shall not make misleading, deceptive, or false statements or claims about their professional qualifications, experience, or performance.

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

R. 5.201 Members shall recognize and respect the professional contributions of their employees, employers, and business associates.

### **Facts**

---

In the considerable number of years that Firm A had been in existence, it had changed partners and names several times. When Architect B became president of Firm A, he and the other stockholders decided upon a name for the firm that would not need to change when stockholders or partners changed. They also began a concerted effort to make the new firm name known to former and potential clients, and to build a reputation for the new firm name within the architectural community.

Prior to the name change, Firm A and Firm C had been joint venturers on a project. Subsequent to Firm A's name change, it had an opportunity to compete for a project similar in type and scope as the one it had completed in a joint venture with Firm C. When preparing the Statement of Qualifications (SOQ) for the public owner,



someone in Firm A noticed that the picture included in the SOQ of the project completed with Firm C, credited the old name of Firm A as joint venturer with Firm C. In an effort to avoid confusion on the part of the potential client, the joint venture credit was intentionally removed from the bottom of the picture of the project before it was included in the SOQ. While Firm A, which was engaging in another joint venture for the potential project, clearly listed that joint venture arrangement on one page of the text in the SOQ, on the very next page it failed to credit Firm C as a joint venturer on the similar project. It listed only Firm A, under its new name, as the architect for that project.

Architect B acknowledges that he, personally, could not ethically claim credit for the project completed with Firm C, since he was not involved in the project in any way. However, he maintains (and the Council agrees) that as one of the owners of an incorporated firm, he is entitled to represent to prospective clients work done by that firm, whether or not he or any of the other present owners were with the firm when the work was done. He claims that the culture, experience, client base, and projects of an incorporated firm are assets which can be sold to new shareholders and partners. Without the ability to sell these assets (and presumably the attendant professional liabilities), there would be few firms in existence today which would not be in violation of the AIA Code of Ethics and Professional Conduct. Architect B acknowledged that the names of the joint venturers were removed from the picture included in the SOQ, and not included in the narrative portion of the SOQ. However, he maintains that action was not intended to damage the reputation of Firm C, or former members of Firm A, who were no longer with the firm. He also claims that since Firm C could prove no harm to its reputation or loss of a project, for which it did not compete, that any ethics violation was only technical, for which sanction should be minimal.

### **Discussion**

---

This case was particularly disturbing for several reasons. The president of Firm A is an experienced architect and long-time AIA member. He has served as a chapter officer, and claims to be well acquainted with the provisions of the AIA Code of Ethics and Professional Conduct. To hear a "no harm, no foul" defense from such a person is very disappointing. This is not the first time the Council has been presented with that defense, especially in a case dealing with the giving and taking of proper credit for architectural work. However, proof of harm to one architect from another failing to give proper credit or taking improper credit is not required to result in a finding of an ethics violation. It may not be possible for the architect who was denied proper credit to even know at the time of filing a Complaint whether or not any harm has resulted from that denial. The Council does not consider no proof of harm resulting from unethical action as a mitigating circumstance in determining the appropriate sanction in this type of case.

Architect B testified that the omission of Firm C's name from the SOQ was simply a last minute, clerical error that occurred in the hurried, last-minute preparation of the SOQ. That explanation was weak, at best. While most architects have had to work in a charette mode to produce a proposal, that does not relieve them of their responsibility to ensure that their actions comply with the Code. Even though Architect B may not have been directly involved in the preparation of the SOQ, he is responsible as president of the firm for the marketing materials that go out under the firm name. The Council was skeptical of Architect B's explanation. He testified that he was not directly involved in the preparation of the SOQ. However, he chose not to present as witnesses the persons who were directly involved in its preparation, nor to explain their absence. One person was a principal in the firm and located only a few minutes away from the hearing site. Yet, he was not called as a witness. When questioned, Architect B admitted that the person



# THE AMERICAN INSTITUTE OF ARCHITECTS

*Code of Ethics and  
Professional Conduct  
DECISION 92-7*

most directly involved was no longer with the firm, but had left the firm on good terms and was still in town. No effort was made to ask her to be a witness at the hearing. An architect against whom a Complaint is filed need not prove his innocence. However, when the person filing a Complaint has presented a case that on its face proves a violation, and the Respondent chooses not to present as witnesses the persons best suited to testify on a particular topic, or to offer any explanation for their absence, the Council may conclude, as they did in this case, that those witnesses would not have supported the testimony offered by Architect B.

In this particular case, the Council was satisfied that Firm A had existed legally for some time, with only changes in name over the years. However, Firm A was not the architect of record for the project in question. The Council concluded that Firm A was obliged to acknowledge somewhere in the SOQ the name of the architect of record for the joint venture project. This includes not only Firm A's predecessor name, but the name of the joint venture partner. If this was not done by caption at the bottom of a picture of the project, it most certainly should have been done in the narrative portion of the SOQ describing that project.

## **Conclusion**

---

On the admission of Architect B that Firm C's name had been excluded from the SOQ, and the other evidence presented, the Council found that Architect B had violated R. 4.107, R. 4.201, and R. 5.201 of the AIA Code of Ethics and Professional Conduct. The Council found that exclusion to be intentional. Two previous Decisions by the Council--Decisions 87-6 and 89-8--have been available to the membership for some time to offer guidance on the giving and taking of proper professional credit. Architect B represented at the hearing that he was familiar with the Code and its requirements. Even with the available Decisions from the Council and Architect B's alleged familiarity with the Code,

the SOQ distributed by Firm A completely excluded any mention of Firm C's joint venture role in a project very similar to the one being sought. The Council found this set of circumstances to be egregious enough to warrant a sanction of Censure.

The Council's decision was appealed to the Executive Committee of the AIA. The Executive Committee concluded that the Council's conclusions about the Rules of Conduct violated were supported by the evidence presented. The Executive Committee also concluded that the recommended sanction was appropriate. The Censure was announced in the October 1993 issue of **MEMO**.

L. Kirk Miller, AIA, Chairman  
Melvin Brecher, FAIA  
James A. Clutts, FAIA  
Robert V. M. Harrison, FAIA  
Kenneth DeMay, FAIA  
Norma Merrick Sklarek, FAIA

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

**May 29, 1993 - National Judicial Council Decision**  
**August 27, 1993 - Executive Committee Appeal**