

WEIL & DRAGE, APC

MEMORANDUM

Ethical Obligations of Design Professionals When an Error or Omission is Discovered

HYPOTHETICALS

1.

Architect A and Architect B are friends. Architect A is the AOR of a four story mixed-use structure project. He owns an architectural firm which subcontracted with the project EOR. During a construction administration observation walk around the project, the AOR overhears two contractors grousing about an ambiguous detail at gusset plates at brace frames. Most of the gusset plates have been welded into place and covered by a fireproofing material. One of the contractors expresses concern about the EOR's designs, questioning whether the specified weld sizes at the gusset plates were sufficient, inasmuch as they seemed much smaller than those the contractor had seen at other projects. While socializing on a Saturday evening, and after a few drinks, Architect A told Architect B that he was concerned about the integrity of structural steel system at the project. He says that he is worried that an investigation into the issue would delay the project, and, remediation could be costly.

Do either or both of the architects have a responsibility to take action? If so, who bears that responsibility? What action, if any, should Architect A or B take?

2.

Architect designs custom residence for Seller. After the residence is constructed, Seller sells residence to Buyer. Six months after close of escrow, Buyer develops concerns about the two-story ceiling in his den. Buyer hires a contractor to expose the joists and plywood at the ceiling. Buyer also retains Inspector Architect to review Architect's plans and to opine on the in-place construction. Inspector Architect determines that the joists design is inadequate and has created a potential life/safety issue. He informs Buyer that he would not let his spouse and children reside in such a home.

What responsibilities, if any, does Inspector Architect bear than to report his finding to Buyer?

3.

Architect A is the AOR of a public works building project. He is employed by Firm A. Architect A is required to stamp drawings to which another architectural firm (Firm B) contributed a partial design. Architect A becomes aware of the fact that the work performed by Firm B was performed by an unlicensed architect with a B.S. in architecture. Time was short, and Architect A performed a hurried review of the partial designs provided by Firm B. A lawsuit regarding project design ensues two years later. Plaintiff alleges that the project design caused a life safety issue. Architect A is aware of the suit, and harbors concerns that the work of the unlicensed architect contributed to the Plaintiff's alleged damages. However, he fears that he will lose his job if he conveys his concerns to his Firm A superior.

What is the Architect to do?

4.

AOR for a university media arts project hears a rumor that the Specialty Inspector responsible for inspecting bolt connections golfs every other Friday with the principal of the project General Contractor. However, AOR receives Daily Field Reports indicating that the Specialty Inspector is on the job every weekday. The project is nearing completion and the AOR develops a concern that he should have been aware of the Specialty Inspector's regular absences earlier in the project.

What if anything should the AOR do?

5.

AOR's contract contains the following

[The AOR shall] ascertain that the progress of the Work and that the character, scope, quality and detail of construction (including workmanship and materials) generally comply with the Contract Documents, Project Manager's directives, approved Submittals and Design Consultant's clarifications. All observations shall be conducted deliberately and thoroughly.

...

On the basis of such onsite observations, [AOR] shall keep OWNER informed of the progress and quality of the Work, and shall endeavor to guard OWNER against, defects and deficiencies in the Work. [AOR], its Consultants and its Sub-consultants, who are in charge of general observation of the Work or any portion thereof shall prepare and file periodic verified reports averring that of his/her own personal knowledge the Work performed during the period of time covered by the report has been performed and materials have been used and installed in every material respect in compliance with the Drawings and Specifications approved by City for the Project.

During a site observation walk, AOR realizes that an ambiguity in the plans was interpreted by the General Contractor incorrectly, and significant structural elements construction appears to be compliant with the approved plans, but is known to the AOR to be contrary to design intent.

What are the AOR's responsibilities at this point in time?



CALIFORNIA 23212 Mill Creek Drive Laguna Hills, CA 92653 (949) 837-8200 phone (949) 837-9300 fax	NEVADA 2500 Anthem Village Drive Henderson, NV 89052 (702) 314-1905 phone (702) 314-1909 fax	ARIZONA 20 E. Thomas Road, Suite 2200 Phoenix, AZ 85012 (602) 971-0159 phone
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