



## ***Failure to Accurately Represent the Scope and Nature of One's Responsibilities in Connection with Work for which Credit is Claimed.***

### **Summary**

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The Council finds a Principal in violation of Rule 4.107 for failing adequately to acknowledge the role of another architectural firm on a prominent project, thereby creating the false impression that the Principal and his firm were responsible for all architectural services on the project. The penalty imposed on the Principal is admonition on the condition that he remedy the omission to credit the other firm.

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

### **References**

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*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 connections with work for which they are claiming credit.

***Commentary:*** *This rule is meant to prevent members from claiming credit for work that they did not do, misleading others, and denying other participants in a project their proper share of credit.*

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

R. 5.201      Members shall recognize and respect the professional contributions of their employees, employers and business associates.

### **Facts**

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A member, while an employee of a firm, was project architect throughout the design and construction documents phase of a large project. In that capacity he worked under the supervision of the Principal in charge of the project. The member left to form his own firm when the project began construction and separately contracted with the owner to provide construction phase architectural services on the project.

After the project was completed, it received several awards and was published in magazine and newspaper articles. With one exception, only the Principal's firm was credited as the architect of the project, and there was no acknowledgement of the participation of the member or his firm. The exception concerns an award, the citation for which was amended at the member's insistence to credit his firm as Architect of the Construction Phase.

### **Discussion**

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The member filed a complaint alleging violations of several rules under the Code of Ethics by the Principal. Turning first to the allegations under Rule 5.201, the member claimed he was denied appropriate recognition of his role as project



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architect in the Principal's firm. The rule prescribes no precise method by which employers must "recognize and respect the professional contributions of their employees," and employers must necessarily be allowed considerable discretion in these matters. The Principal followed a policy generally to seek to have the firm credited for a project without identifying the roles of individual employees. This is not unreasonable, and we do not find a violation of the rule under the circumstances here.

As to the time period after the member left the Principal's firm, the key phrase in Rule 5.201 is "business associates." The member had a written contract for architectural services in the construction phase of the project directly with the owner. His former firm had an unwritten agreement or understanding with the owner that the Principal would continue to be involved in certain decisions in the construction phase. While there was an exchange of correspondence and some discussion between the Principal's firm and the member as to their respective roles and responsibilities in the construction phase, it does not appear to us that the member and the Principal were business associates within the meaning of the rule. Each architect regarded himself as an independent contractor to the owner. There was no sharing of profit or risk of loss as would be the case between joint venturers. We don't see the attributes necessary to establish a business association here. Without that association, the requirements of the rule do not apply. Accordingly, we find no violation of this rule at any time by the Principal.

We now address the allegations under Rule 4.107. There were a number of incidents, primarily magazine and newspaper articles on the project, where the member's role as architect of the construction phase was not credited and should have been. The one common fact uniting these incidents is that the Principal, when the member left to form his own firm, did not acknowledge that any change of roles or responsibilities had taken place. In the principal's view, this was just the moving around of paper,

not responsibilities. In truth, however, the member's departure and the owner's retention of the member for construction phase services was a significant event. The member performed competently as architect of the construction phase, a description of his role that the parties later agreed was accurate. In that role the member provided the usual architectural services attendant to the construction phase. By any measure, the member had a significant role in the project independent of his former role as an employee of the Principal.

The Principal's explanation for why the member was not credited is not convincing. The Principal's firm is large enough to have a public relations department, one of whose tasks is to prepare statements of credit for projects in which the firm participated. On the project at issue here, the PR department never got the word that the member was under separate contract to the owner for construction phase services. It was the Principal's responsibility to ensure that those within his firm who should have this information got it. The fact that he didn't do so simply confirms that the Principal attached no significance to the fact that the member had left to form his own firm.

We find a violation of Rule 4.107 here because the failure to list the member as architect of the construction phase conveyed the false message that the Principal and his firm had provided and were responsible for all architectural services on the project. As stated in the Commentary, which is not part of Rule 4.107 but is a guide to interpretation, the purpose of the rule is "to prevent members from claiming credit for work that they did not do, misleading others, and denying other participants in a project their proper share of credit." All of those things happened here as a direct consequence of the Principal's failure to comprehend the significance of his former employee's new role as architect of the construction phase and his failure to communicate that role to his firm's public relations department and others.

## **Conclusion**



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Because of the nature of the violation, we believe there should be conditions on the sanction we impose so that the Principal has an incentive to ameliorate the injury to the member that resulted from not following the Code. The conditions we impose are as follows:

1. The Principal will cause his firm to reprint the single page from the firm brochure that contains the description and credits for the project so that it includes at the bottom of the list of credits the following: *Architect of the Construction Phase: [Member's Firm]*. This credit is to be in the same typeface and size as the other credits and formatted in the same manner as landscape architects are credited on other projects in the brochure.
2. The Principal will cause this revised page to be included in all future copies of the brochure.
3. The Principal will mail the revised page (not the brochure), first class postage prepaid, to no more than 100 persons or firms whose names and addresses are provided by the member.
4. The Principal will deliver to the member, with a copy to Staff Ethics Counsel, a mailing receipt for the revised pages within 30 days of the latest of the following events: receipt of the list of names and addresses, the expiration of the appeal period, or the conclusion of all appeal proceedings.

If all of these conditions are met, then the sanction on the Principal for violating Rule 4.107 is Admonition. If one or more of these conditions is not met, then the sanction is Censure. We recognize that the brochure is a product of the firm, not the Principal individually. Since the Principal is responsible for the manner in which the firm's public relations department handled

credits for this project, however, it is fair also to hold him responsible to cause the firm to remedy

the violation.

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*The hearing officer, Kenneth DeMay, FAIA, did not participate in the decision of this case, as provided in the Rules of Procedures. Council member Robert Madison, FAIA, also did not participate.*

**April 21, 1995**