



Making False Statement of Material Fact

Summary

The Chair of the National Ethics Council (“Council” or “NEC”) dismissed a Complaint that alleged that two AIA Members violated Rules 4.101 and 4.103 of the Institute’s 2007 Code of Ethics and Professional Conduct in a business transaction between architectural firms. The Chair determined that the allegations, if found to be true, would not sustain a finding of violation by either Respondent.

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

References

2007 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 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.

Allegations

The Complaint alleges a violation of Rule 4.101 and Rule 4.103 by Architect A and Architect B (“Respondents”) in connection with a business transaction to share staff between the Complainant’s architectural firm and the Respondents’ architectural firm.

The Complaint alleges various conduct by Architect C (a principal with the Respondents’ firm), Architect D (Managing Director and CEO of the Respondents’ firm), and other employees of the Respondents’ firm. Of the individuals identified, only Architect A and Architect B are AIA Members.

The only references to either Respondent in the Complaint’s Statement of Facts are the following:

Architect A called back to make a different offer and I told him that we had an agreement—it was not being lived up to and both employees were going to [a third architectural firm]. I indicated that the well was poisoned and Architect A agreed.



Architect A, President, and Architect B, Secretary/Treasurer, are the only officers of the Respondents' firm in the AIA. The other individuals involved are not in the AIA.

The Complaint does not list or include any pertinent documents that are authored by either Respondent or that mention either Respondent, except that several e-mails between the two firms were copied to Architect A.

Applicable Rules of Procedure

Section 3.2 of the NEC's Rules of Procedure states, in part:

A Complaint must allege violation of one or more Rules of Conduct stated in the Code.

Section 3.3 of the Rules of Procedure states, in part:

The Chair of the NEC reviews all Complaints preliminarily to determine if . . . the allegations, if found to be true, could sustain a finding of violation of a Rule of Conduct

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.

Analysis

Rule 4.103

Rule 4.103 of the Code of Ethics provides: "Members speaking in their professional capacity shall not knowingly make false statements of material fact."

The Chair has determined that the Complaint does not allege any "false statements of material fact" by either Respondent.

First, with respect to the excerpts from the Statement of Facts quoted above, no false statement of material fact is alleged. The only statement alleged to have been made by either Respondent was in agreement with the Complainant's own statement that the "well was poisoned."

Second, it might be asserted that Architect A should be held responsible for the content of e-mails that had been written by employees of his firm and that he received. The statements made in these e-mails are in the nature of a promise, however, and are not statements of fact. For example, one e-mail contains the statement: "We have an approval to move forward with your architects."

The breach of a promise does not constitute a false statement of fact. Therefore, even if the Respondents were held responsible for the content of these e-mails, no violation of Rule 4.103 could be found.

Because the Complaint does not allege facts that, if found to be true, would sustain a violation of Rule 4.103, the Chair has dismissed the Complaint with respect to that rule. (*See NEC Rules of Procedure, Sections 3.3 and 3.4.*)

Rule 4.101

Rule 4.101 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 AMERICAN
INSTITUTE
OF ARCHITECTS

Code of Ethics and
Professional Conduct
DECISION 2008-04

The Rules of Enforcement of the Code of Ethics provide that a “violation of Rules 4.101 or 4.202 cannot be established without proof of a pertinent violation of at least one other Rule.”

Because the Chair has determined that the Complaint’s allegations would not sustain a violation of Rule 4.103, no violation of Rule 4.101 by itself can be found. The Chair has therefore dismissed the Complaint with respect to Rule 4.101. (*See NEC Rules of Procedure, Sections 3.3 and 3.4.*)

Conclusion

The Chair has dismissed the Complaint because the allegations, if found to be true, would not sustain a finding of violation of Rule 4.101 or Rule 4.103 by either Respondent.

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

March 11, 2008