



Replacing Another Architect—Supplanting

Question

Q1: *Did Architect B act unethically in replacing Architect A without notice?*

Facts

Architect A was retained by an owner to provide master planning and schematic design services on a mixed-use, residential/retail building project. The architect completed the master plan portion of the project and began schematic design. The relationship between the architect and the owner had been rocky, but they had worked through several disagreements about the best approach to the design challenges of the project. Their differences surfaced again during the beginning phases of schematic design. This time they were unable to resolve them. Architect A stopped work and the owner refused to pay the balance of his fee.

Architect B was aware of the clashes between Architect A and the owner. When he heard about their latest disagreement, he arranged a meeting with the owner. Architect B told the owner that he would be interested in working on the project. The owner discussed that possibility with Architect B and decided that he felt more comfortable with Architect B's approach to the site. Without resolving the dispute with Architect A, the owner retained Architect B to redesign the project using as much of the master planning as possible, but with a new approach to the schematic design. Architect B does not communicate with Architect A before accepting the job.

Discussion

The facts present a situation where one architect replaces another as the principal architect on a project. There was a time when the Institute's Code of Ethics prohibited a Member from accepting a commission for which another Member had already been employed, unless he had evidence that the previous commission had been terminated and written notice was given to the prior architect. This rule against "*supplanting*" was displaced in 1979 by interpretations of the antitrust laws. Professional associations, such as the AIA, may not unreasonably restrict the freedom of their Members to pursue commissions from clients. Because of these judicial rulings, the AIA Code of Ethics does not include a rule on the subject of supplanting.

Since there is no ethical prohibition against supplanting, it was not unethical for Architect B to take over the project from Architect A at the invitation of the owner. Architect B was not required to provide any notice, oral or written, to Architect A that he was accepting the commission. Architect B was not required to determine whether Architect A's contract had been terminated.

The deletion of the "*supplanting*" rule from the Code of Ethics does not mean that there are not serious ethical, legal, and risk management issues that arise when one architect replaces another on a project. For instance, the law in many states prevents one who is not a party to a contract from intentionally interfering with an existing contractual relationship between other parties. Whether Architect B's actions in



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contacting the owner would constitute an intentional interference with Architect A's contract would be determined by the law in the state where that activity occurred. Members who determine that contacting an owner in this type of situation may be a good business decision may also consider consulting first with legal counsel to determine the local law regarding interference with a contract.

The Code of Ethics still requires much of Members by prohibiting violations of the law, by requiring truthfulness and accuracy in the representations they make about their professional qualifications, their experience, and the results that can be obtained for a client, and by prohibiting the infringement of another architect or design professional's copyright. If, in the course of his discussions with the owner or his subsequent actions Architect B violated any of the rules related to those areas of professional conduct, he could be subject to discipline for violating the Code of Ethics.

There may be situations in which an owner will present an architect with the opportunity to take over a commission that has proceeded through schematic design or the preparation of contract documents. A Member considering the pros and cons of such an opportunity will want to give serious thought to resolution of questions regarding the copyright of plans and designs prepared by another architect and issues of professional liability for design error.

Conclusion

Replacing another architect on a project without determining that the other architect's engagement has been terminated and giving written notice is no longer a violation of the Institute's Code of Ethics. But, the withdrawal of the "*supplanting*" rule did not eliminate all ethical considerations, such as those mentioned in the Discussion, that may be raised by such an action. Legal and risk management considerations that existed at the time of the "*supplanting*" rule still exist.

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