

an architectural experts' perspective on standards of care

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any construction dispute involves many parties. The attorneys will look to all the participants in the project to determine who was at fault and which parties should be named in any lawsuit. This article will address how an architectural expert witness will view the architect if named in a lawsuit. An architect may look to State laws, the National Council of Architectural Registration Boards (“NCARB”), the State Board of Technical Registration, the American Institute of Architects (“AIA”), standard practices of care in the area in which they practice architecture as well as nationwide standards to govern its conduct.

The NCARB comprises all of the architectural registration boards of the U.S. We have excerpted from their treatise “Professional Development Program, Professional Conduct” some of their rules. The NCARB recommended rules of conduct are not themselves law, but they do fairly represent what is the norm.

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intended use, this rule specifically rejects the minority standard in favor of the standard applied in the vast majority of jurisdictions that the architect need be careful but need not always be right.”

This Rule and Commentary incorporates the customary legal standard of care, which is widely applied in civil actions.

If an architect does not practice with the reasonable care and competence specified therein and apply the technical knowledge and

skill, he may be practicing negligently.

“According to this standard of “ordinary negligence”, a single failure to act with the care ordinarily applied by competent architects in the locality could lead to discipline.” Pg 16 of Treatise. In contrast to this many State Boards include a disciplinary rule that an architect shall not practice with “gross negligence.” Practically, there has been little evidence that boards have any interest in policing occasional acts of “ordinary negligence.” Many states have simply left these disputes for the Courts rather than to the State Boards. The few cases involving disciplinary cases usually involve substantial defects oftentimes after a building failure.

RULES OF CONDUCT

Rule 1 – Competence

1.1 “In practicing architecture, 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.”

COMMENTARY

1.1 sets forth the common law standard which has long existed and which has been used to judge the performance of architects. “While some few courts have stated that an architect, like the manufacturer of goods, implies warrants that his design is fit for its

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.

COMMENTARY

It should be noted that the rule is limited to applicable state and municipal building laws and regulations. Every major project being built in the United States is subject to a multitude of laws in addition to the applicable building laws and regulations. As to these other laws, it may be negligent of the architects to have failed to take them into account, but the rule does not make the architect specifically responsible for such other laws. Even the building laws and regulations are of sufficient complexity that the architect may be required to seek the interpretation of other professionals. The rule permits the architect to rely on the advice of such other professionals.”

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

COMMENTARY

While an architect is licensed to undertake any project which falls within the definition of the practice of architecture, as a professional, the architect must understand and be limited by the limitations of his own capacity and knowledge. Where an architect lacks experience, the rule supposes that he will retain consultants who can appropriately supplement his own capacity. If an architect undertakes to do a project where he lacks knowledge and he does not seek such supplementing consultants, the architect has violated the rule.” Here are some hypothetical situations to consider: **1.** *A residential architect starts to design commercial buildings with his residential consultants?* **2.** *A commercial architect starts designing custom homes with his regular (commercial) consultants?*

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

COMMENTARY

There has been some conflict in recent years when individual members of that team have claimed greater credit for the project than was appropriate to their work done. It should be noted that a young architect who develops his experience working under a more senior architect has every right to claim credit for the work which he did. On the other hand, the public must be protected from believing that the younger architect’s role was greater than it actually was.

3.3 If, in the course of his work on a project, an architect becomes aware of a decision taken by his 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 affect adversely 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 objection, terminate his services 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 client or employer on account of such termination.

COMMENTARY

This rule holds the architect to the same standard of independence which has been applied to lawyers and accountants. In the circumstances described, the architect is compelled to report the matter to a public official even though to do so may substantially harm the architect’s client. Note that the circumstances are a violation of building laws which adversely affect the safety to the public of the finished project. While a proposed technical violation of building laws (e.g. a violation



which does not affect the public safety) will cause a responsible architect to take action to oppose its implementation, the Committee specifically does not make such a proposed violation trigger the provision of this rule. The rule specifically intends to exclude safety problems during the course of construction which are traditionally the obligation of the contractor. There is no intent here to create a liability for the architect in this area. Clause (iii) gives the architect the obligation to terminate his service if he has clearly lost professional control. The standard is that the architect reasonably believes that other such decisions will be taken notwithstanding his objection. The rule goes on to provide that the architect shall not be liable for a termination made pursuant to clause (iii). Such an exemption from contract liability is necessary if the architect is to be free to refuse to participate on a project in which such decisions are being made.

- 3.6** An architect possessing knowledge of a violation of these rules by another architect shall report such knowledge to the board.

COMMENTARY

This rule has its analogue in the Code of Professional Responsibility for lawyers. Its thrust is consistent with the special responsibility which the public expects from architects.

We have tried to excerpt several relevant portions of the NCARB treatise on Professional Conduct. Besides state laws, this is one of the prime areas that practicing architects should consider in governing their conduct. Like many other professionals, most review boards for architects do not aggressively pursue remedies unless there are serious violations. Most disputes are left to be resolved through the judicial system. The construction attorney should take note of the sources that an architect feels guides his conduct when pursuing an architectural claim. The information in this document should be very relevant to the attorneys and expert witnesses when pursuing a standard of care case with an architect.

