

Wanton Disregard for the Rights of Others

Question Presented

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

The questions posed by the Requesting Member are as follows:

- Q1: If a member designs or participates in the design of a space where execution is intended, has the member engaged in wanton disregard of the right to life of the occupants to be executed or killed, in violation of Rule 1.402?**
- Q2: If a member designs or participates in the design of a space where torture is intended or very likely to occur, has the member engaged in wanton disregard of the right to be free from torture, in violation of Rule 1.402?**

Noting that the commentary to Rule 1.402 “is clear when it comes to harassment, abuse, or other interpersonal issues that might occur in a business setting,” the Requesting Member states the commentary does not address cases “where members might enable the violation of the rights of others through their design work by, for example, designing projects where human rights violations are part of the design intent.”

References

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

Rule 1.402 Members shall not engage in conduct involving wanton disregard of the rights of others.

Commentary: Wanton disregard under this rule includes conduct taken in disregard of (1) a

high degree of risk that the Complainant would be adversely affected, and (2) that risk would be apparent to a reasonable person. “Reasonable person” is an objective standard and considers someone who uses such qualities as attention, knowledge, intelligence, and judgement which a society requires of its members to protect their own interests and the interests of others. Wanton disregard under this rule also includes engaging in conduct that is severe or pervasive enough that a reasonable person would consider it harassing, hostile, or abusive. This includes, but is not limited to, sexual misconduct, bullying, intimidation, or retaliation.

Facts Presented

AIA members are actively involved in the design of “justice facilities,” a category of building that generally includes courthouses, police stations, jails, prisons, customs and border protection facilities, and the like.

The Requesting Member’s inquiry focuses on two specific aspects of architectural design for justice facilities where individuals are held: 1) execution chambers; and 2) spaces where individuals are placed in solitary confinement.¹ The Requesting Member maintains that certain forms of solitary confinement constitute torture.

Discussion

The Requesting Member’s proposition to the NEC can be summed up as follows:

We submit to the NEC that any AIA member who employs their professional knowledge and skill to design spaces

¹ For the purposes of this advisory opinion, solitary confinement refers to the isolation of an individual in a justice facility.

intended to execute or torture a person is acting in wanton disregard for the human rights of people who will be killed or tortured in that space and failing to protect those occupants' health, safety, and welfare.

Execution Chambers

The Requesting Member asserts that “[e]veryone has the right to life, liberty and security of person,” and “every human being has the inherent right to life.”² The Requesting Member goes on to argue that the existence and use of execution chambers is inconsistent with that fundamental right, and that those involved in their design are complicit. The Requesting Member concludes that an AIA member’s design of such a facility would violate Rule 1.402 of the AIA’s Code of Ethics and Professional Conduct (“Code”).

In examining the Requesting Member’s argument, we turn first to the Code’s Ethical Standard 1.4: “Members should uphold human rights in all their professional endeavors.” At the most elemental level, the right to life would fall within this aspirational goal.

We look next to Rule 1.402:

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

According to the Commentary, this rule applies to . . .

. . . conduct taken in disregard of (1) a high degree of risk that the Complainant would be adversely affected, and (2) that risk would be apparent to a reasonable person.

As used in the Commentary, the term “reasonable person” sets . . .

. . . an objective standard and considers someone who uses such qualities as

attention, knowledge, intelligence, and judgement which a society requires of its members to protect their own interests and the interests of others.

The Commentary adds that wanton disregard includes . . .

. . . engaging in conduct that is severe or pervasive enough that a reasonable person would consider it harassing, hostile, or abusive.

The NEC has found violations of Rule 1.402 in a variety of settings. We decline, however, to find that a member has committed such a violation solely for designing an execution chamber in a jurisdiction where capital punishment is sanctioned by law.

Rule 1.402 and its Commentary make clear that we are not addressing the concept of human rights in a vacuum. Rather, we look to an objective standard asking what would be apparent to a reasonable person who “uses such qualities as attention, knowledge, intelligence, and judgement *which a society requires of its members to protect their own interests and the interests of others.*” (Emphasis supplied.)

In this instance, the norms of our society—and what society requires of its members to protect their own interests and the interests of others—are reflected in its laws. Under American law, human life is a fundamental right, but that right is not absolute. Every state in the United States, for example, recognizes an individual’s right to self-defense, even to the point of using deadly force if necessary. A similar right typically applies in the defense of the lives and safety of others by law enforcement officers and other people. In a different context, American law recognizes the right of combatants in war to take the lives of other combatants. Even though these rights are themselves limited, and although some have expressed dissenting views about them, they clearly reflect a societal judgment

² Citing the Universal Declaration of Human Rights; and International Covenant on Civil and Political Rights, Art. 6.

in the United States that the right to human life is not absolute.

In this context, the design of an execution chamber in the United States does not, in and of itself, constitute conduct in wanton disregard of the rights of others for purposes of Rule 1.402. On the contrary, it reflects conduct that is sanctioned by society in those jurisdictions where capital punishment has been adopted as the law of the land.

Rule 1.402, however, does require consideration of an objective standard that would be apparent to the reasonable person in light of societal norms. Applying that standard, we cannot find that a member is in violation of Rule 1.402 for designing an execution chamber in a jurisdiction in which capital punishment is sanctioned by law.

Torture

The Requesting Member has also posed a question about the possible application of Rule 1.402 as to the design of a space where torture is intended or very likely to occur. In the Requesting Member's words, this involves "the right to be free from torture."

We begin by defining what torture is. For purposes of this Advisory Opinion, we accept a definition the Requesting Member provides from the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other

person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Every case that comes before the National Ethics Council has its own unique facts and circumstances, and each is decided on its own merits. As a general rule, however, we can say that Rule 1.402 would preclude a member from designing a facility intended for torture as that term is defined above. Thus, a member may not design a space intended to inflict severe mental or physical pain or suffering for purposes of obtaining a confession, punishment, intimidation or coercion, or for discrimination.

We stress that the intended use of a facility when it is designed is important to deciding whether there is a violation of Rule 1.402. Architects design spaces, and such spaces are a *product* of the practice of architecture; spaces are not in and of themselves an action or practice. Confinement practices are not solely a function of the space itself, but also a function of the policies implemented by the administrators of the facility. Under Rule 4.102, members could not be held responsible for torture policies and procedures put into place by their clients after they occupy a space, so long as the members were unaware as they were designing the space that it was intended to be used for torture.

We turn now to the more specific concern underlying the Request's inquiry about torture—under what circumstances might a member be in violation of Rule 4.102 for designing a space used for solitary confinement? The Requesting Member does not take issue with spaces that are otherwise unobjectionable and that are used for solitary confinement only for limited duration. Indeed, such confinement might reasonably be needed to separate inmates after a fight, or to protect vulnerable people in a dangerous setting, to cite only two examples.

Rather, the Requesting Member submits that the international community regards *prolonged* solitary

confinement as a form of torture. The Requesting Member cites the United Nations' Nelson Mandela Rules of the Treatment of Prisoners:

In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited: (a) Indefinite solitary confinement; (b) Prolonged solitary confinement...

For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.

In a communication submitted after the initial Request was provided, the Requesting Member offered these suggested hypothetical facts for the NEC's consideration:

Firm A has been asked to design a state prison facility for State A that includes a wing intended for "segregated housing," which is intended to hold dangerous and/or unruly prisoners in barren and inhospitable conditions where their opportunity for environmental stimulation and interactions with other people will be severely limited. . . .

We acknowledge that the design of a space used for prolonged solitary confinement could result in a violation of the rule, but do not find that it would necessarily do so. Members must use their professional judgment to determine if the conditions involving solitary confinement within the proposed facility will meet the relevant standards.

A number of considerations would be involved in deciding whether Rule 1.402 has been violated, and the facts of an actual case would be determinative. The NEC could—and most likely would—consider

factors such as whether a space was specifically designed for purposes of:

- imposing "barren and inhospitable conditions" (to use the Requesting Member's language) on the occupant of the space
- inflicting severe mental and physical pain and suffering
- holding the space's occupant in prolonged solitary confinement.
- precluding any meaningful human contact
- denying or severely limiting environmental stimulus (such as access to natural light and fresh air, opportunities for exercise, and so on)

None of these factors would necessarily be dispositive of an actual case, nor is this list intended to state all factors that might be pertinent to the resolution of a case. The NEC would consider whatever factors are appropriate in light of the objective standard already referenced above—what would be apparent to a reasonable person who "uses such qualities as attention, knowledge, intelligence, and judgement which a society requires of its members to protect their own interests and the interests of others"? We also stress that a member will not be found to have violated Rule 1.402 if those controlling a space use it in a manner other than that conveyed by the client to the member when designing the space.

This opinion is based on information and facts submitted to the National Ethics Council. The opinion is for information purposes only and should not be construed as expressing any opinion on the ethics of specific individuals.

**National Ethics Council
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