



Discrimination on the basis of gender; Failure to provide an equitable working environment

Summary

The National Ethics Council (“Council” or “NEC”) found no violation of Rules 1.401, 4.202, 5.101, 5.201, or 5.303 of the Institute’s 2018 Code of Ethics and Professional Conduct (“Code of Ethics”) in connection with a Member discriminating on the basis of gender and failure to provide an equitable working environment.

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

References

2018 Code of Ethics and Professional Conduct,

Canon I, General Obligations

Rule 1.401 Members shall not engage in harassment or discrimination in their professional activities on the basis of race, religion, national origin, age, disability, caregiver status, gender, gender identity, or sexual orientation.

Commentary: Harassment may include, but is not limited to, offensive jokes, slurs, epithets, or name calling, unwelcome physical contact, or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance. Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of violation of this Rule.

Canon IV, Obligations to the Profession

Rule 4.202 Members shall make reasonable efforts to ensure that those over whom they have supervisory authority conform their conduct to this Code.

Commentary: What constitutes “reasonable efforts” under this rule is a commonsense matter. As it makes sense to ensure that those over whom the architect exercises supervision be made

generally aware of the Code, it can also make sense to bring a particular provision to the attention of a particular employee when a situation is present which might give rise to violation.

Enforcement of Rule 4.202 refers to and supports enforcement of other Rules. A violation of Rule 4.202 cannot be established without proof of a pertinent violation of at least one other Rule.

Canon V, Obligations to Colleagues

Rule 5.101 Members shall treat their colleagues and employees with mutual respect, and provide an equitable working environment.

Rule 5.201 Members who have agreed to work with individuals engaged in an architectural internship program or an experience requirement for licensure shall reasonably assist in proper and timely documentation in accordance with that program.

Rule 5.303 Members shall not unreasonably withhold permission from a departing employee or partner to take copies of designs, drawings, data, reports, notes, or other materials relating to work performed by the employee or partner that are not confidential.

Commentary: Members may impose reasonable conditions, such as the payment of copying costs, on the right of departing persons to take copies of their work.

Findings of Fact

The Parties

The Complainant holds a B.Arch degree from the State Institute of Technology and is pursuing their architectural license. While pursuing licensure, Complainant has worked as a framing contractor/subcontractor and in associate positions at architectural and design firms in Purple City.

Respondent is an Architect member who resides in Purple City.

Relevant Undisputed Findings of Fact

- Respondent employed Complainant as an architectural intern in April 20XX – November 20XX, and again from March 20XX – September 20XX.
- In March 20XX, Complainant and Respondent attended a client meeting in Red City and met with a client, although the parties dispute what was said at that time.
- Respondent submitted Complainant’s experience hours to NCARB in September and December 20XX.
- In September 20XX, Complainant approached Respondent in their office to request their annual review and to discuss the Complainant’s NCARB hours approval, health insurance, and reimbursement for software purchases.
- After the employment relationship between Complainant and Respondent ended in September 20XX, Complainant requested copies of their timesheets and work emails from Respondent. Respondent denied this request.
- Respondent included in their Response letters of character reference from Witness #1, Witness #2, and Witness #3, all of whom worked with Complainant and Respondent.
- Witness #3 had been a personal friend of Complainant’s.
- As part of the Response, Respondent included a copy of their firm’s “General Office Policy.”
- Respondent has a “temper” and over the course of Complainant’s employment at the Respondent’s firm, they have become angry with the Complainant.

Relevant Disputed Facts

- At the March 20XX meeting with the Client, Complainant claims Respondent said to the Client “She is prettier than she is smart.” Respondent denies making this statement and instead claims the Client said, “Wow, she is smart and pretty,” to which Respondent stated, “I don’t know about that.”
- In June 20XX, Complainant claims Respondent said to them, “You are stupid, how do you not know how to use a scanner.”
- In September 20XX, Complainant claims that during their discussion, the Respondent was unwilling to schedule the annual review meeting and threw the keyboard in the direction of the Complainant.
- At the hearing Complainant stated Respondent subjected them to multiple instances of verbal abuse.
- As part of the Response, Respondent included a copy of their firm’s “General Office Policy” dated January 20XX. At the top of this document, purportedly, Complainant’s initials appear with a date of “4.24.XX.” Complainant claims those initials are a forgery and has submitted samples of their initials to compare.

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.

The NEC adopts the Hearing Officer’s Overview of Process, as modified below.

1. The Complainant and the Respondent were duly notified and advised of the hearing and the procedures to be followed, including their ability to challenge the Hearing Officer’s appointment.
2. In the case filings, some confusion exists regarding the Rules cited by Complainant to which Respondent filed their Response. The chart below illustrates what is reflected in the record.

Discussion

While no member of the NEC was present at either the Pre-Hearing Conference or the Hearing and therefore cannot comment on Complainant's demeanor, the NEC agrees with the Hearing Officer that inequities and abuse suffered by employees at the hands of those in positions of seniority and power occur far more than they should. Equity, diversity, and inclusion are key priorities for The American Institute of Architects and cannot be underscored enough.

Like the Hearing Officer, the NEC also wishes to emphasize Respondent's decision not to cooperate with these proceedings, except to submit a Response, and does not lightly dismiss their refusal of our communications and rejection of our requests. Respondent could have conducted themselves more respectfully and it is disappointing that an AIA Architect member would choose to act so unprofessionally.

Having stated this, the NEC's obligation is to examine the case record and determine if Complainant met their burden of proof to show a violation of the Code occurred.

Rule 1.401

Complainant stated and testified that the Respondent said offensive things directly to the Complainant and in one instance, physically intimidated them.

Complainant stated Respondent said to another person in their presence that the Complainant "[i]s prettier than she is smart." Respondent denies making the statement. Here, I am asked to weigh one party's assertion against the others. There is no other corroborating evidence offered by either side to support their assertion. However, the Complainant noted that this comment made them feel disregarded.

Complainant also stated that Respondent referred to them as "stupid." The Complainant testified at the hearing that this kind of comment was not an isolated instance and created dissension between Complainant and other employees. Respondent did not address Complainant's assertion in their Response, except to provide letters from Witness #1, Witness #2, and Witness #3, all of whom state Respondent was respectful and courteous to them.

Lastly, Complainant states and testified that Respondent threw a keyboard "in their direction" subsequent to a disagreement during a meeting. Respondent denies this assertion. Neither party provides any corroborating evidence in support of their respective assertions.

Despite the allegations, Complainant offers no evidence or testimony to support that Respondent's actions towards them were made on the basis of "race, religion, national origin, age, disability, caregiver status, gender, gender identity, or sexual orientation."

In this case, the NEC determines Rule 1.401 is inapplicable.

Rule 4.202

The Code of Ethics makes clear Rule 4.202 refers to and supports enforcement of other Rules, and that a violation of Rule 4.202 cannot be established without proof of a pertinent violation of at least one other Rule. During the time the Complainant cites in their Complaint, there was no proof of a violation of at least one other Rule.

In this case, the NEC determines Rule 4.202 is inapplicable.

Rule 5.101

Complainant stated in their Complaint and testified at the hearing that Respondent:

- Said to another person in the Complainant's presence that the Complainant "[i]s prettier than she is smart." Respondent denies making the statement. Here, I am asked to weigh one party's assertion against the others. There is no other corroborating evidence offered by either side to support their assertion.
- Referred to the Complainant as "stupid." Complainant testified at the hearing that this kind of comment was not an isolated instance. Respondent did not address Complainant's assertion in their Response, except to provide letters from Witness #1, Witness #2, and Witness #3, all of whom state Respondent was respectful and courteous to them.

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- Threw a keyboard “in their direction” subsequent to a disagreement during a meeting. Respondent denies this assertion. Neither party provides any corroborating evidence in support of their respective assertions.

The NEC agrees with the Hearing Officer that at issue is Complainant’s word against Respondent’s.

Even though there are credibility questions on both sides, in the final analysis, Complainant provides no evidence either to corroborate their claims, or to rebut Respondent’s.

Accordingly, the NEC finds Complainant did not meet their burden of proof to show a violation of Rule 5.101 occurred.

Rule 5.201

As noted by the Hearing Officer, Complainant admits that Respondent submitted experience hours to NCARB in September 2019 and December 2019. Nothing in the record shows Complainant was prejudiced or otherwise negatively impacted by the time period in which Respondent submitted their hours.

Accordingly, the NEC finds Complainant did not meet their burden of proof to show a violation of Rule 5.201 occurred.

Rule 5.303

Rule 5.303 does not require a member to provide departing employees with copies of their timesheets or work emails, as Complainant contends.

Accordingly, the NEC finds Complainant did not meet their burden of proof to show a violation of Rule 5.303 occurred.

Penalty

The National Ethics Council finds that Respondent did not violate Rules 1.401, 4.202, 5.101, 5.201, or 5.303 and dismisses the Complaint.

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

June 20, 2022