

THE AMERICAN INSTITUTE OF ARCHITECTS



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By Electronic Mail and First Class Mail

Mr. Raphael Sperry, AIA, LEED AP
President, ADPSR – Architects / Designers / Planners for Social Responsibility
PO Box 9126
Berkeley, CA 94709

RE: Proposal to Amend AIA Code of Ethics

Dear Raphael:

The Institute's Board of Directors has carefully considered the proposal of Architects / Designers / Planners for Social Responsibility (ADPSR) to amend the AIA Code of Ethics and Professional Conduct. The Board has decided not to make the proposed changes to the Code of Ethics, and has requested that I let you know the rationale for its decision.

Comment [RS1]: In their considerations, AIA refused to communicate directly with ADPSR, to speak to our members, or to share any of their questions or concerns with us. They refused to describe who was on the working group that considered it, or what their schedule or agenda was. Their process was completely opaque.

The ADPSR proposal would have amended the Code of Ethics to include the following language:

(Proposed) Rule 1.402:

Members shall not design spaces intended for execution or for torture or other cruel, inhuman, or degrading treatment or punishment, including prolonged solitary confinement.

(Proposed) Commentary:

The Convention Against Torture and the International Covenant on Civil and Political Rights prohibit "torture or cruel, inhuman or degrading treatment or punishment" (ICCPR Article 7) and ICCPR also requires that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person" (Article 10). Prolonged solitary confinement has been identified as a

form of torture by the United Nations Human Rights Council, Committee Against Torture, and the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

In May, after receiving the proposal, I appointed a special panel to examine it and to offer findings and recommendations on the requested changes to the Code of Ethics. The following questions guided the panel's deliberations:

1. Are the proposed changes of a type consistent with the purposes and structure of the Code of Ethics?
2. If the changes were adopted, what precedent might that set for future proposals?
3. What are the major substantive issues raised by the proposal?
4. What are the principal arguments in favor of, and against, the requested changes?
5. What other factors may be of importance in this matter?

Panel members reviewed not only the basic proposal, but also an extensive list of secondary materials relevant to their discussion. (I have enclosed a list of those materials.)

After much consideration, the panel submitted its report in October and recommended that the Board not adopt the rule proposed by ADPSR. In doing so, it stated:

- The AIA Code of Ethics should not exist to create limitations on the practice by AIA members of specific building types. The AIA Code of Ethics is more about desirable practices and attitudes than condemnation. Some specifics exist in current rules (such as prohibitions against fraud, mistreatment of employees or interns, or making gifts intending to influence judgment), but a prohibition against members engaging in a certain type of design or building type would be materially different from the current Code. Moreover, adoption of a rule forbidding members from designing a specific type of facility could lead to

Comment [RS2]: You'll notice the response does not address this central issue – is this the right thing to do?

Comment [RS3]: This question is important, but AIA apparently only thought of precedents it might set that made them uncomfortable. They could just as well have considered the inspiring precedent it would set for architects to take leadership and earn public confidence in other spheres in the future. So much for AIA as a "leadership" organization.

Comment [RS4]: The response ignores this important issue as well. They do not mention human rights once in their response, even though that is the core of the proposal.

Comment [RS5]: The response does not summarize what they understood to be the arguments in favor, or describe why those were not important.

Comment [RS6]: One factor conspicuously absent in the response is what impact the proposal might have on the business prospects of members. ADPSR heard this concern clearly stated by some members who at least were willing to admit that they put their business interests ahead of human rights. While AIA's leadership agrees with them, they are too hypocritical to say so in writing. If there had been an open debate within AIA then perhaps members could be found a way to reconcile their legitimate business interests with the need to also protect human rights.

Comment [RS7]: This is problematic: there's nothing that AIA members shouldn't design. Architects designed the crematoria at Auschwitz (the plans are online at http://www.yadvashem.org/yv/en/exhibitions/auschwitz_architecture/overview.asp - see image 11, there's some good drafting in there). Don't we wish German architects had resisted? Well, one might argue, that was before international human rights were codified and published (which was itself a response to WWII). But now that human rights are well known and universally admired, AIA won't draw the line at buildings that violate them?

Comment [RS8]: Not true: Ethics Standards are phrased in the positive but binding Rules are phrased in the negative ("members shall not..."). Both are important parts of the Code.

Comment [RS9]: They are basically saying that the Code might govern practice where architecture is like any other business, but it will not govern our design activities. What then is the need for a code for Architects at all? And why should the profession ...

proposals or demands for similar rules limiting or prohibiting design of other facilities.

- There is real potential of antitrust challenges to such a rule. Such challenges might come either from federal or state enforcement authorities, for example, or from AIA members arguing that restrictions on their right to design legally sanctioned structures unduly restrains their ability to compete in the relevant markets.
- It would be extremely difficult for the National Ethics Council to review and decide complaints brought under the proposed rule. As to certain rules involving violations of law or allegations of fraud, the Council declines to take action unless an independent court or administrative body has made findings concerning the underlying legal issues. Indeed, a body of architects – untrained in the law and unable to conduct judicial proceedings – should not be expected to adjudicate issues of law. Similarly, the National Ethics Council should not be expected to resolve the types of issues inherent in the rule proposed by ADPSR.

Considering the many relevant factors underlying the ADPSR proposal, the Board has decided not to adopt the requested changes to the Code of Ethics. In doing so, however, it has also expressed its encouragement of the Academy of Architecture for Justice to continue examining evidence-based and aspirational approaches to correctional design and operations, and to offer appropriate recommendations.

I thank you for submitting the ADPSR proposal for consideration, and appreciate your commitment to the Institute.

Best regards,



Helene Combs Dreiling, FAIA
2014 President

Enclosure

Comment [RS10]: ADPSR proposed restrictions on very limited kinds of spaces where human rights violations will occur as part of the design intent. This was supported not only by our own human rights research but by letters from human rights advocates including The U.N. Special Rapporteur on Torture, Amnesty International, and Human Rights Watch. AIA prefers to believe that they would be unable to distinguish well-known human rights violations from other unpopular activities. That's an appalling lack of self-confidence for a body that publishes a Code of Ethics that calls on members to "uphold human rights."

Comment [RS11]: Total nonsense. If this is true, then basically any Ethics rule could be anti-competitive. What if you don't feel that you can compete without underpaying your interns? Also, all the medical associations (AMA, ANA, APA, etc.) have language to the same effect. You don't see doctors and nurses being sued over anticompetitive behavior by their professional associations.

Comment [RS12]: Actually, it should be pretty clear whether a space was intended to be an execution chamber. It might be more complicated to determine if a space was intended to hold people in prolonged solitary confinement, but AIA's Academy of Architecture for Justice intends to write guidelines for best practices in design for "segregated housing," which would be a fine point of reference. AIA is well aware of this development as it is mentioned in the following paragraph.

Comment [RS13]: Agreed that architects are not jurists, but as these structures are currently legal, ADPSR was not asking for a legal determination but – in the unlikely event of a complaint -- for AIA's National Ethics Council to determine what the design intent of a project was. Architects respond to clients' design intent all the time – in fact, that is the basis of our work: figuring out what clients want and designing a building to fit that desire. Perhaps the lack of self-confidence here hides a deeper desire to avoid confronting human rights violations by fellow practitioners.