



Delay in Filing a Complaint; Misconduct as Part of Court Proceedings

Summary

The Chair of the National Ethics Council (“Council” or “NEC”) dismissed a Complaint that alleged that an AIA Member violated Rules 1.101, 2.104, and 3.301 of the Institute’s 2004 Code of Ethics and Professional Conduct in connection with architectural services the Member provided to a homeowner. The Chair dismissed the Complaint with respect to Rules 1.101 and 3.301 because the Complaint was not filed within one year of the alleged violations as required by Section 3.1 of the NEC’s Rules of Procedure.

The Chair dismissed the Complaint with respect to Rule 2.104 because any misconduct under that rule that occurred within the year preceding the filing of the Complaint took place as part of a court case between the parties. In the absence of a finding by the court that the Respondent had engaged in litigation misconduct, the Chair concluded that the Respondent’s alleged misconduct as part of court proceedings would not sustain a finding of violation of Rule 2.104.

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

References*

2004 Code of Ethics and Professional Conduct, Canon I, General Obligations

Rule 1.101 In practicing architecture, Members shall demonstrate a consistent pattern of reasonable care and competence, and shall apply the technical knowledge and skill which is ordinarily applied by architects of good

standing practicing in the same locality.

Commentary: By requiring a “consistent pattern” of adherence to the common law standard of competence, this rule allows for discipline of a Member who more than infrequently does not achieve that standard. Isolated instances of minor lapses would not provide the basis for discipline.

2004 Code of Ethics and Professional Conduct, Canon II, Obligations to the Public

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, 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.

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

Rule 3.301 Members shall not intentionally or recklessly mislead existing or prospective clients about the results that can be achieved through the use of the Members’ services, nor shall the Members state that they can achieve



results by means that violate applicable law or this Code.

Commentary: This rule is meant to preclude dishonest, reckless, or illegal representations by a Member either in the course of soliciting a client or during performance.

Analysis

The Complaint filed with the NEC was dated September 1, 2007. The Complaint alleges that the Complainant retained the Respondent in August 2003 to provide architectural services for the Complainant's residence and that the Respondent's services were terminated on April 15, 2004. The Complaint indicates that the Respondent's final bill was submitted to the Complainant on May 12, 2004. The Complaint states that the Respondent sued the Complainant over the bill in June 2005 and that the litigation had not yet been concluded. The Complaint also alleges that the Respondent or his attorney acted improperly during the course of the litigation. The Complaint claims that the Respondent violated Rule 1.101, Rule 2.104, and Rule 3.301 of the AIA's Code of Ethics and Professional Conduct.

The Chair of the NEC conducted a preliminary review of the Complaint as provided in Section 3.3 of the NEC's Rules of Procedure. Section 3.3 provides:

The Chair of the NEC reviews all Complaints preliminary to determine if: (1) the allegations, if found to be true, could sustain a finding of violation of a Rule of Conduct; (2) the alleged violation is not trivial; (3) there is good cause for any delay in filing a Complaint more than one year after the alleged violation occurred; and/or (4) deferral of proceedings is necessary or advisable because of pending litigation or admin-

istrative proceedings involving one or both of the parties.

Section 3.1 of the Rules of Procedure states, in part: "A Complaint must be filed within one year of the alleged violation unless good cause for delay is shown." Section 3.4 of the Rules of Procedure states, in part: "The Chair may dismiss a Complaint that fails to meet any of the requirements of these Rules."

Rules 1.101 and 3.301

Rule 1.101 states:

In practicing architecture, Members shall demonstrate a consistent pattern of reasonable care and competence, and shall apply the technical knowledge and skill which is ordinarily applied by architects of good standing practicing in the same locality.

Rule 3.301 states:

Members shall not intentionally or recklessly mislead existing or prospective clients about the results that can be achieved through the use of the Members' services, nor shall the Members state that they can achieve results by means that violate applicable law or this Code.

The commentary to Rule 3.301 states: "This rule is meant to preclude dishonest, reckless, or illegal representations by a Member either in the course of soliciting a client or during performance."

Rule 1.101 applies to a Member's conduct "[i]n practicing architecture." Rule 3.301 applies to a Member's conduct "in the course of soliciting a client or during performance," as explained in the Commentary to that Rule. These two Rules therefore apply only to a Member's practice of architecture or performance of architectural services.



The Complaint does not allege that the Respondent provided any services after April 2004. As a result, more than a year passed between any possible violation of either Rule 1.101 or Rule 3.301 and the filing of the Complaint. The Chair dismissed the Complaint with respect to these two rules because the Complaint was not filed within one year of the alleged violations as required by Section 3.1 of the NEC's Rules of Procedure.

Rule 2.104

Rule 2.104 states: "Members shall not engage in conduct involving fraud or wanton disregard of the rights of others."

The commentary to Rule 2.104 states:

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, 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 2.104 may apply to a Member's conduct outside of the practice of architecture. The only conduct that the Complaint alleges that the Respondent engaged in within the year prior to the filing of the Complaint took place as part of the ongoing court case. If the NEC were to apply Rule 2.104 to the Respondent under these circumstances, it would amount to a determination of whether he and/or his attorney had engaged in misconduct in court proceedings.

A party to court proceedings has the opportunity to raise with the court itself any allegations of an opposing party's misconduct and, if the court's decision is believed to be unsatisfactory, to appeal that decision to an appellate court. The AIA's Code of Ethics is not intended to serve as an alternative way to govern the conduct of

parties during litigation. As a result, the Chair determined that the Complaint does not allege facts taking place within the preceding year that, if proven to be true, could sustain a finding of violation of Rule 2.104. (*See NEC Rules of Procedure, Section 3.3.*)

Conclusion

The Chair dismissed the Complaint because it was not filed within one year of the alleged violations of Rule 1.101 and Rule 3.301, as required by Section 3.1 of the NEC's Rules of Procedure, and any alleged conduct that occurred within the year preceding the filing of the Complaint would not sustain a finding of violation of Rule 2.104.

[The Complainant appealed the dismissal to the full Council, as permitted in Chapter 7 of the Rules of Procedure. The Council affirmed the Chair's dismissal of the Complaint. The Chair, Janet Donelson, FAIA, and Phillip T. Markwood, FAIA, did not participate in the Council's deliberation on the appeal.]

Members of the National Ethics Council

Janet Donelson, FAIA, Chair
Victoria Beach, AIA
A.J. Gersich, AIA
Phillip T. Markwood, FAIA
Melinda Pearson, AIA
Michael L. Prifti, FAIA
Kathryn T. Prigmore, FAIA
Bill D. Smith, FAIA

January 7, 2008

*The Complainant claims that the Respondent violated the Code of Ethics both before and after September 2004, which is the date that the 2004 edition of the Code replaced the 1997 edition. Because none of the referenced Rules was amended by the 2004 edition of the Code, however, it is unnecessary to determine which of the two editions of the Code applies to each alleged violation.