



## ***Copying Construction Documents Prepared by Others Without Permission; Inaccurate Statement of Scope and Nature of Responsibilities in Connection with Work***

### **Summary**

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The National Ethics Council (“Council” or “NEC”) ruled that an AIA Member violated Rule 4.201 of the Institute’s 1997 Code of Ethics and Professional Conduct (“Code of Ethics”) by reproducing information prepared by another firm and representing it as his own, in spite of a statement on the drawing sheet that was copied indicating that permission was required from the firm that had prepared the drawing sheet. The NEC also ruled that the Complainant had not met her burden of proof to show that the Respondent had violated Rule 2.101 or Rule 3.102.

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

### **References**

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*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.*

*1997 Code of Ethics and Professional Conduct, Canon III, Obligations to the Client*

Rule 3.102 Members shall undertake to perform professional services only when they, together with those whom they may engage as consultants, are qualified by education, training, or experience in the specific technical areas involved.

*Commentary: This rule is meant to ensure that Members not undertake projects which are beyond their professional capacity. Members venturing into areas which require expertise they do not possess may obtain that expertise by additional education, training, or through the retention of consultants with the necessary expertise.*

*1997 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.*

## **Background**

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This case was initially deferred pending the outcome of an administrative proceeding before a State Board of Architects (“State Board”) involving the issues raised in this case. The NEC took up consideration of the case after it received a copy of correspondence from the State Board indicating that it had conducted an inquiry into the administrative complaint filed by the Complainant against the Respondent and had voted to close the administrative proceeding without any action. At a pre-hearing conference call, the parties mutually agreed to dispense with a hearing and to have the Hearing Officer issue a Report and Recommendation predicated solely on the case pleadings and documentary evidence along with statements made during pre-hearing conference calls. The NEC considered the Hearing Officer’s Report and Recommendation and agreed with his findings.

## **Findings of Fact and Analysis**

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The Respondent’s firm was retained by a Developer to design an interior tenant fit-up within a new building under construction. The tenant for this space was a previous client of the Respondent’s firm. According to the Complaint, the Respondent illegally acquired a set of the Complainant’s firm’s construction documents, which the Respondent photocopied and reproduced with the Respondent’s title block as the Respondent’s own work and then released to bid as a bid set or pricing documents. The Complaint further stated that the Complainant’s firm “uses a specific custom and specialized set of Construction Documents and notes, which represent the knowledge gained from having prac-

ticed at this specialty for over 20 years.” The drawing that the Complainant alleges was used by the Respondent consisted of an interior tenant fit-up drawing sheet, with outline specification information, for another tenant space on another floor of the subject building. The title block of the Complainant’s drawing included the following statement:

THIS DRAWING AS INSTRUMENT  
OF SERVICE IS AND SHALL  
REMAIN THE PROPERTY OF THE  
ARCHITECT AND SHALL NOT BE  
REPRODUCED, PUBLISHED OR  
USED IN ANY WAY WITHOUT THE  
PERMISSION OF SAID ARCHITECT.

The Respondent stated that, when his firm was retained, the Developer provided drawings for the base building shell and building standards. The documents included the drawing sheet containing the finishing notes prepared by the Complainant’s firm. The Respondent maintained that it was his “understanding that this information represented the ‘building standards’ that would be applicable within the building for the tenant spaces” and added that the documents were not obtained illegally.

The Respondent further stated that his firm was “responsible for, and developed the design work for this tenant space, including the plan layout, design of cabinetry and room arrangements, ceiling and lighting layout, and plans for the owner’s needs for electrical power and communications locations.” As part of the design process, the Developer requested documents for preliminary pricing to see whether the work would be within an acceptable budget for the tenant space. Along with the design documents, the Respondent stated that his firm “incorporated the finishes information from [the Complainant’s drawings] only to assist the Developer in establishing that the level of finishes for this space would conform to that for other suites in the building.”



As noted above, the Respondent maintained that it was his firm's understanding that the Complainant's information, provided by the Developer, represented the "building standards" that would be applicable within the building for all tenant spaces. The Respondent stated:

We believe that the drawing in question was made available to us, just as the plans of the base building were made available to us, in order that we could perform our work properly within the context that we were hired to do.

Sheet A-8, Finish Specifications, of the design drawings prepared by the Respondent's firm included within the revision box of the title block the notation "PRICING SET." Sheet A-8 also contained information that had been directly reproduced from the drawing sheet prepared by the Complainant's firm.

The Respondent's firm later produced a full set of construction documents for the tenant space. These drawings included seven sheets of architectural drawings and ten sheets of mechanical, electrical, and plumbing drawings. The previously reproduced information from the Complainant's drawing was not reproduced on the construction drawings prepared by the Respondent.

Our analysis begins with a review of the Respondent's alleged violations, as stated in the Complaint. (*See NEC's Rules of Procedure, Section 3.2* ("A Complaint must allege violation of one or more Rules of Conduct stated in the Code [of Ethics].").) The Complaint is based primarily on the following core assertions:

1. The Respondent allegedly acquired a set of the Complainant's firm's construction documents illegally, reproduced them on a drawing with the Respondent's title block suggesting that it was his own work, and then released the document as part of his design drawings as a "pricing set," even though the Complainant's drawing contained a note in-

dicating that it was her property and should not be used without her permission.

2. The Respondent is purportedly representing himself as a health care interior design specialist through the use of Complainant's documents.

#### *Rule 2.101*

This Rule states: "Members shall not, in the conduct of their professional practice, knowingly violate the law." The commentary associated with this Rule states that 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." It adds, however, that "[a]llegations 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 Complainant failed to submit any evidence of such a finding by a court or administrative body. Furthermore, correspondence received from the State Board indicates that this administrative body voted to close the case without any action. Therefore, we conclude that the Complainant has failed to meet her burden of proof with regard to Rule 2.101.

#### *Rule 3.102*

Rule 3.102 provides that "Members shall undertake to perform professional services only when they, together with those whom they may engage as consultants, are qualified by education, training, or experience in the specific technical areas involved."

The Complainant is alleging that the Respondent may lack the necessary qualifications to be a health care interior design specialist and that the Respondent photocopied and reproduced the Complainant's firm's construction documents under the Respondent's title block as the Respondent's work. The Complainant essentially



contends that this conduct reflects the Respondent's lack of expertise in health care interior design and the Respondent's undertaking of a project for which he lacked the requisite education, training, or experience. During the pre-hearing conference calls and in his Response, the Respondent indicated that the health care tenant space for which his firm was providing services was for a previous health care client. Furthermore, the Respondent stated that the principals in his firm have had extensive experience in health care design and that he has had over 20 years of experience in designing health care facilities.

The Complainant has not presented evidence sufficient to support the allegation that the Respondent or the other members of the Respondent's firm lacked the education, training, or experience to undertake a health care project and thereby violated Rule 3.102. Accordingly, we conclude that the Complainant has failed to meet the burden of proof with respect to that rule.

#### *Rule 4.201*

Rule 4.201 states that

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 accompanying commentary states that 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."

Based upon our review of the design drawings prepared by the Respondent and the outline specifications on Drawing A-8 prepared by the Respondent's firm, we have found that major portions of the outline specifications and notes

were copied verbatim from the Complainant's drawing. As previously noted, the Complainant's drawing states within the title block:

THIS DRAWING AS INSTRUMENT  
OF SERVICE IS AND SHALL  
REMAIN THE PROPERTY OF THE  
ARCHITECT AND SHALL NOT BE  
REPRODUCED, PUBLISHED OR  
USED IN ANY WAY WITHOUT THE  
PERMISSION OF SAID ARCHITECT.

Although the Respondent stated that he did not reproduce the Complainant's specifications and notes verbatim in his final construction drawings, he admitted that it was used as a part of his design drawings and made public under his firm's title block, signature, and seal. Indeed, the Respondent himself indicated during the pre-hearing conference call in this case that he probably should not have done what he did with regard to reproducing this information. Therefore, based upon the evidence in the record, we find that the Respondent violated Rule 4.201.

#### **Penalty**

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Under the NEC's Rules of Procedure, the Complainant has the burden of proving the facts upon which a violation may be found. In the event that the Complainant's evidence does not establish a violation, the Complaint is dismissed. (*See NEC's Rules of Procedure, Section 5.13.*) Based upon a review of the evidence in this case, the NEC has determined that the Complainant has not met the burden of proof regarding Rules 2.101 and 3.102 of the Code of Ethics. The Complaint is dismissed as to the allegations directed toward those rules.

We find, however, that the Complainant has proved that the Respondent violated Rule 4.201 by reproducing information prepared by the Complainant's firm and representing it as the Respondent's own, in spite of a statement on the Complainant's drawings indicating that her permission was needed to use them. Accordingly,



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Code of Ethics and  
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having found a violation of Rule 4.201 by the Respondent, the NEC has decided that the Respondent receive the penalty of admonition.

Members of the National Ethics Council

Janet Donelson, FAIA  
Brian P. Dougherty, FAIA  
A.J. Gersich, AIA  
Phillip T. Markwood, FAIA  
Kathryn T. Prigmore, FAIA  
Bill D. Smith, FAIA

*The Hearing Officer, Ronald P. Bertone, FAIA,  
did not participate in the decision of this case,  
as provided in the Rules of Procedure.*

**June 14, 2005**