



Knowing Violation of Law; Payment to a Public Official in Connection with Project; Conduct Involving Fraud or Wanton Disregard of the Rights of Others; Assisting a Client in Fraudulent or Illegal Conduct

Summary

The National Ethics Council (“Council” or “NEC”) ruled that an AIA Member violated Rules 2.101, 2.102, 2.104, and 2.106 of the Institute’s Code of Ethics and Professional Conduct (“Code”) based on a criminal conviction for mail fraud and conspiracy. The illegal conduct took place as part of a scheme to defraud a state in connection with architectural services provided for a state project. The Council found no violation of Rule 2.103.

The NEC imposed the penalty of termination of membership on the Member.

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

References

1997 Code of Ethics and Professional Conduct, Canon II, Obligations to the Public

Rule 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. This includes the federal Copyright Act, which prohibits copying architectural works without the permission

of the copyright owner. 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.

Rule 2.102 Members shall neither offer nor make any payment or gift to a public official with the intent of influencing the official’s judgment in connection with an existing or prospective project in which the Members are interested.

Commentary: This rule does not prohibit campaign contributions made in conformity with applicable campaign financing laws.

Rule 2.103 Members serving in a public capacity shall not accept payments or gifts which are intended to influence their judgment.

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

Commentary: This rule addresses serious misconduct whether or not related to a Member’s professional 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 com-



petent jurisdiction or an administrative or regulatory body.

Rule 2.106 Members shall not counsel or assist a client in conduct that the architect knows, or reasonably should know, is fraudulent or illegal.

Introduction

The Board of Directors of an AIA chapter (“Complainant”) filed a Complaint against the Respondent, an AIA member who resides in another state. The Respondent received the Complaint but failed to file a response within 30 days as required by the NEC Rules of Procedure. (*See NEC Rules of Procedure, Section 4.2.*) The Respondent received a second notice of the Complaint and was notified that a failure to file a response may result in the matter being resolved as if the Complainant’s allegations were proven true. (*See NEC Rules of Procedure, Section 4.3.*) The Respondent did not file a response.

The Chair of the NEC appointed a Hearing Officer, and both the Complainant and Respondent received notice of the appointment. Neither party challenged the Hearing Officer’s appointment. (*See NEC Rules of Procedure, Section 5.2.*)

The Hearing Officer requested that a pre-hearing conference call be scheduled, and the parties were contacted to determine dates and times they were available to participate. The Complainant responded regarding the availability of its representatives. The Respondent received notice of the Hearing Officer’s request but did not reply. The Hearing Officer scheduled the pre-hearing conference call to take place, and both parties received notice of the call at least two weeks before the date of the call.

The day before the scheduled call, an attorney notified the NEC that he would be representing the Respondent and requested that he be pro-

vided a copy of the Complaint and other relevant documents. The same day, the NEC sent him by e-mail the Complaint and copies of correspondence previously received by the Respondent.

The Hearing Officer conducted the pre-hearing conference call as scheduled. The current president of the AIA chapter and the executive director of the chapter participated on behalf of the Complainant. The Respondent’s attorney participated on behalf of the Respondent. During the call, the participants discussed dates they would be available to attend a hearing. The Hearing Officer stated during the call that the hearing would take place in the city where the AIA chapter is located on one of two consecutive dates and that the parties would receive notice of the date selected within several days after the call. Four days after the call, the parties were notified by e-mail of the date that the hearing would take place and also received formal notice by letter shortly after.

Three weeks later, the Respondent’s attorney notified the NEC by e-mail that a trial involving another of his clients had been scheduled to begin the same week as the ethics hearing and that he would not be able to “attend any AIA proceeding during that month,” and he requested that “any proceeding involving the Respondent be rescheduled until a later date.” The attorney repeated that request in a letter several days later.

The Hearing Officer considered the Respondent’s request and determined that the hearing would proceed as scheduled. The parties were notified of the Hearing Officer’s decision in a letter, which stated, in part:

A member of the Institute charged with an ethics violation is afforded various rights under the NEC’s Rules of Procedure, including, for example, the opportunity to submit a written Response (*see Section 4.2*), the opportunity to appear in person and through counsel at a



hearing (*see Section 5.10*), and the opportunity to submit written comments on the Hearing Officer's Report and Recommendation (*see Section 6.2*).

* * *

In the present case, the parties received notice by letter that the Hearing Officer would conduct a pre-hearing conference call and that one of the purposes of the call was to select a time, date, and location for the hearing. Representatives of both parties participated in the pre-hearing conference call. During the call, various potential hearing dates were discussed and some were rejected due to a conflict for one or more individuals involved. Everyone participating in the call committed to a hearing date. Five days later, the NEC sent the parties a formal notification letter confirming that date for the hearing.

Respondent's counsel has requested that the hearing be postponed to a later date. The request does not include a complete description of how the trial date was set in the federal court case that currently poses a conflict for Respondent's counsel, and the National Ethics Council is not in a position to know exactly what took place in that proceeding. Even in the event that the judge did not discuss available dates with the parties and their attorneys before setting a two-week trial, however, it is up to the Respondent in this case to decide how he wishes to participate in the previously scheduled ethics hearing given his attorney's circumstances.

Section 5.10 of the Rules of Procedure provides that parties "may be accompanied by counsel or advisors of their choosing." The Respondent's right to choose his counsel in this proceeding does not mean that the Respondent has the right to be represented at the hearing

by counsel who agreed to a hearing date and has subsequently encountered a scheduling conflict on behalf of another client.

In conclusion, the Hearing Officer has determined that the hearing of this case should proceed as scheduled for the following reasons:

- The Respondent himself is able to attend the hearing.
- The Respondent may be represented at the hearing by other counsel of his choosing.
- The Respondent, through his current counsel, selected a hearing date convenient to him and his counsel.
- This date was immediately confirmed in a formal notice.
- Further delays jeopardize the speedy resolution of this case.
- The only rationale currently submitted for overriding these considerations is a conflict on the part of Respondent's counsel, not the Respondent himself.

In accordance with the Hearing Officer's request during the pre-hearing conference call and Section 5.7 of the NEC Rules of Procedure, the parties submitted additional information in advance of the hearing. The Complainant's submissions included documents filed in a federal criminal case, documents from the State Licensing Board, and excerpts from various news media. The Respondent's submissions included a four-page statement and other documents referred to in that statement. No additional documents were submitted as evidence at the hearing by either party.

The Hearing Officer conducted the hearing beginning at 9:00 a.m. on the scheduled date. The president of the AIA chapter and the executive



director of the chapter appeared at the hearing on behalf of the Complainant. An attorney represented the Complainant as counsel at the hearing. Neither the Respondent nor his counsel was present at the hearing.

Findings of Fact

County Courthouse Project

The Respondent was a principal in an architecture firm in City, State. In 2001, the firm was awarded the contract to provide architectural services for the County Courthouse in the City. Design and construction of this public project was completed over the following several years, and the Respondent oversaw the project for his firm. During this time, the Respondent was also actively involved in his AIA chapter as president-elect, president, and past president in successive years.

The following individuals were also involved in the courthouse project: John White, the president pro-tem of the State Senate; Ben Black, the court administrator; and Howard Green, a former mayor of the City and a lobbyist for the Respondent's firm. According to a criminal plea agreement ultimately entered into by the Respondent, he participated with those three individuals in a scheme to defraud the State by submitting fraudulent invoices for work on the County Courthouse project.

In that plea agreement, the Respondent admitted, among other things, to paying cash bonuses to Mr. Green for additional contracts awarded to the architectural firm in connection with the project with the knowledge that Mr. White and Mr. Black were receiving cash payments. The Respondent also admitted in his plea agreement to preparing and submitting false architectural firm invoices in order to receive payments from the State and to pay kickbacks. The Respondent further admitted that he directly participated in making payments to Mr. White.

Federal Criminal Conviction

Federal authorities first learned of the payments to Mr. White in late 2006. An investigation was begun, and the United States Attorney brought criminal charges against the Respondent in United States District Court. This prosecution resulted in the filing in March 2008 of the Respondent's plea agreement, in which he pleaded guilty to the two counts stated in a Superseding Information filed on the same day.

Count 1 stated a violation of 18 U.S.C. § 371 for conspiracy from 2001 to 2007, the objects of which included submitting "inflated invoices for work on the design and construction of the County Courthouse" so that "public officials and others would share in the proceeds of funds issued by the State in payment of the inflated invoices."

Count 2 stated a violation of 18 U.S.C. §§ 1341 and 1346 for "Frauds and Swindles (Mail Fraud)" from 2001 to 2005, including a specific November 2003 invoice and resulting \$20,000 check from the State.

The Respondent agreed in his plea agreement to cooperate with further federal investigation of the matter. Judgment in the criminal case was ultimately entered on January 8, 2010, in which the court found the Respondent guilty of the two counts charged. At the same time, the Respondent was sentenced to prison and supervised release. He was also ordered to pay restitution to the State. The Respondent was incarcerated in another state. He was released prior to the hearing in this ethics case.

Disciplinary Action by State Licensing Board

The Respondent was registered as a licensed architect in the State. The State Licensing Board began disciplinary proceedings against him in 2008. The alleged licensing violations were based on his conduct described in his federal plea agreement, and he agreed to surrender his



license voluntarily. The State Licensing Board revoked his registration in early 2010 for “misconduct in the practice of architecture in violation of various state licensing statutes and regulations.

The state licensing statute authorizes the State Licensing Board to revoke a registration for, among other things, “misconduct in the practice of architecture as set forth by rule.” The licensing regulations define “misconduct” as, among other things, “[e]ngaging in any fraud or deceit related to the business or practice of architecture.” One of the regulations cited by the Board states, in part:

An architect shall neither offer nor make any payment or gift to a government official, whether elected or appointed, with the intent of influencing the official’s judgment in connection with a prospective or existing project in which the architect is interested.

Public Response to the Criminal Case

The criminal proceedings against the Respondent and others involved in the County Courthouse project were widely reported in the City’s news media, including print, broadcast, and online. Beyond that project, the ties between the Respondent, as an architect, and public officials were raised as a source of concern in public forums.

Another local architect testified at the ethics hearing that the Respondent’s conduct has resulted in more difficult relationships between architects and public clients. A second local architect testified that the Respondent’s behavior damaged the public perception of architects in the State. A third local architect testified that the relationships between architects and their public clients have been damaged by the Respondent’s conduct, resulting in more difficult change order procedures and onerous contract terms.

Conclusions

Burden of Proof

Under Section 5.13 of the NEC Rules of Procedure, the Complainant has the burden of proving the facts upon which a violation may be found. In the event the Complainant’s evidence does not establish a violation, the Complaint is dismissed.

Rule 2.101

Rule 2.101 states:

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

The commentary to Rule 2.101 states:

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. This includes the federal Copyright Act, which prohibits copying architectural works without the permission of the copyright owner. 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.

The Respondent violated federal laws against conspiracy (18 U.S.C. § 371) and mail fraud (18 U.S.C. §§ 1341 and 1346). This was established by his conviction in federal court, as documented by the judgment entered in the criminal case on January 8, 2010.

The violations included “inflat[ing] invoices for work on the design and construction of the County Courthouse” so that “public officials and others would share in the proceeds of funds issued by the State in payment of the inflated invoices.” Consequently, the violations took place in the conduct of the Respondent’s profes-



sional practice as an architect for the County Courthouse project.

The circumstances described in the Respondent's plea agreement, along with his guilty plea itself, establish that he violated the law knowingly.

The National Ethics Council concludes that the Respondent violated Rule 2.101 by knowingly violating federal criminal laws in the conduct of his professional practice.

Rule 2.102

Rule 2.102 states:

Members shall neither offer nor make any payment or gift to a public official with the intent of influencing the official's judgment in connection with an existing or prospective project in which the Members are interested.

The commentary to Rule 2.102 states:

This rule does not prohibit campaign contributions made in conformity with applicable campaign financing laws.

On January 8, 2010, the Respondent was convicted of conspiracy (18 U.S.C. § 371) and mail fraud (18 U.S.C. §§ 1341 and 1346) by a federal court.

The Respondent's conviction was based on his plea agreement, which establishes that his actions involved paying "kickbacks" to Mr. White and Mr. Black, that he knew that Mr. White and Mr. Black were receiving cash payments as the result of inflated project invoices, and that he directly participated in making payments to Mr. White. Mr. White, as president pro-tem of the State Senate, and Mr. Black, as administrator of the County Court, were both public officials within the meaning of Rule 2.102.

Furthermore, based on these circumstances, the State Licensing Board concluded that the Respondent violated a state licensing regulation, which is similar to Rule 2.102 and provides:

An architect shall neither offer nor make any payment or gift to a government official, whether elected or appointed, with the intent of influencing the official's judgment in connection with a prospective or existing project in which the architect is interested.

The National Ethics Council concludes that the Respondent violated Rule 2.102 by participating in making payments to public officials with the intent of influencing their judgment in connection with the County Courthouse project for which the Respondent was serving as architect.

Rule 2.103

Rule 2.103 states:

Members serving in a public capacity shall not accept payments or gifts which are intended to influence their judgment.

There is no commentary to Rule 2.103. The rule has been cited in only one prior decision of the Council. (*See NEC Decision 2007-22.*)

Rule 2.103 applies to a member when serving in a "public capacity," that is, as an official or employee of the government. In this case, the Respondent was providing architectural services for a government, or public, project but did so through his private firm. That circumstance does not constitute acting in a "public capacity" under the rule.

The National Ethics Council concludes that the Complainant did not meet its burden to prove that the Respondent violated Rule 2.103 because the evidence does not show that he was serving in a public capacity.



Rule 2.104

Rule 2.104 states:

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

The commentary to Rule 2.104 states:

This rule addresses serious misconduct whether or not related to a Member's professional 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.

On January 8, 2010, the Respondent was convicted of mail fraud (18 U.S.C. §§ 1341 and 1346) by a federal court. This conviction establishes that the Respondent engaged in conduct involving fraud.

His conduct was also in wanton disregard of the rights of others, specifically the State, from whom payments were fraudulently obtained.

The National Ethics Council concludes that the Respondent violated Rule 2.104 by committing mail fraud and by the Respondent's other conduct described in his criminal plea agreement, which was in wanton disregard of the rights of the State.

Rule 2.106

Rule 2.106 states:

Members shall not counsel or assist a client in conduct that the architect knows, or reasonably should know, is fraudulent or illegal.

There is no commentary to Rule 2.106.

Mr. Black, as administrator of the County Court, was a client of the Respondent. Mr. White, as president pro-tem of the State Senate, could also be considered the Respondent's client in that the County Courthouse project was funded by the State.

The fraudulent, illegal, and knowing nature of the Respondent's conduct is established by his January 8, 2010 conviction, as described in the analysis of Rule 2.101 and Rule 2.104. In his plea agreement, the Respondent admitted to participating and conspiring with both Mr. Black and Mr. White in this conduct. This constitutes counseling or assisting them as described in Rule 2.106.

The National Ethics Council concludes that the Respondent violated Rule 2.106 by participating with one or more clients in conduct that the Respondent knew was fraudulent and illegal.

Penalty

Having found a violation of Rules 2.101, 2.102, 2.104, and 2.106 of the Code of Ethics by the Respondent, the National Ethics Council imposes the penalty of Termination.

[The NEC's decision was considered as an appeal by the Institute's Executive Committee and Board, as provided in Chapter 7 of the Rules of Procedure. The Executive Committee and Board approved the NEC's decision and the penalty imposed.]

Members of the National Ethics Council

Victoria Beach, AIA
Tricia Dickson, AIA
Clyde Porter, FAIA
Michael L. Prifti, FAIA
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**THE AMERICAN
INSTITUTE
OF ARCHITECTS**

**Code of Ethics and
Professional Conduct
DECISION 2010-14**

*The Hearing Officer, Melinda Pearson, FAIA,
did not participate in the decision of this case,
as provided in the Rules of Procedure.*

March 18, 2011