THE AMERICAN
INSTITUTE
OF ARCHITECTS

Code of Ethics and
Professional Conduct
Advisory Opinion No. 2

Conflict Of Interest – Referral Fees

Questions

Q1: *Did the architect act unethically in accepting a referral fee from the contractor?*

Q2: *Did the architect act unethically in failing to disclose the financial arrangement he had with the contractor when he provided the recommendation to the owner?*

Reference

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

Rule 3.202   If members have any business association, direct or indirect financial interest, or other interest which could be substantial enough to influence their judgment in connection with their performance of professional services, the members shall fully disclose to their clients or employers the nature of the business association, financial interest, or other interest, and if the clients or employers object to such association, financial interest or other interest, the members will either terminate such association or interest or give up the commission or employment.

The Code of Ethics and Professional Conduct applies to the professional activities of all Members, Associate Members, and Members Emeritus of the AIA.

Facts

An owner contacts an architect who has done professional work for the owner in the past but is not currently engaged on any project for the owner. The owner asks the architect to recommend a contractor for a project that the architect did not design. The architect provides this service without compensation in the interest of maintaining a good relationship with the owner. The architect recommends a contractor who, by prior arrangement, has agreed to pay the architect a fee for any project on which the contractor is hired as a result of the architect's recommendation. The architect believes the contractor is as skilled and competent as the other contractors in the area that he would recommend but who have no referral fee agreement with the architect. The architect does not tell the owner about his arrangement with the contractor to receive a referral fee.

Discussion

The first question considered here deals with the ethics of accepting a referral fee from a contractor. An architect is uniquely qualified to evaluate the likely performance of a contractor or any other participant in a building project, and because he is a professional architect his advice will be solicited and relied upon as being unbiased. It is not unreasonable for an architect to expect and accept compensation for providing this service. What compensations the architect should receive for this or any other professional service is a business matter for the architect to decide and is not governed by the Code. It is not inherently unethical for an architect to accept a fee for the legitimate

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service of making a referral. The acceptance of a referral fee from the person that the architect recommends, however, affects the interests of persons other than the architect and the contractor. The owner who requests the referral relies on the professional judgment and integrity of the architect. The question remains, therefore, whether there is an actual or apparent conflict of interest that requires disclosure of the fee.

In dealing with this second question, the first issue is whether the owner in this situation is a "client" as that term is used in Rule 3.202 even though no formal agreement exists and no compensation is paid. Webster's Dictionary defines "client" as "a person who engages the professional services of another." The word "engage" has several meanings, including "involve," "interlock with," and "to arrange to obtain the use of services of." It is apparent here that the owner has asked for advice from the architect because of the architect's training and experience. Architects are generally regarded as experts in matters of building design and construction. Accordingly, whenever an architect is asked for an opinion on a matter that is within his professional competence, he is being asked to render a professional service. The individual who seeks his professional advice must be considered a client in the broad sense. In addition, the individual requesting a recommendation in this case was a former client of the architect and would every reason to expect an unbiased professional opinion regardless of whether he paid for the advice.

When an architect is asked to provide professional services, in this case a recommendation on the qualifications of a contractor, he must comply with the requirements of Rule 3.202. The rule applies here because recommending a contractor,

even when the architect is not compensated by the person seeking the advice, is a professional service within the meaning of the rule. A referral fee, even if modest in amount, is a direct financial interest of the architect that a client might reasonably regard as substantial enough to influence the architect's judgment. The architect is obligated to disclose to the owner his fee arrangement with the contractor.

It makes no difference under the disclosure rules whether the architect is certain that the contractor he recommends is the best one for the job or that he would make the same recommendation even if no referral fee were paid. Though the architect may be confident there is no actual conflict of interest, any referral fee is an interest substantial enough to create an appearance of partiality and is a factor about which the client is entitled to know.

Conclusion

A1: No. The architect did not act unethically in accepting a referral fee from the contractor. This is strictly a business decision.

A2: Yes. It is unethical for an architect to fail to disclose a referral fee arrangement when he recommends to someone else the services of the person or firm who pays the fee.

Note: *This opinion is based on data submitted to the National Judicial Council and does not necessarily include all the facts that would be pertinent in another specific case. This opinion is for information purposes only and should not be construed as expressing any opinion on the ethics of specific individuals.*
June 30, 1987