



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 2.104 and Rule 4.201 of the Institute’s 2007 Code of Ethics and Professional Conduct (“Code of Ethics”) by displaying on his website an image of the Complainant’s interior architectural design without any attribution of credit to the Complainant. The NEC imposed the penalty of censure 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 the principal architect with his firm. The Respondent is a principal of his architectural firm.

In or about 2000, the Respondent’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.” At around the same time, Mr. Johnson hired Janice Howard 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 Respondent’s firm at that point in time.” The Complainant was Ms. Howard’s “regular consulting architect,” who would assist her in reading the project’s working drawings and generating the individual room design concepts.

Mr. Johnson and Ms. Howard both agree that, after Ms. Howard’s initial review of the Respondent’s interiors, the owner requested a change in the “look” of the interior architecture and tasked Ms. Howard and the Complainant with preparing new concept sketches, and that,



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

At that time, Mr. Johnson decided, and Ms. Howard agreed, that the Complainant “should take over the design of the architectural interior room elevations.” In or about July 2001, the Complainant took over the interior detailing of the project. In such capacity, the Complainant produced numerous millwork drawings for many parts of the house. These design drawings in turn were developed into shop drawings by the millwork subcontractor and approved by the Complainant. The Complainant also fielded questions from the general contractor, the lighting designer, and various other subcontractors and suppliers regarding coordination of millwork and clarification of interior architectural finishes of the Johnson residence as it continued construction and up to completion in 2002.

Later, the residence was published in *Architectural Digest*. The article credits the Complainant as the interior architect and the Respondent as the architect. That information was submitted to the publishers by Ms. Howard.

In 2010, the Respondent’s website displayed an interior photograph of the Johnson residence as an example of his firm’s work. The photograph depicted the main entry, which was the focus of much of the testimony and evidence presented at the ethics hearing. Both parties have acknowledged each other’s involvement in the designed elements of the project’s main entry as shown throughout their testimony.

The Complainant provided a direct link from the drawings that either he worked on personally or were done by employees of his firm to the shop drawings approved by him for the main entry to the completed work. The Respondent provided documents which show that the main disposition of the elements of the main entry originated with his firm.

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.

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.*)



The Complainant alleges that the Respondent violated Rule 2.104 by refusing to credit the Complainant's firm for its role in the design, construction drawings and specifications, and administration of the interiors of the Johnson residence when depicting the project's interior on the Respondent's website.

The Respondent's firm was the Architect of Record for the Johnson residence. He has acknowledged the participation of the Complainant in the project regarding the interior finishes of the house, although the Complainant and Respondent disagree about who was responsible for particular features of the main entry. The Respondent, his partner, and an associate partner of the firm testified that they either met or saw the Complainant on several occasions at the project site and were conscious of his responsibilities in the project. Although they all worked on the same project for 18 months, neither party could present at the hearing evidence of an understanding between their firms regarding each other's scope of work, nor did either party present evidence that a formal agreement had been reached with the owner to establish their responsibilities once the Complainant's role in the project expanded.

The Respondent has shown a consistent pattern of disregard toward the Complainant and his work on the Johnson residence. The Respondent stated at the hearing that he does not understand "how an architectural consultant for an interior designer becomes the interior architect." The Respondent also stated that the term "interior architect" is new to him, most likely something Ms. Howard, the "interior decorator" for the project, came up with because she is a good friend of the Complainant. In addition, in response to a Wikipedia entry on "Interior architecture" submitted by the Complainant as evidence at the hearing, the Respondent quoted another Wikipedia entry that the "term interior architecture has not achieved meaning in the United States."

The National Ethics Council disagrees. The AIA recognizes Interior Architecture as a specific area of practice, as shown by the fact that interior architects have their own member group or knowledge community within the AIA. The 35-year-old Interior Architecture Knowledge Community was created by architects that handle the interior spaces of a building in a way that completes the architectural design intent. By holistically designing and detailing an interior that results in a comprehensive design solution, interior architects are differentiated from interior decorators who typically deal mostly with objects to be placed within a space.

The Complainant's involvement in the Johnson residence certainly falls in the category of interior architect as defined by the AIA. The drawings presented as evidence show that the Complainant designed elements whose intent and performance holistically complete the Respondent's architectural design. The finished main entry represents a pleasingly comprehensive and successfully completed design solution, including the objects placed there by Ms. Howard. Therefore, credit for all three participants should always accompany any image of the interiors at the Johnson residence.

The National Ethics Council concludes that the Respondent violated Rule 2.104 by failing to credit the work of others when displaying on his website a photograph of the main entry of the Johnson residence. Because that failure was knowing and deliberate, it was in wanton disregard of the Complainant's right to receive credit for his substantial responsibilities for the interior architecture depicted.

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 a photograph of an architectural interior that was designed by the Complainant on the Respondent's website, thereby claiming credit for work that the Respondent did not do.

The Respondent has claimed "the sole right for publications" for the project and the "right to use interior and exterior photos for representation of our firm." The Respondent claims his contract with the owner gives him exclusive rights as the architect with respect to certain publicity about the project.

The contract provision cited by the Respondent states:

The Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's promotional and professional materials with Owner's consent which shall not be unreasonably withheld. The Architect's materials shall not include the Owner's confidential or proprietary information including the Owner's name and cost of the Project without Owner's consent in Owner's sole discretion. Owner recognizes the Architect's desire to show the completed house to other customers of the Architect, and the Architect may within the first two years from completion of the house request such a showing by giving advance notice to Owner.

Owner shall be under no obligation to allow any showing and may either grant such request on terms and conditions it establishes or deny such request in its sole and absolute discretion.

The fact that this provision does not provide any exclusive rights for the architect was quickly accepted by the Respondent during the hearing. This provision establishes the Respondent's contractual relationship with the owner, but it does not exempt the Respondent from his duties toward others under the AIA's Code of Ethics.

As explained in the analysis of Rule 2.104, the Complainant was substantially responsible for the interior architectural design of the main entry of the Johnson residence shown in the photograph displayed on the Respondent's website. As the National Ethics Council has previously explained, the "general public and many clients are not familiar with the process necessary to bring a building to fruition." (*See NEC Decision 2004-10.*) When a project is displayed on an architectural firm's website without any other attribution of credit, the public is likely to assume that the firm is responsible for all of the architectural design work shown. When others are actually responsible for that design work, the firm's display of the project as an example of its work is misleading.

The National Ethics Council concludes that the Respondent violated Rule 4.201 because his firm's website displayed an image of the Complainant's interior architectural design without any attribution of credit to the Complainant, which resulted in a misleading statement of the Respondent's scope of responsibility for the project.

Penalty

Having found a violation of Rules 2.104 and 4.201 by the Respondent, the National Ethics Council imposes the penalty of censure.



THE AMERICAN
INSTITUTE
OF ARCHITECTS

**Code of Ethics and
Professional Conduct
DECISION 2010-07**

Members of the National Ethics Council

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*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