



Inaccurate Statements of Scope and Nature of Responsibilities in Connection with Work; Failure To Give Credit Where Due

Summary

The National Ethics Council (“Council” or “NEC”) ruled that an AIA Member violated Rule 4.201 and Rule 5.201 of the Institute’s 1997 Code of Ethics and Professional Conduct (“Code of Ethics”) by failing to credit the Complainant’s firm for various projects used in promotional material for a new firm that the Member started after leaving the Complainant’s firm. The Council found that, although the Member had worked on the projects while he had been employed at the Complainant’s firm, the Member’s promotional material implied undue credit for himself and denied the Complainant’s firm its proper share of credit. The NEC imposed the penalty of censure, which was reduced to admonition upon the Respondent’s appeal to the Institute’s Executive Committee.

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

References

1997 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.

Commentary: This rule is meant to preclude dishonest, reckless, or ille-

gal representations by a Member either in the course or soliciting a client or during performance.

1997 Code of Ethics and Professional Conduct, Canon IV, Obligations to the Profession

Rule 4.101 Members having substantial information which leads to a reasonable belief that another Member has committed a violation of this Code which raises a serious question as to that Member’s honesty, trustworthiness, or fitness as a Member, shall file a complaint with the National Ethics Council.

Commentary: Often, only an architect can recognize that the behavior of another architect poses a serious question as to that other’s professional integrity. In those circumstances, the duty to the professional’s calling requires that a complaint be filed. In most jurisdictions, a complaint that invokes professional standards is protected from a libel or slander action if the complaint was made in good faith. If in doubt, a Member should seek counsel before reporting on another under this rule.

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 responsi-



bilities 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.

1997 Code of Ethics and Professional Conduct, Canon V, Obligations to Colleagues

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

Findings of Fact

A. Background

The Complainant is an architect licensed to practice in the State. He joined his firm in 1984 and is now one of four owners of that firm ("Complainant's Firm"). Another principal of the Complainant's Firm was involved in the circumstances of this case; she will be referred to as "Architect A."

The Respondent is an architect licensed to practice in the State and operates his own firm ("Respondent's Firm").

The Complainant was present at the hearing in this case and was represented there by his attorney. The Respondent was not present at the hearing but was represented there by his attorney. Testifying at the hearing were the Complainant, Architect A, and another architect employed at the Complainant's Firm.

While traveling in abroad in the 1980s, Architect A met the Respondent. The Respondent subsequently visited the City where the Complainant's Firm is located and later became

employed by that firm. Upon the expiration of his visa, he returned to his home country with a desire to return to the United States and his employment with the Complainant's Firm.

Because of work visa petitions submitted by the Complainant's Firm, the Respondent was able to reenter and remain in the United States. He returned to the City and again became an employee of the Complainant's Firm. While in the that firm's employment during this period, the Respondent obtained his license to practice architecture in the State and also was elevated to the position of associate principal in the firm. In that position, he was engaged in both planning and design aspects of architectural projects.

Several years later, after failing to obtain a position as a "senior associate principal," the Respondent tendered his resignation and left the Complainant's Firm. His written contract with the firm permitted him, upon his departure, to take copies of documents related to the work he had performed. With the firm's permission, the Respondent actually took drawings, renderings, photographs, and at least one model related to the various projects on which he had worked. Soon afterwards, he established his own firm.

B. The Architects Directory Listing

Subsequently, persons associated with the Complainant's Firm learned that the current edition of an *Architects Directory* contained information on the Respondent's Firm. This information included, among the project examples cited as work of the Respondent's Firm, a particular project, which was described as "Public Building, City, State." Although the Respondent had been a project designer for this project, other architects at the Complainant's Firm had served as the architects of record, and the project had been completed well after the Respondent's employment by that firm had ended.

Architect A testified that she sent the Respondent an e-mail stating that the *Architects Directory* listing was a "misstatement of fact and



should be promptly corrected.” Her testimony also indicated that she had made one or more telephone calls to the Respondent and told him that the listing violated the AIA’s Code of Ethics and also his former contract with her firm. In his Response to the Complaint, the Respondent states that no such call was ever made.

Testimony at the hearing established that an edition of the *Architects Directory* could not be corrected once it had been published. While it is unclear whether a reference to “Public Building, City, State” appeared in any subsequent edition of the *Architects Directory* after the Respondent learned of the Complainant’s Firm’s objections to it, no such reference appears in the most recent edition.

C. Web Site Representations of Projects

Architect A testified that she also received information suggesting that the Web site of the Respondent’s Firm contained misrepresentations concerning certain projects connected with the Complainant’s Firm. Subsequent investigation revealed that the Web site listed projects and showed drawings and photographs of projects in which the Respondent had played a role during his employment by the Complainant’s Firm. Representations of several of the projects on the Web site included the notation “Respondent w/CF” (*i.e.*, “with Complainant’s Firm”) while others did not refer to “CF” at all. None of the representations as to these projects (hereafter referred to as the “Cited Projects”) contained any other reference, whether direct or indirect, to the Complainant’s Firm.

The Complainant testified that the legal name of his firm is “Complainant’s Firm” and that in all public documents the firm is referred to by its full name. He added that the initials “CF” are sometimes used with reference to the firm in internal documents but do not appear in the firm’s public communications (including its own Web site) unless the full firm name “has been stated and then the acronym CF becomes clear. Given this, he expressed the opinion that the

representations on the Web site of the Respondent’s Firm did not provide adequate attribution to the Complainant’s Firm regarding the Cited Projects. He further testified as to his opinion that the representations were misleading to the point that the Respondent’s Firm might be considered as the prime architect and/or part of a joint venture that had produced the Cited Projects.

According to Architect A’s testimony, she sent the Respondent a letter objecting both to the *Architects Directory* listing and to the references to the Cited Projects on the Web site of the Respondent’s Firm. It is not clear whether the Respondent actually received that letter.

It appears that the essence of the Respondent’s position is that he had in fact had substantial responsibility for the design of each of the Cited Projects and took only appropriate credit as to the work he performed in connection with each of them. It also appears to be his view that he provided appropriate attribution as to the Cited Projects, at worst committing only *de minimis* violations as to several of the projects.

D. The Complaint’s Allegations

A careful reading of the Complaint, in light of the facts discussed above, shows that it is based on the following factual core:

1. The *Architects Directory* contained information submitted by the Respondent’s Firm that included a listing for “Public Building, City, State” among the project examples of that firm’s work. According to the Complaint and evidence offered at the hearing in this case, this was a project for which the Complainant’s Firm was the architect of record.
2. The Web site of the Respondent’s Firm contained representations concerning certain of the Cited Projects on which the Respondent had worked while employed by the



Complainant's Firm but gave no attribution to that firm as to those projects.

3. The Web site of the Respondent's Firm also allegedly contained representations of projects on which the Respondent had worked while employed by the Complainant's Firm but provided only the attribution "Respondent w/CF."

The NEC finds that the Complainant has established these core facts.

Analysis and Conclusions

That, however, is only the start of this discussion, for we must next determine whether these facts are indeed sufficient to establish one or more violations of the referenced rules by the Respondent. (*See NEC's Rules of Procedure, Section 5.13* ("In the event the Complainant's evidence does not establish a violation, the Complaint is dismissed").)

The Complainant has cited the following provisions of the Code of Ethics as the basis for the Complaint: Rules 3.301, 4.101, 4.201, and 5.201.

A. Rule 4.101

Under this Rule, a Member is required to file a complaint with the National Ethics Council if the Member has substantial information which leads to a reasonable belief that another Member has committed certain violations of the Code of Ethics. The Complainant appropriately acted upon this Rule when he filed the Complaint in this case. The Rule, however, does not provide an independent basis for establishing a violation of the Code of Ethics by the Respondent.

B. Rule 3.301

This Rule prohibits a Member from intentionally or recklessly misleading existing or potential clients about the results that can be achieved

through the Member's services and from stating that the Member can achieve results that violate applicable law or the Code of Ethics. This obligation binds the Member both when soliciting a client and during the Member's performance of professional services.

The Respondent essentially maintains that his involvement in the Cited Projects, as an associate principal and as designer and/or planner, indicated his creative efforts in producing designs that were eventually transformed into completed buildings. His involvement in these specific building types, along with his credentials as a licensed architect, would reasonably indicate his abilities to provide design services associated with those building types.

In the Complainant's own words, the Respondent is a "very strong architect and a talented designer." He also acknowledged that the Respondent had design responsibilities with respect to all the Cited Projects. He has no personal knowledge of any potential or actual clients of the Respondent's Firm that may have been misled with respect to the Cited Projects referenced on that firm's Web site. Architect A testified that she knew of no material damages to the Complainant's Firm as a result of the alleged violations that are the subject of the Complaint.

Considered as a whole, the evidence does not establish that, by representing the Cited Projects in the manner summarized above, the Respondent intentionally or recklessly misled any existing or potential clients about the results that could be achieved through his services. Neither does the evidence demonstrate that his representation of the Cited Projects constituted a statement that he could achieve results such that there would be a violation of applicable law or the Code of Ethics.

On this record, the NEC thus concludes that the Complainant has not borne his burden of proving a violation of Rule 3.301 by the Respondent.



C. Rules 4.201 and 5.201

Rule 4.201 provides that

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.

Rule 5.201 requires Members to “recognize and respect the professional contributions of their employees, employers, professional colleagues, and business associates.”

In this case, there is a clear interplay between Rule 4.201 (governing the credit the Respondent may claim for the Cited Projects and the manner in which he may describe his role as to those projects) and Rule 5.201 (governing the credit he must give his former employer for those same projects).

As the National Ethics Council has previously commented, “Failure to give and take appropriate credit for design work has been, and continues to be, a problem that plagues the architectural profession.” (*See NEC Decision 92-5.*) The Council has issued other decisions and advisory opinions on this subject. (*See, e.g., NEC Decision 94-2; NEC Advisory Opinion No. 8.*)

At the outset, we note what is *not* at issue here. The Complainant does not question the Respondent’s right, upon his departure from the Complainant’s Firm, to take with him materials relating to his work on the Cited Projects. Neither does he maintain that the Respondent should be barred from referring to the Cited Projects in all contexts. On the contrary, he testified that “the reality is senior people leave architectural firms, you know, all the time, and in the material they use to obtain other employment, they refer and should be clear in their responsibility on projects.” The issues thus

do not center on whether the Respondent had a right to use materials he took with him from the Complainant’s Firm, but on how he used them.

1. *Scope and Nature of Responsibilities*

The first issue arises from the way the Respondent has described the scope and nature of his responsibilities in connection with his work on the Cited Projects. The *Architects Directory* listing discussed above referred simply to “Public Building, City, State.” The Web site of the Respondent’s Firm listed the client, the specific building, and, in some cases, a date associated with a project. These were listed under specific building category types, *i.e.*, commercial, institutional, and educational. None of these listings described the nature and scope of the Respondent’s participation in each specific project.

The Complainant himself does not contest that, as to the Cited Projects, the Respondent was the project designer or otherwise served on the team of people responsible for developing and designing each of the Cited Projects. As to one of the projects, the “International Competition,” the Respondent contributed his own time to the Complainant’s Firm’s effort, and thus shared attribution with that firm in the resulting competition submission. The Respondent was not, however, the principal architect as to any of the Cited Projects.

At the hearing, the Complainant stated his opinion that the representations of the cited projects on the Web site of the Respondent’s Firm suggested that the Respondent was the principal architect for those projects. The Complainant’s testimony as to the representation of one of the Cited Projects is characteristic of his overall position:

I would expect that in order to meet the standard of accurately stating the scope and nature of responsibilities that an appropriate attribution here would be “project designer while employed with Complainant’s Firm.”



None of the representations on the Web site of the Respondent's Firm stated the Respondent's specific role (e.g., as project designer) as to any of the Cited Projects. The "Examples of Project" listed by the Respondent's Firm in the *Architects Directory* could reasonably be interpreted such that the "Public Building, City, State" would be viewed as a project for which the Respondent was the architect of record. In the Web site pages developed by the Respondent's Firm, the reference to "Respondent w/CF" implies an interrelationship between individuals or entities in the completion of the Cited Project but does not clearly discern the responsibilities of each with regard to those projects. The Web site references to the remaining Cited Projects make no reference at all to any third party and thus leave the impression that the Respondent was the architect of record for them.

Having carefully examined the Respondent's representations concerning the Cited Projects, and after careful consideration of all the evidence, the NEC concludes that the Respondent failed to accurately state the scope and nature of his responsibilities in connection with work for which he was claiming credit and thus violated Rule 4.201.

2. Attribution of Credit

The second issue centers on whether Respondent gave proper attribution, and thus credit, to the Complainant's Firm in the representations of the Cited Projects in the *Architects Directory* listing and on the Web site of the Respondent's Firm.

Our starting point on this issue looks to whether the parties had a contractual understanding as to how the Respondent would be able to represent his work on the Cited Projects. State laws typically allow employers to set conditions of employment over and above what is stated in the Code of Ethics. These might include a requirement of prior approval for the use of all publicity information. Such conditions should be explicit, preferably in writing, and clearly set forth and understood by the employee before accepting a

position with a firm. Testimony at the hearing in this case addressed a written employment contract between the Respondent and the Complainant's Firm, but this document was never introduced into evidence. Based on the evidence, we are not prepared to rule that the Respondent's representations concerning the Cited Projects violated a written contract with the Complainant's Firm.

We consider next whether the reference to "Respondent w/CF" as to certain of the Cited Projects on the Web site of the Respondent's Firm provided sufficient attribution to the Complainant's Firm. It would appear that the Respondent believed it did. Nowhere on the Web site, however, was a definition of "CF" provided. Further, the references to the remaining Cited Projects, both in the *Architects Directory* and on the Web site of Respondent's Firm, omitted the "CF" notation altogether and, indeed, made no mention of the Complainant's Firm at all. Moreover, the reference on the Web site to the International Competition clearly makes no reference to anyone else's involvement in that project.

Based on all the evidence, the NEC finds the Respondent to have violated Rules 4.201 and 5.201 in that he inappropriately implied to himself undue credit and denied other participants in the projects their proper share of credit.

Penalty

Having found violations of Rules 4.201 and 5.201 of the Code of Ethics by the Respondent, we turn to consideration of the penalty appropriate to those violations.

The penalty in past cases involving the violation of these Rules has ranged from admonition to a one-year suspension of membership. We believe the violations in this case are sufficiently serious to warrant a penalty beyond admonition. The NEC has imposed the penalty of admonition in cases where the evidence demonstrated that the



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Member's failure to give proper credit was either inadvertent, an oversight, or an honest mistake. (*See, e.g., NEC Decision 87-6.*) No such evidence was presented in this case. We also note, however, that there is no evidence that the Respondent had used information concerning the Cited Projects in competitive proposals. Moreover, the evidence shows that revisions to the Respondent's Firm's entry in the *Architects Directory* and to the firm's Web site have modified or eliminated the references that gave rise to the Complaint. While these circumstances do not excuse the Respondent's violations, they do suggest that a penalty less than suspension is appropriate here. We therefore have determined that the penalty of censure be imposed in this case.

[The Respondent appealed the NEC's decision to the Institute's Executive Committee, as permitted in Chapter 7 of the Rules of Procedure. The Executive Committee approved the NEC's decision but reduced the penalty to admonition.]

Members of the National Ethics Council

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The Hearing Officer, Ronald P. Bertone, FAIA, did not participate in the decision of this case, as provided in the Rules of Procedure.

March 1, 2002