



Inaccurate Claim of Professional Credit, Failure to Give Credit Where Due

Summary

The Council found a violation of R. 4.107, inaccurate portrayal of the scope and nature of responsibility in connection with a project depicted in a brochure prepared for a newly formed firm. The Council also found a violation of R. 4.201, failure to include in the brochure an appropriate reference to the Member's former firm, which had done the bulk of the architectural work on the project. The Council found no violation of R. 5.202, use by a former employee of a photograph of work performed while in the employer's service. The penalty imposed is admonition.

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

References

Code of Ethics and Professional Conduct, Canon IV, Obligations to the Profession

R. 4.107 Members shall accurately represent their qualifications and the scope and nature of their responsibilities in connection with work for which they are claiming credit.

R. 4.201 Members shall not make misleading, deceptive, or false statements or claims about their professional qualifications, experience, or performance.

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

R. 5.202 Members leaving an employer's service shall not, without permission of the employer, take the designs, drawings, data, reports, notes, or other materials relating to work performed in the employer's service by the Member.

Facts

Architect A was employed by an architecture firm, BC Associates, for a period of less than a year. Architect A then left BC Associates to open his own firm. During the time of his employment at BC Associates, Architect A worked on a project for the Widget Corporation headquarters renovation. He acted as a design assistant on the Widget project and contributed significantly to the design of a portion of that project, which will be referred to as portion X. Architect A distributed a brochure about his new firm and included photographs of several projects, one of which was a photograph of portion X of the Widget project. The caption below the picture said, "Widget Corporation Headquarters—Big City, USA." On the back page of the brochure was the following statement, "Corporate projects completed prior to 1990 by Architect A were completed in the office of XYZ and other offices in Big City, USA." BC Associates is not named anywhere in the brochure.

BC Associates saw the brochure and believed that it unfairly credited Architect A's firm for work done by BC Associates, in violation of R. 4.107 and R. 4.201 of the AIA Code of Ethics and Professional Conduct. BC Associates also believed that Architect A had used a picture of portion X of the Widget project in violation of R.



5.202 of the Code. A Complaint was filed against Architect A.

Discussion

No evidence was presented that Architect A removed anything from the offices of BC Associates without permission.

The photograph of the Widget project used in the brochure did not exist at the time Architect A left BC Associates. The project was under construction and wasn't completed until a year after Architect A's departure. The picture of portion X was taken by a professional photographer hired by BC Associates, but it does not claim to own the copyright to that photograph. Architect A purchased a slide of the picture from the photographer who had the negatives.

BC Associates asserted that Architect A "took" something from it by using the photograph without its permission. BC Associates' contract with the Widget Corporation provided that BC Associates could not use the project or Widget's name in any promotional material without Widget's consent. Architect A did not seek permission from Widget to use the photograph in his brochure. BC Associates said that its relationship with Widget had been damaged by Architect A's unauthorized use of the photograph. No evidence was presented to support that claim.

The Code of Ethics does not require Architect A to seek BC Associates' permission to use the photograph. He had no way of knowing about the restrictive clause in the contract. He was never shown the contract until after this case started and was never told that Widget had to approve promotional uses of the project. BC Associates believes that Architect A should have come to it as a matter of course to ask permission to use the project in his brochure. Nothing in the Code of Ethics requires such an action.

If the law allows, any employer can set conditions of employment over and above what is stated in the Code of Ethics. These might include a requirement of prior approval of all publicity information. Conditions like this should be explicit, preferably in writing, and clearly set

forth before the employee accepts the job. Then everyone knows what the rules are, and the employee can refuse the offer if the conditions are unacceptable. There was no evidence that BC Associates had ever set any conditions for use by former employees of marketing materials related to work done while employed by BC Associates.

Two questions must be considered in deciding whether the brochure is inaccurate or misleading: *What contribution did Architect A make to the Widget project? Does the brochure accurately present that contribution?*

The first question—what did Architect A do—could not be clearly answered on the evidence presented. BC Associates minimized Architect A's work on the project, while he asserts that he made important improvements in portion X of the project and is responsible for all significant elements of the design of portion X. It is clear that Architect A had some responsibility for design work in portion X of the Widget project, and that he was employed as a design assistant on the Widget project.

Did Architect A's brochure correctly describe the nature and scope of his participation in the Widget project? To answer this question, the Council assumed that Architect A did everything on the Widget project claimed in the brochure.

The design of the brochure is intentionally sparse. The visual images of the photographs are dominant. The text, through its placement, size, color, and content, avoids attention. The eye is immediately drawn to the high quality, full color pictures and ignores the words as nearly superfluous. This effect was apparently intended by Architect A. He described the brochure at the hearing more than once as "minimalist."



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However effective this technique is in attracting prospective clients, in this instance it works to Architect A's detriment. Here is a circumstance that requires an explanation of responsibilities in connection with the pictured projects. But the brochure contains less information rather than more. Even though he included a picture of only portion X of the Widget project, a reader would not understand from this brochure that he worked on the Widget Corporation project as one member of a team of designers at a firm owned by someone else. Nor would the reader understand that Architect A had no involvement at the preliminary design stage and did not see the project through to completion. There simply is not enough said in the brochure to describe the scope and nature of his responsibilities in connection with the project.

The text in the brochure is less than illuminating. The statement on the back panel: "Corporate projects completed prior to 1990 by Architect A were completed in the office of XYZ and other offices in Big City, USA," leaves the reader to guess which of the corporate projects depicted were done before 1990 and which after. In fact, all three corporate projects pictured in the brochure were done before 1990. By not saying this directly, the brochure allows readers to believe that some of these projects may have been done by Architect A's current firm, which is not true. The ambiguity in the statement leaves standing the dominant message of the brochure—that the projects depicted were all done by the firm whose name is on the cover. That message is a misleading representation of Architect A's experience and performance.

Some mention should be made of Architect A's communications with AIA Staff Ethics Council for two reasons. It has some bearing on Architect A's response to complaints by BC Associates after seeing the brochure. It will help to clarify the role of Staff Ethics Council in responding to inquiries about the application of the Code of Ethics to a particular set of facts. In this case, Architect A's calls to Staff Ethics Council were prompted by complaints received from BC

Associates after it learned of the publication of the brochure. Counsel sent Architect A a copy of Decision 87-6, which addresses a similar set of facts dealing with the publication of a newspaper ad that inaccurately claimed professional credit and failed to give appropriate professional credit to another firm. In the absence of a Decision or Advisory Opinion issued by the National Judicial Council, Staff Ethics Counsel cannot interpret the Code of Ethics or advise a Member whether particular activities would or would not be in violation of the Code. In this case, Staff Ethics Counsel did not advise Architect A that his brochure complied with the requirements of the Code of Ethics. The brochure was not seen by the Staff Ethics Counsel until the Complaint was filed. Even if the brochure had been presented to Staff Ethics Counsel prior to publication, no opinion could have been rendered about its compliance with the Code. Discussing the facts in question and providing copies of relevant Council Decisions and Advisory Opinions would be the extent to which Staff Ethics Counsel could assist a Member or any potential complainant. As in every case where an ethical issue is raised, each Member is required to make his or her own decision whether or not a particular action would be in compliance with the Code.

In considering what penalty to impose, we think it significant that there is no evidence that Architect A intended to harm the business or reputation of BC Associates or to damage its relationship with Widget Corporation. Architect A made no attempt to conceal the brochure from BC Associates. He even sent a copy to BC's contact at Widget Corporation. The acknowledgment on the back panel of the brochure was an attempt, although inadequate, to clarify the circumstances under which the projects were done. Finally, there are the attempts by Architect A to determine whether the Council had issued any Decisions on this topic, even though done after the publication of the brochure. Having all these considerations in mind, we accept the recommendation of the Hearing Officer and admonish Architect A for failure to adhere to the Rules.



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Conclusion

Architect A did not violate R. 5.202 of the Code of Ethics and Professional Conduct by using a photograph of portion X of the Widget Corporation project obtained from an independent photographer. He did violate R. 4.107 by publishing a brochure that failed to accurately represent the scope and nature of his responsibilities on the Widget project, and which failed to give appropriate credit to BC Associates for work pictured from the Widget Corporation project. He also violated R. 4.201 by publishing a brochure that through omission and innuendo made misleading, deceptive, or false statements about his professional experience and performance on the projects pictured. The penalty imposed by the Council for each of these infractions is admonishment.

Samuel A. Anderson III, FAIA, Chair
A. Notley Alford, FAIA
Harry Harmon, FAIA
Glenn Allen Buff, FAIA
James A. Clutts, FAIA
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As provided in the Rules of Procedure of the National Judicial Council, the Hearing Officer, Robert V.M. Harrison, FAIA, did not participate in the decision of this case.

October 16, 1990