



## Discrimination on the Basis of Race, National Origin, or Gender

### Summary

The National Ethics Council (“Council” or “NEC”) ruled that an AIA Member violated Rule 1.401 of the Institute’s 2020 Code of Ethics and Professional Conduct (“Code of Ethics”) in connection with a Member discriminating on the basis of race, national origin, or gender.

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

### References

*2020 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.*

### Findings of Fact

*The Parties*

The Complainant was employed as an intern at Respondent’s firm, Architecture Firm from January 20XX until June 20XX in Purple City.

Respondent is an Architect member and the principal at Architecture Firm in Purple City.

### *Relevant Undisputed Facts*

Complainant is a native Spanish speaker and would converse with other Spanish speaking co-workers at work. At times, Complainant’s conversations would be loud, and Respondent would come out of their office and say to Complainant, “Are you going to fight?” Respondent admitted this statement was intended as a sarcastic way of asking Complainant and their co-worker to speak to one another more quietly.

On June XX, 20XX, Complainant and Respondent had a conversation regarding Complainant’s hair which they had recently colored. Complainant told Respondent that a friend of theirs said their hair looked like a “beta fish.” In response, Respondent used the word “hooker” in reference to Complainant.

On June XX, 20XX, Complainant recorded a conversation with Respondent regarding their conversation about the Complainant’s hair. In that conversation, the following was said:

*COMPLAINANT:* So do you – tell me clearly what is – what people say about your hair, and I try to explain you that one of my friends tell me that my hair looks like a fish (unintelligible). And you told me, Oh, do you mean hooker? So you say it clearly. And I say again, What do you mean by hooker, and you just laugh at me –

*RESPONDENT:* I apologize for that.

*COMPLAINANT:* It’s not apology.

*RESPONDENT:* Well, I’m sorry. I didn’t mean to hurt you.

*COMPLAINANT:* I’m sorry. No, tomorrow, you are going to get my resign letter, so thank you.

Complainant submitted their resignation letter on or around June XX, 20XX. In the letter, Complainant states:

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[I] don't want to continue working in a place when someone calls you a "HOOKER" and [their] response is that it was a joke. I don't really think how calling me a "HOOKER", on June XX, 20XX, at 2:50 pm approximately, can be a joke. We are in a workplace, and it doesn't matter where I'm from or who I am, I need respect, the same way that I respect you.

Respondent provided a written response to Complainant's resignation letter, denying they called Complainant a "hooker."

At the hearing, Respondent confirmed the recording was a conversation between themselves and Complainant.

### *Relevant Disputed Facts*

Below are the relevant disputed facts in the record:

In the conversation between the parties on June XX, 20XX, Respondent argues they used the word "hooker" because they thought that was the word Complainant used when they recounted comments their friend made to them regarding their hair.

### **Conclusions**

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#### *Burden of Proof*

Section 5.13 of the NEC Rules of Procedure states: 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 will be dismissed.

The NEC agrees with the Hearing Officer that the undisputed facts establish that Respondent referred to Complainant, a subordinate employee and an intern, as a "hooker" and laughed. The NEC also agrees with the Hearing Officer that there is no ambiguity about this fact.

Although Respondent later denies they called the Complainant a hooker in their response to the Complainant's resignation letter, that denial is without credibility, given the recording Complainant submitted. Of note, the NEC finds that at the hearing, Respondent presented a different explanation, stating they were only repeating what they thought Complainant said. Like their initial denial, Respondent's explanation

at the hearing is unconvincing. The NEC agrees with the Hearing Officer's conclusion that for Respondent to claim they thought the Complainant said "hooker" and that they only repeated what the Complainant said is unpersuasive.

The NEC underscores the Hearing Officer's statement that in no instance would it be acceptable for any employer to refer to an employee as a hooker, much less an AIA architect member firm owner to an intern.

### **Penalty**

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The National Ethics Council finds the Respondent violated Rule 1.401 and imposes the penalty of Censure.

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

**June 20, 2022**