



Inaccurate Statement of Scope and Nature of Responsibilities in Connection with Work; Failure To Give Appropriate Credit

Summary

The National Ethics Council (“Council” or “NEC”) ruled that an AIA Member violated Rule 5.301 of the Institute’s Code of Ethics and Professional Conduct (“Code”) by failing to give credit to another architect for his contribution to the design of a project when that project was displayed on the website of the Member’s firm. The Council found no violation of Rule 4.201.

The NEC imposed the penalty of admonition on the Member.

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

References

2007 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.

2007 Code of Ethics and Professional Conduct, Canon IV, Obligations to the Profession

Rule 5.301 Members shall recognize and respect the professional contributions of their employees, employers, professional colleagues, and business associates.

Findings of Fact

The Parties

The Complainant practices architecture through his firm in Midwest City, Midwest State. He has been a registered architect in Midwest State for 30 years. He is not registered in any other state.

The Complainant’s practice is primarily custom houses, and he has won design awards for his work. His firm does not have other employees, but he regularly uses the services of the Midwest City firm Design Associates as an independent contractor. Design Associates staff includes an architect and an unregistered designer.

The Respondent practices architecture through his firm, ABC Architects in Resort City, Resort State. The firm has done work in numerous states and abroad, and the Respondent is a registered architect in various states, including Resort State.

ABC Architects apparently employs at least several architects and several other staff, but the record in this ethics case does not reflect the number. The firm has won design awards for its work, which includes residential projects.



The Initial Project Design

In late 2003, a client retained ABC Architects to provide architectural services for her new residence to be built in Resort City (“Project”). The site is not far from downtown Resort City. Construction of the Project would require various approvals from Resort City officials, including residential design standards and the planning and zoning commission.

ABC Architects began conceptual design in May 2004 and, in March 2005, began construction documents. The application process for a building permit was begun in June 2005, and the initial permit was issued in November 2005. In December 2005, the general contractor began construction, including foundation work. The “Construction Set” of architectural drawings dated January 8, 2006, shows the Project as designed at the start of construction. ABC Architects produced a rendering at the client’s request that shows this design.

The client had also retained Harry Albertson of Midwest City to provide interior design services for the Project. Mr. Albertson collaborated with ABC Architects throughout the Project and was actively involved in space planning and the design and detailing of the interior.

The Design Revisions

In late 2005, at about the same time that construction was beginning, the client felt dissatisfied with the exterior design of the Project. She expressed her dissatisfaction to the Respondent but did not receive a response that she thought was adequate.

The year before, the client had become aware of the Complainant’s work in the Midwest City area and had noted at that time that she liked the look of the Complainant’s work. On December 17, 2005, the client met with the Complainant and Mr. Albertson in Midwest City to discuss the Project underway in Resort City. In the days following that meeting, the Complainant pre-

pared some design sketches and, on January 13, the three met again. The client liked the Complainant’s proposed design revisions to the Project and, as a result, called the contractor to stop construction.

The following week, the Complainant and the Design Associates architect travelled to Resort City and, on January 21, had meetings with the general contractor’s staff, City staff, and ABC Architects staff. Exactly what happened in the meeting that the Complainant had with ABC Architects is a matter of some dispute. The Complainant did provide ABC Architects at least two elevation studies that he had prepared for the Project that showed modifications of the exterior design. At the hearing, the Complainant testified that he left more drawings with ABC Architects at that time, including site and floor plans, but neither party produced copies of them in this ethics case.

The Complainant and the Design Associates architect returned to Midwest City the following day. In early February, the client discussed the Project both with the Complainant and with the Respondent and decided to bring the Complainant into the Project as an “advisory architect” or “consulting architect.” She decided that ABC Architects would remain responsible for the construction documents and that ABC Architects would incorporate design changes proposed by the Complainant to the extent technically possible. The client initially proposed that ABC Architects would contract with the Complainant’s firm, but ultimately the Complainant was retained directly by the client. The record reflects communications among various parties about how the design collaboration was supposed to work, including communications involving the general contractor and Mr. Albertson, but communications between ABC Architects and the Complainant are conspicuously absent. The Design Associates architect did ask the Respondent by e-mail to provide additional drawings, but Design Associates’s participation ended when the client determined that ABC



Architects would remain responsible for all of the Project's drawings.

In February and March 2006, both the Complainant and ABC Architects continued to work on revising the design of the Project, but the extent to which they worked together is unclear. The Complainant produced more detailed drawings showing his design concepts for the Project. The Complainant contends he sent these 16 drawings to ABC Architects on March 20, 2006. The Respondent agrees that ABC Architects received those drawings at about that time.

According to the Respondent, at the end of 2005 he had replaced his firm's project architect for the work because the client had complained about that individual's resistance to modifying the design. Another ABC architect, who had worked on the Project in its initial stages, was brought back into the process to accomplish the redesign. That architect testified that he produced sketches of a revised design during the first week of February 2006, without having been given the drawings ABC Architects received from the Complainant on January 21. He testified that his redesign was based only on photographs he had been given showing the Complainant's built projects and that his two sketches dated February 6, 2006, reflected concepts that ABC Architects had initially proposed for the Project but the client had not approved. He also acknowledges receiving the Complainant's "large color elevations" on March 21.

The ABC project architect testified that his firm had a meeting with the client and various consultants on April 5, 2006, to discuss incorporating the Complainant's design concepts. He describes producing an elevation sketch over the lunch hour as a working document. At about the same time in the redesign process, ABC Architects did drawing studies to determine the extent to which the exterior walls could be modified within the constraints imposed by the existing foundations.

ABC Architects made revisions to the construction documents and issued a "Coordination" set of drawings dated September 17, 2006; a "Change Order" set dated October 13, 2006; and a "Construction" set dated April 10, 2007. The cover sheet of the revised drawings contains the Complainant's elevation drawing. The revised design includes some exterior elements similar to modifications proposed by the Complainant. Determining the exact source of some of the design revisions is hampered by the lack of dates on drawings prepared by each firm and by the absence in the record of transmittals and other correspondence between the parties.

Attribution of Credit for the Project

During construction of the Project, the Complainant had his firm's sign placed at the site. He visited the site on May 9, 2008, and saw that his sign was missing. Believing that ABC Architects had removed his sign, he raised the issue with the general contractor's superintendent and with the client, who decided that either both architectural firms' signs would be posted or neither would be. Ultimately, both signs disappeared and were not replaced.

The Project was completed in March 2009, and ABC Architects has included it in various publicity materials. The Project was displayed or listed on ABC Architects's website as early as September 20, 2008. In 2008, ABC Architects submitted the Project for a design award given by the local AIA chapter. In conjunction with that event, ABC Architects created a project presentation board that was displayed when the award was given to the Project. A regional magazine featured the Project in an article that described awards given by the AIA chapter. An eNewsletter published by ABC Architects advertised the Project as the winner of the chapter design award.

The Complainant's name does not appear in these materials except on the webpage displaying the Project on the ABC Architects web-



site as of April 15, 2009, where the following credits appear:

Harry Albertson, Interiors
[the Complainant], Consultant

ABC Architects added these credits after the Complainant made a request in November 2008 to provide credit to him for the Project.

Conclusions

Burden of Proof

Under Section 5.13 of the NEC Rules of Procedure, the Complainant has the burden of proving the facts upon which a violation may be found. In the event the Complainant's evidence does not establish a violation, the Complaint is dismissed.

Rule 4.201

Rule 4.201 states:

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 Complainant argues that the Respondent made a misleading statement in violation of Rule 4.201 by listing the Complainant as a "consultant" on the ABC Architects website. The Complainant also argues generally that the Respondent "took credit for work done by the Complainant on the Project" in violation of Rule 4.201.

In applying Rule 4.201, the NEC has explained that the "general public and many clients are not familiar with the process necessary to bring a building to fruition." (See *NEC Decision 2004-10*.) The NEC has found violations of Rule

4.201 when a principal or employee leaves a firm and uses that firm's projects for promotional purposes without mentioning the firm. (See *NEC Decision 2004-05*; *NEC Decision 2004-10*.) The current case presents a different circumstance, in which a project's architect of record makes a statement about his own or his firm's experience or responsibilities when someone else has participated in the design of a project but is not mentioned in promotional materials about the project.

At the hearing, the Respondent acknowledged that the Complainant contributed to the redesign of the Project and that ABC Architects had attempted to "blend" the Complainant's sketches with ABC's work and to "incorporate" the Complainant's work "as much as possible in a reasonable and rational manner." A comparison of the drawings provided to ABC Architects by the Complainant on January 21, 2006 and on March 20, 2006 with ABC's revised construction drawings supports the conclusion that the Complainant contributed to the design of the Project as built. ABC Architects displayed the Project on its website in September 2008 without any reference to the Complainant.

An architect of record usually incorporates the design work of other participants in a project as well as design influences from other sources. Frequently it is not possible to determine the exact origin or source for a particular feature of a built project. In this case, ABC Architects was the architect of record for the Project, which included the work of multiple design professionals. Based on the evidence submitted, the NEC is unable to conclude that the Complainant's contribution to the final design was sufficient to make ABC's representation that it was the architect of the Project either inaccurate or misleading.

The National Ethics Council concludes that the Complainant has not met his burden to prove that the Respondent violated Rule 4.201.



Rule 5.301

Rule 5.301 states:

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

The Complainant argues that the Respondent's failure to list the Complainant in ABC Architects's promotional materials as a participant in the design of the Project was a violation of Rule 5.301.

As described in the analysis of Rule 4.201, the Complainant contributed to the design of the Project as built. He was a "professional colleague" of the Respondent, as acknowledged in the Response submitted by the Respondent in this case. The NEC concludes that the Complainant should accordingly have been credited as a participant when the Project was displayed in detail on the ABC Architects website.

The Respondent, for his part, asserts that the Complainant "has claimed credit for the Project on his website and in advertisements without providing any credit to ABC Architects." Whether this constitutes a violation of Rule 5.301 by the Complainant is not a determination that the NEC is authorized to make absent the filing of a complaint.

The Complainant further asserts that identifying him as a "consultant" in connection with the Project instead of using the term "architect" was also a violation of the rule. In the absence of conclusive evidence as to the exact agreements, responsibilities, and contributions of the participants, the appropriateness of a particular title or work description cannot be determined.

With respect to the project sign, the Complainant did not present evidence that proves that the Respondent or ABC Architects was responsible for removing the sign from the Project site. As a result, the circumstances relating to the

sign do not contribute to a conclusion that the Respondent violated Rule 5.301.

With respect to ABC's submissions in connection with the AIA chapter's design award, the NEC concludes that the chapter's submission form precluded naming more than one firm and that it was appropriate for ABC Architects to list itself on the form. The NEC also finds that the presentation board submitted by ABC Architects did not name any architecture firm, including ABC. As a result, the known circumstances relating to submissions for the design award do not contribute to a conclusion that the Respondent violated Rule 5.301.

The Complaint claims that the Respondent failed to give credit to the Complainant because a magazine article about the Project lists ABC Architects as the architect and does not mention the Complainant. For the reasons stated above, the NEC concludes that the Complainant should be given credit as a participant in the Project, but evidence has not been submitted to establish what the Respondent or ABC Architects told the article's author or to establish that ABC Architects had control over the content of the article. As a result, the absence of the Complainant's name from the article does not contribute to a conclusion that the Respondent violated Rule 5.301.

The Complaint asserts that the Respondent improperly claimed a right in the Complainant's design of the Project because of the copyright notice on the ABC Architects website pages that display the Project. The same copyright notice appears throughout the ABC website. Taking the website as a whole, the copyright notice should be understood to refer to the website design and not to individual images or their content. (*See NEC Decision 2009-06.*) Using the copyright notice in this way does not violate Rule 5.301 even if the work depicted were that of the Complainant.

The National Ethics Council concludes that the Complainant has met his burden to prove that



the Respondent violated Rule 5.301 by failing initially to list the Complainant on the ABC Architects webpages that display the Project in detail.

Penalty

Having found a violation of Rule 5.301 of the Code of Ethics by the Respondent, the National Ethics Council imposes the penalty of admonition.

Members of the National Ethics Council

Victoria Beach, AIA
Tricia Dickson, AIA
Clyde Porter, FAIA
Benjamin Vargas, FAIA
Bradford C. Walker, AIA

The Hearing Officer, Michael L. Prifti, FAIA, did not participate in the decision of this case, as provided in the Rules of Procedure. Melinda Pearson, FAIA, Chair of the Council, also did not participate in the decision.

October 7, 2011