



Using Partnership Funds for Personal Use; Wanton Disregard of the Rights of Others

Summary

The National Ethics Council (“Council” or “NEC”) ruled that an AIA Member violated Rule 2.104 of the Institute’s 1997 Code of Ethics and Professional Conduct by wrongfully using substantial sums of partnership funds for his own personal benefit in wanton disregard of the rights of his partners. The NEC also ruled that the evidence did not prove a violation of Rule 2.101 because there was not a finding by a court or administrative or regulatory body that the Member had violated a state, federal or local law. The NEC’s decision to impose the penalty of termination of membership was approved by both the Institute’s Executive Committee and Board of Directors.

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

References

1997 Code of Ethics and Professional Conduct, Canon II, Obligations to the Public

Rule 2.101 Members shall not, in the conduct of their professional practice, knowingly violate the law.

Commentary: The violation of any law, local, state or federal, occurring in the conduct of a Member’s professional practice is made the basis for discipline by this rule. This includes the federal Copyright Act, which prohibits copying architectural works without the permission of the copyright owner. Allegations of violations of this rule must be based

on an independent finding of a violation of the law by a court of competent jurisdiction or an administrative or regulatory body.

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, then its proof must be based on an independent finding of a violation of the law by a court of competent jurisdiction or an administrative or regulatory body.

1997 Code of Ethics and Professional Conduct, Canon IV, Obligations to the Profession

Rule 4.101 Members having substantial information which leads to a reasonable belief that another Member has committed a violation of this Code which raises a serious question as to that Member’s honesty, trustworthiness, or fitness as a Member, shall file a complaint with the National Ethics Council.

Commentary: Often, only an architect can recognize that the behavior of another architect poses a serious question as to that other’s professional integrity. In those circumstances, the duty to the professional’s calling requires that a complaint be filed. In most jurisdictions, a complaint that invokes



professional standards is protected from a libel or slander action if the complaint was made in good faith. If in doubt, a Member should seek counsel before reporting on another under this rule.

Findings of Fact and Analysis

The Complainants and Respondent were in a partnership for a number of years. The Respondent was responsible for the financial affairs of the partnership. The Respondent resigned from the partnership shortly after his partners discovered that for a period of seven years the Respondent had employed monies from the partnership for his personal use.

The Complainants initiated civil litigation in a state court claiming, among other things, that the Respondent had used partnership monies to pay his personal credit card bills and to pay off personal loans. The Complainants further contended that the Respondent had admitted these allegations. Subsequently the court issued a judgment against the Respondent in an amount of more than \$134,000. The court also dismissed a counterclaim that had been asserted by the Respondent.

Two other factors were noted in the record:

First, the documents filed in the original Complaint filed with the NEC in this case asserted that the Respondent, an attorney at the time the civil case was filed, had been disbarred “on consent for these actions” by order of the state supreme court. The NEC approached this conclusory assertion with caution. While Section 4.3 of the NEC’s Rules of Procedure permitted the acceptance of the factual allegations underlying the Complaint in this case as true because the Respondent had failed to file a Response, it did not require that the Council accept unquestioningly the Complainants’ assertions about the nature or basis of actions taken by a different adjudicatory body. Indeed,

because the Complainants did not support this conclusory assertion with supporting documentation, the NEC had no way of knowing to what extent this assertion might be relevant to allegations that the Respondent had violated the Code of Ethics.

Second, the Respondent was elected to membership in the Institute’s College of Fellows during the pendency of this case. Elevation to membership in the College of Fellows “not only recognizes the achievements of the architect as an individual but also elevates before the public and the profession those architects who have made significant contributions to architecture and society.” (*See www.aia.org/fellows_default.*)

The Complainants’ amended Complaint included two documents as evidence of their allegations: (1) a complaint (“Civil Complaint”) filed against the Respondent by the Complainants in an action brought in a state court; and (2) the subsequent consent judgment issued by the same court in the Complainants’ favor. The Civil Complaint contained eight counts, including one count each for alleged conversion, breach of contract, and fraud by the Respondent, and two based on the Respondent’s alleged breach of fiduciary duty. The remaining counts sought specific forms of relief—punitive damages, a finding of a constructive trust, and an accounting of funds.

Upon receipt of the amended Complaint in this case, the Respondent was notified and given the opportunity, in accordance with Section 4.2 of the Rules of Procedure, to submit a Response within thirty days of his receipt of that letter. He failed to file a Response. He was then notified during a telephone conversation with the Institute’s Associate General Counsel and through subsequent letters that, unless he filed a Response within the specified time, the NEC would proceed with the case in accordance with Section 4.3 of the Rules of Procedure.

Since the Respondent failed to file a Response in this case, the NEC, in accordance with Section



4.3 of the Rules of Procedure, had the option to resolve the matter as if the Complainants' allegations were proven true. Due to the seriousness of the allegations, however, the Complainants were required to meet the burden of proof described in Section 5.13 of the Rules of Procedure.

Prior to the consideration of the Hearing Officer's Report and Recommendation by the Council, the parties were informed that they could submit comments covering only: (a) subjects pertinent to the NEC's role as defined in Section 6.2 of the Rules of Procedure and (b) any rulings of the Hearing Officer alleged to have substantially prejudiced the disposition of the matter as to either party. (*See Rules of Procedure, Section 6.2.*) They were also informed that the Chair may, upon request, allow the parties to appear in person or through counsel before the NEC to make a brief oral presentation and to respond to questions at the meeting in which it would consider the Report and Recommendation for this case. Both of the parties submitted written comments and requested the opportunity to make an oral presentation.

The Complainants submitted written comments and forwarded additional evidence, which was not in their original ethics Complaint, nor in any subsequent correspondence sent to the NEC after it was filed. They maintained that the purpose of this evidence was "to complete the record, and to allow the NEC to revisit the conclusions of the Hearing Officer."

Subsequently, both parties were informed in a follow-up letter from the Institute's Associate General Counsel that the NEC would be advised not to consider any additional evidence, including the above-referenced documents, which was not in the record prior to issuing the Report and Recommendation.

The Complainants then notified the Institute's Associate General Counsel that they intended to contend at the NEC meeting that the Report and Recommendation substantially prejudiced the

disposition of this matter as to the Complainants by failing to accept as true the undisputed allegations of the Complainant that (1) the Respondent had been disbarred and (2) that he had pled guilty to a felony in connection with his theft of money from his partners. The Complainants asserted that the attachments to the letter were intended to support their position and that they intended to raise the matter directly with the NEC. Moreover, in the event the NEC declined to consider the information, they would request that the NEC return the case for re-hearing, in light of the additional information.

Based upon advice from the Institute's General Counsel, the NEC decided to receive a proffer of evidence from the Complainants during the NEC meeting prior to considering the Report and Recommendation, including an explanation for the delay in submitting the evidence, in order to determine whether a remand to the Hearing Officer would be appropriate to receive additional evidence in this case.

This proffer and explanation proved unnecessary because the Respondent, during his presentation, admitted that he had pled guilty to the crime of theft and had been sentenced to six months house arrest and four years probation. The Respondent also acknowledged that he had been required to make restitution in the amount of \$134,000. Based on the facts as established by the evidence of record, including the Respondent's acknowledgement of all the material allegations against him, the Council found the Respondent had violated Rule 2.104 of the Code of Ethics.

The Council also found that there was insufficient evidence to find a violation of Rule 2.101, which prohibits Members from knowingly violating the law in the conduct of their professional practice. In doing so, the Council was guided by the Commentary for Rule 2.101, which states, in part: "Allegations of violations of this rule must be based on an independent finding of a violation of the law by a court of competent jurisdiction or an administrative or



regulatory body.” The court judgment mentioned above found civil liability but no violation of law, and therefore was insufficient to support a finding that the Respondent had violated Rule 2.101.

The Council removed Rule 4.101 from consideration because that rule does not provide an independent basis for establishing a violation of the Code of Ethics by the Respondent in this case.

Penalty

In determining the penalty to be imposed in this case, the NEC noted the Respondent’s failure to file a response to the Complaint when first given the opportunity to do so, and either to mount a defense to the charges against him or to provide an explanation for his conduct until the last stage in the NEC process—the consideration of the Hearing Officer’s Report and Recommendation by the Council. The NEC noted the Respondent admitted during his appearance before the Council that the Complainants’ allegations were true and that he had pleaded guilty to the crime of theft, a felony in the third degree, in connection with his misuse of partnership funds. The NEC also expressed concern that the Respondent had become a member of the College of Fellows after he had been convicted of a felony directly connected with his practice as an architect and while this case was pending before the Council.

Although the NEC has generally reserved the penalty of termination for conduct potentially affecting the public health, safety, and welfare, it believed that the negative circumstances in this case were so compelling that the most severe penalty—termination of membership—should be imposed.

[The Institute’s Executive Committee approved the decision of the National Ethics Council and the penalty imposed. Subsequently the Board of Directors concurred in the decision of the

Executive Committee. In accordance with Section 2.085 of the Institute’s Bylaws, the Respondent has lost all rights and privileges granted by law or the Bylaws, including the right to use the Institute’s name, initials (including “FAIA”), and symbols.]

Members of the National Ethics Council

D. Susan J. O’Brien, FAIA, Chair
Peter Piven, FAIA
Ronald P. Bertone, FAIA
Duane A. Kell, FAIA
Brian P. Dougherty, FAIA
Phillip T. Markwood, FAIA

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

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