



# 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

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The National Ethics Council (“Council” or “NEC”) ruled that two AIA Members violated Rule 4.201 of the Institute’s 2004 Code of Ethics and Professional Conduct (“Code of Ethics”) by distributing a marketing brochure that is misleading because, taken as a whole, it suggests that they are entitled to more than their proper share of credit for the projects listed. The NEC found no violation of Rule 5.301 or Rule 5.302. The NEC imposed the penalty of admonition on each of the Members.

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

## References

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*2004 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.*

*2004 Code of Ethics and Professional Conduct, Canon V, Obligations to Colleagues*

Rule 5.301 Members shall recognize and respect the professional contributions of their employees, employers, professional colleagues, and business associates.

Rule 5.302 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 Allegations

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The Complainant is the primary owner of ABC Architects (“ABC”), is an architect licensed to practice in the State, and has expertise in libraries.

The two Respondents are former employees of the Complainant’s firm, where they held the title Senior Associate. Following their departure from that firm in 2005 and 2006, respectively, they formed the firm New Design Associates (“NDA”), located in the same City. As a part of their practice, they pursue work with libraries in the State.



The Complainant in this case levels the following allegations in his complaint.

- On July 13, 2007, the Respondents distributed a tri-fold brochure (“Tri-Fold”) at the State Library Association conference that failed to attribute credit to the Complainant’s firm for ABC projects shown and that used photographs from ABC’s Web site without permission.
- The Respondents are misleading clients regarding their roles while at ABC.
- In the summer of 2007, the Respondents caused the Village Public Library to mistakenly believe that NDA was an award-winning firm and misled the library that NDA received awards that had been won by ABC and another architecture firm.
- The Respondents provided information about ABC-designed projects for the Village Library Web site and failed to attribute credit to ABC.
- ABC clients contacted the firm saying that the use of the same photographs in ABC and NDA marketing materials confused them.
- The Respondents improperly claimed sole responsibility for several ABC-designed projects for the Suburb Public Library System.
- The Respondents’ claim of responsibility for the design of the Town Public Library was misleading.
- The Respondents used ABC photographs without permission.

### **Findings of Fact**

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#### *The Tri-Fold*

The Respondents developed marketing materials for NDA using experience gained while employ-

ees of the Complainant. A particular piece was the Tri-Fold brochure distributed on July 13, 2007 at the State Library Association conference. The Complainant alleges the Tri-Fold violates all three of the Referenced Rules. The Respondents stated they had reviewed the AIA’s Code of Ethics as well as the Guidelines for the Attribution of Credit published by the National Ethics Council prior to filing their response in this case.

The Complainant goes on to admit the Respondents did request permission to use ABC photographs that appear in the Tri-Fold.

The Tri-Fold includes captioned photographs of the following projects, among others:

Town Public Library;  
Meadows Library;  
Suburb Public Library (Central Library  
and two branch libraries);  
Field Public Library; and  
Brooks Township Public Library.

The Tri-Fold also includes renderings of the Regional Library and County District Library. Several of the project photographs and both renderings were commissioned by ABC. The Complainant was the architect for each of those nine projects depicted.

Under the heading “Previous Clients and Past Experience,” the Tri-Fold also lists each of those projects along with other projects for which ABC was the architect. At the beginning of that list is the notation, “As Senior Associates at ABC Architects,” using a font smaller than the body of the document. The Tri-Fold does not show any other credit except for photography credits listed for four photographers.

#### *The Village Library Web Site*

In the summer of 2007, the Respondents successfully marketed architectural services to the Village Public Library. The Complainant alleges that the Respondents caused the library to



believe that NDA was an award-winning firm and the Respondents were responsible for images of ABC projects that the library placed on the Village Library Web site and credited to NDA. The Complainant alleges the Respondents proposed that the information be placed on the Web site and failed to attribute credit to the Complainant for his firm's work. He goes on to state that the Respondents failed to take any action to correct the erroneous information for 126 days after this ethics complaint was filed. According to the NEC's records, the Respondents actually received the ethics complaint on October 26, 2007. The Respondents contacted the Complainant by e-mail on November 8, 2007, and then sent a letter to Village Library on November 20, 2007 requesting the project credits be revised.

#### *The City Proposal*

In September 2007, both ABC and NDA submitted proposals to the City District Library in response to the same request for proposals. Hearing Exhibit 30, which is NDA's proposal, includes extensive comments inserted by the Complainant regarding alleged inaccuracies regarding the following ABC projects: Town Public Library, Field Public Library, County District Library, Meadows Library, and Suburb Public Library.

The Respondents' proposal includes a qualifications page for one of the Respondents that attributes credit by use of asterisks. In hearing testimony, he acknowledged that the asterisks have more than one meaning on the same page.

#### **Conclusions**

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##### *Rules 4.201 and 5.301*

Rule 4.201 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.

Rule 5.301 states:

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

The Complainant asserts the Respondents have repeatedly violated both Rule 4.201 and Rule 5.301, including by means of the Tri-Fold, the Village Library Web site, and NDA's proposal to the City District Library. The Respondents counter that they used a method of attributing credit that was equal to or better than the Complainant himself had previously employed. The Complainant's conduct is not at issue in this case; in any event, the Complainant testified that he no longer uses the same methods to attribute credit that he used when the Respondents were employed at his firm. The Respondents, on the other hand, contend that their firm's marketing materials, such as the Tri-Fold and City proposal, meet the requirements of Rules 4.201 and 5.301.

#### *The Tri-Fold*

In the Tri-Fold, the Respondents included information titled "Previous Clients and Past Experience." Immediately below that title, the Tri-Fold states in smaller font: "As Senior Associates at ABC Architects." This heading is followed by a listing of 15 libraries, including Suburb Public Library (five facilities), Town Public Library, Meadows District Library (two facilities), Brooks Township Public Library, County District Library (six facilities), and Regional Library.

Each of these projects was designed by ABC Architects. However, the Respondents make no mention that ABC was the architect of record nor do they state their roles on the projects.



The Respondents include photographic images of various of the projects, but nowhere do they credit the Complainant's firm as the architect of record. Finally, the Respondents state that three of these "library projects [were] recognized by the American Institute of Architects Honors Award program for design excellence."

Based on its review of the Tri-Fold, the Council does not conclude that the Respondents failed to recognize and respect the professional contributions of the Complainant or his firm. In reaching this conclusion, the Council relies on the fact that the listing of 15 libraries is under a heading that refers specifically to "ABC Architects." As a result, the Council concludes that the Complainant has not met his burden to show that the Respondents violated Rule 5.301 by distributing the Tri-Fold.

The Council has reached a different conclusion with respect to Rule 4.201, which prohibits "misleading" statements and requires members to accurately state the scope and nature of their responsibilities when describing project experience. As the Council has previously explained, the "general public and many clients are not familiar with the process necessary to bring a building to fruition." (*See NEC Decision 2004-10.*) A firm's marketing materials that assert that an architect was responsible for a project while with another firm but do not provide other information about the architect's actual role on the project can lead to confusion in the marketplace.

The Tri-Fold could lead potential clients and the general public to misunderstand the Respondents' actual role or responsibilities for the ABC projects listed. Multiple factors contribute to this conclusion. The Tri-Fold prominently features the name "New Design Associates." Most of the projects depicted and listed in the Tri-Fold, however, are ABC projects, but there is only a single reference to ABC. That reference is in a smaller font than other text, is not immediately adjacent to the various images of ABC projects, and does not state that ABC is the architect of record for those projects. In addition, the use of the term

"Previous Clients" to describe a list of ABC projects may be misunderstood by the general public to claim sole responsibility for the projects, rather than recognizing the ABC firm's clients. In sum, the Tri-Fold taken as a whole suggests that the Respondents are entitled to more than their proper share of credit for ABC projects and is therefore misleading. The Council therefore concludes that the Respondents violated Rule 4.201.

#### *The Village Library Web Site*

The information posted on the Village Library Web site was prepared by representatives of the library. The president of the library's board provided a letter stating his sole responsibility for the content of the information on the Web site. Based on that letter and the record in this case taken as a whole, the Council concludes that the Complainant has not met his burden to show that either Respondent violated Rule 4.201 or Rule 5.301 in connection with the Village Library Web site.

#### *The City Proposal*

In their proposal for a Facility Planning Study to the City District Library, the Respondents included projects that were designed by ABC Architects. The Respondents' proposal includes numerous references to ABC, including:

- references to the Respondents' work on seven named library projects "while senior associates at ABC Architects";
- descriptions of their employment history with ABC;
- asterisked references to ABC on the Respondents' list of public library experience; and
- detailed descriptions of their responsibilities on individual projects "while senior associate at ABC Architects."



The Council believes that the Respondents' proposal, when viewed as a whole, is not misleading, false, or inaccurate in its descriptions of either the Respondents' experience or credit for projects completed by the Complainant's firm. As a result, the Council concludes that the Complainant has not met his burden to show that either Respondent violated Rule 4.201 or Rule 5.301 with respect to the City proposal.

In summary, the National Ethics Council concludes that the Respondents violated Rule 4.201 by making misleading statements or claims about their experience and project responsibilities in the Tri-Fold. The National Ethics Council concludes that the Complainant did not meet his burden to prove that the Respondents violated Rule 5.301.

*Rule 5.302*

Rule 5.302 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 Complainant claims that he did not give permission to the Respondents to use photographs of ABC projects that had been commissioned by ABC. The Respondents produced a letter signed by the Complainant, however, giving permission to one of the Respondents to use ABC project photography available as of January 2005. They also produced e-mail correspondence from the Complainant in May 2006 that gave the same Respondent permission to take and use additional project images.

The Complainant claims that the Respondents failed to abide by the conditions he imposed on their use of the images with respect to crediting the work. The Complainant claims that the Respondents therefore have no right to use the photographs.

The National Ethics Council concludes that the Complainant did not meet his burden to prove that the Respondents violated Rule 5.302 by taking ABC materials without permission. The fact that the Respondents used the materials in the Tri-Fold, which did violate Rule 4.201, does not establish that the Respondents lacked permission to take the materials.

**Penalty**

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Having found violations of Rule 4.201 of the Code of Ethics and Professional Conduct by the Respondents, the Council must determine an appropriate penalty.

After careful consideration of the case and violations, the National Ethics Council imposes the penalty of admonition on each Respondent.

Members of the National Ethics Council

Victoria Beach, AIA  
Janet Donelson, FAIA  
A.J. Gersich, AIA  
Melinda Pearson, FAIA  
Michael L. Prifti, FAIA

*The Hearing Officer, Bill D. Smith, FAIA, NEC Chair, 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.*

**June 11, 2009**