



## False Statements to Fulfill One's Own Economic Interests

### Summary

The National Ethics Council ("Council" or "NEC") found no violation of Rules 2.301, 3.201, 3.202, or 4.101 of the Institute's 2012 Code of Ethics and Professional Conduct ("Code of Ethics") in connection with a Member making false statements to the Homeowners and to others and interfered with the project to fulfill their own economic interests in taking over the project.

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

### References

*2012 Code of Ethics and Professional Conduct,*

#### *Canon II, Obligations to the Public*

Rule 2.301 Members making public statements on architectural issues shall disclose when they are being compensated for making such statements or when they have an economic interest in the issue.

#### *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 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.

*Commentary: This 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. Those who are entitled to disclosure may include a client, owner, employer, contractor, or others who rely on or are affected by the Member's*

*professional decisions. A Member who cannot appropriately communicate about a conflict directly with an affected person must take steps to ensure that disclosure is made by other means.*

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.

*Commentary: This 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.*

#### *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*



## Code of Ethics and Professional Conduct DECISION 2014-06

*doubt, a Member should seek counsel before reporting on another under this rule.*

Rule 4.103 Members speaking in their professional capacity shall not knowingly make false statements of material fact.

*Commentary: This rule applies to statements in all professional contexts, including applications for licensure and AIA membership.*

### **Findings of Fact**

---

#### *The Parties*

Complainant is an AIA Architect member who resides in Green City, State A.

Respondent is an AIA Architect member who resides in Blue City, State B.

#### *Factual Background*

Mr. and Mrs. Homeowners are married and reside with their children in Purple City, State B. Mrs. Homeowner is the owner of [ZZ] for Children with Special Needs, a State B non-profit organization, and the Homeowners own ten group homes in the state of State B.

The Homeowners' child, now twenty-one years of age, who suffers from severe physical disabilities related to cerebral palsy and has special health needs. The [XX] Special Needs Trust (the "Trust") was set up around 1997 for the benefit of the Homeowners' child. The purpose of the Trust is to care for the Homeowners' child's special needs, including living accommodations and the design and construction necessary to provide adequate care for the child. At the time of the events related to this case, Attorney 1 was the trustee for the Trust.

In approximately 2011, Attorney 1 engaged the services of The Complainant to do architectural plans for the needs of Homeowners' child. The Accessibility Designer was engaged by Attorney 1 to work with the Complainant. In October 2012, Mrs. Homeowner ran an advertisement for an architect,

and the Respondent was interviewed by the Homeowners, agreeing to work on a pro-bono basis from October 2012 to January 2014.

The Complainant prepared plans for an addition and renovation to the Homeowner home in 2012 and 2013. The Homeowners were shown two sets of plans by two different architects (including a set of plans by the Complainant in 2012) through Attorney 1 and did not accept either set of plans. The work of the Accessibility Designer was also rejected by the Homeowners. Mrs. Homeowner accepted a set of plans prepared by the Complainant in 2013.

Mrs. Homeowner contacted the Complainant to come to a meeting at the Homeowner's home on January 8, 2014. The Complainant did not know that the Respondent would be there. During the meeting, the Respondent asked the Complainant about the plans that they had prepared for the Homeowners in 2013, and indicated that there were errors in the plans and in the work they had done.

The Attorney 2 is the attorney for Mrs. and Mr. Homeowner. In March 2014, the Attorney 2 sent an email to Attorney 1 alleging that there were errors in the plans by the Complainant. The email from Attorney 2 alleges the drawings prepared by the Complainant demonstrate:

- Application of an incorrect Building Code version (2009 instead of 2012)
- Failure to include code and permit requirements
- Risks to the existing structure
- A less than optimal feasibility of the design vis a vis therapeutic living space for the child

Both Attorney 1 and the Complainant sent return emails to Attorney 2, disputing the allegations. The Complainant alleges that the Attorney 2's allegations are the same accusations the Respondent made against their work at the meeting on January 8, 2014, and apparently that the Respondent essentially made the statements through Attorney 2.



## Code of Ethics and Professional Conduct DECISION 2014-06

The Complainant's response email to Attorney 2, which is the subject of the counterclaim related to this case, was sent April 11, 2014. On April 14, 2014, the Respondent and the Complainant exchanged emails confirming that the Respondent was in receipt of the April 11 email from the Complainant to Attorney 2, and that the Complainant did in fact send the email of April 11 to Attorney 2.

### **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.

#### *Summary*

The Complainant's complaint against the Respondent arises from work that was done for the Trust related to a renovation of the home of Mr. and Mrs. Homeowners, to benefit their Homeowners' child. The Complainant alleges that the Respondent made false statements to the Homeowners and to others and interfered with the project to fulfill their own economic interests in taking over the project. They thus allegedly violated several Rules, as described below.

#### *Rule 3.201*

Rule 3.201 states:

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 Rule 3.201 states:

*This 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 interests of others. Those who are*

*entitled to disclosure may include a client, owner, employer, contractor, or others who rely on or are affected by the Member's professional decisions. A Member who cannot appropriately communicate about a conflict directly with an affected person must take steps to ensure that disclosure is made by other means.*

The Complainant asserts:

A conflict of interest occurs when Mrs. Homeowners [sic] arranges a meeting for the final review of the plans on January 8th, 2014. Prior to entering the dining room at Mrs. Homeowners [sic] home, the Complainant was greeted by Mrs. Homeowner in the hallway. Mrs. Homeowner whispers in the Complainant's ear that there is an architect by the name of the [Respondent] waiting in the dining room and for me not to mention to Attorney 1 that the Respondent was in attendance. The Respondent stated that he working [sic] for Mrs. Homeowner on a pro bono basis and he was trying to help her understand the plans.

When questioned specifically about Rule 2.301 during the hearing, The Complainant testified:

Q. Did you know at the time of the January 8th meeting that the Respondent had been hired by the Homeowners?

A. No.

Q. Did you know that he was at least a consultant to them?

A. He said he was working on a pro bono basis.

Q. Did you learn that he signed a contract for services with them 12 days after your meeting?

A. Yes.

Q. You have seen that as a contract exhibit in this matter?

A. Yes, I saw it in the exhibit.



## Code of Ethics and Professional Conduct DECISION 2014-06

Q. Is it your position he had an economic interest on the issue criticizing your work?

A. Most definitely.

The question remains, what exactly is the conflict that the Complainant alleges?

It is not clear in a reading of the Complaint, or from the Complainant's testimony, what configuration would present a conflict between the best interests of the Respondent's clients and some other interest at play.

The Respondent was the architect for the Homeowners. The Complainant has not offered persuasive evidence to show an actual conflict between the Respondent's own interests or the interests of a third party on the one hand, and the interests of the Homeowners themselves on the other.

The Complainant, and by his testimony, Attorney 1, seem to suggest that the Respondent's work for the Homeowners and his behavior—both at the January 8, 2014, meeting and as allegedly illustrated in the email by Attorney 2—demonstrate an apparent desire to mislead the Trust and to ultimately construct a group home at the Homeowners' residence. The Complainant was the Trust's architect, and thereby expected to work in the best interests of the Trust formed for the benefit of the Homeowners' child. However, the Respondent was not engaged as an architect for the Trust—his loyalties rested with the Homeowners only.

Were the Respondent the architect for the Trust, there could potentially be a conflict between the Trust's interests and an economic interest by the Respondent in serving the needs of a third party, the Homeowners. Further, if the Respondent had been the architect for the Trust, but working on a project that benefitted the Homeowners, he would be expected and required to disclose that relationship to the Trust. However, none of this is the case. In reality, the Respondent was working for the Homeowners separate and apart from the Trust's work with the Complainant. Because the

Respondent had no duty to the Trust, they were not required to disclose anything about the work to the Trust, nor to the Complainant.

**The National Ethics Council concludes that, because Complainant has not demonstrated a conflict of interest within the reach of Rule 3.201, the Complainant has not met the burden of proof to establish a violation of the rule by Respondent.**

### *Rule 3.202*

Rule 3.202 states:

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.

The Commentary to Rule 3.202 states:

*This 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.*

Rule 3.202 applies in contexts in which the architect is making an impartial review of work in a project which he or she has some direct involvement. This commonly occurs where a difference of opinion arises on a job between a contractor and an owner, or between the architect and a contractor or a consultant. The architect is expected to weigh in with an unbiased opinion, even if it is to the architect's disadvantage. This is different from the case where the architect is retained explicitly to conduct a third-party peer review of another architect's work, but has no other involvement with the underlying project.

To establish a violation of Rule 3.202 in this case, the Complainant would have to demonstrate as a threshold matter that there was an "agreement of the parties" that the Respondent would act "as the independent interpreter of building contract documents and the judge of contract performance."



## Code of Ethics and Professional Conduct DECISION 2014-06

The Complainant alleges that the Respondent was acting as an independent interpreter of building contract documents when the Respondent did work for the Homeowners prior to and including the January 8, 2014, meeting, which the Respondent disclosed to the Complainant at that meeting. However, the parties did not enter into an agreement that the Respondent would act as an independent interpreter of contracts or contract performance. In the absence of such an agreement, there could be no violation of Rule 3.202.

Assuming such an agreement had existed, the Complainant would still need to demonstrate that the Respondent had failed to act with impartiality. The Complainant alleges that the Respondent did not act impartially when interpreting the Complainant's work to the Homeowners, because the Respondent had an economic interest in persuading the Homeowners that the Complainant's work was not accurately performed. Although testimony at the Hearing and other evidence show that the Respondent did make observations about the Complainant's plans and shared them with the Homeowners, there is no evidence in the record that the Respondent did so other than with impartiality. Rather, the record shows that the Respondent believed they were helping the Homeowners to come to a new design to meet their needs. The Complainant does not provide persuasive evidence to the contrary.

**The National Ethics Council concludes that Complainant has not met the burden of proving a violation of Rule 3.202 by Respondent.**

### *Rule 4.101*

Rule 4.101 states:

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.

The Commentary to Rule 4.101 states:

*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.*

The Code of Ethics itself makes clear that Section 4.101 does not provide an independent basis for a violation of the Code. That being the case, there was no violation of this rule by the Respondent.

**The NEC finds no violation of Rule 4.101 by Respondent.**

### *Rule 2.301*

Rule 2.301 states:

Members making public statements on architectural issues shall disclose when they are being compensated for making such statements or when they have an economic interest in the issue.

The Complainant appears to allege that the Respondent violated Rule 2.301 because they did not disclose at the January 8 meeting that the Respondent was being compensated by the Homeowners, and that the email sent by Attorney 2 was in effect a public statement by the Respondent, which made statements on architectural issues without disclosing that they were being compensated or had an economic interest in making the statements. The Complainant's attempt to prove such a violation fails at several levels.

First, the email was sent by Attorney 2, not by the Respondent. The NEC is not persuaded that this should be regarded as a statement by the Respondent. That being the case, it cannot serve as



## Code of Ethics and Professional Conduct DECISION 2014-06

the “statement” required to establish a violation of Rule 2.301.

Second, even if this were a statement that could be attributed to the Respondent, the email was not a “public” statement within the meaning of Rule 2.301. The Respondent cites a previous NEC decision that clarifies the meaning of “public statements” for the purpose of Rule 2.301, as those made to newspapers, or statements to planning commissions, other government bodies or city officials.

In the decision cited by the Respondent, NEC 2010-09, the NEC found that a private email sent to one individual was not a “public” statement. The same decision also cites a previous NEC decision, NEC 2005-09. At issue in that case was also an email sent privately to an individual, a contractor, during a construction project. The NEC held that “[a] Member’s communications to a contractor during a construction project are not ‘public statements’ under the Rule.”<sup>1</sup> The email that the Complainant alleges came from the Respondent was sent by Attorney 2, not by the Respondent, and was sent to one person, Attorney 1. Here, as in both previously cited NEC decisions, the communications alleged to be public statements were also private email communications, and in this case, were not even sent by the Respondent.

The NEC is guided by the previous NEC decisions in which private emails were deemed not to be public statements, and will apply their conclusions to this case. For the reasons stated above, the Respondent’s statements were not “public” for the purposes of Rule 2.301.

The Complainant also alleges that statements made by the Respondent in the January 8, 2014, meeting were public statements. Because the January 8 meeting was a private meeting and the Respondent was not speaking before a board or

other public entity, the statements made in the meeting were not “public” for purposes of Rule 2.301.

Because the statements made in the Attorney 2’s email were those of Attorney 2, and not statements made by the Respondent, and because none of the statements cited by the Complainant were “public,” the NEC finds no violation of Rule 2.301.

**The NEC concludes that Complainant has not met the burden of proving a violation of Rule 2.301 by Respondent.**

---

<sup>1</sup> See NEC Decision 2010-09 - [http://aiad8.prod.acquia-sites.com/sites/default/files/2016-08/Code\\_Of\\_Ethics\\_Decision\\_2010\\_09.pdf](http://aiad8.prod.acquia-sites.com/sites/default/files/2016-08/Code_Of_Ethics_Decision_2010_09.pdf). See also NEC

Decision 2005-09 - [http://aiad8.prod.acquia-sites.com/sites/default/files/2016-08/Code\\_Of\\_Ethics\\_Decision\\_2005\\_09.pdf](http://aiad8.prod.acquia-sites.com/sites/default/files/2016-08/Code_Of_Ethics_Decision_2005_09.pdf).





## Code of Ethics and Professional Conduct DECISION 2014-06

### *Rule 4.103*

Rule 4.103 states:

Members speaking in their professional capacity shall not knowingly make false statements of material fact.

The Commentary to Rule 4.103 states:

*This rule applies to statements in all professional contexts, including applications for licensure and AIA membership.*

Thus, to establish a violation of Rule 4.103 by the Respondent, the Complainant must prove five elements: (1) The Respondent was speaking in his/her professional capacity (2) when the Respondent made statements of fact (3) that were material, (4) that were false, and (5) that the Respondent knew were false.

### *The Alleged Statements*

The NEC notes that—for reasons already addressed above—statements made by Attorney 2 cannot be attributed to the Respondent. They are therefore not reviewed here as the basis for a violation of Rule 4.103.

That leaves statements allegedly made by the Respondent during the meeting of January 8, 2014. The Complainant seems essentially to allege that the Respondent made ten such statements, which can be separated into three categories:

- Statements about the client (Statements A,B),
- Statements about the building and energy codes (Statements C,D,E), and
- Statements of opinion about the design of the project (Statements F,G,H,I,J).

*Element 1: Did the Respondent make the statements in his/her professional capacity?*

We begin with the first element of Rule 4.103: Did the Respondent make the ten statements in his/her professional capacity?

The meeting of January 8, 2014, was requested by Mrs. Homeowner to go over the Complainant's

plans. At that meeting, the Respondent informed the Complainant that the Respondent had been helping Mrs. Homeowner. (Exh A, 5.) As an architect “helping” the Homeowners, present at a meeting about the project where plans would be reviewed, and giving no other reason for the Respondent's presence, the Respondent was acting in a professional capacity. The Respondent's statements were thus made in a professional capacity, and satisfied the first element to establish a violation of Rule 4.103.

### *Elements 2 Through 5*

We turn now to the individual statements to determine whether the other elements of a Rule 4.103 violation have been established.

- Statement A: Mrs. Homeowner did not understand the approved plans or the contract bid prices. The Complainant stated that in requesting the meeting that Mrs. Homeowner did not understand the plans. (Exh. C, 5.) Therefore, this statement was not false, and cannot be the basis for a violation of Rule 4.103.
- Statement B: Mrs. Homeowner was concerned about the yard being disturbed. This was a statement of fact, but were the facts material? A material fact, according to *Black's Law Dictionary*, is one that is necessary to determine the outcome of an issue or that goes to the merits of an issue. This statement about the client's state of mind does not go to determining the outcome of the central issues or to their merits—that is, whether the Respondent was attempting to discredit the plans, support the Respondent's employment as architect, support the design of a second home, or convince the Trust to pay for it. It thus fails the requirement that a statement must be material in order to establish a violation of Rule 4.103. However even if it were material, it is not demonstrably false. The NEC made this decision taking into consideration all the evidence and submissions provided.



## Code of Ethics and Professional Conduct DECISION 2014-06

- Statement C: The plans called out the 2009 International Residential Code even though the county was using the 2012 version. This statement is found to be true, as the Complainant implicitly acknowledged:

I was surprise [sic] to find the county skipped the typical 3 year code-cycle and made a jump of a 6 year period. However, I did not find this to be very concerning, since it is not unusual to Have [sic] to update plans from time to time.

Because the statement is true, it cannot be the basis for a Rule 4.103 violation.

- Statement D: Because of the energy code, the whole house would have to be updated with energy efficient windows and insulation because the cost of the project exceeded 50% of the assessed value of the home.

This is a statement of fact, essentially relying on a particular code provision that would come into play on the project. It is also material as it tends to discredit the approved plans. This follows because using the appropriate energy code is a basic architectural service, and failing to realize that a home must have new windows and insulation installed would be a significant error resulting in considerable expense to the client.

The next question is whether the statement was false. The Complainant stated in an email to Attorney 2 dated April 11, 2014, that this statement was false. The Complainant added that application of the 2012 energy code provisions would require an upgrade to the insulation, addition of an air barrier, and an upgrade to 75% of the lighting in the house to energy efficient fixtures, claiming these changes would have a minimal effect on pricing. In this case, however, the Complainant did not submit into evidence the applicable energy code provisions that would demonstrate whether the Respondent's statements

regarding the energy code were true or false. In the absence of this evidence, the NEC cannot find that the statement was in fact false, and it therefore cannot be the basis for a violation of Rule 4.103.

- Statement E: The addition would require a sprinkler system.

As with the prior statement, this statement is material in that it tends to discredit the approved plans. This is because using the appropriate building code is a basic architectural service and generally falls within the standard of care for architects.

Also as with the prior statement, we next ask whether this statement is false. The Complainant provided [State B's] County Building Code, Subtitle 4, Section 4-245 as evidence that "[o]nly Additions to existing structures which exceed one hundred percent of the total floor square footage of the existing structures will cause the altered structure (addition plus existing structure) to be fully sprinkled." The drawings submitted into evidence by the Complainant do not indicate that 100 percent of the structure was to be replaced, or that the addition, renovation or alteration amounted to 100 percent of the footprint. Based on the evidence provided by the Complainant, we find that the Respondent's statement that the Homeowners' addition project would require a sprinkler system was false.

The final question is whether, under the remaining element of Rule 4.103, the Respondent "knowingly" made the false statement. As in NEC Case No. 2006-21, this particular fact pertains to a code issue. Knowledge of the building code is part of the standard of care for an architect. However, this law is constantly changing, and a diligent architect must check the code frequently for accuracy. The Complainant stated that they checked the code multiple times and called





## Code of Ethics and Professional Conduct DECISION 2014-06

[State B's] County officials to verify that sprinklers were in fact not required.

Most other published NEC cases interpret “knowingly” to mean whether or not the member actually knew that the statement was false. The evidence of record does not establish that that standard has been satisfied as to this statement. It therefore cannot be the basis for a violation of Rule 4.103.

- Statement F: An access in the crawlspace would harm the existing foundation wall and the mechanical system should not occupy any portion of the original house, even in the existing furnace room.

Professionals may disagree on their assessments of a particular design solution. Although statements may contain factual observations—such as “the wall was cracked” or “there was condensation present on the inside face of the wall”—absent a reference to a code or other mandatory requirement, a reasonable person would interpret generalized statements about the placement of systems and structure as opinion. Therefore, the statement is an opinion, not a statement of fact, and cannot form the basis for a Rule 4.103 violation.

- Statement G: The placement of the mechanical systems and placement of the condensers were erroneous.

Like Statement F, this is a statement of opinion rather than of fact. It therefore cannot be the basis for a violation of Rule 4.103.

- Statement H: The design of the septic system was not adequate.

This also is a statement of opinion rather than of fact, and cannot form the basis of a violation under Rule 4.103.

- Statement I: The mechanical system should be totally separate and the furnace room could be made into a bedroom.

This is a statement of opinion and not of fact, and therefore is not the basis for a Rule 4.103 violation.

- Statement J: The mini-connection that was planned by the Complainant was not long enough.

This is a statement of opinion rather than of fact, and cannot be the basis for a violation of Rule 4.103.

**From the evidence in the record, the NEC determines that Complainant failed to meet the burden to prove that the Respondent violated Rule 4.103.**

### **Penalty**

Having found no violation of the Rules cited by Complainant against the Respondent, the case is hereby dismissed.

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

**March 30, 2017**