



Failing to Design in Conformance with Applicable Laws and Regulations; Materially altering the Scope or Objective of a Project Without the Client's Consent; Intentionally or Recklessly Misleading a Client About the Results that could be Achieved through the Use of a Member's Services.

Summary

The Council found the Associate Member had not violated multiple Rules of Conduct in the AIA Code of Ethics and Professional Conduct as alleged by a dissatisfied, former client.

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

Reference

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

R. 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.

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

R. 2.101 Members shall not, in the conduct of their professional practice, knowingly violate the law.

Commentary: *The violation of any law, local, state or federal, occurring in the conduct of a Member's professional practice, is made the basis for discipline by this rule. Allegations of violations of this rule must be based on an independent finding of a violation of the law by a court of competent jurisdiction or an administrative or regulatory body.*

R. 2.104 Members shall not engage in conduct involving fraud or wanton disregard of the rights of others.

Commentary: *Conduct which brings into serious question a Member's qualification to assume the fiduciary duties of an architect is the basis for discipline even if that conduct did not*



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occur in the course of practice. When an alleged violation of this rule is based on a violation of a law, then its proof must be based on an independent finding of a violation of the law by a court of competent jurisdiction or an administrative or regulatory body.

for zoning laws, which lead a prospective client to believe that a design could be achieved when, in fact, it could not.

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

R. 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.

R. 3.103 Members shall not materially alter the scope or objectives of a project without the client's consent.

R. 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. For example, it would cover the conduct of an architect who provides conceptual drawings based on an inadequate site examination or without regard*

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

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

Facts

The Associate Member (AM)--who was not a registered architect, but was an experienced, licensed general contractor--was lawfully engaged in the design/build of custom residential projects. The client's home was damaged as the result of a natural disaster. AM was hired by the client to prepare the necessary plans for repair of the damage in compliance with the regulations governing low interest federal loans for repair of such damage. AM began design work without a signed contract. The client and his wife eventually signed a contract calling for an anticipated construction budget of \$250,000.

The client had obtained AM's name from a neighbor with whom he and his wife were well acquainted and for whom AM had completed renovation work. AM also had shown the client several other projects that he had completed. The neighbor apparently referred to AM as "her architect". When the client needed to look up AM's telephone number, he found a listing for his business in the Architects section of the soon-to-be reprinted edition of the local yellow pages. Both AM and his receptionist had advised the client that AM would be unavailable for several weeks while he studied for and took the last section of the licensing examination. However, one of the blank contracts submitted to the client for his review identified AM as an Associate



Architect. AM's office manager thought that this was the correct designation for an Associate Member of the AIA. That designation never appeared again on any of the contracts or other documents presented to the client.

Work progressed through schematic design for several design options. Those design options represented AM's attempt to meet the client's constantly changing wishes about the repair and renovation of his home. Finally, AM advised the client that he would not proceed further with schematic design unless he was paid at an hourly rate. This request caused a rift between the client and AM.

After terminating AM's services, the client submitted one of the design development drawings to the building permit office. He was advised that it did not meet the setback requirements of the local jurisdiction. After some research the client found that approximately one year prior to his working with AM, a box ad had run in the local newspaper stating that AM was a general contractor who also prepared architectural plans. The ad ran once and was immediately pulled after AM's office manager was contacted by the state licensing board. The office manager was not aware of the restrictions on the use of the title "architect" by non-registered persons. The local yellow pages ad was also pulled by AM's receptionist. It had been run in error when the receptionist was contacted to run an ad and she described the services provided by AM, but did not specify that he was not an architect.

The client, feeling that he had paid a fee to AM for which he had not received a set of plans that he could use, filed a complaint with the state licensing board, a suit for return of his fee in small claims court, and an ethics Complaint with the National Ethics Council. The small claims case and the complaint to the state licensing board were both decided in favor of AM.

Discussion

The AIA Code of Ethics and Professional Conduct applies to all classes of members in the AIA. By applying for and accepting the status of Associate Member, one agrees to be bound by the AIA Code. Seven Rules of Conduct are alleged to have been violated. Each Rule is addressed in turn.

R. 1.101 requires that members "...demonstrate a consistent pattern of reasonable care and competence...." The *Commentary* clearly states that "...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." The issue of major or minor lapses does not apply in this case. The only instance in which the client claims any failure by AM to exhibit competence, or to meet the standard of skill and knowledge ordinarily applied by lawfully practicing designers is the client's project. Since no evidence was presented of multiple times when AM failed to perform competently and in conformance with the local standard of care, the Council found that R. 1.101 does not apply in this case.

R. 2.101 and R. 2.104 will be discussed together because there are similar base requirements of proof required for each Rule. Whether alleging violation of state licensing laws or alleging fraud, the client cited the following examples to support his case:

- AM was practicing architecture without being licensed to do so;
- The client would not have entered into a contract with AM had he known AM was not a licensed architect;
- AM, or his employees, misled the client into believing that AM was a licensed architect;
- The client was misled into believing AM was a registered architect through AM's name being listed in the local yellow pages under the heading "Architects",

and through the designation "Associate



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Architect" on a blank, sample contract provided to the client;

- That these illegal and intentionally misleading acts by AM resulted in the client being defrauded out of fees paid for design services, which yielded no final, usable plan for the renovation of the client's home.

The *Commentary* to both R. 2.101 and R. 2.104 requires that when alleging a violation of law, evidence showing violations of those Rules "... must be based on an independent finding of a violation of the law by a court...or an administrative or regulatory body." The client's complaint to the state licensing board and the small claims court suit were both decided in favor of AM. The incorrect local yellow pages listing was removed as soon as the next edition was printed. The client did not rely on the yellow pages listing in selecting AM to perform services for him. The client did not rely on the box ad in selecting AM to perform services for him. The box ad ran nearly a year before the client and AM began working together. The box ad, the yellow pages listing, and the sample contract identifying AM as an "Associate Architect" were all the result of misunderstandings on the part of AM's staff about the use of the designation "architect" and the requirements of the AIA regarding the appropriate references to use for Associate Members. The fact that the client could present no independent finding from a court or other administrative body to support the allegations of violation of R. 2.101 and R. 2.104 would be enough to justify a finding of no violation of those Rules. There is also no evidence to support the conclusion that AM knowingly violated the law, or that any deceit or misrepresentation was used to defraud the client.

R. 3.101 and R. 3.301. The client relied heavily on a letter from the local permit office stating that the elevations prepared by AM during design development did not comply with zoning set-back requirements. The client gave AM a copy of an information sheet showing the set-back

requirements for the various city zoning divisions.

While the client and AM disagree about the zoning information given to AM, AM admitted that he relied on the information given to him by the client rather than checking the zoning himself. No matter how experienced a designer or architect may be, it will do no harm to double-check the zoning requirements for a new project. Confirming the correct zoning category may prevent serious problems. The plans submitted to the zoning office were elevations and design development, not final plans. AM didn't know that the client had submitted the plans for review.

It appears that other designs prepared by AM did comply with the zoning requirements. Because the plans submitted were in the design development stage, there was still time for AM to correct the mistake. Had AM's final plans not complied with code requirements, another decision might have been reached by the Council.

R. 3.103. It is not unusual for estimates of cost of construction to exceed the budget specified by a client. The final cost of construction specified in the contract between the client and AM was \$100,000 more than this initial figure the client says he gave to AM. This increase leads to the conclusion that the construction cost amounts was not as firm, or as low, as the client states. The contract signed by the client specifically excluded from the services to be performed by AM "...a detailed estimate of construction costs based upon the final floor plan." Preliminary estimates based on design development plans often exceed a client's budget. Preliminary estimates are obtained so that the designer or architect and the client know whether or not changes need to be made before proceeding to final plans and construction documents. Preparation of a preliminary design that exceeds a proposed budget does not constitute violation of this Rule. The client's allegation that the designs prepared by AM far exceed the limited scope of work expected by the client is not supported by the evidence. Several of the design concepts were prepared by AM in response to the client's efforts to maximize the amount of renovation that

could be done under the restrictions imposed by the regulations governing his low interest loan for



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repair of damage caused by the natural disaster. Work began before a scope of work was agreed upon by AM and the client. The contract did not clearly specify a scope of work. AM and the client never had a clearly defined and common understanding about the scope of work to be pursued. As a result, they were talking a great deal, but not communicating. The failure to clearly define the scope of work from the beginning of the project caused what was a good working relationship to go so sour that an ethics Complaint was filed by the client. Still, there is no evidence to support a finding that AM materially altered the scope of the project without the client's consent.

R. 4.201. Allegations of AM's misrepresentation of his status as a licensed architect were discussed earlier. When he signed the contract with AM, the client thought that AM was well qualified to do the work that the client wanted done. He signed that contract knowing that AM was not an architect. As an experienced residential designer and general contractor, AM appears to have been qualified to undertake the client's project. The client shared that opinion until a dispute over fees became an issue. There is no evidence to support a conclusion that AM made representations to the client that were misleading, deceptive, or false about AM's professional qualifications or experience.

Conclusion

The Council concluded that AM had not violated any of the Rules of Conduct cited by the client. That is not to say that certain areas of AM's practice do not need to be examined closely to determine if different approaches might avoid this type of problem in the future.

The Council was troubled by the fact that AM was willing to take the word of an inexperienced client about the zoning classification of the property on which work was to be done. While

this failure did not result in an ethical violation, it certainly contributed to the disillusionment of a

client who chose AM to help him restore a home damaged in a devastating natural disaster.

AM appears to have hired competent and enthusiastic office assistants. However, he clearly failed to spend enough, if any, time with them to educate them about the professional requirements of his practice, the legal requirements regarding the use of the term "architect", and the requirements of the AIA Code of Ethics and Professional Conduct.

All architects need to be sensitive to the business decisions that have potential for causing trouble in the future. One of the business decisions made by AM was to begin work without a written contract that clearly spelled out the scope of work desired by the client. Sometimes clients and projects require a "fast-track" approach. But, members should be aware of the risks that may arise when they make the business decision to proceed on the "fast track". In this case, the failure to clearly define the scope of work, the failure to meet zoning requirements on a proposed design, and errors on the part of staff, resulted in a client who was so disillusioned with AM's services that what began as a good working relationship ended in an ethics hearing.

L. Kirk Miller, FAIA, Chair
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James A. Clutts, FAIA
Kenneth DeMay, FAIA
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The hearing officer, Glenn Allen Buff, FAIA, did not participate in the decision of this case, as provided in the Rules of Procedures.

April 15, 1994