



Failure To File Complaint within One Year of the Alleged Violations

Summary

The Chair of the National Ethics Council (“Council” or “NEC”) dismissed a Complaint that alleged that an AIA Member violated Rules 2.103, 2.104, 2.301, and 3.101 of the Institute’s 2004 Code of Ethics and Professional Conduct in connection with architectural services provided for a project adjacent to the Complainant’s residence. The Chair dismissed the Complaint because it was not filed within one year of the alleged violations as required by the NEC’s Rules of Procedure.

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 2.103 Members serving in a public capacity shall not accept payments or gifts which are intended to influence their judgment.

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 com-

petent jurisdiction or an administrative or regulatory body.

Rule 2.301 Members making public statement on architectural issues shall disclose when they are being compensated for making such statements or when they have an economic interest in the issue.

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.

Procedural Background

On December 6, 2007, the Complainant sent a letter dated November 20, 2007 by e-mail to the NEC alleging that the Respondent had violated the AIA’s Code of Ethics and Professional Conduct. After receiving the NEC’s e-mail response the same day that set out the requirements for filing an ethics complaint, the Complainant sent the NEC a formal Complaint (also dated November 20, 2007) on December 8, 2007.

On January 28, 2008, the NEC forwarded the Complaint to the Respondent and, at the same time, notified the parties that the ethics case was deferred pending resolution of litigation identified in the Complaint. On November 10, 2009, the NEC notified the parties that the case was returned to active status and requested the Respondent to file a response. The Response was filed in December 2009.



Analysis

Section 3.1 of the NEC's 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 3.3 of the Rules of Procedure states, in part:

The Chair of the NEC reviews all Complaints preliminarily to determine if . . . there is good cause for any delay in filing a Complaint more than one year after the alleged violation occurred.

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.

The Complaint alleges that the Respondent acted or failed to act in various ways in connection with meetings and other proceedings that took place from January 2005 to July 2005. The Complaint does not describe or allege conduct by the Respondent subsequent to those dates. More than two years elapsed between those dates and the filing of the Complaint in late 2007. As a result, the Complaint was not filed within one year of the alleged violations. (*See NEC Rules of Procedure, Section 3.1.*)

The Complaint argues that there was good cause for that delay because in July 2007 during the litigation the Complainant obtained documents that relate to the alleged violations of the Code of Ethics.

By August 2005, however, the Complainant was already aware of the circumstances that form the basis for the Complaint, as shown by the fact that he had retained an attorney who sent the Respondent a letter dated August 16, 2005 about

“potentially serious conflicts of interest.” That letter specifically describes the Complainant's concerns about the Respondent's relationship with the Plan Review Board while at the same time providing architectural services on the project at issue. As a result, the Complainant has not demonstrated good cause for delay in filing the Complaint.

Finally, although the Complaint asserts that Rule 2.104 and Rule 3.101 are continuing to be violated to the present day, there are no factual allegations that, if found to be true, would support such a finding.

Conclusion

The Complaint was not filed within one year of the violations alleged. The Complaint does not include any information that would establish a good cause for delay in filing. (*See NEC Rules of Procedure, Section 3.1.*)

Accordingly, the Chair has dismissed the Complaint because it was not filed within one year of the alleged violations as required by Section 3.1 of the NEC's Rules of Procedure.

Members of the National Ethics Council

A.J. Gersich, AIA, Chair
Victoria Beach, AIA
Melinda Pearson, FAIA
Michael L. Prifti, FAIA
Bill D. Smith, FAIA
Benjamin Vargas, FAIA

August 4, 2010

*The Complaint also alleges that the Respondent violated Rule 2.104 and Rule 3.101 from 2005 to the present. The 2007 edition of the Code of Ethics would apply to violations occurring after December 2007. Neither Rule 2.104 nor Rule 3.101 was amended by the 2007 edition of the Code of Ethics.