

DAROFFDESIGN

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Architect's Duty to be Honest, Fair and Impartial

Architects are required by our American Institute of Architects (AIA) Code of Ethics, the National Council of Architectural Registration Board's (NCARB) Rules of Conduct and Legislative Guidelines, States' laws governing the practice of Architecture, the International Building Code and the AIA Owner – Architect form of Agreement, to be honest, fair, impartial and to abide by the laws, ordinances, codes and guidelines governing the practice of Architecture.

These duties and legal obligations begin while the architect is marketing his or her professional services to the prospective client. These obligations are further defined in the written owner – architect agreement (that is a requirement in some US States), and continue through the design and documentation phases of the project, resulting in a set of (to be) well-coordinated Record Contract Documents that are signed, sealed and submitted to the local building code officials as required to obtain the required building permit(s). Thereafter, the architect who has accepted the role of "Design Professional in Responsible Charge" is obligated to his or her client and (in the public interest) to review the contractor's sample and shop drawing submissions and the work in progress on the project site so as to be able to confirm to his or her client and the building code officials that the work on the project site, when substantially completed, will substantially comply with the Record Contract Documents and "all codes and ordinances". The building code officials have a right to rely on this certification as the predicate to issuing the Certificate of Occupancy, and the property owner, "invitees" and public at large have a right to rely on this certification as they use and occupy the resulting facility.

Failure to abide by these general and ethical guidelines, professional principles, laws and ordinances, potentially subjects the architect, who has assumed the role of "Design Professional in Responsible Charge," to legal claims that may be difficult if not impossible to defend. Moreover, these claims may arise many years after the project has obtained a Certificate of Occupancy, and many states courts grant (legal) standing for economically injured third parties who were not in privity of contract with the architect (all states allow such third party standing and recovery for personal injury or property damage).

In my practice as an architectural expert witness, I have researched, discovered and opined on the failure of many Architects of Record to abide by the above noted important guidelines of the profession, i.e., to render decisions honestly, fairly and impartially, and to abide by the laws, ordinances, codes and guidelines governing the practice of Architecture.

In many of these legal matters, I have discovered that the Architect of Record, has inexplicably sided with either the contractor or the project owner/client rather than rendering decisions honestly, fairly and impartially.

In some of these matters, I have discovered that the architect thought that he or she owed the client deference in a dispute between the client and the contractor, perhaps because the client was paying fees to the architect, and perhaps also because the architect thought that by siding with the client the next project assignment from the client would be forthcoming.

In some of these matters, I have understood that the architect thought that by siding with the contractor or one of the contractor's sub-contractors or suppliers, the client and building code official might not come to realize that the root cause of the change order or dispute was an error or omission of the architect, either in the preparation and failure to coordinate the contract documents, or an error or omission in response to a contractor's Request for Information (RFI). Some of these error and omission matters rise to the level of an attempt to violate prevailing codes, ordinances, laws and standard of care guidelines, that if discovered would be detrimental to the architect's professional and personal best interest.

I have had occasion to review circumstances where the client has demanded that the architect violate the code or be discharged from the project. One case involved an architect being so directed to violate code and compounding the breach of duty by failing to bring such dispute to the attention of the building code official, as required by the standard of care, the building code, the laws governing the practice of architecture in the various US States and ethical guidelines.

Moreover, some of these matters are rooted in situations where the client has asked the architect to document a design where the architect knew or should have known the result would be a violation of prevailing codes, ordinances, laws and standard of care guidelines.

I have also provided architectural expert opinions in matters where I have discovered that the architect failed to inform his or her client of best practices and recommendations that could be sustained by the standard of the care prevalent in the profession of architecture, because the architect either did not know the best practices, or thought his or her way-around the best practices was somehow in the best interests of the project, the client and the public at large.

I have focused many of the construction litigation legal matters I have collaborated on with both Plaintiff and Defense attorneys on whether the "Design Professional in Responsible Charge" has been honest, fair, impartial and abided by the laws, ordinances, codes, and guidelines governing the practice of Architecture. I highly recommend that practicing architects re-read the following guidelines and conduct their practices accordingly.

I also recommend that both Plaintiff and Defense attorneys consider these guidelines advising their clients.

James Rappoport, AIA - NCARB

AIA Code of Ethics

Members should uphold the law in the conduct of their professional activities.

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

In the course of their work on a project, if the Members become aware of a decision taken by their employer or client which violates any law or regulation and which will, in the Members' judgment, materially affect adversely the safety to the public of the finished project, the Members shall: (a) advise their employer or client against the decision, (b) refuse to consent to the decision, and (c) report the decision to the local building inspector or other public official charged with the enforcement of the applicable laws and regulations, unless the Members are able to cause the matter to be satisfactorily resolved by other means.

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

When acting by agreement of the parties as the independent interpreter of building contract documents and the judge of contract performance, Members shall render decisions impartially.

Members should pursue their professional activities with honesty and fairness.

NCARB Rules of Conduct

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.

In the case of a termination in accordance with the above, the architect shall have no liability to his/her client or employer on account of such termination. 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 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, refuse to consent to the decision, and in circumstances where the architect reasonably believes that other such decisions will be taken notwithstanding his/her objection, terminate his/her services with reference to the project unless the architect is able to cause the matter to be resolved by other means.

NCARB Legislative Guidelines

REQUIRING THAT AN ARCHITECT BE ENGAGED DURING THE CONSTRUCTION OF A PROJECT:

An owner who proceeds to have constructed a project having as its principal purpose human occupancy or habitation and not exempted, shall be deemed to be engaged himself/herself in the practice of architecture unless he/she has employed an architect to perform at least minimum construction contract

administration services, including periodic site visits, shop drawing review, and reporting to the owner and building official any violations of codes or substantial deviations from the contract documents which the architect observed.

It shall be the project design architect's obligation to report to the state board and to the building official if he/she is not engaged to provide construction contract administration services described herein

SECTION 10A – CONSTRUCTION CONTRACT ADMINISTRATION SERVICES REQUIRED

The Owner of any real property who allows a Project to be constructed on such real property shall be engaged in the practice of architecture unless such Owner shall have employed or shall have caused others to have employed a registered architect to furnish Construction Contract Administration services with respect to such Project. For purposes of this Section the following terms shall have the following meanings: (a) "Owner" shall mean with respect to any real property any of the following persons: (i) the holder of a mortgage secured by such real property; (ii) the holder, directly or indirectly, of an equity interest in such real property exceeding 10 percent of the aggregate equity interests in such real property; (iii) the record owner of such real property; or (iv) the lessee of all or any portion of such real property when the lease covers all of that portion of such real property upon which the Project is being constructed, the lessee has significant approval rights with respect to the Project, and the lease, at the time the construction of the Project begins, has a remaining term of not less than 10 years. (b) "Project" shall mean the construction, enlargement, or alteration of a building, other than a building exempted by the provisions herein, which has as its principal purpose human occupancy or habitation. (c) "Construction Contract Administration Services" shall comprise at least the following services: (i) visiting the construction site on a regular basis as is necessary to determine that the work is proceeding generally in accordance with the technical submissions submitted to the building official at the time the building permit was issued; (ii) processing shop drawings, samples, and other submittals required of the contractor by the terms of construction contract documents; and (iii) notifying an Owner and the Building Official of any code violations; changes which affect code compliance; the use of any materials, assemblies, components, or equipment prohibited by a code, major or substantial changes between such technical submissions and the work in progress; or any deviation from the technical submissions which he/she identifies as constituting a hazard to the public, which he/she observes in the course of performing his/her duties. (d) "Building Official" shall mean the person appointed by the municipality or state subdivision having jurisdiction over the Project to have principal responsibility for the safety of the Project as finally built [or use state statute or building code language].

Full Disclosure: A registered architect making public statements on architectural questions shall disclose when he/she is being compensated for making such statements or when he/she has an economic interest in the issue. A registered architect shall accurately represent to a prospective or existing client or employer his/her qualifications and the scope of his/her responsibility in connection with work for which he/she is claiming credit. If, in the course of his/her work on a project, a registered architect becomes aware of a decision taken by his/ her employer or client against such registered architect's advice which violates applicable state or municipal building laws and regulations and which will, in the registered architect's judgment, materially and adversely affect the safety to the public of the finished project, the registered architect shall: 1. 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; and 2.

refuse to consent to the decision; and 3. in circumstances where the registered architect reasonably believes that other such decisions will be taken notwithstanding his/her objection, terminate his/her services with respect to the project unless the registered architect is able to cause the matter to be resolved by other means. In the case of a termination in accordance with this clause (3), the registered architect shall have no liability to his/her client or employer on account of such termination. D) When acting as the interpreter of building contract documents and the judge of contract performance, a registered architect shall render decisions impartially, favoring neither party to the contract.

International Building Code

107.3.4 Design Professional in Responsible Charge.

Where it is required that documents be prepared by a registered design professional, the building official shall be authorized to require the owner or the owners authorized agent to engage and designate on the building permit application a registered design professional who shall act as the registered design professional in responsible charge. If the circumstances require, the owner or the owners authorized agent shall designate a substitute registered design professional in responsible charge who shall perform the duties required of the original registered design professional in responsible charge. The building official shall be notified in writing by the owner or the owners authorized agent if the registered design professional in responsible charge is changed or is unable to continue to perform the duties.

The registered design professional in responsible charge shall be responsible for reviewing and coordinating submittal documents prepared by others, including phased and deferred submittal items, for compatibility with the design of the building.

AIA Owner – Architect Agreement

ARTICLE 2.6 CONTRACT ADMINISTRATION SERVICES 2.6.1 GENERAL ADMINISTRATION 2.6.1.1

The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Architect. 2.6.1.2 The Architect's responsibility to provide the Contract Administration Services under this Agreement commences with the award of the initial Contract for Construction and terminates at the issuance to the Owner of the final Certificate for Payment. However, the Architect shall be entitled to a Change in Services in accordance with Paragraph 2.8.2 when Contract Administration Services extend 60 days after the date of Substantial Completion of the Work. 2.6.1.3 The Architect shall be a representative of and shall advise and consult with the Owner during the provision of the Contract Administration Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written amendment. 2.6.1.4 Duties, responsibilities and limitations of authority of the Architect under this Article 2.6 shall not be restricted, modified or extended without written agreement of the Owner and Architect with consent of the Contractor, which consent will not be unreasonably withheld. 2.6.1.5 The Architect shall review properly prepared, timely

requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the Architect and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. 2.6.1.6 If deemed appropriate by the Architect, the Architect shall on the Owner's behalf prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor. 2.6.1.7 The Architect shall interpret and decide matters concerning performance of the Owner and Contractor under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness. 2.6.1.8 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for the results of interpretations or decisions so rendered in good faith. 2.6.1.9 The Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents.