

INTENTIONALLY OR RECKLESSLY MISLEAD EXISTING OR PROSPECTIVE CLIENTS ABOUT THE RESULTS THAT CAN BE ACHIEVED THROUGH THE USE OF THE MEMBERS' SERVICES

Question Presented

The National Ethics Council (“Council” or “NEC”) received a request from a member (“Requesting Member”) requesting an Advisory Opinion under Chapter 8 of the NEC’s Rules of Procedure.

The question presented is whether a member of one architecture firm potentially violated Rule 3.301 of the AIA’s Code of Ethics and Professional Conduct by contacting a potential client about another firm’s project, and “imply[ing] that they would design the same project for less cost,” without providing “any research, or comparisons of scope or client expectations regarding the referenced projects to justify such claims.”¹

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

References

2018 Code of Ethics and Professional Conduct, Canon III, Obligations to the Client

Rule 3.301 Members shall not intentionally or recklessly mislead existing or prospective clients about the results that can be achieved through the use of the Members’ services, nor shall the Members state that they can achieve results by means that violate applicable law or this Code.

Commentary: This rule is meant to preclude dishonest, reckless, or illegal representations by a Member either in the course of soliciting a client or during performance.

¹ In asking whether the Code of Ethics may have been violated, the Requesting Member has also referred to Ethical Standards 1.2, 4.1, and 5.3. Ethical Standards reflect goals toward which members should aspire in professional performance and behavior. By contrast, Rules of Conduct

Findings of Fact

The Parties

The requesting member is the President and CEO of Firm A, an architecture firm in Alpha City, State A.

Firm B is a competitor of Firm A, and is located in Bravo City, State B. A member of Firm B has been identified as having written a letter containing statements that may have allegedly violated Rule 3.301.

Facts

1. Firm A was selected to provide architectural services for Charlie School District in State A. The work included a new high school, two new elementary schools, partial renovation of an existing high school, and numerous other miscellaneous projects.
2. Firm A’s work was put on hold for nearly a year due to upheaval in the school district. Firm A was ultimately told by the school superintendent that Firm A’s position was tenuous due to a change in school board representatives (elected since Firm A’s selection) who were fiscally conservative, a majority of whom were against a construction bond that was passed to fund these district projects.
3. An architect at Firm B sent a letter (the “Letter”) to a school board member. A copy of the Letter is included as Exhibit A.
4. Subsequently, the requesting member learned in a private meeting with the superintendent that the school board had directed the district to terminate Firm A’s contract for all work. It was claimed that part of the school board’s rationale was

(such as Rule 3.301) are mandatory, and violation of a Rule is grounds for disciplinary action by the Institute. This Advisory Opinion examines only whether, based on the stated facts, there could be a violation of Rule 3.301.

that Firm A's work is too expensive and that Firm A would have to compete with other architects to prove the firm can do less expensive work.

Discussion

With the facts provided, the NEC has been asked to provide an advisory opinion as to whether the actions described above could be deemed to have violated Rule 3.301. In this case, the Council is of the opinion, based solely on the facts provided, that the Rule would not have been violated.

Here, the Letter, sent by an architect from Firm B to a school board member said that Firm B had worked with many school districts in the area, and that it was currently designing new high schools in two school districts. It also stated that Firm B was "on track for a construction cost per square foot of \$275" at one high school and "less than \$300" at the other. The Letter added: "This is in comparison to the \$320 per square foot bid cost" in a project undertaken by Firm A. There was no definitive offer to do specific work at a specific price, there was no bid on a contract, there was no work that was proposed to be done by Firm B.

The Letter may appear misleading in that it presents the only variable between project construction costs as being the architecture firm designing the projects. The Letter provides no further context or explanation as to the many factors that can contribute to construction costs. Increased costs may be due to scope requested by the Owner, the bidding climate, the choice of Construction Manager or General Contractor, unforeseen conditions, or many other factors that are beyond the control of the architect. In this case, the Letter may have been written so as to take advantage of an inexperienced client not regularly practicing design and construction to suggest that construction costs are primarily controlled by architects, a belief that is not uncommon among the general public.

The Letter does not address whether Firm A made an effort to or was unable to meet the Owner's budget. While different firms may specialize in project types that typically are delivered within a certain cost range, a project bid at \$300/square foot will not change in price simply because a different architecture firm is hired. Architects at Firm A may have seen these statements as setting up an unfair comparison between their firm and Firm B. The school district's termination of Firm A's contract may or may not have occurred in some measure as a result of comments in the Letter included as Exhibit A.

However, Firm B's intent may only have been to demonstrate that a school could be built for less money per square foot. There is not sufficient evidence that the Letter "intentionally or recklessly [misled] existing or potential clients [of Firm B] about the results that [could] be achieved through the use of [Firm B's] services." Neither has there been any assertion that the letter stated that Firm B could achieve results by means that violate applicable law or the Code of Ethics. These facts are not sufficient to establish a violation of Rule 3.301.

This is not to say that if an ethics complaint were formally filed with the NEC, and the case fully developed under the NEC's Rules of Procedure, facts would not come to light to show that a violation had occurred. This advisory opinion is based on the limited information provided.

This opinion is based on information and facts submitted to the National Ethics Council and does not necessarily include all the facts that would be pertinent in another specific case. This opinion is for information purposes only and should not be construed as expressing any opinion on the ethics of specific individuals.

**National Ethics Council
June 2019**

EXHIBIT A

Hello Mr. [REDACTED]:

I, like many other people, have been watching with interest the happenings in [REDACTED] surrounding the new High School. I have many friends (and relative) in the community that have asked me questions similar to those you are facing. I take a personal interest in the construction activities in the District, having begun my relationship with the [REDACTED] School District following the passage of the bond in 1993 and working on the elementary and middle school modernizations, and the new construction building out on the Base ([REDACTED] Middle School?) The assignment given to us at the time was to construct those buildings as economically as possible, but with an eye toward durability and functionality. It is hard for me to believe that this adventure started almost twenty-five years ago! In the ensuing time, [REDACTED] has grown our professional reputation on providing attractive and functional buildings for a reasonable price. It is my belief that the patrons of the [REDACTED] School District share those values. Our firm has worked with many school districts in Central [REDACTED], also in communities that expect great learning environments without excessive opulence. We are currently designing new High Schools for the [REDACTED] and [REDACTED] School Districts. Those communities appreciate a quality value-driven building. Our strict admonition from those Districts was “No Taj Majals!” With respect for our clients and their stakeholders, we are on track for a construction cost per square foot of \$275 at [REDACTED] and less than \$300 at [REDACTED]. This is in comparison to the \$320 per square foot bid cost at [REDACTED] High School. Any money saved in design on the new building could potentially be funneled into upgrading the current High School to be in equitable condition with the new building.

Your concern that the patrons of the [REDACTED] School District get the best value for any money that they spend is admirable. I am sharing the above information with you to show that it is also achievable. Should you wish to discuss this further or have any questions about the Reader’s Digest version given above, please do not hesitate to contact me.

Thank you and best of luck in your endeavors,