



Failure to Give Appropriate Design Credit and Unreasonably Withholding Permission for a Departing Employee to Take Copies of Work Performed While in the Employer's Service.

Summary

The Council finds a member not in violation of the Code of Ethics and Professional Conduct where the member had no control over the manner in which magazine articles listed credit for projects done with a former partner. Further, the Council finds no violation in the member's refusal to allow his departing partner to take a computer.

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

References

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 connections with work for which they are claiming credit.

Commentary: *This rule is meant to prevent members from claiming credit for work that they did not do, misleading others, and denying other participants in a project their proper share of credit.*

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.

R. 5.203 A member shall not unreasonably withhold permission from departing employees to take copies of designs, drawings, data, reports, notes, or other materials relating to work performed by the employees in the member's service which are not confidential.

Commentary: *A member may impose reasonable conditions, such as the payment of copying costs, on the right of departing employees to take copies of work performed while in the member's service.*

Facts

Two members practiced together in the same firm for many years. While initially only one of their names was the name of the firm, for the last five years of their association both of their names together comprised the firm name. When one of the members left the firm, the name reverted to that of the remaining member. The firm did primarily residential design. Several of the firm's projects were the subject of articles in local or regional design publications. Statements in those articles and the published credit information are



the primary subject of this case.

The firm had from 2 to as many as 13 employees over the years. The two members functioned as partners although the firm was formally organized as a sole proprietorship of one member. That member (the Proprietor) was primarily responsible for business development, public relations, and client contact. He signed all contracts with clients. All stamped drawings had his stamp and signature affixed to them, and all client correspondence went out over his name. The other member (the Partner) spent the majority of his time in the drafting room and managing the production of the firm's projects.

When the Partner left the firm in August 1993 he took nothing with him. In a subsequent contact with the Proprietor he asked to take an office computer containing both personal and business records. The Proprietor denied permission to take the computer.

After the Partner left the firm, four projects that had been done before he left were written up in articles in local home design magazines. As to each of these articles and projects the Partner asserts that the credit information and, more particularly, the quotations in the text of the articles attributed to the Proprietor, misrepresent the Proprietor as the principal designer when the Partner was actually the designer.

Discussion

In an ideal world, at the breakup of a partnership the partners would discuss and agree on all aspects of their professional relationship following the dissolution of the business relationship. In this case the lack of any discussion on any aspect of the breakup has predictably led to disputes. It is seldom easy when a successful professional collaboration comes to an end, and even less so when the former partners have an acrimonious falling out. We cannot put the entire relationship back together; here we must deal as

best we can with a few specific issues the dissolution has caused.

Three of the articles at the heart of this case are by the same author, who is the regional editor for a magazine group. The editor has known both the Partner and the Proprietor for 15 years and has written some 30 articles about their projects. The editorial policy of the magazine group is to focus on the viewpoint of the owner of the house and to provide readers with one point of contact for further information on the design of the project. In this case, the editor was concerned about how to fairly indicate to readers that the designs were done by a partnership that had subsequently dissolved and yet provide one current address and phone contact for further information. It was the editor who devised the credit line following each article that credits the project to the Proprietor's current firm with a parenthetical note that the firm name formerly included the Partner. The Partner objected to this form of credit in at least one instance, but the editor's superior, who had the last word on the matter, elected to run it unchanged.

As to the text of the articles and the photo captions, the editor's manuscript was converted to final copy for the articles and edited to the space available by persons in the head office of the magazine group. The editor did not see the final article until it appeared in print. We do not read the articles as showcasing the Proprietor as designer. One possible exception is an article about the Proprietor's own residence. The extensive quotations from him are consistent with the editorial philosophy to focus on the owner's perspective, which in this case included the design perspective of an architect as well.

The last article is by a different author and there is little information in the record about it. While one of the partnership's projects is pictured on the cover, the article is about the style of design of which it is an example, and the Proprietor is mentioned only in passing. The Partner's complaint about the photo credit is misplaced. The language is obviously a lead-in to the feature



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article written by the magazine editors, and there is no indication that the Proprietor had any influence over its wording.

Credit for design work in magazine and newspaper articles about architecture has long been a sore point for the profession and probably will continue to be so because writers and editors have different objectives and priorities than architects. In this case, the writer of three of the articles knew the individuals involved for many years and knew that the firm members worked as a team on the firm's projects. The record supports a finding that both the Proprietor and the Partner contributed to the design of these projects. The magazines' policy was to credit a firm for projects, which is what was done here. As to the text of the articles, there is no basis to attribute to the editor a motive to slight the contribution of the Partner to the featured projects, let alone to suggest that the Proprietor manipulated the focus of the articles. Neither the editor nor the Proprietor had final control over the content of the articles or the credit lines. Therefore, we are compelled to find that there were no violations of the Code of Ethics in these articles.

Finally, there is the allegation that the Proprietor violated Rule 5.203 in denying permission to the Partner to take an office computer when he left the firm. The only specific request that the Partner made upon leaving the firm was that he be allowed to take with him a computer. The computer was not a CAD machine that could have contained design work product. Regardless of whether its contents were or were not confidential, a computer is not within the scope of the list of items in Rule 5.202. While a computer may contain work done by an employee, the computer itself is not work product of any employee and cannot reasonably be regarded as illustrative of the employee's abilities. Therefore, we find no violation of the Rule in the Proprietor's refusal to release the computer to the Partner.

Kenneth DeMay, FAIA, Chair
Melvin Brecher, FAIA
Carolyn D. Geise, FAIA
D. Susan J. O'Brien, AIA
Norma Merrick Sklarek, FAIA

The hearing officer, Samuel A. Anderson, FAIA, did not participate in the decision of this case. Council member Robert Madison, FAIA, also did not participate.

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