



Misleading or Deceptive Claim of Credit for Projects Done while at a Previous Firm; Failure To Give Appropriate Credit; Taking Copies of Photographs from a Previous Firm Without Permission

Summary

The National Ethics Council (“Council” or “NEC”) ruled that two AIA Members violated Rule 4.201 of the Institute’s 1997 Code of Ethics and Professional Conduct (“Code of Ethics”) by making misleading and deceptive statements in a marketing brochure. The brochure inaccurately claimed that one of the Members was responsible for the projects listed, without making any mention of the Complainant’s firm, which was the architect of record for the projects.

The NEC also ruled that the two Members violated Rule 5.201 by failing to provide appropriate credit to another architectural firm in marketing materials. In addition, the NEC ruled that one of the Members violated Rule 5.202 by taking copies of project photographs from her former firm without permission. The NEC imposed the penalty of censure on both of the Members.

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

References

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.

1997 Code of Ethics and Professional Conduct, Canon V, Obligations to Colleagues

Rule 5.201 Members shall recognize and respect the professional contributions of their employees, employers, professional colleagues, and business associates.

Rule 5.202 Members leaving a firm shall not, without the permission of their employer or partner, take designs, drawings, data, reports, notes, or other materials relating to the firm’s work, whether or not performed by the Member.

Findings of Fact

The Parties

The Complainant is an architect who founded an architectural firm 30 years ago and is chairman of that firm. Respondent A is a vice president and managing principal of a regional office of



the Respondents' architectural firm. Respondent B is a senior vice president of the Respondents' firm.

The Tri-Fold Announcement

Respondent A worked for the Complainant's firm for about 10 years up until the time she left and joined the Respondents' firm. Subsequently, the Respondents' firm hired a marketing consultant to publicize Respondent A's presence as manager of one of the firm's regional offices. A tri-fold announcement prepared by the marketing consultant was reviewed by both Respondents and subsequently mailed to prospective clients of the Respondents' firm including some clients of the Complainant's firm. The announcement describes Respondent A as "one of this region's leaders in architectural design and project management with over \$200 million in projects and 10 years of award-winning design and project management experience." It further states: "Her portfolio includes the acclaimed Office Building, Sports Facility, and College Facility, as well as other award-winning facilities like the Stadium, the University Facility, and the University Hospital." All of the projects cited are projects of the Complainant's firm. The Complainant's firm is not mentioned.

The Complainant learned of the announcement from clients who were confused about his firm's projects being ascribed to the Respondents' firm. As a result, the Complainant sought the publication of specific corrections by the Respondents' firm. When that effort failed, the Complainant filed a complaint with the National Ethics Council.

Photographs

The Complainant's firm had no published policy regarding the use of photographs or other project materials by former employees. At the hearing, the parties offered testimony regarding a discussion about permission for Respondent A to use materials. The discussion was held by the brother of the Complainant (who is president

and CEO of the Complainant's firm), Respondent A, and the former counsel to the Complainant's firm. A few months after Respondent A left the Complainant's firm, the three met as friends for lunch. During that conversation, Respondent A's experience at the Complainant's firm was discussed, but the type of materials her new firm might want to use was unspecified. The testimony reflects that use of the Complainant's firm's projects by the Respondent's firm as examples of Respondent A's experience would be acceptable to the Complainant's brother as long as the Complainant's firm was given credit. No permission to use project photographs of the Complainant's firm was given to Respondent A.

Promotional material of the Respondents' firm that incorporated photographs of Complainant's firm projects was provided by the Respondents to the Complainant as part of an attempt to settle the case. The Respondents' firm, in order to highlight Respondent A's experience, used nine of the Complainant's firm projects as examples. Several dozen photographs of varying size were used on more than a dozen pages of promotional material. All of these were photographs that had been commissioned by the Complainant's firm. Each project was identified as a project of the Complainant's firm by text under one photograph of the example. This text also identified Respondent A's role on the project. The type font was smaller than that used in the body of the text describing the project. No other attribution was given.

Conclusions

Rule 4.201

Rule 4.201 of the 1997 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 this Rule 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 Complainant alleges that Respondent A violated Rule 4.201 by deceptive and misleading statements in the tri-fold announcement. The announcement lists six projects for which the Complainant’s firm is the architect of record but is given no credit. Respondent A’s claim that credit is not necessary because the announcement is actually a resume fails to acknowledge that projects like these are always well known, while the architects who produce them are not. The general public and many clients are not familiar with the process necessary to bring a building to fruition. The announcement’s promotional strategy does create confusion in the marketplace. The credit claimed in the tri-fold announcement is misleading and deceptive and has denied the other participants in the projects their proper share of credit.

We conclude that Respondent A violated Rule 4.201 by making misleading and deceptive statements in the tri-fold announcement.

The Complainant also alleges that Respondent B, a principal in the Respondents’ firm, violated Rule 4.201 because he was responsible for the review, approval, and distribution of misleading marketing and promotional material. The tri-fold announcement inaccurately claims that an employee of the firm, Respondent A, was responsible for the six projects listed, without making any mention of the Complainant’s firm.

Prior decisions of the National Ethics Council have explained that the principals of a firm may be held accountable under the Code of Ethics for the firm’s marketing materials regardless of whether they are directly involved in preparation of the materials. (*See Decision 92-07; Decision*

94-07.) In this case, the testimony reflects that Respondent B was aware of the content of the announcement and reviewed and approved it prior to publication.

We conclude that Respondent B violated Rule 4.201 by making misleading and deceptive statements in the tri-fold announcement.

Rule 5.201

Rule 5.201 of the 1997 Code of Ethics states:

Members shall recognize and respect the professional contributions of their employees, employers, professional colleagues, and business associates.

The testimony and exhibits show a pattern by Respondent A of overstating her project influence on certain projects and understating the contributions of her former employer, the Complainant’s firm. Respondent A used well-known projects of the Complainant’s firm by name and by photographs in promotional efforts on behalf of the Respondents’ firm with minimal or no attribution to the Complainant’s firm.

In the tri-fold announcement, Respondent A implied that particular award-winning projects were of her design without any reference to the fact they were projects of the Complainant’s firm. The tri-fold announcement making these claims was reviewed by both Respondents and subsequently mailed to prospective clients including some clients of the Complainant’s firm. The manner in which Respondent A and her firm used Complainant’s firm projects to promote the Respondents’ firm leaves the impression that the projects are projects of the Respondents’ firm.

We conclude that Respondent A and Respondent B violated Rule 5.201 by failing to provide appropriate credit to the Complainant’s firm for its professional contributions.



Rule 5.202

Rule 5.202 states:

Members leaving a firm shall not, without the permission of their employer or partner, take designs, drawings, data, reports, notes, or other materials relating to the firm's work, whether or not performed by the Member.

The Complaint alleges that Respondent A took "other materials," namely photographs, without the knowledge or permission of the Complainant's firm. Although there is some conflicting testimony regarding the use of photographs, there is no argument concerning the fact that Respondent A used the Complainant's firm's photographs to promote the Respondents' firm without permission. There is also no doubt that had she requested permission, it would have been denied. The testimony does not support Respondent A's claim that she had tacit approval to take and use the Complainant's firm's photographs of that firm's projects.

We conclude that Respondent A violated Rule 5.202 by taking copies of the Complainant's firm's project photographs without permission.

Breach of Confidentiality

Section 3.5 of the Council's Rules of Procedure states:

In the interests of fairness and justice, Complainant shall avoid public disclosure and discussion of the Complaint, the parties involved, and the issues under consideration. Breach of this requirement may result in dismissal of the Complaint under section 5.5.

Section 5.5 of the Rules of Procedure states:

The Hearing Officer has full authority to issue instructions and make decisions for the fair and orderly presentation of

evidence and conduct of a hearing.... [T]he Hearing Officer, with the Chair's concurrence, may dismiss a Complaint ...because the Complainant has breached the confidentiality requirement of section 3.5....

After this ethics Complaint was filed, the Complainant filed in state court a Petition for Issuance of Subpoena to a client of the Respondents' firm. The court issued the subpoena, which was later quashed. In his petition, the Complainant described the complaint filed with the National Ethics Council in this case and sought to obtain an "unredacted" copy of the proposal that the Respondent's firm had submitted to that client for a particular project. The Respondents claimed that the Complainant's state court petition breached the requirement of confidentiality in this case and requested dismissal under Sections 3.5 and 5.5 of the Rules of Procedure.

Confidentiality was breached in this case. It is within the authority of the Hearing Officer to rule on the effect of any breach.

We agree with the Hearing Officer's conclusion that the complaint should not be dismissed because the breach of confidentiality had no effect whatsoever on any aspect of the merits of this case and has not resulted in significant prejudice to the Respondents in any other respect.

Penalty

Having found violations of Rules 4.201, 5.201, and 5.202 of the 1997 Code of Ethics by Respondent A and violation of Rules 4.201 and 5.201 of the 1997 Code of Ethics by Respondent B, the National Ethics Council must decide an appropriate penalty.

The following factors should be considered in the assessment of a penalty:



- The tri-fold announcement is not a curriculum vitae or resume. It is a marketing document that is casual with the facts regarding Respondent A's titles and experience. The Complainant's firm's projects cited are attributed specifically to Respondent A's portfolio and by implication to the Respondents' firm.
- Respondent B testified that he had reviewed the tri-fold announcement and its attribution of the Complainant's firm's projects to Respondent A.
- Copies of photographs of the Complainant's firm's projects were taken from that firm by Respondent A without permission and used not for securing a position with another firm, but for the purpose of promoting projects for the Respondents' firm's account, going so far as to use the Complainant's firm's projects to compete with the Complainant's firm.
- Respondent A testified that she reviewed the Code of Ethics in the process of drafting and/or reviewing promotional materials.
- Respondent A exaggerated her design and management experience at the Complainant's firm. There is, in fact, a pattern by Respondent A of inflated claims as well as minimal attribution to the Complainant's firm.
- Although it was intimated that the Respondents had used information concerning the Complainant's firm's projects in other competitive proposals, there was no evidence submitted to that effect.

The penalty in past cases involving the violation of the referenced Rules has ranged from admonition to a one-year suspension of membership. The violations by Respondent A and Respondent B in this case are sufficiently serious to warrant a penalty beyond admonition. After careful consideration of the violations, the

Council directs that the penalty of Censure be imposed as to Respondent A and Respondent B.

[The Respondents appealed the NEC's decision to the Institute's Executive Committee, as permitted in Chapter 7 of the Rules of Procedure. The Executive Committee approved the NEC's decision and the penalty imposed.]

Members of the National Ethics Council

Janet Donelson, FAIA
A.J. Gersich, AIA
Melinda Pearson, AIA
Michael L. Prifti, FAIA
Bill D. Smith, FAIA

The Hearing Officer, Phillip T. Markwood, FAIA, did not participate in the decision of this case, as provided in the Rules of Procedure. Kathryn T. Prigmore, FAIA, a member of the Council, also did not participate in the decision.

October 20, 2006