



Misleading Statements of Professional Qualifications and Experience; 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 Rules 4.201 and 5.201 of the Institute’s 1997 Code of Ethics and Professional Conduct (“Code of Ethics”) by making a misleading representation on a postcard promoting his new firm. The Council ruled that statements on the postcard were misleading and led the public to believe that the Member’s new firm had been previously associated with his prior firm, although the two firms were unrelated. In addition, it also ruled that the statements on the postcard led the public to believe that the Member’s new firm was responsible for a project that he had worked on while at his prior firm. The NEC found that the Complainant failed to meet his burden of proof regarding Rule 5.202. The Respondent appealed the NEC’s decision to the Institute’s Executive Committee, which upheld the decision.

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

References

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

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 responsibilities

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.

Rule 5.202 Members leaving a firm shall not, without the permission of their employer or partner, take designs, drawings, data, reports, notes, or other materials relating to the firm’s work, whether or not performed by the Member.

Findings of Fact and Analysis

The Parties

Architect A is an architect licensed to practice in the eastern United States. He is a Member of the AIA and principal in his own architectural firm. Architect B is an architect licensed to practice in the eastern United States. He is a Member of the



AIA and principal in his own architectural and interior design firm.

The Relationship Between the Parties

Architect A and Architect B met during the late 1990s. At that time, Architect A, principal in a firm that had been in existence since the late 1980s, approached Architect B about joining his firm to work out a partnership arrangement and assisting him with a hospitality project. Architect B agreed and joined Architect A's firm shortly thereafter, initially as a consultant. He began working full-time on the hospitality project four months later.

Architect B was not brought into the practice as a salaried employee. Rather, it was determined that Architect B would join in "collaboration" with Architect A, bring a number of pieces of computer and other equipment to the practice, and be compensated through periodic draws from the business bank account. Apparently the draws were in equal amounts to both parties after business expenses were covered. During this period, Architect B's name was added to the firm's title and it was known as "A and B Architects." This title was used on drawings, business cards, stationery, and other forms of communication to the public regarding the firm.

During Architect B's tenure at the firm, the parties discussed the possibility of creating a partnership and even considered proposals to do so. However, they were unable to agree on the terms for the arrangement and never signed an agreement creating a formal partnership. The parties disagree about whether a partnership ever existed. Regardless, the Hearing Officer noted that he had no authority to rule on the existence of a partnership in this case and that this issue was relevant only for the purpose of determining whether the manner in which Architect B claimed credit for the hospitality project was in violation of Rule 4.201.

Approximately one year later, for a variety of reasons, Architect A and Architect B decided to

cease their "collaboration." Architect A returned to practice as the principal of his previously named firm "A Associates Architects" and Architect B created his own architectural and design firm and began practicing as the principal of "B~design."

The Hospitality Project

At the center of the Complaint in this case are the scope and nature of Architect B's responsibilities in connection with the hospitality project referenced above, a restaurant/banquet facility. Architect A stated that about one year after dissolving their collaboration, while entertaining a potential client at the project site, he learned that a stack of postcards or handbills featuring the project had been placed in the lobby of the restaurant to be picked up by patrons.

Upon inspecting one of the postcards, Architect A noticed that it had been prepared by Architect B for the purpose of promoting his current firm, "B~design." The front side of the postcard featured a prominent photograph of the renovated space of the project under the following heading:

*THE PROJECT – RESTAURANT –
BANQUET HALL – SPECIAL
FUNCTION FACILITY*

The logo for B~design, a credit for the photographer and Architect B's contact information appear on the left side of the postcard. The logo reads "B~design Architecture, Interiors, and Urban Planning" over a subtext of "Design – Ensemble."

The reverse side of the postcard features a "before" photograph of the space when it was a bank, prior to being renovated. The following text appears before the photograph:

The Heritage of Place Revitalized
Sharing the vision of our client and
community **B~design**, previously **A and
B Architects**, contributes in the creation



and preservation of the heritage of place. Occasionally a commission offers a unique opportunity to design a project which will have a significant impact upon the emotional, intellectual and moral qualities that distinguish a place. **B~design's** revitalization of the [bank] building into the new [project site] is one of those rare opportunities.

The following text appears afterward:

Built in phases from [dates], this bank has been respectively saved and extraordinarily transformed into an adaptive reuse which has tremendous economic potential for the historical square. **B~design** revived the 19th century Romanesque Revival front façade and meticulously reclaimed the existing grand Beaux Arts interiors. Quality that fascinates is a constant in **B~design** projects. If you would like to learn more about our work and our firm please call.

Architect B, AIA

The logo for Architect B's firm and his contact information also appear on the left side of the postcard. Architect A asked the owners of the project site to remove the postcards from the lobby and to discontinue distributing them from their restaurant, which they agreed to do.

Architect B visited the project site approximately one month later and learned that Architect A had asked the owners to remove his postcards from the lobby and to discontinue distributing them. The following day, Architect B contacted Architect A, first by telephone and then by letter, and asked him to edit the text of the postcard into a form that would be acceptable. Subsequently, the parties spoke by telephone and exchanged correspondence in an effort to reach an agreement on the manner in which Architect B could claim credit for his work on the project. However, they were unable

to come to an agreement and Architect A filed the complaint that gave rise to this case.

The history of the project is significant for purposes of illustrating Architect A's and Architect B's responsibilities in connection with the project. Both parties agree that Architect A secured the commission for the project, developed the schematic design which included the signature bar occupying the center of the historic space, and signed the initial contract for the project with the client one month prior to Architect B's becoming associated with A Associates Architects. They also agree that Architect A's professional stamp and signature are placed on the construction documents for the project and that he is regarded by the local regulatory agency as the "Architect of Record."

While they disagree as to who developed and had responsibility for specific elements of the project, they both also agree that Architect B participated significantly in the development and implementation of the project, that it was further developed and increased dramatically in scope after he joined the firm, and that he ran the day-to-day administration and development of the project as the "project architect."

Conclusions

The allegations as alleged in the Complaint in this case focus on three core issues:

- First, whether the postcard promoting Architect B's new firm makes a misleading claim about his professional experience and performance, and inaccurately states the nature and scope of his responsibilities in connection with the project, in violation of Rule 4.201;
- Second, whether the postcard fails to recognize the professional contributions of Architect A to the project, in violation of Rule 5.201; and



- Third, whether Architect B took designs, drawings, data, reports, notes or other materials relating to the firm's work without Architect A's permission, in violation of Rule 5.202.

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." The commentary to this Rule states that it 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."

In a previous decision, which involved facts similar to those at issue here, the NEC ruled that a member had violated Rule 4.201 by publishing a brochure (advertising his newly created firm) which contained a misleading representation of his experience and performance on the three projects pictured in the brochure. It also ruled that he had violated Rule 4.107 (a rule which has since been eliminated, but whose text has been essentially incorporated into current Rule 4.201) by publishing a brochure that failed to represent accurately the scope and nature of his responsibilities in connection with one of the projects depicted in a photograph in the brochure, and which failed to give appropriate credit to the firm where he had worked on the project. (*See NEC Decision 89-8.*) In determining that the Member had violated Rule 4.201, the NEC noted that the brochure left the impression that all of the projects were the work of the Member's new firm.

Applying this reasoning to the facts here, the Council finds that the phrase "B~design, previously A and B Architects" on the postcard promoting Architect B's new firm is a misleading representation of his experience and perform-

ance, particularly in connection with the project, and thus violates Rule 4.201. That phrase suggests that Architect B was a principal in the firm of "A and B Architects," and that "B~design" evolved from that firm. Indeed, a name change of this type is often seen in maturing firms as ownership transfers from one generation to the next. Thus, upon an initial reading of the postcard, one might assume that a person by the name of Architect A had previously been associated with the firm but had since retired.

The reality was quite different. Two professionals collaborated on the project under the name "A and B Architects." That collaboration ended. Architect A once again began practicing under the firm name "A Associates Architects," and Architect B created a new firm, "B~design." Under these circumstances, it was misleading and inaccurate to identify the latter firm as having "previously" been "A and B Architects," or to suggest that Architect B's firm, "B~design," was responsible for the project. These misleading statements by Architect B concerning his professional qualifications and experience constitute a clear violation of Rule 4.201.

Moreover, the Council finds that Architect B violated Rules 4.201 and 5.201 by inaccurately stating the nature and scope of his own responsibility in connection with the project, and failing to make appropriate mention of Architect A's name or his contributions to the project. As previously noted, the postcard contains repeated references to "B~design," suggesting that it was previously "A and B Architects." Furthermore, the following statements from the post card regarding B~design's contributions clearly imply that Architect B, as the principal in the firm, had sole responsibility for the Project:

B~design revitalization of the landmark [bank] building into the new [project site] is one of those rare opportunities.

B~design revived the 19th century Romanesque Revival front façade and



meticulously reclaimed the existing grand Beaux Arts interiors.

Although the evidence shows that Architect B played a significant role in the development and implementation and the day-to-day operation of the project, he did not have sole responsibility for the project. On the contrary, Architect A also played a major role in its initial development and was the architect of record. He secured the commission for the project, developed the schematic design, and signed the contract with the client. Despite all this, the postcard makes no reference to his contributions, and indeed makes only one passing reference to his name, in the phrase “B~design, previously A and B Architects.” This glancing reference gives the reader no way of knowing that Architect A was involved in the project at all. Therefore, through the postcard, Architect B not only violated Rule 4.201 by inaccurately stating the scope and nature of his responsibilities in connection with the project, but also violated Rule 5.201 by failing to provide appropriate credit to Architect A for his professional contributions.

Rule 5.202

Rule 5.202 forbids a Member leaving a firm to take designs, drawings, data, reports, notes or other materials relating to the firm’s work unless the Member has the permission of his/her employer or partner. The Council finds that there is not sufficient evidence to establish a violation of this rule by Architect B.

Architect A claimed that documents and materials were missing from his files and that they were reproduced by Architect B in responding to the Complaint. Architect B claimed that he had simply reproduced copies that were legitimately in his possession and that he did not have any of the original materials. The absence of documents from Architect A’s files does not prove that Architect B is in possession of those documents, or that they were taken in violation of Rule 5.202. Since Architect A has not met his burden of proof as to this issue, as required by Rule 5.13

of the Rules of Procedure, the Council dismissed the allegation of a violation of Rule 5.202.

Penalty

Having found violations of Rules 4.201 and 5.201 of the Code of Ethics by Architect B, the Council is required to assess an appropriate penalty. There are mitigating factors which should be considered in the assessment of this penalty:

- The evidence indicates that the violations arose only from the distribution of the single postcard discussed above and that the distribution was limited to the reception desk at the project site. Architect B showed no malice or ill intent toward Architect A in distributing the postcard. Moreover, the postcard was promptly withdrawn from public display upon Architect A’s request.
- The postcard did contain at least an indirect reference to Architect A by including the phrase “A and B Architects” although that reference was inadequate to avoid violations of Rules 4.201 and 5.201.
- The evidence demonstrates Architect B’s willingness to re-phrase and re-design the postcard to satisfy Architect A’s concerns.
- Except with respect to the distribution of the postcard, there is no evidence that Architect B engaged in any behavior in violation of the Code of Ethics.

After careful consideration of the violations discussed above, balanced against the mitigating factors examined here, the Council imposes the penalty of admonition. This penalty is commensurate with the penalty imposed by the NEC in cases involving other violations of these Rules where similar mitigating circumstances existed. (*See NEC Decisions 87-6, 89-8, 90-2, and 94-7.*)



Finally, the Council believes that had Architect B consulted with Architect A prior to publishing the postcard on the project, the parties might have been able to find mutually acceptable language, which more accurately described the nature of their respective responsibilities in connection with the project. This might have resolved the matter and averted the need to bring the dispute before the NEC for resolution. Therefore, the NEC recommends that in similar circumstances, the parties communicate with one another prior to publishing and distributing any materials promoting their new firms.

[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 upheld the NEC's decision.]

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

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