



What Would You Do?

NCARB's new Mini-Monograph, "Ethics and Professional Rules of Conduct: Distinction and Clarification," examines some of the ethical dilemmas architects face each day. The author discusses NCARB's *Rules of Conduct* and the American Institute of Architects' (AIA) *Code of Ethics and Professional Conduct* and how they can help resolve some of these issues. Several case studies are presented that show that in some situations it is difficult, and at times even impossible, to determine "right" and "wrong."

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We hope you find "Ethics and Professional Rules of Conduct: Distinction and Clarification" to be informative, provocative,

and educational. If you'd like to learn more about ethics in architecture, order a copy of NCARB's monograph entitled, *Professional Conduct*, or one of more than 20 other titles available in our monographs series. You'll find a complete list of NCARB monograph titles on the back cover or by visiting the NCARB web site. **DC**

ETHICS AND PROFESSIONAL RULES OF CONDUCT: DISTINCTION AND CLARIFICATION

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INTRODUCTION

Today's headlines are filled with stories about athletes using performance-enhancing drugs, business leaders engaging in insider trading, and government officials under indictment. While celebrities and politicians may make front-page news, ethical misconduct is not limited to public figures. Lack of moral direction is endemic throughout society.

The fact that the media reports the aberration, not the norm, presents a skewed perspective. Most people live moral and ethical lives, most of the time.

Architects often view the profession, their fellow practitioners, and even themselves as somehow immune from temptation, distraction, or misbehavior. Traditionally, professions such as architecture are very highly respected. The public expects architects to exemplify the highest ethical values.

However, architects are relentlessly confronted with conflicting values, incompatible loyalties, and subtle temptations from a variety of sources. Within every project, decisions must be made about the quality of materials versus budget constraints, owner-prescribed requirements versus building codes, or client confidentiality versus legal disclosure. Often the resolution of conflicts does not require a decision about right and wrong, it requires action to resolve situations in which competing principles may be correct, but contradictory.

The opinions, beliefs, and viewpoints expressed by the authors do not necessarily reflect the opinions, beliefs, and viewpoints of NCARB or serve as official policy of NCARB.

LAWS, MORALS, ETIQUETTE, AND ETHICS

Rules that govern an individual's personal and professional life may be classified into four general and overlapping categories: *laws*, *morals*, *ethics*, and *etiquette*. These are social contracts that have developed over time and have become rules that members of society have agreed to live by. *Laws* are rules that are absolute and enforceable by established governing agencies. *Morals* are disapproved behavior; they are not codified or endorsed as law. *Etiquette* or *good manners* are suggested conduct, usually applied in social settings.

A definition of *ethics* requires a distinction of the differences between these categories. What is the basis for their justification? What is society's obligation to observe them? How will they be enforced? What is the appropriate jurisdiction of each?

Legal statutes are based on commonly accepted business practices and legal precedents established between individuals or legal entities. The rights of individuals are protected by universal acceptance of this legal arrangement. Legal responsibilities and contractual obligations are outlined in contracts and described through specific legislation. Correct behavior is commonly agreed upon through established norms. The process for determining penalties and consequences of violations is pre-established. Laws also reflect contemporary social beliefs and the established morality of the times. In contrast to today's laws that reflect contemporary social standards and norms, in Colonial New England there were harsh penalties for smoking tobacco, cursing, lying playing cards, and selling guns or boats to Native Americans.

Morals and etiquette are not as widely accepted, developed, defined, and applied as laws. Morals and etiquette are not usually codified and enforced. While many laws reflect universally accepted morals and the implications of such morals, many morals such as lying and deceit are not generally legislated. Violation of these moral decrees may not be prohibited by law, however, society still disapproves. Etiquette is more subjective and less universally defined. Desired behavior may be categorized as *etiquette* or simply *good manners*. Behavior is not mandatory; disregard of etiquette generally assumes no severe consequences.

Ethical conduct falls somewhere between legal and moral obligations and general guidelines of good behavior. In early English scholarship, the terms *morals* and *ethics* were treated as synonymous, as they often are today. Over time, *ethics* was defined as the study of morality or a system of moral precepts. Ethics has

traditionally been divided into three subject areas: *metaethics*, *normative ethics*, and *applied ethics*. The term *metaethics* describes the search for universal truths, the role of reason in making ethical judgments and the definition of ethical terms. *Normative ethics* refers to the more practical and pragmatic study of ethics. *Normative ethics* defines moral standards used to determine and regulate behavior. *Applied ethics* engages truth, reason, moral standards, and acceptable behavior to address specific dilemmas. These issues may relate to environmental concerns, capital punishment, gun control, animal rights, or nuclear war. *Applied ethics* attempts to resolve disputed issues by applying the issues explored in *metaethics* and *normative ethics*.

In current vernacular, *ethics* is a set of commonly held rules established by a unique group such as a church, a profession, a corporation, or a legislative body. It may be argued that ethics and morals are inherent to nature, and that humans are genetically wired or even spiritually bestowed with a predisposition for right or wrong. This is debatable, however, it is generally believed that humans have an ability to differentiate between right and wrong and have the free will to make that choice. Defining what is *right* and *wrong* necessitates a discussion of ethics and morality.

Some ethical issues lack moral certainty or elude legal definition. Ethical dilemmas present issues that have competing, but equally compelling values. Ethics also defines fairness in a given situation or attempts to describe a balance between opposing views. For example, individuals may be faced with circumstances in which speaking the truth conflicts with maintaining a confidence entrusted to them. An architect may find that an obligation to a client's needs is at odds with the needs of the general public or the needs of a local jurisdiction. These situations may represent mutually viable positions and are not necessarily differentiated by right and wrong.

In some situations, certain ethical standards may take precedence over others. For instance, life safety issues are usually seen as more important than a client's dictates. A commitment to the environment may hold sway over personal issues. In the legal world, and arguably in the moral world, the definition of *right* and *wrong*, *correct* and *incorrect*, *good* and *evil* is well established. Ethical dilemmas are not so easily defined; they require a definition of conduct, or an ethical code.

CONTINUING EDUCATION

Use the following learning objectives to focus your study while reading the semi-annual Direct Connection/Professional Development (PDU) and AIA Continuing Education (CEU) HSW credit article. To receive credit, go to the NCARB web site: www.ncarb.org, click on "Publications," then "Mini-Monographs," fill out the registration form and payment information and you will be given an online access number and be able to take the quiz for credit online. NCARB Record holders can take the quiz for free by logging onto "My NCARB Record" and then clicking on "Mini-Monograph Quiz."



LEARNING OBJECTIVES

After reading this article, you should be able to:

1. Differentiate between ethics and enforceable rules of conduct and how both impact the lives of architects on a daily basis.
2. Comprehend how ethical dilemmas covered by the code of conduct are not easily resolved on the basis of right vs. wrong situations.
3. Understand the evolution of the architectural code of conduct and how it continues to change as the practice of architecture changes.

NCARB Rules of Conduct

Architects are governed by licensing laws and jurisdictions. To provide uniform requirements for licensing, the National Council of Architectural Registration Boards (NCARB) has established *Model Law and Model Regulations* for state legislatures to adopt and registration boards to enforce. In addition to these laws, NCARB also publishes *Rules of Conduct*, which is recommended rules for licensing boards. As explained in NCARB's monograph *Professional Conduct* (www.ncarb.org/publications/pdpmonographs.html):

“The *Rules of Conduct* are, like criminal laws, standards for minimum acceptable conduct.... If practitioners decide to conduct their business according to higher standards, so much the better. Most architects can fairly easily meet most of the *Rules of Conduct* by acting on a common sense understanding of right and wrong...”

The NCARB *Rules of Conduct* define specific practices expected of licensed architects. These are practices that protect the public; they are written to be enforced by state boards, which are charged with the responsibility to guard the health, safety, and welfare of the public. As might be expected, a violation of the *Rules of Conduct* that has legal consequences also constitutes a violation of professional ethical conduct. In all cases, legal jurisdiction takes precedence over ethical concerns.

RULE 1 COMPETENCE

- 1.1 In practicing architecture, an architect's primary duty is to protect the public's health, safety, and welfare. In discharging this duty, an architect shall act with reasonable care and competence, and shall apply the technical knowledge and skill which is ordinarily applied by architects of good standing, practicing in the same locality.
- 1.2 In designing a project, an architect shall take into account all applicable state and municipal building laws and regulations. While an architect may rely on the advice of other professionals (e.g., attorneys, engineers, and other qualified persons) as to the intent and meaning of such regulations, once having obtained such advice, an architect shall not knowingly design a project in violation of such laws and regulations.
- 1.3 An architect shall undertake to perform professional services only when he/she, together with those whom the architect may engage as consultants, is qualified by education, training, and experience in the specific technical areas involved.
- 1.4 No person shall be permitted to practice architecture if, in the board's judgment, such person's professional competence is substantially impaired by physical or mental disabilities.

RULE 2 CONFLICT OF INTEREST

- 2.1 An architect shall not accept compensation in connection with services from more than one party on a project (and never in connection with specifying or endorsing materials or equipment) unless the circumstances are fully disclosed to and agreed to (such disclosure and agreement to be in writing) by all interested parties.
- 2.2 If an architect has any business association or direct or indirect financial interest which is substantial enough to influence his/her judgment in connection with the performance of professional services, the architect shall fully disclose in writing to his/her client or employer the nature of the business association or financial interest, and if the client or employer objects to such association or financial interest, the architect will either terminate such association or interest or offer to give up the commission or employment.

- 2.3 An architect shall not solicit or accept compensation from material or equipment suppliers in connection with specifying or endorsing their products. As used herein, "compensation" shall not mean customary and reasonable business hospitality, entertainment, or product education.
- 2.4 When acting as the interpreter of building contract documents and the judge of contract performance, an architect shall render decisions impartially, favoring neither party to the contract.

RULE 3 FULL DISCLOSURE

- 3.1 An architect, making public statements on architectural questions, shall disclose when he/she is being compensated for making such statement or when he/she has an economic interest in the issue.
- 3.2 An architect shall accurately represent to a prospective or existing client or employer his/her qualifications, capabilities, experience, and the scope of his/her responsibility in connection with work for which he/she is claiming credit.
- 3.3 If, in the course of his/her work on a project, an architect becomes aware of a decision taken by his/her employer or client, against the architect's advice, which violates applicable state or municipal building laws and regulations and which will, in the architect's judgment, materially and adversely affect the safety to the public of the finished project, the architect shall
 - (i) report the decision to the local building inspector or other public official charged with the enforcement of the applicable state or municipal building laws and regulations,
 - (ii) refuse to consent to the decision, and
 - (iii) in circumstances where the architect reasonably believes that other such decisions will be taken notwithstanding his/her objection, terminate his/herservices with reference to the project unless the architect is able to cause the matter to be resolved by other means.

In the case of a termination in accordance with Clause (iii), the architect shall have no liability to his/her client or employer on account of such termination. [Continued on page 36.]

ETHICAL CODES

Ethical codes are based on the core values of an institution or profession. Core values may be derived from moral codes, secular beliefs, social conventions, traditional philosophies, or even religious doctrine. Although ethical standards find their common foundation in these virtues, each individual code adopts the traditions and business practices that are exclusive to that institution.

An ethical code for architects will describe the issues and practices that are unique to the architecture profession. It will be distinctly different from codes adopted by legislators, doctors, or priests. Ethical codes must define the core values and business practices that assist in daily decisions and help guide professional judgment. For architects, these core values include obligations to legal statutes as well as obligations to colleagues, clients, and even the environment.

Although ethical codes may clearly define these imperatives, occasionally judgment by an impartial moderator may be necessary. In these instances, boards or councils are convened to interpret the established code, to render decisions based on the facts of the case, and to impose penalties when necessary.

In the United States, there are two commonly accepted standards of conduct for architects. In 1977 the National Council of

Architectural Registration Boards (NCARB) issued the *Rules of Conduct* for adoption by individual Member Boards. The *Rules of Conduct* are derived from the Council's mission to protect the health, safety, and welfare of the public. Architects are legally bound to this responsibility by the licensure laws in each jurisdiction. NCARB's *Rules of Conduct* have been adopted, with modifications, by a number of NCARB Member Boards as part of licensing regulations. Licensed architects practicing in jurisdictions that have adopted these rules are legally obligated to comply with their prescriptions. These are legal statutes. As such they are not defined as ethical standards, although they are necessarily included, specifically or by inference, within the authority of ethical canons.

The American Institute of Architects (AIA) has also established a definition of ethics for architects in the *Code of Ethics and Professional Conduct*. This code not only addresses public health, safety, and welfare issues, but also includes rules that deal with professional interactions and aspirations, as well as mandatory rules of conduct. AIA members are held accountable for a wide range of issues, from seeking aesthetic excellence to respecting the environment. Although this code applies only to AIA members, it has the potential to benefit every licensed architect.

AIA CODE OF ETHICS

The development of the AIA's *Code of Ethics and Professional Conduct* demonstrates the variety of issues addressed in the ethical arena as well as the dynamic interrelationship between ethics and business practices. The AIA established the first architectural ethical code in 1909. In light of today's practices, some of the original prohibitions seem outdated:

- Design-build
- Paid advertising
- Fee-based competition
- Uncompensated design competitions

These restrictions were derived from common business practices, not necessarily from widely accepted moral principles. In 1947 the AIA issued Document No. 330, *Standards of Professional Practice*, which did not materially change the prohibitions of the 1909 code. The 1947 document also defined the *Responsibilities of the Profession, Advisory* by outlining the aspirations and goals of the profession.

In 1972, the issue of competition was addressed, not by the architectural profession, but by the United States Department of Justice requiring architects to comply with the 1890 Sherman Antitrust Act. Compliance mandated that architects be allowed to compete on the basis of fees. The AIA's prohibition of competition constituted an unreasonable restraint of trade.

Design-build was approved as an acceptable contract form for AIA members in 1978. The following year, a federal court ruled that enforcement of the supplanting rule constituted a violation of federal antitrust laws. In 1977, an architect's AIA membership was suspended for violating the supplanting rule of the *Code of Ethics*. Even though the ethical violation was not disputed, the court ruled in favor of the architect on legal grounds and awarded substantial monetary damages. Rulings by the court and Justice Department led to the reconsideration and an internal examination of the AIA's *Code of Ethics*.

Conflicting Loyalties

Honesty—at face value it seems easy enough, even effortless. However, principled professionals are occasionally presented with competing obligations. Business and financial responsibilities, religious convictions, family duties, or professional aspirations could easily be in conflict.

For example, an employee may decide to moonlight to build a client base, take advantage of opportunities to demonstrate design creativity, or simply make extra money. In doing so, the employee could unwittingly expose the firm to liability. They may even compromise their own performance. Moonlighting is generally discouraged and often formally restricted by company policy.

An employee may decide to use the firm's software (or even printers and plotters) for personal use, believing that no harm is done or that the firm can easily afford it. Usually the employee is honorable, sometimes not, but almost always they feel justified. It is human nature to justify such actions, even if they are incompatible with other values.

Maintaining moral and ethical integrity without sacrificing 'lesser' fundamental values requires commitment and determination—a challenging task. Principles may need to be prioritized, but disregarding them may have significant consequences.

- 3.4 An architect shall not deliberately make a false statement or fail deliberately to disclose accurately and completely a material fact requested in connection with his/her application for registration or renewal or otherwise lawfully requested by the board.
- 3.5 An architect shall not assist the application for registration of a person known by the architect to be unqualified in respect to education, training, experience, or character.
- 3.6 An architect possessing knowledge of a violation of these rules by another architect shall report such knowledge to the board.

RULE 4 COMPLIANCE WITH LAWS

- 4.1 An architect shall not, in the conduct of his/her architectural practice, knowingly violate any state or federal criminal law.
- 4.2 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.
- 4.3 An architect shall comply with the registration laws and regulations governing his/her professional practice in any United States jurisdiction. An architect may be subject to disciplinary action if, based on grounds substantially similar to those which lead to disciplinary action in this jurisdiction, the architect is disciplined in any other United States jurisdiction.
- 4.4 An employer engaged in the practice of architecture shall not have been found by a court or an administrative tribunal to have violated any applicable federal or state law protecting the rights of persons working for the employer with respect to fair labor standards or with respect to maintaining a workplace free of discrimination. [States may choose instead to make specific reference to the "Federal Fair Labor Standards Act of 1938, as amended" and the "Equal Employment Opportunity Act of 1972, as amended" and to state laws of similar scope.] For purposes of this rule, any registered architect employed by a firm engaged in the practice of architecture who is in charge of the firm's architectural practice, either alone or with other architects, shall be deemed to have violated this rule if the firm has violated this rule.
- ing architect has reviewed the other architect's work and either has coordinated the preparation of the work or has integrated the work into his/her own technical submissions; or (iv) prepared by another architect registered in any United States jurisdiction and holding the certification issued by the National Council of Architectural Registration Board if (a) the signing and sealing architect has reviewed the other architect's work and has integrated the work into his/her own technical submissions and (b) the other architect's technical submissions are prototypical building documents. An architect may also sign and seal drawings, specifications, or other work which is not required by law to be prepared by an architect if the architect has reviewed such work and has integrated it into his/her own technical submissions. "Responsible control" shall be that amount of control over and detailed professional knowledge of the content of technical submissions during their preparation as is ordinarily exercised by architects applying the required professional standard of care. Reviewing, or reviewing and correcting, technical submissions after they have been prepared by others does not constitute the exercise of responsible control because the reviewer has neither control over nor detailed knowledge of the content of such submissions throughout their preparation. Any registered architect signing or sealing technical submissions not prepared by that architect but prepared under the architect's responsible control by persons not regularly employed in the office where the architect is resident, shall maintain and make available to the board upon request for at least five years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the architect's control over and detailed knowledge of such technical submissions throughout their preparation. Any registered architect signing or sealing technical submissions integrating the work of another architect into the registered architect's own work as permitted under clauses (iii) or (iv) above shall maintain and make available to the board upon request for at least five years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the registered architect's review of and integration of the work of such other architect's work into his/her own technical submissions, and that such review and integration met the required professional standard of care.

RULE 5 PROFESSIONAL CONDUCT

- 5.1 Each office engaged in the practice of architecture shall have an architect resident and regularly employed in that office.
- 5.2 An architect may sign and seal technical submissions only if the technical submissions were: (i) prepared by the architect; (ii) prepared by persons under the architect's responsible control; (iii) prepared by another architect registered in the same jurisdiction if the signing and seal-
- 5.3 An architect shall neither offer nor make any gifts, other than gifts of nominal value (including, for example, reasonable entertainment and hospitality), with the intent of influencing the judgment of an existing or prospective client in connection with a project in which the architect is interested.
- 5.4 An architect shall not engage in conduct involving fraud or wanton disregard of the rights of others.
- 5.5 An architect shall not make misleading, deceptive, or false statements or claims.

Recognizing a potential liability, the AIA Board of Directors suspended the *Code of Ethics* in 1980 and replaced it with a *Statement of Ethical Principles*, providing guidelines for *voluntary* conduct. In 1986, the membership adopted a new, mandatory *Code of Ethics and Professional Conduct*. Although this code and subsequent versions were created under the auspices of the Office of the General Council of the AIA, the document was not limited to legal issues. Many rules were created to help architects clarify complex situations. Since 1986, changes have been adopted to reflect changing social beliefs, economic forces, and technological innovations.

Some ethical situations in the *Code of Ethics* rise to the level of aspirations defined by ethical standards. For example, the profession of architecture as a whole may aspire to contribute to the preservation of historical and cultural resources by helping to develop appropriate building codes or formulate aesthetic guidelines. However, some architects are more suited to these tasks than others; this may not be a reasonable expectation for an AIA member whose expertise lies in business management or graphic design. Similarly, it should not be a requirement that all AIA members provide pro bono services to the needy; some architects

may support causes or organizations by other means. A code of ethics may embrace every aspiration of a profession but aspirations, by definition, cannot be mandatory. In order to be effective a code must exhibit restraint in defining actions to which all members must be required to reasonably submit.

The present AIA *Code of Ethics and Professional Conduct* describes in detail the ethical obligations of AIA members. The code is divided into five canons that prescribe broad principles of conduct:

- General Obligations (including obligations to the environment)
- Obligations to the Public
- Obligations to the Client
- Obligations to the Profession
- Obligations to Colleagues

Each canon is subdivided into a number of ethical standards and is further supplemented with specific rules. These rules are mandatory and enforceable within the context of AIA membership. In some instances, additional commentary is provided. An AIA member who violates a rule may be subject to disciplinary action by the Institute.

COMMON ETHICS VIOLATIONS

The most common violations of AIA's *Code of Ethics* are:

- Improper attribution of credit (i.e., stating or giving improper credit for project involvement),
- Inaccurate representation of professional qualifications,
- Misrepresentation of a project's budget, scope, or expectations, and
- Inability to obtain examples of work from employers.

These are the most prevalent violations because each situation has a specific injured party—an upset client, a disgruntled employee, or an angry colleague—and because these violations tend to be less defined in contracts and therefore have limited legal recourse. Architects who knowingly violate the law are subject to more severe penalties; these cases are typically not presented to AIA's National Ethics Council (NEC).

AIA National Ethics Council (NEC) Guidelines

These Guidelines are recommended for AIA members making any oral, written, or graphic representation of their work. These representations may be for marketing, awards entries, submittal for Fellowship in the AIA, web sites, general public relations, competitions, publications, resumes, or any other public or private representation of one's work.

- An architectural project, built or unbuilt, involves any of the services provided by or under the direction of an architect.
- In analyzing attribution-of-credit issues, the National Ethics Council typically views the Architect-of-Record as the legal entity that has contracted for and completed the work in question. It can be a corporation, partnership, or an individual architect. If the Architect-of-Record takes credit for a project, there is no further need to define the role or state "Architect-of-Record." Unless specific attribution is noted, it is assumed that the Architect-of-Record is making a representation of complete responsibility for a project including the design, the production of construction documents, and construction observation.
- A member taking credit for a project or a specific role on a project other than as the Architect-of-Record must clearly define that role. In addition to the member's specific role, the Architect-of-Record must be acknowledged.

- It is not necessary to present a complete or exhaustive list of all the team participants. The acknowledgement of major team participants is recommended.
- Designation of the member's role and/or the Architect-of-Record must be obvious, plainly visible, and legible at the anticipated viewing distance. The reference text should be no less obvious than the text used to describe the project. The description must be specific enough to make clear the services the member rendered on this project. In the instance of a mailer/postcard that shows only an image of a project on the front, it is necessary to give the appropriate credit on the other side. The member shall not overstate, actually or implicitly, his/her involvement in a project.
- If attribution of credit is not previously defined in a written agreement, and to avoid potential conflict, it is recommended that members open a dialogue between all concerned parties prior to making any representations.

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ATTRIBUTION OF CREDIT

The most common violation of the *Code of Ethics* is improper attribution of credit. Individual creativity and design innovation are highly prized in architecture. However, the collaborative nature of contemporary practice makes individual contributions difficult to define or document. The dynamic and fluid nature of the profession and the market make credit for work complicated and problematic.

Assigning proper attribution is further complicated by the wide variety of media. Printed proposals, web sites, mailers, PowerPoint presentations, and e-mail all offer complexities of presentation and scale that require individual solutions. In 2004, the AIA's National Ethics Council (NEC) established guidelines, based on the *Code of Ethics*, to assist members with the issue of attribution (see sidebar). In addition, specific Ethics Standards apply:

- Ethical Standard 4.2: Dignity and Integrity: Members should strive, through their actions, to promote the dignity and integrity of the profession, and to ensure that their representatives and employees conform their conduct to this Code.
- Ethical Standard 5.3: Members should provide their associates and employees with a suitable working environment, compensate them fairly, and facilitate their professional development.

The associated AIA rules mandate the following:

- Rule 4.201: Members shall not make misleading, deceptive, or false statements or claims about their professional qualifications, experience, or performance and shall accurately state the scope and nature of their responsibilities in connection with work for which they are claiming credit.
- Rule 5.301: Members shall recognize and respect the professional contributions of their employees, employers, professional colleagues, and business associates.

The NCARB *Rules of Conduct* also address the issue of attribution and recommend the following for licensing boards:

- Rule 3.2: An architect shall accurately represent to a prospective or existing client or employer his/her qualifications, capabilities, experience, and the scope of his/her responsibility in connection with work for which he/she is claiming credit.

The fact that this issue is specifically addressed in the NCARB *Rules of Conduct* emphasizes that ethical violations may constitute legal obligations. While the AIA *Code of Ethics* is mandatory only for AIA members, NCARB regulations, as adopted by Member Boards, apply to all architects licensed in that jurisdiction.

Case Study I / Attribution

An architect spent over thirty years developing expertise and personal credibility in health care facility design and retired at age 65. Some months later, a competing firm invited the architect to serve as a consultant for an upcoming proposal. The architect agreed and provided the firm with graphics and photographs of completed projects. The proposal was prepared and submitted for a large hospital expansion project. Unfortunately, the architect's original firm submitted almost exactly the same materials and examples of work. The client, wanting to avoid an uncomfortable situation, rejected both proposals.

There was nothing illegal or contractually binding that would require either firm or the architect/consultant to provide detailed attribution, but the AIA's *Code of Ethical Conduct* makes specific provisions for attribution. A case was filed with the National Ethics Council. Documentation of both proposals was provided. Detailed review revealed profound similarities. A hearing was held and each party served as their own counsel

and witnesses. No defense was offered other than that the lack of appropriate credit for the consultant's work was a simple oversight. The architect/consultant offered apologies and a verbal agreement that, in the future:

1. Further use of materials would be cleared in advance with the original firm.
2. The original firm would be designated on the materials as the "Firm of Record."
3. The architect/consultant's specific role would be defined for each project (i.e. project manager, principle-in-charge, lead designer).

Although both firms had hard feelings about the lost opportunity, all parties left the hearing with a sound agreement and a clear understanding of future obligations; long-term mutual respect and friendship was restored. The charges against the architect/consultant were withdrawn by the original firm and no further action was taken.

REPRESENTATION OF QUALIFICATIONS

Presentation of qualifications is equally problematic in ethical terms. It is common business practice and simple human nature for architects to present their professional qualifications in the best possible light. However, in competitive situations in which architects are trying to persuade a new client to select their firm or negotiating with existing clients, they can create unrealistic expectations. Although the architect's legal and contractual obligations are well defined, the demands of project goals, client needs, building function, and other competitive factors place pressure on the architect and often make practice issues more subjective and more open to interpretation. Again, the AIA Code offers specific direction:

- Rule 1.101: In practicing architecture, members shall demonstrate a consistent pattern of reasonable care and competence, and shall apply the technical knowledge and skill which is ordinarily applied by architects of good standing practicing in the same locality.
- Rule 3.102: Members shall undertake to perform professional services only when they, together with those whom they may engage as consultants, are qualified by education, training, or experience in the specific technical areas involved.

As previously noted, there are several instances where the NCARB *Rules of Conduct* coincide with the AIA's *Code of Ethics*. Rule 3.102 is one such case in which the wording is identical to NCARB's Rule 1.3, which concerns all licensed architects.

- Rule 1.3: An architect shall undertake to perform professional services only when he/she, together with those whom the architect may engage as consultants, is qualified by education, training, and experience in the specific technical areas involved.

The realities of the architecture profession, the building industry, and the job market underscore the importance of qualifications in relation to ethics. Architectural firms evolve over time. New competencies are developed with existing employees through education. However, expertise in a specific building type may be lost through staff attrition. In addition to misstating qualifications, architects are often compelled to make statements about projects that could unintentionally prove misleading. Comments regarding budget or timing made in an informal manner may be misconstrued as commitments. It is incumbent upon the firm and the principles, to assure that proposals, marketing materials, and statements accurately represent the firm's current capabilities and resources.

Case Study II / Qualifications

An architect was asked to design a strip shopping center in a suburban community. The client had completed several similar projects, however, previous projects were not as large as the new project. Although not particularly enthusiastic, the architect recognized that the project could be profitable and also offer design opportunities. The architect was also hesitant because the architect's previous experience was limited to residential projects including the client's home.

The client's program called for 34,000 square feet of retail space. The client assured the architect that commercial design was not difficult and supplied drawings and specifications from previous projects to provide an idea of the project's complexity and requirements. The client also had in-house staff to assist with cost estimation, material and system selections, bidding and negotiating with contractors, and project supervision. The architect was told that the developer's in-house staff typically handled all the day-to-day work during construction and that construction contract administration services would not be required.

The architect completed the work as contracted and, through the mechanical engineer, specified mechanical systems recommended by the client. The structural engineer relied on the soils test provided by the client. The project proceeded effectively, the architect performed services as requested, produced required construction drawings on time, and was paid as stipulated.

When the project was put out to bid, costs exceeded the owner's anticipations by 28 percent. The owner asked the

architect to re-design the project to bring it in on budget, however, no directions were provided on necessary program adjustments to reduce the cost. The architect explained that, in the current construction market, price escalations on materials and labor were to be expected and a reduction in scope would be necessary to reduce the budget. The owner built the project as originally drawn.

For the next two years there were continual problems with the mechanical systems. Constant repairs were required and, after two years, all main air-handling units had to be replaced. Cracks in the ceramic floor tiles in several retail spaces were evidence of cracks in concrete slabs. Although the cracks were not substantial, they resulted in tenant complaints.

The client brought a civil case against the architect for:

1. Cost to replace the air-handling units.
2. Cost to replace concrete slabs throughout the project.
3. Lost revenue due to sub-market rent for retail spaces with defective floors.
4. Cost of the entire architectural fee because the architect took on a project without adequate project experience.

Was the architect actually responsible for any of these costs? If the architect was found not responsible by a court, are there ethical violations or violations of the licensing board's rules?

A number of these Case Studies purposely raise questions of conflicting values without offering prescribed solutions. Individual details of the case or even of the personalities involved often influence final judgments.

MISREPRESENTATION OF PROJECT EXPECTATIONS

Responsibility for cost is a common complaint against architects. The architect's restraint in discussing expectations related to budget, building function, quality of materials, and other anticipated results of the proposed services may help to minimize potential misrepresentation. Contractual definition of all parties' responsibilities and reiteration of this definition as the project progresses can further minimize potential misrepresentation. Rules from the AIA *Code of Ethics* outline ethical responsibilities of architects in this area:

- Rule 3.103: Members shall not materially alter the scope or objectives of a project without the client's consent.
- Rule 3.301: Members shall not intentionally or recklessly mislead existing or prospective clients about the results that

can be achieved through the use of the member's services, nor shall the members state that they can achieve results by means that violate applicable law or this Code.

The medical profession uses the concept of "informed consent," in which a patient must be informed of a situation to a level of understanding that allows for the patient to make an informed decision. Architectural clients deserve and often demand the same consideration. In order to achieve this, it is critical to keep expectations realistic and attainable. Frequent verbal and written communication with the client at every stage of the project is a standard practice that architects employ to keep the project on track; it also keeps the client involved, up to date, and able to make informed decisions that minimize potential misrepresentation.

Case Study III / Expectations & Results

An architect is engaged to design a single family home for a young couple. A revision to a standard AIA document excluded the architect from a specific budget although the approximate size of the house was defined.

By their own estimation, the owners had a reasonable budget for construction of their home. However, the architect was concerned about their budget and, at the completion of the schematic design, offered to have three contractors review the drawings and provide preliminary cost estimates. Based on three favorable estimates, the clients directed the architect to continue with the construction drawings.

The final drawings did not alter the scope of the project, however, additional details were provided defining the foundation, structural components and architectural features. When the

drawings were put out for bids, the cost of construction had escalated beyond the clients' resources. Even though the reasons for the cost increases were strictly market-driven, the clients were upset with the architect and filed an ethics complaint.

There was anger and a great deal of tension between the parties. The clients claimed monetary damages by being required to pay for a design that they could not afford to build. Even though responsibility for construction cost was specifically omitted from the contract, did the architect implicitly accept some level of responsibility for the cost by recommending preliminary estimates? Should the architect be required to revise the drawings to bring the project within budget? What actions could the architect have taken to help the clients have more realistic expectations and a better understanding of their responsibilities?

EXAMPLES OF WORK

For a wide variety of reasons, obtaining examples of professional work, particularly from a previous employer or firm, can be difficult and occasionally can result in an ethical violation. Defining an architect's role and specific work product can be difficult with today's complex projects and electronic technologies.

Rights and obligations of both employee and firm must be protected. However, technological complexities and differing viewpoints make honoring both firm rights and employee rights problematic. Rules 5.302 and 5.303 of the AIA *Code of Ethics* offer specific directions regarding use of work, however, they fall short of addressing the full complexities of contemporary practice.

- 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.
- Rule 5.303: A member shall not unreasonably withhold permission from a departing employee or partner to take copies of designs, drawings, data, reports, notes, or other materials

relating to work performed by the employee or partner that are not confidential.

Employees rightfully expect to be permitted to retain and use reasonable documentation of their professional experience with a firm. Determining which examples of projects might be useful in the future is not an issue that most employees consider during employment. Because departure from a firm or termination of employment is often awkward, emotional, or even volatile, the discussion of the right to retain examples of work is often overlooked or carefully avoided.

Employers, however, are not obligated to make the entire project documentation available to employees. Firms have an interest in retaining control of confidential materials and the work product it rightfully owns, such as copyrighted drawings, renderings, photography, or proprietary software. The AIA has published a document titled *Personal Use of Documents: A Sample Firm Policy* to help firms establish in-house policies and procedures for the ethical use of documents.

Case Study IV / Examples of Work

An architect, who had worked for a firm for just over six years, was offered a position with a competing firm. The new firm offered higher pay and new opportunities for growth. The architect accepted the offer and provided two weeks' notice.

Although the architect offered to complete project responsibilities, the firm declined and terminated the employment contract immediately—not an uncommon practice. The firm agreed to compensate the architect for outstanding vacation time, however, they offered no other severance or assistance.

During six years with the firm, the architect's responsibilities ranged from drafting and CAD operation to project design and finally project management. The firm's marketing department possessed extensive project documentation; renderings by professional illustrators depicted his projects and a professional photographer documented completed projects (the photographer retained the copyright). The firm also produced in-house computer-generated images of some of the projects.

The architect felt entitled to copies of project renderings, and photographs and thought the firm was obligated to provide

them. The architect agreed to pay for the copies requested since the firm paid for the photography, the artist's renderings, and the computer graphics. Was the firm obligated to provide copies of those materials?

Many of the drawings the architect completed were in storage six miles away from the office and the firm would not allow the architect to access without supervision. Was the architect still entitled to copies of the stored documents? The architect knew that the AIA *Code of Ethics* entitled employees to examples of work. Without permission the architect made copies of some of those documents while still employed by the firm. Was it ethical to make those copies without permission?

If the architect had spent his six years developing software for the firm, what would be an acceptable example of work? Would the architect be entitled to a copy of the software? If the architect had developed specialized details using research obtained while at the firm, would it be wrong to expect copies of those details?

CONCLUSION

The definition of professional ethics and the role that architects play in that evolution remains a topic of animated debate. While providing the definitive position of the profession, the AIA National Ethics Council and NCARB *Rules of Conduct* must be responsive to changing business practices, shifting societal attitudes and advancing technologies. The importance of ethics is not necessarily in the definition or the enforcement, but in the continued discussion and redefinition of the issues. Which values are enforceable? Are aspirations governable? Does defining and implementing an architect's ethical obligations create a more ethical profession? Or does it merely define the technicalities? Are contemporary business practices momentary trends or are they based on enduring moral absolutes?

It is essential for all architects, whether or not they are an AIA member or an NCARB Certificate holder, to understand the ethical responsibilities and legal obligations of architects is critical to practice. Each new situation presents new complexities and conflicts that continue to require the reassessment of current values and re-examination of the ethical standards that govern the architecture profession.

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