



Failure To Give Credit Where Due; Discrimination on the Basis of Gender; Conflict of Interest When Architect Serves on Building Committee; Withholding Permission from Departing Employee To Take Copies of Work

Summary

The National Ethics Council (“Council” or “NEC”) ruled that two AIA Members violated Rules 4.201 and 5.201 of the 1997 Code of Ethics and Professional Conduct by failing to properly credit the Complainant for work completed on projects listed in a directory of architectural firms and on their firm’s Web site. The AIA Members were found not to have violated Rules 1.401, 2.101, 3.201, 3.202, 4.202 or 5.203. The Council found that a third Respondent did not violate any of the cited Rules.

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

References

1997 Code of Ethics and Professional Conduct, Canon I, General Obligations

Rule 1.401 Members shall not discriminate in their professional activities on the basis of race, religion, gender, national origin, age, disability, or sexual orientation.

1997 Code of Ethics and Professional Conduct, Canon II, Obligations to the Public

Rule 2.101 Members shall not, in the conduct of their professional practice, knowingly violate the law.

1997 Code of Ethics and Professional Conduct, Canon III, Obligations to the Client

Rule 3.201 A member shall not render professional services if the Member’s professional judgment could be affected by the responsibilities to another project or person, or by the member’s own interests, unless all those who rely on the Member’s judgment consent after full disclosure.

Rule 3.202 When acting by agreement of the parties as the independent interpreter of building contract documents and the judge of contract performance, Members shall render decisions impartially.

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.

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.

Rule 4.202 Members shall make reasonable efforts to ensure that those over whom they have supervisory authority conform to this Code.

*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 5.203 A member shall not unreasonably withhold permission from a departing employee or partner to take copies of designs, drawings, data, reports, notes, or other materials relating to work performed by the employee or partner that are not confidential.

The Parties' Allegations

Architect A, the Complainant, is an architect licensed to practice in a state in the United States. She is a member of the AIA, and principal in her own architectural firm. Architects B, C, and D (together, the Respondents) are architects licensed to practice in the one or more states in the United States. Architects B and C are AIA members and owner/principals, and Architect D is an AIA member and an employee of the same architectural firm ("Respondents' Firm").

At the center of the Complaint in this case are the scope and nature of the Complainant's responsibilities in connection with a church project ("Church Project") for which Architect B under-

took to perform programming and master plan services on a pro bono basis. The Complainant maintained that she created three conceptual designs and that Architect B's firm issued and disseminated a booklet that contained her concepts and that failed to credit her as author. Architect B maintained that he was the author of the conceptual designs and that he created them and submitted them to the client prior to the date that the Complainant claims to have created them. He further maintained that the Complainant's involvement in the project was limited to providing drafting support for his concepts and to finishing work begun by others.

The Complainant alleged that Architect B discriminated against her on the basis of her gender because she rejected his sexual advances as repayment for mentoring her and that, as a result, he retaliated in various ways, including refusal to provide appropriate credit for work on the Church Project, withdrawal of an opportunity to recover the costs of her pro bono work, and a threat to interfere with her involvement in other work and in the AIA. She cited various e-mail and telephone messages as evidence of Architect B's sexual discrimination. In response, Architect B argued that the e-mail and telephone messages were taken out of context and were unsubstantiated. In addition, it appeared that civil litigation between these parties had been filed and settled with the parties having agreed to "nondisclosure and confidentiality." That may explain why the parties did not provide more information on this issue.

The Complainant claimed that the Respondents' Firm's Web site failed to credit other architects or architecture firms that had worked on projects shown on the Web site. She made a similar claim regarding the Respondents' Firm's projects shown in a Web-based directory ("Directory"). Architects B, C, and D acknowledged that they had inadvertently failed to credit other architects and firms that had worked on some of their projects but added that once they learned of their oversight they corrected the mistake. Regarding the Directory, Architects B, C, and D



did not deny that they had failed to credit others but offered reasons for not doing so, including limited space, well-established custom for such publications, lack of appropriate instructions, and the Directory's own guidelines.

Finally, the Complainant alleged that during the proceedings of another case filed with the NEC, the Respondents made false statements under oath and refused to recognize her professional contributions on several projects accomplished while she was an employee of Respondents' Firm. Architects B, C, and D responded that the matter was "the subject of resolution" of another Complaint filed by Architect C.

Findings of Fact and Analysis

The NEC determined that the Complainant met her burden of proof as to Architect B's and Architect C's violation of Rules 4.201 and 5.201 in connection with misrepresentation on the Respondents' Firm's Web site and the Directory listing. However, she failed to meet her burden of proof regarding alleged violations of Rules 1.401, 2.101, 3.201, 3.202, 4.202, and 5.203. She also failed to meet her burden of proof regarding Architect D's alleged violation of Rules 4.201 and 5.201. Moreover, Rule 4.101 does not provide a basis for establishing a violation of the Code of Ethics by any of the Respondents.

Rule 1.401

Rule 1.401 provides that "Members shall not discriminate in their professional activities on the basis of race, religion, gender, national origin, age, disability, or sexual orientation." The Complainant maintained that Architect B discriminated against her because she rejected his sexual advances as repayment for mentoring. He allegedly engaged in such discrimination by refusing to credit her for work she had done on a project, taking away the opportunity for her to recover the costs of work she had done on a pro bono basis, and threatening to interfere with her

involvement in other projects and in the AIA. She cites telephone and e-mail messages, allegedly communicated by Architect B, as evidence.

Guided by federal and state law for guidance on the type of conduct that is considered to constitute sex discrimination, the NEC holds that in order to prove that Architect B's conduct constituted sexual harassment in this case for purposes of establishing sexual discrimination in violation of Rule 1.401, it is necessary to demonstrate that: (1) his conduct consisted of unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature; and (2) rejection of his conduct by the Complainant took place in professional activities by explicitly or implicitly affecting her employment, interfering with her work performance or creating a hostile or offensive work environment.

Architect B did not deny making the statements in telephone or e-mail messages that were alleged to have been sent to the Complainant. Moreover, he did not provide evidence that would negate the perception that they constituted unwanted sexual advances, or verbal conduct of a sexual nature toward the Complainant. The NEC therefore found that the Complainant met her burden of proving the first element necessary to establish sexual harassment, and thus sexual discrimination, under Rule 1.401. However, the NEC also found that she failed to demonstrate the second element, *i.e.*, that the sexual harassment took place in the context of Architect B's professional activities. He did not interfere with the Complainant's work performance, nor did he create an intimidating, hostile or offensive work environment.

Accordingly, the NEC found that the Complainant failed to satisfy her burden of proving a violation of Rule 1.401.



Rule 2.101

Rule 2.101 prohibits Members from knowingly violating the law in the conduct of their professional activities. The Complainant contended that Architect B violated this rule by copying concepts that she created without obtaining her permission. At the center of her argument was her belief that Architect B violated federal copyright law. In order to prove that Architect B violated this Rule, the Complainant must provide evidence of a finding by a court that Architect B violated federal copyright law. Since there was no evidence in the record of such an independent finding, the NEC concluded that the Complainant did not satisfy her burden of proving a violation of Rule 2.101.

Rules 3.201 and 3.202

Rule 3.201 states that “[a] Member shall not render professional services if the Member’s professional judgment could be affected by responsibilities to another project or person, or by the Member’s own interests, unless all those who rely on the Member’s judgment consent after full disclosure.” The Commentary to this Rule states that “[t]his Rule is intended to embrace the full range of situations that may present a Member with a conflict between his interests or responsibilities and the interest of others....” Rule 3.202 provides that “[w]hen acting by agreement of the parties as the independent interpreter of building contract documents and the judge of contract performance, Members shall render decisions impartially.” The Commentary to this Rule states that “[t]his Rule applies when the Member, though paid by the owner and owing the owner loyalty, is nonetheless required to act with impartiality in fulfilling the architect’s professional responsibilities.”

In alleging violations of Rules 3.201 and 3.202 by Architect B, the Complainant contended that Architect B was rendering his professional judgment (in his capacity as Chairman of the owner’s Building and Grounds Committee) on

design work that she was performing. During the same period, she was also rejecting his personal advances toward her. She believed that his personal interest in her presented him with a conflict of interest and prevented him from rendering unbiased decisions regarding her work. She cites statements, e-mail messages and a letter to support her claim.

Rules 3.201 and 3.202 are designed to prevent a Member from rendering professional services when he or she is presented with a conflict of interest, and to help ensure that he or she renders decisions impartially. There was not sufficient evidence in the record that Architect B violated either of these Rules. First, the record lacks evidence describing the exact nature of his responsibilities as Chairman of the Building and Grounds Committee. It did not appear that they included providing professional services on the project cited, at least in the sense contemplated by Rule 3.201. Second, despite ample evidence of friction with the Complainant on a personal level, there is scant evidence that, as Chairman of the Building and Grounds Committee, Architect B failed to render professional decisions impartially insofar as his services for the owner were required. On the contrary, the Respondent provided evidence that he had praised the quality of the services provided by the Complainant’s firm. Given this record, the NEC declined to hold that Architect B violated Rules 3.201 and 3.202.

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 the work for which they are claiming credit.” The Commentary to this Rule states that “[t]his 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.”



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

The Complainant alleged that Architects B, C, and D violated these Rules in connection with the descriptions listed on the Respondents’ Firm’s Web site and in the Directory listing. The Complainant submitted copies of the Web site pages which contained photographs and descriptions of various projects as examples of design work done by the Respondents’ Firm. Although other architects and firms played a role in these projects, they were not mentioned on the Web site. The Respondents implicitly acknowledged these facts themselves. They went on to state, however, that they remedied this situation as soon as it was brought to their attention. This does not excuse their oversight in failing to credit the roles of affiliated architects and firms.

The Complainant also submitted copies of listings in the Directory as examples of projects designed by the Respondents’ Firm. Again, although other architects and firms played a role in these projects, they were not mentioned in the listings.

Based on its review of the record, the NEC judged that the Complainant had met her burden of proof regarding Architect B’s and Architect C’s violation of Rules 4.201 and 5.201. The NEC also found that there was no proof of intention to mislead and that the omissions described were promptly corrected once they were identified.

The Complainant also alleged that Architect B violated both of these rules with respect to the Church Project by executing one of the schemes for the project, originally developed by the Complainant’s firm, and disseminated it without crediting her or her firm for the work she had performed. The Respondent argued that the Complainant was not due attribution because the master plan concepts that she said she created were, in fact, created by him and submitted to

the client on a date prior to the dates the Complainant claimed to have created the designs. He submitted an undated document to substantiate his claim. He also maintained that the Complainant’s role in the project was limited to providing drafting support for his concepts.

The NEC concluded that the evidence submitted by the Complainant as proof that she created the concepts and was therefore due attribution was inconclusive. Based on the evidence in the record, the NEC was unable to determine whether the Complainant or Architect B created the concepts. Since Section 5.14 of the NEC’s Rules of Procedure provides that the burden is on the Complainant to prove the facts upon which a violation is to be found, and since the Complainant failed to satisfy that burden, the NEC concluded that the Complainant had not demonstrated a violation by Architect B.

Rule 4.202

Rule 4.202 provides that “Members shall make reasonable efforts to ensure that those over whom they have supervisory authority conform their conduct to this Code.” In her Complaint, the Complainant alleged that Architects B, C, and D did not ensure that an employee was conforming to the Code of Ethics. In addition, she alleged that they were using the employee as an instrument of revenge. The NEC found that there was no mention of the specific provisions of the Code of Ethics with which the Respondents’ employee supposedly failed to comply, and nothing in the record, aside from her assertions, had been offered to support the Complainant’s views.

Complainant also alleged as a violation of this rule that Architect B coached the employee to file his own sham ethics complaint against the Complainant. Assuming strictly for the sake of argument that this assertion were sufficient to establish a violation of this rule, the Council would still not be able to find a violation in this case because the Council concluded that the Respondent did not have supervisory authority



over the employee at the time he filed the complaint in question, and thus could not be held accountable under Rule 4.202 for his actions at that time. Accordingly, the NEC concluded that the Complainant had not borne her burden of proving a violation of Rule 4.202.

Rule 5.203

Rule 5.203 states that “[a] Member shall not unreasonably withhold permission from a departing employee or partner to take copies of designs, drawings, data, reports, notes, or other materials relating to work performed by the employee or partner that are not confidential.”

The Complainant maintained that Architect B violated this Rule by unreasonably withholding copies of her work when he stated:

...You need prints of the project. Uh, I think it is a good suggestion. Talk to xxx, OK? We’ll make them available to you ... at forty dollars a print. Then you can sleep with him and he’ll give them to you for nothing.

The Complainant, however, failed to submit any evidence substantiating her claim that she was actually denied copies of her work. Accordingly, the NEC did not find a violation of Rule 5.203.

Penalty

Having found no violations as to Architect D, the Council dismissed the Complaint with respect to him.

The Council determined that only violations of Rule 4.201 and 5.201 had been established as to Architect B and Architect C, and therefore considered the penalty that would be appropriate for those violations. The Council has four levels of sanctions that it may impose for violations of the Code of Ethics: admonition (private reprimand), censure (public reprimand), suspension of mem-

bership in the Institute, and termination of membership in the Institute.

In previous decisions, the Council viewed the lack of malice on the part of the respondent and his or her willingness to cure the error by providing the appropriate credit as mitigating factors in determining the appropriate penalty to impose for a violation of Rule 4.201. (*See NEC Decisions 87-6, 89-8 and 2000-11*) Inasmuch as Architect B and Architect C corrected their failure to credit appropriate firms and architects on their firm’s Web site once they learned of the oversight, the Council decided that a penalty of admonition was the appropriate sanction.

Members of the National Ethics Council

D. Susan J. O’Brien, FAIA
Ronald P. Bertone, FAIA
Brian P. Dougherty, FAIA
Phillip T. Markwood, FAIA

Hearing Panel members Peter Piven, FAIA (Presiding Officer), Duane A. Kell, FAIA, and Kathryn T. Prigmore, FAIA, did not participate in the decision of this case, as provided in the Rules of Procedure.

May 7, 2004