Wanton Disregard of the Rights of Others; Failing to Resolve or Notify Others of Unsafe Condition Resulting from Client Decision; Making False Statement of Material Fact; Failing to Ensure Ethical Conduct of Employee

Summary

The National Ethics Council ("Council" or "NEC") ruled that an AIA Member violated Rule 2.104 and Rule 3.201 of the Institute's 2004 Code of Ethics and Professional Conduct ("Code") by ignoring the risk that her proposed design would adversely affect adjoining property owned by the Complainants and by failing to make disclosures to the Complainants that would have enabled them to consent or to act to protect their interests.

The Council also ruled that the Member violated Rule 2.105 because she was aware of unsafe and improper activity by her clients but failed either to resolve the matter or notify the proper authorities. The Council ruled that the Member violated Rule 4.103 by making a statement of material fact to public officials about the project site's characteristics and drainage that she knew or should have known to be false. The Council ruled that the Member violated Rule 4.202 by not making reasonable efforts to ensure the ethical conduct of her employee who sent the Complainants a letter containing a false statement of material fact. The NEC found no violation of Rules 2.101, 2.106, 3.101, and 4.101.

The NEC imposed the penalty of a three-year suspension of membership on the Member.

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

References

2004 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: 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.

Rule 2.105 If, in the course of their work on a project, the Members become aware of a decision taken by their employer or client which violates any law or regulation and which will, in the Members' judgment, materially affect adversely the safety to the public of the finished project, the Members shall:

(a) advise their employer or client against the decision,

(b) refuse to consent to the decision, and

(c) report the decision to the local building inspector or other public official charged with the enforcement of the applicable laws and regulations, unless the Members are able to cause the matter to be satisfactorily resolved by other means.

Commentary: This rule extends only to violations of the building laws that threaten the public safety. The obligation under this rule applies only to the safety of the finished project, an obligation coextensive with the usual undertaking of an architect.

Rule 2.106 Members shall not counsel or assist a client in conduct that the architect knows, or reasonably should know, is fraudulent or illegal.

2004 Code of Ethics and Professional Conduct, Canon III, Obligations to the Client

Rule 3.101 In performing professional services, Members shall take into account applicable laws and regulations. Members may rely on the advice of other qualified persons as to the intent and meaning of such regulations.

Rule 3.201 A Member shall not render professional services if the Member's professional judgment could be affected by responsibilities to another project or person, or by the Member's own interests, unless all those who rely on the Member's judgment consent after full disclosure.

Commentary: This rule is intended to embrace the full range of situations that may present a Member with a conflict between his interests or responsibilities and the interest of others. Those who are entitled to disclosure may include a client, owner, employer, contractor, or others who rely on or are affected by the Member's professional decisions. A Member who cannot appropriately communicate about a conflict directly with an affected person must take steps to ensure that disclosure is made by other means.

2004 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.

Rule 4.103 Members speaking in their professional capacity shall not knowingly make false statements of material fact.

Commentary: This rule applies to statements in all professional contexts, including applications for licensure and AIA membership.

Rule 4.202 Members shall make reasonable efforts to ensure that those over whom they have supervisory authority conform their conduct to this Code.

Commentary: What constitutes "reasonable efforts" under this rule is a common sense matter. As it makes sense to ensure that those over whom the architect exercises supervision be made generally aware of the Code, it can also make sense to bring a particular provision to the attention of a particular employee when a situation is present which might give rise to violation.

Introduction

The complaint in this case was filed in May 2006. The Respondent received the Complaint in July 2006 and filed a response the following month. The case was then deferred pending resolution of an administrative complaint filed with the State by the Complainants against the Respondent. After the administrative proceeding had concluded, this ethics case resumed in August 2007.

The pre-hearing conference was held by telephone in early December 2007. The participants were the Hearing Officer, the Complainants, the Respondent, the Respondent's attorney, and an Associate General Counsel of the American Institute of Architects ("AIA" or "Institute").

During the pre-hearing conference, the hearing was scheduled for April 25, 2008. The Complainants objected to setting a hearing date more than four months out, but no earlier date could be agreed upon due to the participants' schedules. On March 31, 2008, the NEC received a letter dated March 27, 2008 from the Respondent's attorney stating that the Respondent would be out of the country the week of April 25 and requesting that the hearing be postponed. The Hearing Officer reviewed the Respondent's request and determined that the hearing should proceed as originally scheduled.

Both parties received written notification on April 8, 2008 of the Hearing Officer's decision. The notification letter stated, in part:

> The National Ethics Council prefers that a Respondent participate in the complaint process, but a Respondent's failure to participate does not prevent the Council from adjudicating the Complaint. A Respondent's failure to participate in the hearing itself does not waive other rights that the Respondent may have, including submission of written comments on the Report and Recommendation or any appeal under Chapter 7 of the Rules of Procedure. Further, even if the Respondent does not attend the hearing in person, she may appear through counsel, who can present evidence, cross-examine witnesses, and otherwise represent the Respondent.
>
> In conclusion, the Hearing Officer has determined that the hearing of this case should proceed as scheduled for the following reasons:

- The Respondent's interests, as stated above, may be represented without her personal attendance at the hearing.
- The Respondent, along with the other involved parties, selected a hearing date convenient to her.
- This date was immediately confirmed and remained undisputed for nearly four months.
- Further delays jeopardize the speedy resolution of this case.
- The only rationale currently submitted for overriding these considerations is a voluntarily scheduled appointment rather than an unforeseen emergency.

The Hearing Officer held the hearing in this case on April 25, 2008. The Complainants were both present and participated. The Respondent's attorney was present and participated on behalf of the Respondent, who was not present. No witnesses were called by either party. The Institute's Associate General Counsel was also present.

Both parties provided written comments on the Hearing Officer's Report and Recommendation. The National Ethics Council considered the case record on October 5, 2009. Neither party appeared before the Council at that time.

Findings of Fact

The Parties

The Complainants, Mr. and Mrs. Johnson, are homeowners in Suburban City. Mr. Johnson is also an attorney. The home where they have lived for approximately 20 years at 1111 Mayberry Lane abuts a neighboring property at 1113 Mayberry Lane.

The Respondent is the principal of the architectural firm Design Associates. In 2005 and 2006, the Respondent designed a custom residence (hereinafter "the Project") of between 20,000 and 40,000 square feet for the owners of the property at 1113 Mayberry Lane.

The Chronology

The Johnsons have lived at their current address for approximately 20 years. For approximately 10 years, Mr. and Mrs. Gonzales and their family lived a few doors down. The two couples had friendly relations, serving together on the neighborhood association, as members of the same country club, and supporting their children on the same swim team. A few years ago, the Gonzaleses acquired an existing house at 1113 Mayberry Lane adjacent to the Johnsons and engaged the Respondent to design a new house to be built on that property for their family.

The Gonzales family, which includes five children, owns a collection of historic automobiles. As part of the Project, the Respondent was requested to design both a six-car "active" garage for the family's daily use and a six-car "museum" garage for the historic collection. The garages and other proposed features of the Project required zoning variances from Suburban City.

In late 2005, Mr. and Mrs. Gonzales met with the Johnsons, described the Project (without the aid of any drawings), and asked for the Johnsons' support for zoning variances. The Johnsons consented on the condition that no active uses would be placed near their property line, where they had always enjoyed a wide buffer from the prior estate's activity. The Johnsons understood that the Respondent's plans called for only the inactive museum garage to be placed on the side of the lot adjacent to their property.

The Respondent had started the zoning variance process with Suburban City in the fall of 2005. In Suburban City, zoning variances are granted

by the City Council sitting as the Zoning Board of Appeals. By December 2005, the Respondent, on behalf of her clients, had submitted an initial Zoning Board of Appeals Application, only a portion of which was submitted as evidence in this ethics case. In January 2006, the Respondent presented her plans at the required public hearing. The plans she presented at the hearing reflected the Johnsons' understanding of the Project site usage, with an inactive museum garage use more than 150 feet from their property line and most parking and traffic routed around the opposite side of the building.

After the January hearing, the Respondent, as the agent for her clients, submitted an amended application stating:

> The size of the site along with the fact that it is extremely flat, causes an unusual condition in that the existing site does not drain properly. . . . [T]he site needs to have better drainage, therefore, additional fill should be brought in and the house should be elevated to keep a good visual proportion to the site.

This revised zoning variance application was initially set for public hearing in February 2006, but was delayed to early April because of the scope of changes that the Gonzaleses subsequently requested the Respondent to make. The version of the plans reviewed at the April hearing was completed in mid-March. The Respondent presented the revised plans at the April hearing before the City Council and argued for variances, including raising the grade on the property above that of the neighbors.

The plans submitted with the amended application and that the Respondent presented at the April hearing differed substantially from the initial plans described by the Gonzaleses to the Johnsons and submitted with the initial application. The revised plans show an active "family garage" at least twice as close to the Johnsons' property as the museum garage that had been shown before and new staff and other parking lots adding 13 parking spaces and wide driveways along the Johnsons' property line. The museum garage had been relocated to the opposite side of the property.

Neither the Respondent nor the Gonzaleses had informed the Johnsons of these changes. At the April hearing, the Respondent first implied that she had the Johnsons' approval of the new plan but, when pressed, she acknowledged that she did not.

At the April hearing, the Zoning Board of Appeals ruled that, in order for the Respondent to be granted the variances she requested, she must obtain "written consent of the immediate adjoining neighbor (1111 Mayberry Lane) regarding the current design and configuration of the attached garages" as well as "written consent of the adjoining residences on Sunnyvale Terrace" regarding other matters.

A week after the hearing, the Respondent's office sent letters (signed by George Anderson, an employee) to the Sunnyvale Terrace neighbors and the Johnsons per the Board's request. However, instead of stating that the recipients' approval was required, the opposite was stated (and also implied) throughout the letter: "The purpose of this letter is not for approval of the variances, only that you have had the opportunity to review and acknowledge the variances." In addition, the letter the Respondent's office sent to the Johnsons omitted the site plan drawings that required their approval, while a supposedly identical version of the letter to the Johnsons copied to the City included those drawings. The Project's general contractor hand-delivered the Respondent's letter to the Johnsons.

At the beginning of May 2006, neighbors alerted the Johnsons to a verbal description of the Respondent's site plan and the requirement for neighbor approval published in a local newspaper a week before. The Johnsons assert it was only then that they discovered that the letter they had received was misleading.

Weeks before (and prior to the issuance of any variances), the regrading of the lot had already begun. By April 2006, photographs show the grade level had already been raised approximately 28 to 48 inches and had been retained by wood and concrete block walls at the property lines. By the following winter, photographs show the Johnsons' property flooded due to the earthwork. And the Johnsons contend that the water incursions have persisted even after the retaining wall was subsequently removed because the grade is still artificially high 15 or 20 feet from their property line. The Johnsons also suspect that a specimen tree on their property, always healthy beforehand, contracted Dutch Elm disease as the result of the earthwork; it had to be removed at the cost of $6,000. While the earthwork was proceeding, the Respondent knew that the Johnsons were concerned about its effect on their property.

According to a City Ordinance: "Grading shall be done in a manner that will not result in the flow of storm water to be concentrated or accelerated onto adjacent properties, and in a manner that will not result in flooding of storm water on adjacent properties . . . ." Another City Ordinance "restricts the construction of retaining walls, unless acting as an actual barrier retaining existing earth at normal grade."

In mid-April 2006, the City issued a Stop Work Order to the contractor requiring he "cease and desist all land balance and fill operations" because no "site drainage plan" had been submitted. The following week, the City issued a Notice of Violation to the contractor because the "request for a cease and desist of land balance and fill operations has been disregarded." The City copied the Respondent on both of these notices.

A week later, the City's Director of Public Service and Building Office wrote a letter directly to the Respondent:

> The construction of the wall and grade adjustment has created an approximate three (3') foot elevation difference [that] creates a specific safety hazard to . . . adjacent property owners [and] a potential for detrimental impact on site drainage and surrounding vegetation including trees, on this and adjacent properties.

He recommended to the Respondent that "this wall [be] removed and the grade be restored."

The contractor submitted a Preliminary Grading Plan in late April 2006, which the City determined was inadequate. At the beginning of May 2006, the City issued a written notice that the previously constructed wall had to be removed and a "Signed and Sealed Engineered Site Drainage Plan" be submitted for review and approval.

Prior to the ethics hearing, the Respondent's attorney had specifically asked the Respondent about her response to receiving the City's letter to her about the fill and the retaining wall. The attorney reported that the Respondent informed her clients and the contractor that they had to "take care of this." The Respondent, however, had been on the site and had seen the fill and wall in place prior to the City's letter to her. The Respondent's attorney presented no information about any earlier response by the Respondent to the sitework. The only information that can be construed as evidence of a response by the Respondent to zoning or building code violations on the Project is a letter she sent to the Johnsons while this ethics case was pending, in which she states: "[I]t wasn't my responsibility, as an Architect, to 'control' [my client's] every move on his own property. He didn't take my advice when given." Here, the Respondent implies that she advised her client against the improper activity that was taking place.

The Respondent continued to work with her clients for at least five more months and notified the City that her commission for the Project ended in October 2006. During that time, the Respondent attended two private meetings with

the Johnsons and the City and helped resolve the design issues. Mrs. Johnson testified: "I said [to the Respondent] 'you are the architect, you are in charge,' and I know I said that . . . and I said 'give me your best guesstimate' [of when grading issues would be resolved], and then she said 'perhaps six weeks.'" At the second meeting, the Respondent herself presented drawings (with the title block of the Project's civil engineering firm) that show the demolition of the retaining wall and the removal of the active family garage from the Johnsons' side of the Project site. (Until then, the Respondent's site plan presented at the April City Council meeting had been the current drawing of the layout.)

Despite claiming to end her formal involvement with the Project in October 2006, the Respondent "spent over an hour on the property walking the entire perimeter" with the Project owner and the owner of the landscaping company as late as March 2007. She made similar site visits, which she spent speaking with the contractor or the owners, throughout the Project and which were recorded by Mrs. Johnson in a diary she began in April of 2006.

Conclusions

Rule 2.101

Rule 2.101 of the 2004 Code of Ethics states:

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

Some aspects of the Project did evidently fail to conform to some local laws: laws pertaining to grading, parking, retaining walls, and un-permitted construction work. However, there is sufficient evidence that the Respondent was aware of and properly sought variances for the nonconforming grading and parking that she designed. There is not sufficient evidence that she designed the un-permitted retaining walls or that she personally was responsible for the construction work done without proper permits.

The National Ethics Council concludes that the Complainants have not met their burden to prove that the Respondent violated Rule 2.101.

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 this rule states, in part: "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."

The only relevant independent findings in this case are the Stop Work Order and Notices of Violation issued by the City to the contractor. There has been no independent finding that the Respondent violated a law or committed fraud.

A violation of this rule may, alternatively, be based on conduct involving the wanton disregard of the rights of others. The NEC has previously described "wanton disregard" under this rule to be an action taken in disregard of a "high degree of risk that the Complainant would be adversely affected" and that risk "is apparent or would be apparent to a reasonable person." (*See NEC Decision 2005-15.*)

The evidence shows that the Johnsons' property was adversely affected by the Project. The Respondent proposed the Project's design, which required extensive fill on a relatively flat site that had an existing subsurface drain system. As designed, the site would require engineered measures to ensure no adverse affect to neighboring properties. Without such measures, the design proposed by the Respondent carried a

high risk of adversely affecting neighboring property, a risk that is apparent from a review of the topographic drawings and photographs of the site.

The Council concludes that the Complainants have met their burden to prove that the Respondent violated Rule 2.104 by ignoring the high degree of risk that her proposed design would adversely affect the Complainants' property.

Rule 2.105

Rule 2.105 of the Code of Ethics states:

> If, in the course of their work on a project, the Members become aware of a decision taken by their employer or client which violates any law or regulation and which will, in the Members' judgment materially affect adversely the safety to the public of the finished project, the Members shall:
>
> (a) advise their employer or client against the decision,
>
> (b) refuse to consent to the decision, and
>
> (c) report the decision to the local building inspector or other public official charged with the enforcement of the applicable laws and regulations, unless the Members are able to cause the matter to be satisfactorily resolved by other means.

There is sufficient evidence that construction on the Project site was unsafe and violated City requirements. There is also sufficient evidence that the Respondent was actively engaged throughout the Project with the contractor who created the violations.

The Respondent has implied that she advised her clients against the violations but without any success. The Johnsons have presented insufficient evidence to prove that the Respondent did not advise against the improper activity (*see Rule 2.105, Subparagraph (a)*) or that she consented to client decisions regarding that activity (*see Rule 2.105, Subparagraph (b)*).

However, the Respondent has admitted that she was aware of but could not herself cause the matter to be satisfactorily resolved, and she provides no evidence that she notified the proper authorities of the violations she saw. (*See Rule 2.105 Subparagraph (c)*.) In fact, it was the authorities who finally notified her to request compliance, not the reverse. Moreover, the Respondent has stated that controlling a client's behavior is not her responsibility, and she conducted herself accordingly on this Project.

The Council concludes that the Complainants have met their burden to prove that the Respondent violated Rule 2.105 because, in the course of her work on the Project, she was aware of unsafe and improper activity by her client but failed either to resolve the matter or notify the proper authorities.

Rule 2.106

Rule 2.106 of the Code of Ethics states:

> Members shall not counsel or assist a client in conduct that the architect knows, or reasonably should know, is fraudulent or illegal.

By her own admission, the Respondent appears to have preferred her clients' interests to those of the surrounding community. She claims, however, to have disputed, rather than assisted, her clients' actions that did not comply with City requirements, and there is not sufficient evidence to the contrary. Although she did not notify proper authorities, which the Council has concluded constitutes a violation of Rule 2.105, that failure does not constitute assistance in violation of Rule 2.106.

The Respondent and her clients may have had an interest in deceiving the Johnsons to obtain approval of a less intrusive design while moving forward with a more intrusive one. However, the

Johnsons had all their potentially fraudulent communications with the Project owner or the Respondent's staff and none with the Respondent herself. The Respondent claims that she had no knowledge of the client communications and could have simply failed to supervise her staff's communications. The Johnsons have not presented sufficient evidence to the contrary.

The Council concludes that the Complainants have not met their burden to prove that the Respondent violated Rule 2.106.

Rule 3.101

Rule 3.101 of the Code of Ethics states:

> In performing professional services, Members shall take into account applicable laws and regulations. Members may rely on the advice of other qualified persons as to the intent and meaning of such regulations.

The analysis for Rule 2.101 also applies to Rule 3.101. There is sufficient evidence that the Respondent was aware of the nonconforming aspects of her own work and tried to get variances for them.

The Council concludes that the Complainants have not met their burden to prove that the Respondent violated Rule 3.101.

Rule 3.201

Rule 3.201 of the Code of Ethics states:

> A Member shall not render professional services if the Member's professional judgment could be affected by responsibilities to another project or person, or by the Member's own interests, unless all those who rely on the Member's judgment consent after full disclosure.

The commentary to this rule states:

> This rule is intended to embrace the full range of situations that may present a Member with a conflict between his interests or responsibilities and the interest of others. Those who are entitled to disclosure may include a client, owner, employer, contractor, or others who rely on or are affected by the Member's professional decisions. A Member who cannot appropriately communicate about a conflict directly with an affected person must take steps to ensure that disclosure is made by other means.

The Johnsons argue that the Respondent had responsibilities to them and to others, which could have affected her judgment in rendering professional services to her client. The Respondent responds that she had no relationship with the Johnsons and her "interest in no way conflicts with" theirs such that independent disclosure was required."

As recognized by the rule and its commentary, many people can be "affected by the Member's professional decisions" in performing architectural services, including a project's neighbors, a project's occupants or users, and the community of which a project is a part. To read into Rule 3.201 a requirement that an architect notify everyone who might be adversely affected by design decisions would be to demand the impossible. However, in the circumstances presented by this ethics case, the immediate neighbors, the Johnsons, were directly affected by the design put forward by the Respondent to such an extent that she had an obligation to them under this rule. Her design required adding a very significant quantity of fill to create a large "plinth" upon which the new house and associated garages and drives would be placed, a design approach that could have affected neighboring property in multiple ways. In addition, her revised design relocated daily vehicle traffic to the edge of the site adjacent to the Johnsons' property. The Council believes that the Respondent interpreted her obligations too narrowly—simply to obtain a permit for the new design on behalf of

her clients. In so doing, she failed to recognize her other obligations to the neighboring property owners.

As described in the commentary to Rule 3.201, those who are entitled to disclosure may include persons who are affected by the Member's professional decisions in addition to a client. The Respondent failed to make such disclosure to the Johnsons.

The Council concludes that the Complainants have met their burden to prove that the Respondent violated Rule 3.201 by failing to make disclosures about the Project to the Johnsons that would have enabled them to consent or to act to protect their interests.

Rule 4.101

Rule 4.101 of the Code of Ethics states:

> 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.

The Rules of Application, Enforcement, and Amendment of the Code of Ethics provide that a violation of Rule 4.101 "cannot be established without proof of a pertinent violation of at least one other Rule." (*See NEC Decision 2002-19.*)

The only AIA Member identified in this case is the sole Respondent. George Anderson is not an AIA Member, and a firm cannot be a Member of the Institute, only an individual can be.

Rule 4.101 is inapplicable to the Respondent's conduct in this case because no other Member has been alleged to have violated the Code of Ethics.

The Council concludes that the Complainants have not met their burden to prove that the Respondent violated Rule 4.101.

Rule 4.103

Rule 4.103 of the Code of Ethics states:

> Members speaking in their professional capacity shall not knowingly make false statements of material fact.

The Respondent stated to the City that the grade level at the Project site must be raised because the property is large and flat and therefore does not drain properly:

> The size of the site along with the fact that it is extremely flat, causes an unusual condition in that the existing site does not drain properly. . . . . [T]he site needs to have better drainage, therefore, additional fill should be brought in . . . .

This is a false statement that any licensed architect would know to be false. Largeness and flatness do not cause drainage problems. Raising grade level, by itself, does not solve drainage problems, it merely diverts them to lower ground. Stormwater in flat areas is controlled by proper direction of the water and/or well-maintained drainage equipment.

From the outset, the Respondent had another goal in mind for raising the ground level, as evidenced by her statement in her initial zoning variance application that the "new house is being elevated out of grade to create a look similar to the old homes in Suburban City." Establishing a fictional link between parcel size and drainage creates the misleading illusion of an objective, scientific justification for what is merely a personal preference.

The Respondent's statement about site drainage dealt with material fact. The change of grade at the Project site was material since that construction work resulted in the issuance of a Stop

Work Order and Notice of Violation by the City; consumed great public and private resources; and, even after it was ameliorated, caused unsafe conditions and significant damage to neighboring property.

The Council concludes that the Complainants have met their burden to prove that the Respondent violated Rule 4.103 by making a statement of material fact that she knew or should have known to be false.

Rule 4.202

Rule 4.202 of the Code of Ethics states:

> Members shall make reasonable efforts to ensure that those over whom they have supervisory authority conform their conduct to this Code.

The April 2006 letter to the neighbors from the Respondent's office, which was signed by her employee, George Anderson, contained a false statement of material fact. It asserted that the letter itself was not for the purpose of gaining the Johnsons' approvals for the Project variances, presumably in order to portray the Project as a fait accompli over which they had no influence.

However, this was the precise purpose of the letter as evidenced by the fact that: (1) the Respondent was ordered by the City a week prior to send this and four similar letters to gain neighbor approvals, (2) her office presented the neighbors' signed letters to the City as evidence of compliance with the City's order, and (3) the Respondent refers to the four signed letters as successful "approval" letters in her Response to the ethics Complaint.

Although there is not sufficient evidence that the Respondent wrote or approved the April 2006 letter prior to its being delivered, her own words indicate that she later became familiar with the copies signed by the neighbors. She therefore had substantial information that her employee made dishonest statements on the firm's behalf. The Respondent allowed an inaccurate and misleading document to be delivered on behalf of her firm.

The Council concludes that the Complainants have met their burden to prove that the Respondent violated Rule 4.202 by not making reasonable efforts to ensure the ethical conduct of her employee.

Penalty

The Respondent has crossed ethical lines primarily to further the interests of her clients. These client interests were sometimes disrespectful of community interests or were violations of legal and safety standards. Having found violations of five rules of the Code of Ethics by the Respondent, the National Ethics Council assesses the penalty of suspension of AIA membership for three years.

Members of the National Ethics Council

Bill D. Smith, FAIA, Chair
Janet Donelson, FAIA
A.J. Gersich, AIA
Michael L. Prifti, FAIA
Kathryn T. Prigmore, FAIA

The Hearing Officer, Victoria Beach, AIA, did not participate in the decision of this case, as provided in the Rules of Procedure. Melinda Pearson, FAIA, a member of the Council, also did not participate in the decision.

October 5, 2009