



## *Using Photographs of Another Architect's Work on Firm's Web Site; Inaccurate Claim of Professional Credit*

### Summary

The National Ethics Council ("Council" or "NEC") found that an AIA Member violated Rule 4.201 of the Institute's 1997 Code of Ethics and Professional Conduct ("Code of Ethics") by including on his firm's Web site photographs of two houses that had been designed by the Complainant. The Complainant was not mentioned in the description of the projects, thus implying that they had been done by the Respondent's firm. 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 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.*

### Findings of Fact and Analysis

The Complainant is an architect who resides in a Northeastern state ("State"). The Respondent is an Architect Member of the Institute in good standing and is a partner in an architectural firm in the same State.

At the center of this Complaint are two homes designed by the Complainant which appeared on the Web site of the Respondent's firm. The Complainant was not mentioned in the description of the projects, thus implying that they had been done by the Respondent's firm.

To prove that he was not mentioned on the Web site, the Complainant submitted four pages which he had downloaded directly from the site. The pages include a description of Respondent's firm, the scope of services offered by the firm, a client list, and photographs of various projects on which its members have worked. Three of the photographs are of the two projects at issue in this case. The first residence appears on the introductory page of the Web site in connection with the following general description of the services offered by the firm:

Whether you are remodeling, adding on, or building new, [Respondent's firm] can help guide the way. As professionals with nearly 1,000 projects completed in the field of Residential Architecture, we can show you unique design and construction options that probably never crossed your mind as well as minimize your project costs....

On the second page of the Web site, photographs of this project, as well as the other project of the



Complainant, appear side-by-side under the caption: “New Homes.” A statement located to the right of the photograph of the second residence states: “Custom built homes in [State].” The Complainant maintains that the house on the right is actually located in a Midwestern state, and that the Respondent and his firm attempted to “mask their deception by locating these buildings fictitiously.” To prove that he is, in fact, the architect who had designed the homes, the Complainant submitted feature stories from a magazine and a newspaper. Both articles described the project and the Complainant’s work as the architect. The Complainant also submitted drawings of the two residences as further evidence that he had designed them.

The Respondent admitted that the photographs at issue in this case were of homes that had not been designed by architects at his firm and contended that they were included on the firm’s Web site by mistake. He also noted that these images were contained in a binder belonging to the other principal of the firm, who had directed that they be deleted from the Web site immediately once he was notified of the mistake. He submitted copies of pages downloaded from the firm’s Web site on which the photographs of the two homes designed by the Complainant had been deleted.

The Respondent also submitted a copy of a letter from the State’s Board of Architects that he contended dismissed him from its investigative inquiry on the same issues that are raised in this case. In addition, he submitted a statement from his partner, in which his partner acknowledged that the photographs of the projects were in a binder belonging to him. The Respondent also submitted a copy of e-mail messages between his partner and the firm’s Web site designer requesting that she remove the photographs from the site because they were not homes that he had designed. In her response, the Web site designer indicated that she had corrected the error.

In the Statement of Facts submitted in conjunction with his Response and in other statements

he has made in the course of this case, the Respondent also essentially asserted the following:

- The inclusion of the images in question on the Web site was a simple mistake; there was never any intention to misrepresent the capabilities or residential experience of his firm.
- Neither he nor the Web site designer had any way of knowing that these images were of homes that were designed by anyone other than his partner.
- Respondent’s partner does not know how these images of another architect’s work came to be in his binder of photos depicting his work. He mistakenly believed these two images to be of a home that he designed many years ago.

In addition to the Complaint filed in this case, the Complainant also filed a complaint with the State Board of Architects, in response to which the executive director of the State Board of Architects sent a “Letter of Admonishment in Lieu of a Disciplinary Proceeding” to the Respondent and his partner. They in turn signed statements on the letter signifying their agreement with its terms and conditions and further agreeing to comply with all directives set forth in the letter.

The proceeding before the State Board of Architects is an independent proceeding, which the Institute is not bound to follow. However, we believe that the Board’s findings are relevant to the NEC’s consideration of the ethics case. In its findings, the Board noted, in part:

Upon review of all available information, the Board has determined that there is insufficient cause in this matter to warrant the filing of formal disciplinary charges at this time. Notwithstanding that decision, the Board wishes to express its concerns with regard to this matter. More specifically, the Board be-



believes that you are responsible for the accuracy of your website. In this case, it is alleged that photographs reflected on your website are not representations of your work. The Board has reviewed these allegations and determined that your website is inaccurate since the photographs are not representative of your work. However, the Board believes from the evidence and testimony presented that the website inaccuracies were an oversight on your part and not an intentional misrepresentation.

The NEC's consideration of this case must begin with a review of the Respondent's alleged violations, as stated in the Complaint. (*See NEC's Rules of Procedure, Section 3.2* ("A Complaint must allege violation of one or more Rules of Conduct stated in the Code [of Ethics].").) As previously noted, the Complainant cited Rule 4.201 of the 1997 Code of Ethics as the basis for his Complaint.

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: "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."

As the NEC 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 Advisory Opinion No. 8; NEC Decisions 87-6, 89-8, 92-7, and 94-2.*)

The Complainant has asserted that the Respondent included photographs of two houses, which the Complainant had designed, on the Web site of the Respondent's firm. In the Statement of Facts submitted as part of his Response to the Complaint, the Respondent noted that:

The firm with which I am currently employed was started on January 1, XXXX and later that year began to put together a web site. The website contained images taken from my portfolio as well as images contained in a binder belonging to my partner. Two of the images contained in my partner's binder were evidently not photographs of his work. How am I to have reasonably to have known this? Further, I did not represent these images to be my work.

Upon receipt of the Complaint, I immediately questioned my partner about this allegation and asked him to have the images in question removed from these two web pages immediately as it was evident that the images of work designed by someone else.

The Respondent also submitted a statement in which his partner acknowledged that the two photographs at issue were in a binder that belonged to him. The Respondent's partner also stated that he does not know how the two photographs ended up in his binder and that they were selected by the Web site designer, who assumed that they belonged to him. Thus, the Respondent does not deny that his firm's Web site included photographs of the two residences, which were designed by the Complainant. The State Board of Architects' Letter of Admonishment in Lieu of Disciplinary Proceeding indicates that the Board came to the same conclusion.

Accordingly, since the Respondent's firm's Web site presented the work of another architect, without appropriate identification and credit, we conclude that the Respondent has violated Rule 4.201 of the Code of Ethics.



As noted above, the Respondent has largely acknowledged the key facts underlying the conclusions stated above. In addition to the statements above, he has also raised several arguments apparently designed to stay the Council's hand in this matter. We address each of those arguments here.

1. The Respondent alleges that "the State Board of Architects has excused [him] from the investigative inquiry that had been scheduled in this matter." This assertion turns out not to be true. Rather, it appears that the Board excused the Respondent's appearance before it, but did not dismiss him from the inquiry. Even if a dismissal by the State Board had taken place, however, the Institute was not a party to the Board proceeding, and the NEC is not bound by the Board's findings, as it determines whether a violation of the Institute's Code of Ethics has occurred.
2. The Respondent attempts to divert responsibility elsewhere by asserting: "Two of the images contained in my partner's binder were evidently not photographs of his work. How am I to have reasonably to have known this? Further, I did not represent these images to be my work." The Council finds this argument to be disingenuous, at best. As a principal of the firm, the Respondent should have known which work was the firm's and which was not. Moreover, as a partner in the firm, Respondent bears some responsibility to verify that all of the content on the firm's Web site is accurate.
3. In the Statement of Facts in his Response, the Respondent asserts that the "Complainant has not proven that I made misleading, deceptive, or false statements or claims about *my* professional qualifications, experience or performance." (*emphasis by Respondent.*) The commentary to Rule 4.201 is clear 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." The Respondent cannot divorce himself from responsibility by limiting the conditions to which the Rule applies or by avoiding personal responsibility for the firm's actions.

4. Lastly, in a letter to the AIA's Associate General Counsel, the Respondent states: "If the Complainant is intent on ruining my reputation and 20 years as an AIA member with an impeccable record, and the AIA is intent on allowing this to happen, I no longer wish to be an AIA member." There is no evidence that the Complainant filed this Complaint with the specific intent of ruining the Respondent's reputation. Moreover, the Respondent's desire not to be an AIA Member has no bearing here because Section 2.084 of the Institute's Bylaws provides that a Member "against whom a charge of violating the Code of Ethics and Professional Conduct is pending may not resign or be terminated or suspended from membership until all proceedings related to the charge are completed."

#### **Penalty**

---

Having found that the Respondent violated Rule 4.201 of the Code of Ethics, we must determine the appropriate penalty. 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 membership in the Institute for a period of time, and termination of membership in the Institute.

The Respondent has implied that his "20 years as an AIA member with an impeccable record" should somehow excuse him from his ethical responsibilities. We do not agree. Membership of long standing should make a Member more conscious of the responsibilities of membership and more eager to represent properly the profession and the Institute.



In determining an appropriate penalty, the NEC considered as key factors not only the seriousness of the Respondent's conduct in and of itself, but the additional fact that there was no relationship between the Complainant and the Respondent, making it even more difficult to understand how photographs of projects done by the Complainant ended up on the Web site of the Respondent's firm. A prior relationship—for example, if the parties were former colleagues—would make it easier to understand how a mistake of this magnitude could have occurred. But that clearly does not reflect the circumstances of this case. Moreover, the Respondent was admonished by the State Board of Architects for the very same infraction and, despite such evidence, the Respondent continues to assert innocence and offer excuses for his conduct that are disingenuous, at best.

Although the failure to credit in this case appears to have been a single, isolated act, which was corrected once the Respondent and his partner were notified of the error, the Respondent has not acknowledged the full seriousness of the oversight or its ethical implications.

Given these factors, we believe that a penalty of censure is warranted in this case. In the past, the Council has imposed a penalty of admonition in several cases involving violations of Rule 4.201. In those cases, the respondents not only immediately corrected the act that gave rise to the complaint but acknowledged the nature of the ethical infraction and their responsibility for it. In NEC Decision 92-7, the Council imposed a penalty of censure, noting that the Member, as an experienced architect and long-time Member of the AIA, should be acquainted with the Code of Ethics and its requirements. In this case, as one of the principals of the firm, the Respondent bears equal responsibility for ensuring that the content on his firm's Web site is correct.

Taking all of these factors into consideration, we believe that a penalty of censure is warranted 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

Ronald P. Bertone, FAIA  
Janet Donelson, FAIA  
Brian P. Dougherty, FAIA  
Duane A. Kell, FAIA  
Phillip T. Markwood, FAIA  
Kathryn T. Prigmore, FAIA

*The Hearing Officer, Peter Piven, FAIA, did not participate in the decision of this case, as provided in the Rules of Procedure.*

**August 5, 2004**