



Wanton Disregard of the Rights of Others; Failure To Give Appropriate Credit

Summary

The National Ethics Council (“Council” or “NEC”) ruled that an AIA Member violated Rule 4.201 of the Institute’s 2007 Code of Ethics and Professional Conduct (“Code of Ethics”) because his firm’s website displayed images of a project without any attribution of credit to the firm responsible for the project. The NEC found no violation of Rule 2.104. 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 II, Obligations to the Public

Rule 2.104 Members shall not engage in conduct involving fraud or wanton disregard of the rights of others.

Commentary: This rule addresses serious misconduct whether or not related to a Member’s professional practice. When an alleged violation of this rule is based on a violation of a law, or of fraud, then its proof must be based on an independent finding of a violation of the law or a finding of fraud by a court of competent jurisdiction or an administrative or regulatory body.

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.

Findings of Fact

The Complainant is a principal architect with his firm. The Respondent is the sole principal of his architectural firm.

In or about 2000, the Complainant’s firm was hired by Perry Johnson “to provide full architectural services to design and administrate the construction of a new house on his property.” Shortly after, Mr. Johnson also hired Janice Howard, an interior designer, to “provide interior design services along with the added task to review and comment on the floor plans and the first set of interior elevations as designed and drawn by the Complainant’s firm at that point in time.”

Although Mr. Johnson and Ms. Howard did not testify at the hearing in this ethics case, both submitted written statements regarding the allegations in the Complaint.

The Respondent serves as Ms. Howard’s “regular consulting architect,” whom she uses to assist her in reading working drawings and generating design concepts. Ms. Howard brought the Res-



pendent into the project as her consultant to generate individual room design concepts.

Mr. Johnson and Ms. Howard agree that once a room concept for the project was approved by Mr. Johnson's wife, the "sketches were sent to the Complainant's firm to be developed and incorporated into working drawings." According to Mr. Johnson and Ms. Howard, the Complainant's firm's second set of interior elevations was based on concept sketches developed by the Respondent. Mr. Johnson and Ms. Howard also agree that the revised second set of interior elevations prepared by the Complainant's firm did not follow the approved design concept and were rejected by the owners.

At that time, Mr. Johnson decided that the Respondent "should take over the design of the architectural interior room elevations." In or about July 2001, Mr. Johnson called the Respondent to ask him to "take over the interior detailing of the residence." The Respondent agreed, although he and Mr. Johnson did not enter into a written contract. The Respondent continued to send invoices for his services to Ms. Howard.

The construction of the project continued with the participation of the Complainant's firm, Ms. Howard, and the Respondent, and the project received its certificate of occupancy in 2002. The Complainant and his firm were the architect of record. During the ethics hearing, the Respondent presented evidence to show the extent of his involvement in the interior detailing.

The project was published in an issue of *Architectural Digest* with design credit information submitted to the publishers by Ms. Howard.

Several years later, another architect contacted the Complainant's firm about photos he saw posted on the Respondent's website showing the exterior of the residence. The other architect recognized the project as one designed by the Complainant's firm.

The Complainant wrote a letter to the Respondent objecting to his use of an exterior photo of a project designed by the Complainant's firm and requesting that he remove from his website all exterior photos of the Johnson residence. The Complainant filed the ethics complaint at the same time.

Within several days, the Respondent responded by letter, apologizing for posting exterior photos of the Johnson house. He stated it was not maliciously done and explained that the website designer had used the photos contrary to his instruction. He also stated that he had "again instructed the website designer to immediately take down" the exterior photographs and later verified that they had been removed.

In his Response filed in this ethics case, the Respondent repeated the same statements and submitted a letter from his website designer to support his contentions about how the photographs came to be posted and why the website designer had not removed them promptly when the Respondent had initially instructed him to do so. At the same time, the Respondent claims that he should receive credit for the "architectural interiors" and "interior architecture finish out" of the project.

At the hearing, the Respondent confirmed that exterior photos of the Johnson residence had been removed from his website the same day he received a request to do so from the Complainant's firm. Subsequent to the prehearing conference call in this ethics case, the Complainant found that an exterior photo remained visible online as part of the web developer's archive, but not as part of the Respondent's website. At the hearing, the Respondent submitted an additional letter from his website designer explaining why the photo had remained accessible, although not part of his website, and confirmed that it also had been removed to the best of the developer's ability as soon as he was notified of its existence.



Conclusions

Rule 2.104

Rule 2.104 of the Code of Ethics states:

Members shall not engage in conduct involving fraud or wanton disregard of the rights of others.

The commentary to Rule 2.104 states:

This rule addresses serious misconduct whether or not related to a Member's professional practice. When an alleged violation of this rule is based on a violation of a law, or of fraud, then its proof must be based on an independent finding of a violation of the law or a finding of fraud by a court of competent jurisdiction or an administrative or regulatory body.

The Complainant alleges that the Respondent violated Rule 2.104 by disregarding the rights of the Complainant's firm to be recognized as the architect of the exterior design of the Johnson residence when that project was displayed on the Respondent's website.

As described in the commentary, a violation of this Rule based on a violation of law or of fraud must be supported by an independent finding by a court or administrative or regulatory body. No violation of law or fraud has been asserted.

A violation of Rule 2.104 may, alternatively, be based on the Respondent's wanton disregard of someone else's rights. The NEC has previously described "wanton disregard" under this Rule as conduct that creates a "high degree of risk that the Complainant would be adversely affected." (See *NEC Decision 2005-15*.)

At issue in this case is the right of the Complainant's firm and the firm's principals to receive their proper share of credit for the exterior design of the Johnson residence when

that project is displayed as an example of an architect's work. The display of exterior project photographs on the Respondent's website without providing credit to the Complainant's firm was adverse to the rights of the Complainant and his firm. The Complainant has not, however, met his burden to prove that the Respondent's conduct was wanton. (See *NEC Rules of Procedure, Section 5.13*.) The NEC has previously stated that the term "wanton" refers to an "aggravated level of negligence that borders on intent." (See *NEC Decision 2006-15*.)

According to the evidence presented, the Respondent provided his website designer exterior photos of the Johnson residence, which could have been properly incorporated into his website—with proper attribution of credit—to give context to the Respondent's work on the interior of the project. The Respondent instructed the website designer to remove those photos when the website was launched. Although the Respondent did not verify that the photos were removed at that time, he immediately responded and removed them upon receiving the Complainant's letter. These circumstances may show inadequate care, but they do not reflect the wanton behavior that is required to establish a violation of Rule 2.104. The fact that a photo remained accessible through an Internet search engine even after it was removed from the Respondent's website provides a cautionary lesson in how the Internet functions but does not establish that the Respondent's conduct was wanton.

The National Ethics Council concludes that the Complainant has not met his burden to prove that the Respondent violated Rule 2.104 because the evidence does not show that the Respondent's conduct was wanton.

Rule 4.201

Rule 4.201 of the Code of Ethics 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 Commentary to Rule 4.201 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.

The Complaint alleges that the Respondent violated Rule 4.201 because he used

exterior photographs of a house designed by the Complainant's firm on his website. He is claiming credit for work he did not do. He was not the architect on this project.

To assist in the understanding of the Code of Ethics, the NEC has published Guidelines for the Attribution of Credit, which state, in part:

A Member taking credit for a project or a specific role on a project other than as the Architect-of-Record must clearly define that role. In addition to the Member's specific role, the Architect-of-Record must be acknowledged.

In the Guidelines, the term "Architect-of-Record" is considered to be the "legal entity that has contracted for and completed the work in question."

The NEC has previously applied Rule 4.201 in an ethics case in which an architect's marketing materials contained project photographs without any attribution of credit to another firm that was the project's architect of record. The NEC concluded that such use of project photographs constitutes "visually misleading claims regarding the firm that produced the work" in violation of Rule 4.201. (*See NEC Decision 2004-05.*) In another case, the NEC concluded that a

firm principal was responsible for the content of his firm's website under the Code of Ethics even if he was not aware of what material was being displayed. (*See NEC Decision 2008-14.*)

The Respondent does not dispute the facts that his website displayed exterior photographs of the Johnson residence, that no credit was given to the Complainant's firm, and that the Complainant's firm was the architect of record for the project. Although the Respondent submitted evidence about the extent of his involvement in the project's interior architecture and the circumstances that caused photographs of the Johnson residence to be included on his website, neither of those issues affects a determination as to whether he violated Rule 4.201.

The National Ethics Council concludes that the Respondent violated Rule 4.201 because his firm's website displayed images of a project without any attribution of credit to the firm responsible for the project.

Penalty

Having found a violation of Rule 4.201 by the Respondent, the National Ethics Council imposes the penalty of Admonition.

Members of the National Ethics Council

Melinda Pearson, FAIA, Chair
Victoria Beach, AIA
Tricia Dickson, AIA
Clyde Porter, FAIA
Michael L. Prifti, FAIA
Bradford C. Walker, AIA

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

June 24, 2011