



Withholding Permission to Take Copies of Non-Confidential Work Performed in the Employer's Service.

Summary

The Council found that a member's refusal to give a departing employee access to materials relating to work done while the employee was with the firm was not unreasonable and therefore not in violation of Rule 5.203.

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

Reference

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

R. 5.203 A member shall not unreasonably withhold permission from departing employees to take copies of designs, drawings, data, reports, notes, or other materials relating to work performed by the employees in the member's service which are not confidential.

Commentary: *A member may impose reasonable conditions, such as the payment of copying costs, on the right of departing employees to take copies of work performed while in the member's service.*

Facts

Architect A and Architect B were contemplating merging their practices. Architect B had a part-time practice, and was a part-time teacher. Architect A had a small firm. Because of unexpected logistic necessities, they decided that Architect B would move into the firm's offices. Both architects did some work on each other's projects. Architect B was not paid. Neither considered Architect B an employee of Architect A.

During the four months that Architect B worked in the firm's offices, he spent three days a week at his teaching job. On the remaining two days, he worked on his own projects. He also did some work on a large commercial project for one of the firm's clients. By the time he moved into the firm's offices, the schematic design phase of the project had been completed and the basic design characteristics had been established. Architect B did produce a book of approximately 150 design and sketch drawings for the project. Only a few of his ideas were used, after extensive modification by the project architect to make them feasible and constructable. Construction documents for the project were not started until after Architect B left the firm. They were completed almost a year later. Professional photographs of the project were not taken until long after Architect B had left the firm. None of the engineers or other consultants working on the project had ever had any contact with Architect B.

It became clear that any hopes that Architects A and B could form a successful professional relationship were misplaced. After four months, Architect B left the firm's offices, returning only



THE AMERICAN INSTITUTE OF ARCHITECTS

*Code of Ethics and
Professional Conduct
DECISION 94-9*

once to retrieve personal belongings. Eleven months after his departure, Architect B contacted Architect A requesting copies of architectural construction documents and

photographs of the large commercial project. He also requested that he be given credit as "designer" on all public relations and publicity submittals, and for any architectural awards. Architect A offered to give Architect B the book of detail sketches that he had drawn for the project. Architect A also offered to list Architect B's name in submissions for which other members of the design team were named, describing Architect B as "a contributing design development delineator". Architect B declined Architect A's offer as unreasonable and filed an ethics complaint.

Discussion

In his complaint Architect B acknowledged that he was not an employee of Architect A. He argued that R. 5.203 should apply to all professional colleagues rather than applying a narrow definition of "employee". The Council agrees that this Rule should be interpreted broadly to facilitate the goal of enabling an architect to put together a portfolio that reflects professional work that has been accomplished. Decision 93-13 makes it clear that invoking a narrow definition of the word "employee" will not constitute a defense to failing to comply with this Rule.

Decision 88-7 states that photographs taken by a professional photographer do not constitute "other materials" that should be provided under R. 5.203. Decision 93-13 distinguishes photographs taken by the departing employee.

The main point in this case, though, is that the material requested by Architect B did not at all reflect work that he did while with Architect A's firm. The schematic design phase had been completed and all basic design characteristics established before Architect B began his

association with the firm. Construction documents were not started until after he left the firm. The photographs were not taken until long after he left the firm. Architect B did no

demonstrable work on any of the materials he wanted to copy. Architect A was not unreasonable in refusing to permit Architect B to obtain copies of material on which he did no work.

Conclusion

The copies requested by Architect B represented work either completed before or started and completed after he left Architect A's firm. The Council found that Architect A was not unreasonable in refusing to permit Architect B to copy the work requested, and that there was no violation of R. 5.203.

L. Kirk Miller, FAIA, Chairman
Samuel A. Anderson III, FAIA
Melvin Brecher, FAIA
Kenneth DeMay, FAIA
Robert P. Madison, FAIA
D. Susan J. O'Brien, AIA

The Hearing Officer, Norma Merrick Sklarek, FAIA, did not participate in the decision of this case, as provided in the Rules of Procedure.

December 2, 1994