



Knowingly Violating the Law; Engage in Conduct Involving Fraud; Failure to Give Credit Where Due

Summary

The National Ethics Council (“Council” or “NEC”) found no violation of Rules 2.101, 2.104, 4.103, or 5.302 of the Institute’s 2018 Code of Ethics and Professional Conduct (“Code of Ethics”) in connection with a Member knowingly violating the law; engage in conduct involving fraud; failure to give credit where due.

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

References

2018 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 2.104 Members shall not engage in conduct involving fraud.

Commentary: This rule addresses serious misconduct whether or not related to a Member’s professional practice. Proof of fraud must be based on an independent finding of a violation of the law or a finding of fraud by a court of competent jurisdiction or an administrative or regulatory body.

Canon IV, Obligations to the Profession

Rule 4.103 Members speaking in their professional capacity shall not knowingly make false statements of material fact.

Commentary: This rule applies to statements in all professional contexts, including applications for licensure and AIA membership.

Canon V, Obligations to Colleagues

Rule 5.302 Members leaving a firm shall not, without the permission of their employer or partner, take designs, drawings, data, reports, notes, or other materials relating to the firm’s work, whether or not performed by the Member.

Findings of Fact

The Parties

The Complainant is an Associate Architect who resides in Purple City and is the principal of Architecture Firm in Purple City.

Respondent is an Architect member who resides in Purple City and was originally hired as a designer and was promoted to project manager at Architecture Firm in Purple City.

Undisputed Facts

The NEC adopts the Hearing Officer’s undisputed facts as follows:

- Respondent was employed at Complainant’s Architecture Firm in Purple City, from October 20XX until July 20XX. Respondent was originally hired as a designer and was promoted to project manager in 20XX.
- Respondent signed a Confidentiality Agreement with Architecture Firm in April 20XX around the time of their promotion.

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- Respondent attained their architectural license in December 20XX.
- Respondent worked on various side projects while in the employ Architecture Firm, using their equipment, resources, and proprietary content during work hours at the Architecture Firm. Respondent billed clients for such side projects and received compensation for such work.
- Following Respondent's employment termination, Complainant and Architecture Firm examined Respondent's issued laptop, as well as Architecture Firm's records and logs and discovered Respondent had also been working on a number of other side projects while in Architecture Firm's employ, in addition to the one leading up to their termination, using Architecture Firm's equipment, resources, and proprietary content.
- In February 20XX, Respondent and Architecture Firm entered into a settlement agreement ("Settlement.") In this Settlement, the Respondent made the following representations:

12. Representations of Respondent.

Respondent makes the following representations upon which Architecture Firm relies and bases its agreement to Settle:

- (a) Respondent worked on a number of projects for their own personal gain (the "Side Projects") without Architecture Firm's knowledge while employed at Architecture Firm, including doing some of this work while in Architecture Firm's office during regular office hours;*
- (b) Respondent used Architecture Firm's equipment and software licenses for the Side Projects without Architecture Firm's knowledge;*
- (c) When confronted by Architecture Firm, Respondent did not disclose the scope of their outside work and the use of Architecture Firm resources for that work;*

- (d) One of the Side Projects was originally an Architecture Firm prospect for a new home which Respondent diverted to himself, and won, despite Architecture Firm being invited to propose;*
- (e) Respondent used Architecture Firm's employees (who were being paid to work fulltime for Architecture Firm) to perform work on the Side Projects without Architecture Firm's knowledge; and*
- (f) Respondent used information defined by Architecture Firm as "Confidential Information" in the Confidentiality Agreement Respondent signed with Architecture Firm, including drawings, and proposals, etc. for their Side Projects.*

- The State Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design ("State Board") issued its Stipulation and Order, dated May XX, 20XX ("State Board Order.") The State Board stated the following:

2. Facts. This Stipulation is based upon the following facts:

- a. Respondent was employed with an architecture firm ("Employer") from October 20XX to July 20XX.*
- b. On April 20XX, Respondent signed a confidentiality agreement with Employer.*
- c. While with Employer, Respondent created a new business that was in direct competition with their Employer.*
- d. On July 20XX, Respondent was terminated from their employment.*
- e. On February 20XX, Respondent signed a settlement agreement in which they admitted the following:*
 - i. Working on a number of projects for their own personal gain (the "Side Projects") without the Employer's*

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- knowledge while employed at the Employer, including doing some of this work while in the Employer's office during regular office hours.*
- ii. *Using the Employer's equipment and software licenses for the Side Projects without the Employers knowledge.*
 - iii. *Not disclosing the scope of their outside work and the use of the Employer's resources for that work.*
 - iv. *One of the Side Projects was originally an Employer prospect for a new home, which the Respondent diverted to himself, and won, despite the Employer being Invited to propose.*
 - v. *Using other employees (who were being paid to work fulltime for the Employer) to perform work on the Side Projects without the Employer's knowledge.*
 - vi. *Respondent used information defined as confidential information in the confidentiality agreement they signed, including drawings, and proposals for the Side Projects.*
3. *Violations. Respondent admits that the facts specified above constitute violations of State Stat. § 326.111, subd. 4(a)(1), (2), and (3) (2020), State R. 1805.0200, subp. 1, 4(C), and (D), 1805.0300, subp. 1 and 2, and 1805.0900 (2017), and are sufficient grounds for the action specified below. Specifically, it is alleged that the Respondent created a business in direct competition with their employer, while still being under the employ of that employer, and was soliciting work from their employer's potential clients while using their employer's intellectual property to complete projects for their personal clients.*
4. *Enforcement Action. Respondent and the Committee agree that the Board should issue an Order in accordance with the following terms:*
- a. *Civil Penalty. Respondent shall pay to the Board a civil penalty of Five Thousand Dollars (\$5,000). Respondent shall submit a civil penalty of \$5,000 by check to the Board within sixty (60) days of the Board's approval of this Stipulation and Order.*
 - b. *Professional Development Hours. Respondent shall complete eight (8) ethics hours in addition to the regularly required ethics requirement under State Stat. § 326.107 subd. 1(c), and provide proof of completion of the hours to the Board, within ninety (90) days of the Board's approval of this Stipulation and Consent Order. These hours shall not count towards the hours required for Respondent's license renewal.*
 - c. *Stayed Suspension. Respondent's Architect license is SUSPENDED until June 20XX, however, this suspension is STAYED so long as Respondent: (1) pays the civil penalty described in paragraph 4(a); and completes the professional development hours described in paragraph 4(b). If Respondent violates these conditions, the stay shall be automatically lifted, and Respondent's license shall be suspended.*

Disputed Facts

The NEC restates the Hearing Officer's disputed facts as follows:

- Whether the State Board is considered an administrative body within the meaning of the Code, and whether its findings and determinations are independent findings of law within the meaning of the Code.
- Whether Architecture Firm encouraged its employees to do side-work and made it clear the firm expected employees to affirmatively notify the firm of such work.
- Whether Architecture Firm had any interest in doing the small projects for clients such as those Respondent did on the side.

- Whether Architecture Firm employees were free to use the firm’s design libraries and resources on their own projects without first advising the firm.
- Whether Respondent was reasonably justified in retaining Architecture Firm’s proprietary materials during legal negotiations between the firm and Respondent.

Exclusion of Complainant’s Exhibit E

The NEC agrees with the Hearing Officer’s determination to exclude Exhibit E.

Conclusions

Burden of Proof

Section 5.13 of the NEC Rules of Procedure states: 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 will be dismissed.

The NEC finds Respondent violated Rule 2.101.

The State Board Order establishes the Respondent violated the law. As noted by the Hearing Officer, the Respondent presented two arguments challenging this determination. First, Respondent’s counsel argues the State Board Order does not constitute an independent finding of a violation of the law by—in this case—a regulatory body. Second, Respondent argues that they [were] coerced or otherwise forced by the circumstances to agree to statements of admission that were inaccurate because they lacked the financial resources and emotional wherewithal to pursue their defense further and wished to put the matter to rest.

The State Board is in fact a regulatory body within the meaning of Rule 2.101, and its determinations the law has been violated would be considered independent findings.

With regard to Respondent’s second argument, the statements they agreed to in the Settlement, later adopted by the State Board in its Order, speak for themselves. Respondent read and agreed to these statements when they signed

both the Settlement and the State Board Order, and it is clear they are admissions of misconduct.

The NEC finds Respondent violated Rule 2.104.

The State Board states, “Respondent admits that the facts specified above constitute violations of State Stat. § 326.111, subd. 4(a)(1), (2) ...” which states:

Actions against applicants and licensees.

- The board may, by order, deny, refuse to renew, suspend, temporarily suspend, or revoke the application, license, or certification of a person; censure or reprimand that person; condition or limit the person’s practice; refuse to permit a person to sit for examination; or refuse to release the person’s examination grades if the board finds that the order is in the public interest and the applicant, licensee, or certificate holder:*

....

- (2) has engaged in conduct or acts that are fraudulent, deceptive, or dishonest whether or not the conduct or acts relate to the practice of architecture, engineering, land surveying, landscape architecture, geoscience, or certified interior design, providing that the fraudulent, deceptive, or dishonest conduct or acts reflect adversely on the person’s ability or fitness to engage in the practice of architecture, engineering, land surveying, landscape architecture, geoscience, or certified interior design;*

(Emphasis added.)

The State Board’s determination establishes Respondent violated Rule 2.104.

The NEC finds Respondent did not violate Rule 4.103.

The NEC agrees with the Hearing Officer that Complainant did not meet Complainant’s burden of proof to show that Respondent knowingly made false statements of material fact. The Complainant argues the Respondent violated Rule 2.104 because when confronted about their conduct at the July 20XX, termination meeting, they failed to

disclose further the scope of this outside work and use of the firm's resources for that work. From the record and testimony at the hearing, it is unclear whether the Respondent specifically lied when asked directly about the scope of their outside work, and it is inconclusive from the record that the Respondent was asked about the entire scope of their outside work.

The NEC finds Respondent violated Rule 5.302.

Respondent used materials proprietary to their employer for their personal gain while on staff and retained those materials after their termination.

Penalty

The National Ethics Council finds the Respondent violated Rules 2.101, 2.104, and 5.302 and imposes the penalty of Suspension for a period of two (2) years.

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

November 30, 2022