

# Watcha Gonna Do?

## *Landscape Architecture Ethics*

This series of 26 scenarios appeared in LAND: Landscape Architecture News Digest, the newsletter of the American Society of Landscape Architects between February 1998 and September 2000. They appear to be prepared under the auspices of the ASLA Ethics Committee, however there is no attribution of authorship.

## Cities and Counties Cooperate on Brownfields

A group of mayors and county officials met with Vice President Gore on December 17, 1997, to enlist his support for pressing regional problems such as transportation and brownfields. The latter provides opportunities for landscape architects in terms of planning, design, and sustainability.

The officials belong to a city-county

organization known as the Joint Center for Sustainable Communities established by the U.S. Council of Mayors and the National Association of Counties.

Some of the cities and counties that have formed partnerships to redevelop brownfields are the City of Detroit and Wayne County, Michigan; the City of Louisville and Jefferson County, Kentucky; and the City of

Chattanooga and Hamilton County, Tennessee. The groups focus on how to improve the market conditions of brownfield areas.

"Almost every large city that I am aware of has some sort of group dedicated to brownfields whether in planning or redevelopment," says Judy Sheehan, brownfields expert and coordinator, U.S. Conference of Mayors.

### ETHICS

## Watcha Gonna Do? *Landscape Architecture Ethics*

The Situation

N. Dignant, an established landscape architect, was aghast when he saw a brochure lying on a table that featured on its cover a photograph of his work. "Why that's not only a photograph of one of my projects, it happens to be my swimming pool in my backyard!" he said to himself. In fact, he had hired a professional photographer to take the picture that was reproduced on the brochure. He subsequently confronted N. Fringement, the owner of the firm advertised on the brochure, with these facts.

When confronted, Fringement stood his ground and said, "I bought the photograph so I have every right to use it." Fringement believed he was justified in using it because it reflected the kind of work he believed his new firm could produce if given the chance. Fringement brushed off the affair and told Dignant to speak to the photographer, Vi Olation.

Olation said that she owned the rights to the photograph even though Dignant had paid her to take it. She told Dignant, "I've sold dozens of these kinds of prints at photography shows. I can make and sell all of the reprints of my photographs that I want to."

### Watcha Gonna Do?

There are at least several separate issues worth considering here. The central issue is whether Fringement violated ASLA's Code and Guidelines for Professional Conduct by failing to give an accurate photo credit and thereby implying that the design

shown in the photograph was his own work. Another important issue is who has the rights to the photograph? Did Olation have the right to sell copies of a photograph that had been bought and paid for by Dignant? Could Dignant have protected his work from being reproduced against his wishes by negotiating contract terms that would have enabled him to retain rights to the photograph? Did purchase of the photo by Fringement ethically and legally allow him to reproduce the work of Dignant without Dignant's approval?

### Recommendation of Ethics Committee

The committee found Fringement in violation of Rule 1.109 of the ASLA Code and Guidelines for Professional Conduct. The rule states: "Members shall neither copy nor reproduce the copyrighted works of other landscape architects or design professionals, without prior approval of the author."

The Ethics Committee also notes that Olation, the photographer, should have taken into consideration the wishes of Dignant, who commissioned the photograph. Without doing so, Olation disregarded her own professional code. The American Society of Media Photographers Code of Ethics Rule 21 states, "Consider an original assignment client's interests with regard to allowing subsequent stock use of that work by the client's direct competition, absent an agreement allowing such use."

The Ethics Committee believes that if Dignant was unable to get sufficient redress from Fringement, then Dignant should consider the feasibility of filing a

civil suit on the grounds that such a reproduction of Dignant's original design without his permission violated copyright laws and provisions. Whether Dignant had signed a property release when the photograph was taken might have a bearing on the outcome of the suit.

The Ethics Committee suggests Dignant should have copyrighted his design with the Library of Congress under "Works of the Visual Arts." The filing fee is \$20 and the copyright office can be reached at either (202) 707-3000 or through its hotline at (202) 707-9100.

Although Dignant's work automatically became copyrighted once it was created, unless he registered it with the copyright office he would not be entitled to the benefits that come with having a public record of the design. A copyright registration basically ensures that when an infringement occurs the person holding the copyright receives statutory damages and compensation for attorneys' fees.

In this instance, although the copyright would provide protection against any reproduction of the plans, blueprint, or drawing of the design, it would not necessarily transfer to a photograph of the work once it is executed and becomes part of the landscape.

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## Watcha Gonna Do?

### Landscape Architecture Ethics

#### The Situation

D. Ceive, who is a design/build contractor, is an affiliate member. He insists on using ASLA on his promotional literature. Vic Tim, who has seen this literature, hires D. Ceive to build a terrace and a wooden deck in his backyard.

No sooner is the work done than Vic Tim is dissatisfied with it. The deck shakes uncontrollably whenever family or friends walk across it. What's more, the terrace floods every time it rains.

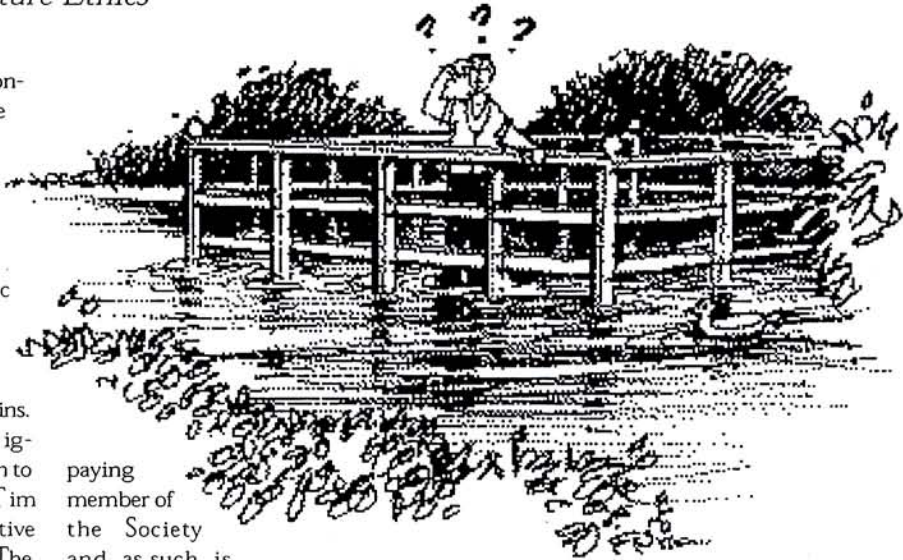
Vic Tim confronts D. Ceive, who ignores the complaint and takes no action to correct the situation. Exasperated, Vic Tim contacts the ASLA president and executive vice president to complain. He says, "The contractor who did faulty work on my house uses the professional designation of your Society. I chose a member of ASLA because I understood he would be trained and competent to properly solve my problems. I expect you to compensate me for his poor performance because I relied on your endorsement of D. Ceive, which was obviously flawed."

#### Watcha Gonna Do?

Three parties are now involved in the situation: D. Ceive, Vic Tim, and ASLA officers and staff. We've already heard Vic Tim's position. Let's look at the case from the standpoint of the other parties involved.

Is D. Ceive obligated to fix the shoddy work? Did D. Ceive misrepresent himself as a landscape architect who has the appropriate academic training and professional experience to warrant the professional designation of ASLA?

D. Ceive contends that he is not obligated to fix the deck because the client asked him to cut corners on the design and construction costs that resulted in a marginal project. Further, D. Ceive blames the flooding of the terrace on the roof of a large shed in the neighbor's backyard that drains onto the terrace. As for the designation, D. Ceive insists that he is a dues-



paying member of the Society and, as such, is entitled to use the ASLA designation on his promotional material.

Are the ASLA officers and staff responsible for the quality of work performed by one of their affiliates? Can the Society take action against the affiliate for using the designation of ASLA on his literature?

#### Recommendation of the Ethics Committee

The committee noted that D. Ceive violated the Society's Bylaws by using "Affiliate ASLA," on his promotional literature. The committee also noted that D. Ceive's use of the designation was misleading to Vic Tim because it implied he was qualified to practice landscape architecture.

In this case, the supporting language is found in the Society's Bylaws rather than in the Code and Guidelines of Professional Conduct. Ethical Standard 3.103 of the Code states "Members, associates, and affiliates should adhere to the specific applicable terms of the Bylaws regarding use of references to ASLA membership."

To support its position, the Committee cited two sections of the Bylaws' Article 4, "Privileges of Members and Affiliates." Section 406 sets forth how the designation of affiliate may be used. It states the designation of affiliate "shall not be used on

any professional letterhead, card, sign, drawing, specifications, or contract documents; in any telephone or professional directory; or in any signed article, report, or other publication."

Section 406 further states that the use of affiliate is restricted to "correspondence with the Society, its membership, and its publications or in connection with any Society or Landscape Architecture Foundation matter or activity."

Finally, Section 408 states that affiliates shall not "use this designation in any way to imply eligibility to practice landscape architecture in any state contrary to the laws of the state."

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## Watcha Gonna Do?

### Landscape Architecture Ethics

#### The Situation

Cant Helpya, ASLA, is employed full-time for the Department of Public Works, Small Town, USA. Although he has a well-paying job as a municipal planner, he yearns for more outlets for his creative design talents. He is therefore delighted when an opportunity arises to bid on a project to restore the gardens of a private estate that lies in the rural landscape just outside the town limits.

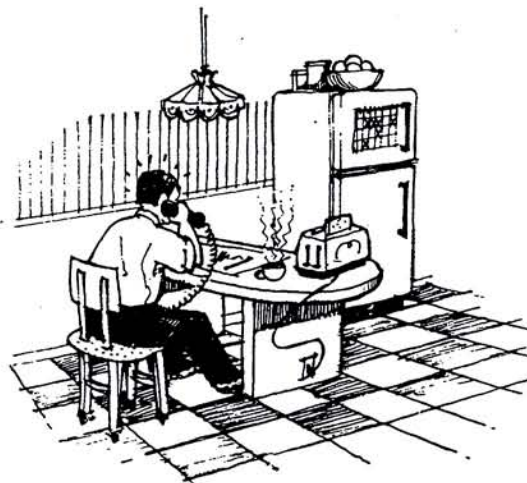
The client, Stately Appearance, hires Cant Helpya based on his proposal, which, incidentally, is priced very competitively seeing as Cant Helpya has no overhead to speak of. The project, which is on a large scale, will undoubtedly require diligent oversight by Cant Helpya. In this sense, Stately Appearance fully expects that Cant Helpya will be available practically on a daily basis to monitor the progress of the project and troubleshoot any crises that may develop.

The Department of Public Works where Cant Helpya is employed forbids employees from using its facilities and equipment

for any work outside its domain. So Cant Helpya spends many a long night working at his kitchen table putting together the design. Absent from Cant Helpya's proposal is any mention of the fact that he is only available for consultation on evenings or weekends and that he doesn't carry errors and omissions insurance.

Shortly after the project begins on a Monday, the client and landscape contractor disagree over how to proceed with construction of a new walkway designed to connect the estate's terraces to a river landing. When Cant Helpya finally returns the call Monday evening, he tells Stately Appearance that he won't be able to visit the site until Saturday.

"What do you mean, you can't visit the site until this weekend?" shouts Stately Appearance into the phone. "We must have this project finished by the end of the summer, and, at this rate, we won't be finished until next spring! Why didn't you tell me



you weren't available during the week?"

#### Watcha Gonna Do?

Has Cant Helpya violated the ASLA Code and Guidelines for Professional Conduct by failing to make full disclosure of his availability, insurance status, and other limitations inherent in part-time employment? Has he deliberately or otherwise misled his client by not providing a comprehensive list of his services? What recourse is available to Stately Appearance in this situation?

For his part, (Continued on Page 9)

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## ETHICS

(Continued from Page 8) isn't Cant Helpya only doing what any other business would do to survive and succeed by landing a lucrative business venture despite his part-time availability? If he sincerely believes he can get the work done despite his other commitments, then didn't he in fact deal openly and honestly in marketing himself and his talents to Stately Appearance?

#### Recommendation of the Ethics Committee

The Ethics Committee found Cant Helpya in violation of R1.202 for failing to make full disclosure regarding whether he was insured and in violation of ES 1.2

for not making full disclosure to his client regarding his schedule restraints.

R1.202 states, "Members shall make full disclosure during the solicitation and conduct of a project of the roles and professional status of all project team members and consultants, including their state licenses and professionals degrees held, if any, availability of coverage of liability and errors and omissions insurance coverage; and any other material potential limitations."

ES 1.2 states, "Members should seek to make full disclosure of relevant information to the clients, public and other interested parties who rely on their advice and professional work product."

In this situation, the best recourse available to Stately Appearance would be

to file a complaint with the ASLA Ethics Committee.

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## Watcha Gonna Do?

### The Situation

**M**o Tivated, FASLA, heads the state's Department of Natural Resources (DNR) Planning and Design Branch. Mo, nearing retirement, has earned a reputation for his leadership in wetlands restoration and has had several offers to do consulting work for various firms undertaking wetlands restoration projects.

Due to downsizing, the state must now rely on outside consultants for many of its larger projects. Funding has just been appropriated to undertake a significant wetlands restoration project. Although a request for proposal (RFP) has not yet been issued, Mo agrees to provide consultation on an unrelated federal project to a well-respected firm that specializes in wetlands restoration.

The firm has had no previous contract work with the state DNR; however, Mo knows that the firm will soon be invited to compete for the DNR project. Mo believes he would be well suited to serve as a project manager for the firm, if only he can negotiate a lucrative consulting contract for the job with the firm before submitting his request for retirement.

### Watcha Gonna Do?

Is Mo Tivated's decision to pursue work with the firm on an unrelated project in keeping with the provisions of the ASLA Code and Guidelines for Professional Conduct? Or is the fact that the DNR plans to approach the firm in the near future pose a conflict of interest? Isn't it reasonable to expect that Mo should be allowed to take the necessary steps to plan for his future before he retires from DNR? Before making any move, has Mo thought to check the agency's regulations to see if DNR prohibits consulting work for a specific period of time following a job change or retirement?



### Recommendation of the Ethics Committee

The ASLA Code and Guidelines for Professional Conduct is arranged in three tiers of standards: canons, ethical standards and rules of conduct. Canons are broad principals of conduct. Ethical standards are more specific goals which members should strive to obtain. The rules are mandatory and violation is subject to disciplinary action.

Rule 1.103 of the ASLA Code and Guidelines for Professional Conduct states: "Members in government service shall not accept private practice work with anyone doing business with their agency, or with whom the member has

any government contract on matters involving applications for grants, contracts, or planning and zone actions."

The Ethics Committee found that Mo had not violated Rule 1.103 for several reasons. First, at the time that Mo accepted the project, DNR did not have a contract in place with the firm. He was therefore not injuring or compromising DNR by accepting work with the wetlands restoration firm. Second, the Ethics Committee noted that Mo was not a member of the source selection committee for DNR and therefore not in a position where there was the likelihood of a future conflict of interest. Last, Mo arranged to work for the firm after he had resigned from DNR and, in this way, he made sure that he would not be in a position to impart privileged information as a consultant. The Ethics Committee suggested, however, that Mo should check his agency's provisions closely to see if there was any period of time following his resignation during which he would not be allowed to appear before DNR as a consultant.

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## Watcha Gonna Do?

### The Situation

A landscape architect, Rain King, is hired by a client, Fast and Loose, Inc., to design a master plan and stormwater drainage for the first phase of a residential development. The design includes a comprehensive plan for the 40 units covered in the first phase of the project.

Rain King finishes the project and delivers the plans to the developer. Having fulfilled his contractual relations, Rain King waits for payment for his services, but it never arrives.

Through his professional contacts in the design community, Rain King subsequently learns that a competing landscape architecture firm, Steelem N. Copium Associates, was in the process of developing plans for phase two (the last 40 units) at the request of Fast and Loose.

While designing phase two, Steelem N. Copium changes the configuration of the housing units and road pattern, nullifying Rain King's original stormwater management plan. When Fast and Loose finds out the original stormwater plan is now inadequate, he promptly sues Rain King.

### Watcha Gonna Do?

Was it ethical for Steelem N. Copium to use Rain King's original site plans and stormwater management design when it was hired to execute phase two of the project without consulting Rain King? Did Steelem N. Copium inquire of his client, Fast and Loose, whether its initial contract with Rain King had been terminated and that Rain King's services as a landscape architect were no longer needed on the project?

When Steelem N. Copium revised components of the original plan such as the housing and road pattern, did the that firm have an obligation to its client to explain how this would effect the constructed stormwater plan?



WILLI COV, FASLA

Alternately, did Rain King have an obligation in his master plan to ensure that any phases subsequent to phase one had adequate stormwater capacity?

### Recommendation of the Ethics Committee

The ASLA Ethics Committee believes it was not Rain King's responsibility to make any provisions or provide for alternatives should his design undergo modifications without his consultation.

The essence of the case is whether Rain King has an action against Steelem N. Copium, Rain King, or both.

The committee observed Fast and Loose did not act in good faith by failing to pay Rain King in a timely manner and failing to notify him promptly that his future services were no longer required for the phase two design of the project.

As for Steelem N. Copium, the Ethics Committee found the firm negligent for not communicating the full implications of the design changes of the housing and road pattern on the original stormwater management plan. Specifically, the committee found Steelem N. Copium in violation of R1.110 of the ASLA

Code and Guidelines for Professional Conduct which states: "Members shall neither copy nor reproduce the copyrighted works of other landscape architects or design professionals without prior written approval of the author."

As for Fast and Loose, the committee observed Rain King's recovery is tied to the quality of the contract written by the two parties. With this said, Rain King may want to also consider filing a civil action against Fast and Loose.

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## Whatcha Gonna Do?

### The Situation

Landscape architects Lots & Lots presented an exclusive forty-lot subdivision plan for approval to the county zoning commission on behalf of its client, Shy O. Cash Associates. Does this story sound familiar so far? Although three rear lots seemed to place stress on the sensitive ecology of the site, they had a positive impact on the financial bottom line. Lots & Lots used its reputation and credibility to justify these questionable intrusions, and the plans were approved.

The commission never questioned who the applicants, Shy O. Cash Associates, really were, so it was never divulged that Lots & Lots was given a ten percent stake in the venture for deferring payment of its fees until the sale of the last ten lots began and all other debt was satisfied.

### Whatcha Gonna Do?

Was it ethical for Lots & Lots to become part of the development team under these circumstances?

### Recommendation of the Ethics Committee

There is no prohibition to Lots & Lots becoming part of Shy O. Cash



VAN L. COX, FASLA

Associates; however, once firms become partners, they have an obligation to make that information available to the commission. For not doing so, the Ethics Committee found Lots & Lots in violation of R1.201, which states, "Members making public statements on landscape architecture issues shall disclose compensation other than fee, and their role in any economic interest in a project."

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## CORRECTIONS

An article titled "Digital Office Series to Address Needs of Landscape Architects" in the November/December 1998 *LAND* should have read that Jerry Laiserin has been invited to lecture at the Rhode Island School of Design rather than stating that he has already lectured at the school.



## Whatcha Gonna Do?

### The Situation

After an apprenticeship with a small, but nationally known firm, Late Start opened his own firm. He quickly was commissioned to design a large, multiphased commercial development, to be known as Summerwoods. His younger brother, Up, passed the Landscape Architect Registration Exam, and joined Late, to form Start & Start, but after a year or so, Up, a member of ASLA, left his brother to form Up Start Associates.

One Sunday, Late was reading the *San Francisco Examiner's* real estate section, when he saw a photo of his Summerwoods project, and a story about the prestigious award it had received by a national green industry. The landscape architect to receive the award was none other than Up Start, who had not worked on the first constructed phase shown in the photograph. He had, however, taken the commission for subsequent phases with him when he left his brother.

### Whatcha Gonna Do?

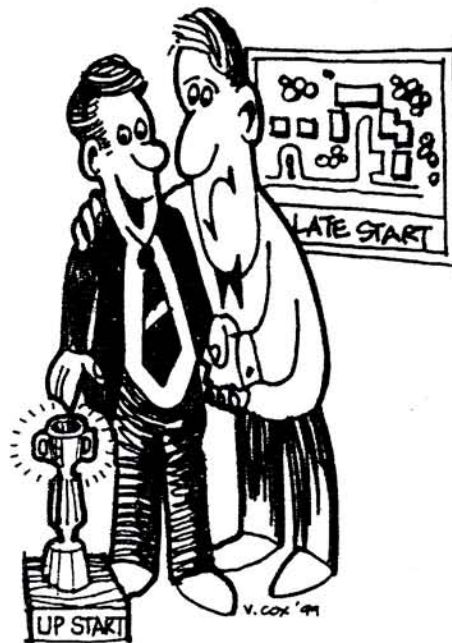
Who deserved the credit for the award-winning project? If you were Late Start what would you do? Scold Up Start? Seek guidance from the ASLA Ethics Committee?

If you were Up Start what would you do? Would you invite your brother to the awards ceremony to watch you get your photo taken or would you seek a good attorney?

Does credit for the first phase of the project belong to Late Start, who held the original contract, or was it transferred to Start & Start?

### The Recommendation of the Ethics Committee

Despite whether credit for the project belonged to Late Start or Start & Start, the ASLA Ethics Committee found Up Start in violation of the



VAN L. COX, FASLA

ASLA Code and Guidelines for Professional Conduct for misleading and deceiving the public about which firm was actually responsible for the contract and work. The committee cited several parts of the code to support its decision.

Rule 1.105 states, "Members shall recognize the contributions of others engaged in the planning, design, and construction of the physical environment, and shall give them appropriate recognition and due credit for professional work....Credit shall be given to the design firm of record for the use of all project documents, plans, photographs, sketches, reports, or other work products developed while under the management of the design firm of record."

Rule 1.106 states, "Members shall not mislead, through advertising or other means, existing or prospective clients about the results that can be achieved through the use of the member's services...."

Rule 1.108 states, "Members shall not take credit for work performed

under the direction of a former employer beyond the limits of their professional involvement and shall give credit to the performing firm."

The committee notes, however, that Up Start could submit photographs of later sections of Summerwoods that he designed for future awards.

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## Whatcha Gonna Do?

### The Situation

Things were great in Pleasantville. The prosperity-driven "ring of activity" for landscape architects was expanding rapidly, so the several small- to mid-size firms were clicking along with full workloads and increasing profits. Hungary Associates, headed by Getmoor Jobs and Needsum Staff, wanted to grow to a twenty-five-or-more-person firm, and were successful in gaining the projects to sustain the increased size.

Qualified landscape architects are hard to come by in a good economic climate, and the firm's need was immediate. The ASLA chapter newsletter had just gone to print, so an advertisement for help through the newsletter was too far away to fill its staff needs. Needsum Staff created an enticing job opportunity letter, touting high pay, three weeks vacation per year with additional days off, comprehensive health care and dental coverage (paid in full by the employer), as well as the opportunity for responsible roles in exciting, career-expanding, creative projects. How best to find the limited potential workforce? The employee lists—from the several other local firms—fit the bill, and letters were addressed to all area landscape architects at their place of employment.

When Happy Here received the proselytizing offer, he shared it with his employer, Leska Pacity, who hit the roof. In an irate phone call, she demanded that Needsum Staff not stir up discontent within her firm by coming there by mail to raid her personnel and destroy her ability to meet her contractual agreements. If her employees wished to respond to a job search offer in a newspaper, or newsletter, or the ASLA Web site,



VAN L. COX, FASLA

that was fine, but it was inappropriate to try to break up her team by coming directly into her office space to do it.

### Whatcha Gonna Do?

What should Leska Pacity do? Should she E-mail Needsum Staff's employees and attempt to rebuild her staff? Offer to sell some of her projects to Hungary Associates, which now has the capacity to produce them? Raise her prices, which would serve to reduce her workload in the competitive marketplace while yielding her a higher profit with lower overhead? Or should she file a complaint with the Ethics Committee?

What about Hungary Associates? Should he refrain from interviewing any candidates who responded to the letter of invitation that Needsum Staff wrote, if that letter influenced their decision to seek new employment? Should Needsum Staff allow the new employees to moonlight for Leska Pacity during the first six months of their employment? Should Needsum Staff offer Leska Pacity a coposition as an associate on the project, so that the firms can perform the work with a combined staff?

### The Recommendation of the Ethics Committee

The Ethics Committee, after examining all sides, concluded that Hungary Associates had gone behind the backs of the area firms, and had not treated them with the "honesty, dignity, and integrity" required of a member of ASLA, a profession that espouses and grows in stature and public perception by adherence to the highest ethical standards. The matter was referred to the Executive Committee with a recommendation for a Letter of Admonition.

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## Whatcha Gonna Do?

### The Situation

Bess O'Bothwirls, ASLA, has been hired as a field director with the Natural Resources Conservation Service. In this capacity, she will make decisions affecting her former employer, Rural Landscape Architects, Inc. (RLA).

Before leaving RLA, Bess accepted a "golden parachute" (i.e., compensation package from her former employer). RLA made the generous offer not only in recognition of Bess's accomplishments while a landscape architect employed by the firm but also in recognition of her new career with the federal government. Interestingly, the package contained a clause requiring Bess to return to work for RLA following her government service.

Before assuming her new duties, Bess's job application was reviewed by the personnel manager, Mitic U. Lus, who screened her application for possible conflicts of interest. Mitic U. Lus told Bess on the telephone that she must provide full disclosure of all the details—financial and otherwise—of the compensation package from RLA as a condition of her employment with the federal government.

### Whatcha Gonna Do?

Bess had worked long and hard during her 15-year career at RLA. She felt she deserved the compensation package. At the same time, she viewed the opportunity to serve the public as a once in a lifetime opportunity.

After thinking it over for a few days before her interview with Mitic U. Lus, Bess decided that she would keep the compensation package. At her meeting with Mitic U. Lus, she politely told him that the details of the compensation package were none of his nor the government's business.

### The Recommendation of the Ethics Committee

The ASLA Ethics Committee found Bess in violation of Rule R1.102 of the ASLA Code and Guidelines for Professional Conduct. R1.102 states "Members in the conduct of professional practice, shall not violate the law, including any federal, state, or local laws, and particularly laws and regulations in the areas of antitrust, employment, environment, and land use planning, and those governing professional practice."

Since Bess already had accepted the job with the federal government and did not turn down her compensation package from RLA she was in violation of federal law regarding dual compensation. The federal statute at 18 U.S.C. Section 209 prohibits federal employees from accepting money or anything of value from an outside source for doing or not doing his or her job properly. Mitic U. Lus told Bess that taking the compensation package might give the appearance that Bess was to remain under contract to RLA even though she had resigned. Therefore, Mitic told Bess not to make any advance plans to return to work for RLA until she retired from her new career in government service.

All bureaus and agencies in the federal government have agency ethics officials who can provide spoken and written advice on ethics matters. The Department of Interior has published an ethics manual. *Ethics-An Employee Guide* can be ordered by writing to Human Resources, Department of Interior, 1849 C Street, NW, Washington DC 20240.



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### The Situation

Atnoe Chargg, ASLA, believed that a parcel of undeveloped land deeded to the town as the open space contribution for a newly approved residential subdivision near his office in Incoor Pourated City should be transformed into a park with playground equipment and ballfields. His way of thinking was in keeping with Mayor Sockamom Votegetta, who was up for re-election that fall. Indeed, the mayor was outspoken about the beneficial aspects of open space for parks and recreation purposes. So Atnoe picked up the phone and called the mayor's office to share his idea with her staff.

The mayor and her staff were open to the idea, and they agreed to a meeting at which Atnoe showed a conceptual plan and offered to organize and lead a charette that would engage the community in the design process. For her part, the mayor also instructed the park commissioner to establish a fund not to exceed \$500,000 for site construction.

Everything was proceeding according to plan until Gel Oscompetitor, ASLA, sent a letter of complaint to the ASLA Ethics Committee charging Atnoe Chargg with unfair business practices.

### Whatcha Gonna Do?

In his letter to the Ethics Committee, Gel Oscompetitor accused Atnoe Chargg of trying to curry favor with the mayor and swing the election in her favor. His most relevant accusation, however, was that Atnoe Chargg was taking business away from practicing landscape architects.

With this in mind, was Atnoe Chargg, ASLA, crossing the lines of acceptable professional conduct by suggesting that a neighborhood park be constructed adjacent to his office? By giving his office time and talent to an elected official, was he violating Rule



1.103 of the ASLA Code and Guidelines for Professional Conduct? Was he attempting to enhance future contract award chances? Would that be a violation of the Code or just smart business?

### Recommendation of the Ethics Committee

The mayor was within her power to instruct the city's park department to build the park based on the landscape architects' design. The ASLA Ethics Committee decided that Atnoe Chargg had not violated the Society's Code and Guidelines for Professional Conduct because he had offered his services pro bono. However, he would have been in violation if he had tried to influence the city to award the contract to his firm. In a letter back to Gel Oscompetitor, the Ethics Committee noted that offering pro bono services is every landscape architect's prerogative.

Rule 1.103 of the ASLA Code and Guidelines for Professional Conduct states, "Members shall not give, lend, or

promise anything to any public official, or representative of a prospective client, in order to influence the judgment or actions in the letting of contract, of that official or representative of a prospective client. However, the provision of pro bono services will not violate this rule."

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## Whatcha Gonna Do?

### The Situation

When county residents approved a construction bond for new park facilities, the county park authority issued a request for proposal (RFP) for design and construction of a park shelter and surrounding landscape in one of its public parks.

The RFP directed that bidders submit one price that included both the design and build phases of the project. The contract's pay structure, however, was in four phases: initial approval of design, final approval of design, initial phase of construction, and final phase of construction.

The contract selection committee narrowed the competition down to two qualified firms: a design-build firm owned by Baklode Feez, ASLA, RLA, and a joint venture comprising Owt Raged, ASLA, RLA, and Park Shelter Construction, Inc. After further review of the RFPs, the county selected Baklode Feez, Landscape Architect.

When county officials debriefed Owt Raged, he learned that Baklode Feez intended to charge only 25 percent of the standard design fee for the first two phases of the contract. Owt Raged saw this as an unfair business practice, and as something he could not easily do since he was a joint venture combining his design team with an independent contractor each being responsible for its own phase of the project.

Owt Raged wrote a letter of complaint to the ASLA Ethics Committee suggesting that Baklode Feez was in violation of the ASLA Code and Guidelines for Professional Conduct.

### Whatcha Gonna Do?

Was Baklode Feez' pricing strategy dishonest? Was it fair of him to scale back the design fee for the first two phases and then make up for it in the



construction phase? If so, did Baklode Feez obtain the contract in an unscrupulous or unethical manner?

Furthermore, is a registered landscape architect who is a member of the Society obligated to price his or her work according to a standard pricing structure?

Was Owt Raged out of line for objecting to Baklode Feez' practices or did he have a legitimate case against the design-build firm?

### Recommendation of the ASLA Ethics Committee

Delaying the county's obligation to pay for the landscape architect's fees until the end of construction was a benefit that Baklode Feez was willing to give to obtain the contract.

The Ethics Committee observed that that the contractor has command of its business practices and pricing policies. Although it is expected that the contractual relationship will remain within the normal parameters of business, the ability to freely price services high or low, or to package fees

within a design-build format, is the individual owner's decision.

It may be startling and unusual, but is not a violation of the ASLA Code and Guidelines for Professional Conduct. For the ASLA Ethics Committee to decide otherwise would be a restraint of trade.

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## Whatcha Gonna Do?

### The Situation

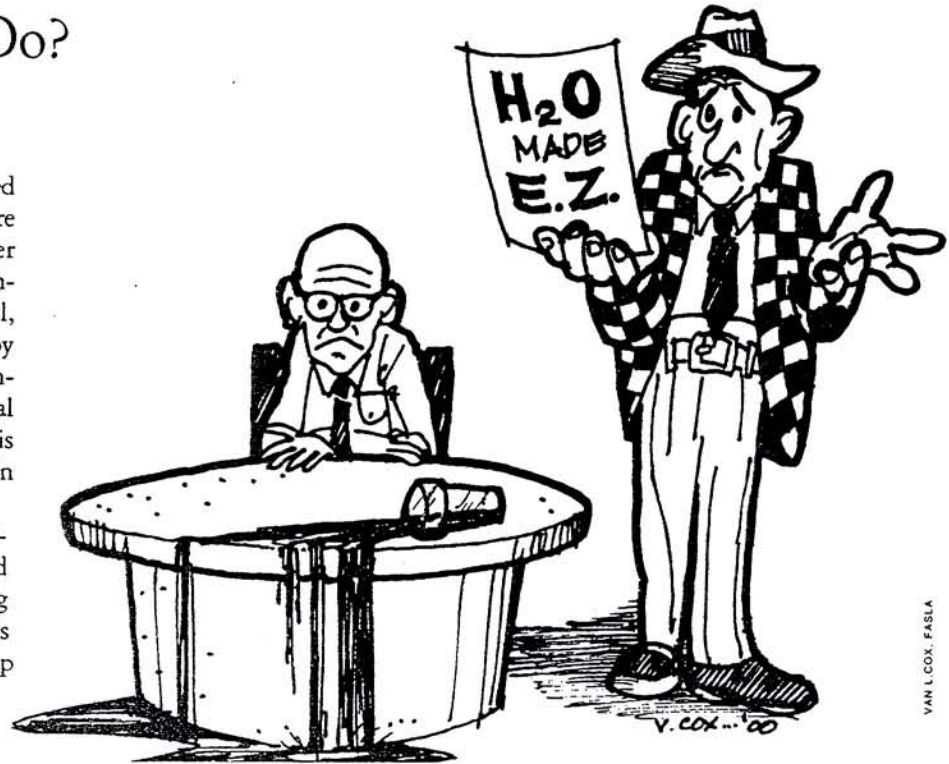
Noe Noledge, ASLA, was determined to expand his landscape architecture business into the realm of water quality including watershed management, water pollution control, and stream restoration. Noe had stood by and watched while a number of his competitors received public and professional acknowledgement for their work in this field, and he desperately wanted to join them in their cutting-edge endeavors.

Despite his determination, Noe overlooked one important point. He lacked any formal training or any continuing education units in water quality. This lack of education and training showed up in his applications and proposals, and he was routinely turned down and bypassed for new state and local jobs that were receiving federal matching funds. On one particularly appealing project, a fellow member of the Society, Wel Trayned, suggested that he and Noe collaborate on the new Back Creek stream restoration project. Wel was an award-winning designer of water conservation projects with national name recognition. This would be just the kind of opportunity Noe needed to switch his specialization. In the interest of expanding his practice and increasing his revenues, Noe told Wel he had prior experience in streambank restoration. Later, Wel found out that his partner lacked any experience whatsoever in water conservation.

### Whatcha Gonna Do?

Wel was in a bind. He felt that Noe had betrayed his trust and may have committed an ethical violation. So for this reason he wrote to the ASLA Ethics Committee for advice.

In his letter, he described the situation and asked the committee whether and to what degree Noe was in violation of the ASLA Code and Guidelines for Professional Conduct. He also asked the committee if it had any suggestions as



to what short-term steps Noe might take to increase his knowledge of water conservation work.

### The Recommendation of the ASLA Ethics Committee

The ASLA Ethics Committee suggested that Wel help Noe find a reputable continuing education program that would provide him with the skills and certification he needed for this kind of work. The committee noted that the ASLA School of Continuing Education provides seminars on a variety of emerging practice areas including streambank assessment and classification and streambank restoration.

The committee also noted that as a member of the Society, Noe had an ethical commitment to keep his education and training current in his area of practice. In this regard, ES1.3 states, "Members should endeavor to protect the interests of their clients and the public through competent performance of their work; participate in continuing education, educational research, and

development and dissemination of technical information relating to planning, design construction and management of the physical environment."

Similarly, R1.301 states, "Members shall undertake to perform professional services when education, training, or experience in specific technical areas involved qualifies them, together with those persons whom they may engage as consultants."

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## Whatcha Gonna Do?

### The Situation

Onlie Reviewzit, a planning director for Soggy County, was responsible for regulatory and environmental compliance and site plan review for major development projects within the county. In addition, she had worked for a long time with Buildum Cheaply, a major developer who had numerous projects across the county line, but had never worked in Soggy County.

Onlie Reviewzit had not cleared her outside work across county lines with the Soggy County Ethics Board. Buildum Cheaply eventually decided to expand his horizons, and he began buying large tracts of land in Soggy County with the intent of developing a major retail and office complex inside the county. This would test the county's resolve to restrict growth in certain sensitive areas, thus generating a considerable amount of controversy.

Obviously, Onlie Reviewzit determined that she could not work on Buildum Cheaply's project in Soggy County. After learning of Buildum's expansion plans, she explained her relationship with Buildum Cheaply to the planning commission. The commission determined that Onlie had to recuse herself from any consideration of Buildum's various applications before the commission because of conflicts of interest. Onlie was not sure, however, if other actions were required.

### Whatcha Gonna Do?

Should Onlie Reviewzit have explained her work with Buildum Cheaply outside the county to the Soggy County Ethics Board? Once Buildum Cheaply started developing inside Soggy County, was Onlie Reviewzit ethically obligated to inform both the board and the planning commission of her work with the developer?

Should Buildum Cheaply have resisted the urge to expand into Soggy

County with the knowledge that he would be causing a conflict of interest for Onlie Reviewzit?

### Recommendation of the Ethics Committee

The ASLA Ethics Committee advised Onlie Reviewzit to terminate all work on Buildum Cheaply's projects in the adjoining state. Although these projects are not under the jurisdiction of Soggy County, now that Buildum Cheaply is a player in Soggy County, her compensation from him places her in a direct conflict of interest.

If she does otherwise, she will be in violation of the ASLA Code and Guidelines for Professional Conduct, which states at Rule 1.104: "Members on full-time government employment shall not accept private practice work with anyone doing business with their agency, or with whom the member has any government contact on matters involving applications for grants, contracts or planning and zoning actions."



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### CORRECTIONS

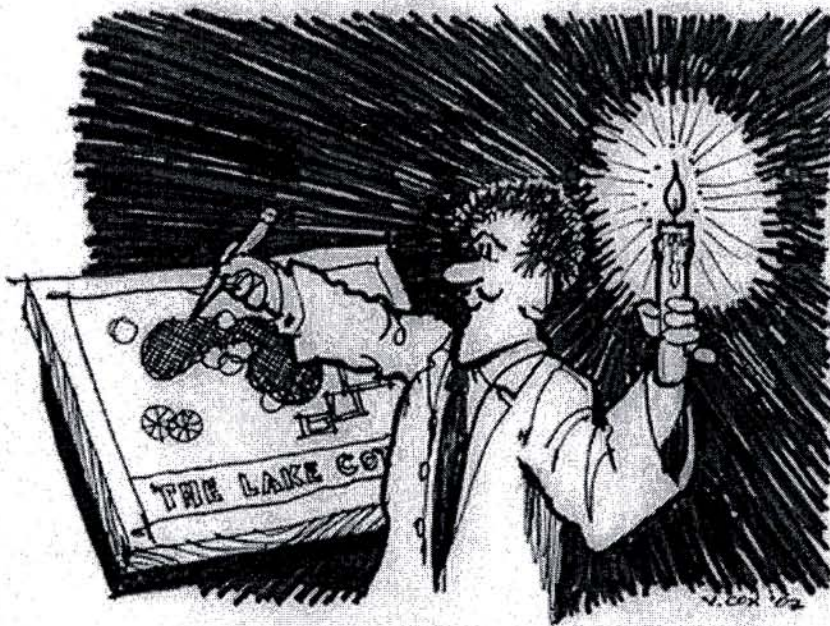
Sandra B. Nash, ASLA, is director of development consultation at Richardson Verdoorn, Austin, Texas. Her position in the firm was incorrectly reported in the April LAND article, "The Write Way."





## Whatcha Gonna Do?

### The Situation



### Ohso Careless Moonlighting

**Wanabe Green, ASLA**, had a well-regarded design firm that specialized in a broad spectrum of environmental services as well as traditional site design. The company was often presented with projects too small to be profitable. Green had a liberal policy on moonlighting. She considered practicing "on the side" a means of broadening the experience of her junior associates as well as supplementing their income. Green encouraged them to handle some of these small-scale projects on their own. She even let associates use the office for late-afternoon consultations with their clients. In order to avoid any conflict of interest, however, she required associates to inform her of their outside work.

Morand Morestores was a local developer who was building a controversial



shopping center adjacent to several environmentally sensitive areas. The town of Filledup had never worked with a developer like Morestores and fashioned a tight set of conditions for the construction permits. Morestores was cited several times for serious violations of the conditions. The town decided that enforcement was beyond the local building inspector's ability and hired Wanabe Green to monitor construction.

Nomore Stores, an organization of citizens opposed to the project, was independently monitoring construction of the shopping center. Several months after Green's appointment, Nomore discovered that Green's employee, **Ohso Careless, ASLA**, was actively working on the site plan of Morestores's nearby vacation home. Citing conflict of interest, the organization demanded that Green be replaced as monitor of the shopping center project.

Green was furious at being blindsided and shocked at the abuse of her moonlighting policy. Careless claimed that the work was not a result of a referral through the office, therefore, he did not have to inform Green about working for Morestores. Green, on the other hand, had nothing to say about the office's involvement and sent Careless packing within the hour.

### **Whatcha Gonna Do?**

Should Green remove herself from the project even if the town says she can stay? Did Careless violate office policy? Was it necessary to inform his boss of his outside work? And, should Careless have come forward when he learned of the town contract? Did Green have the right to regulate his outside activities? Should she have fired Careless?

### **Relevant Code sections: R1.101; ES1.2; R1.203**

Green's moonlighting policy was a condition of employment, set up to avoid the very situation that occurred with Morestores. She had a right to fire Careless; if Careless did not like the policy, he need not have worked for Green. Even if Careless thought he was within his rights working for Morand Morestores, he had an obligation to inform Green of the project with Morestores before Green took the contract with the town. Ultimately, Green decided to remove herself from the town contract to avoid an appearance of a conflict of interest and improve her relationship with the Nomore Stores group.

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Ethics Committee, c/o ASLA  
636 Eye St., NW  
Washington, DC 20001-3736



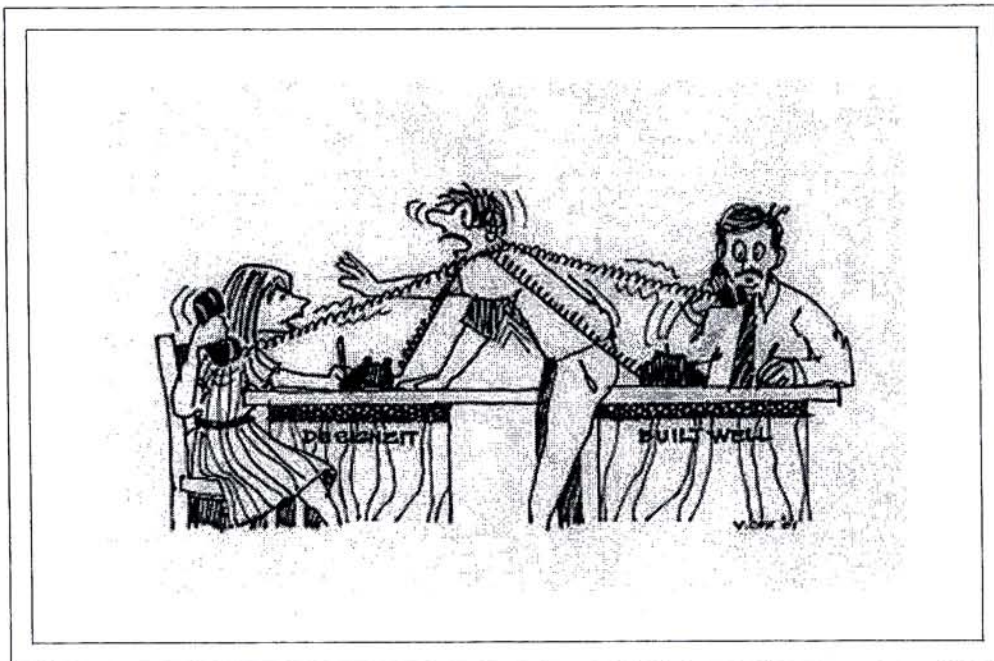
January 25, 2002



## Whatcha Gonna Do?

# Partnership Lost

Part Two



[Read Part One](#)

When we left Designzit, Buildwell, and Selzum, their partnership was dissolved and each partner had moved on to run an individual practice. Unfortunately, what seemed to be an amicable divorce ultimately resulted in a laundry list of outstanding issues.

How do they divide the work in progress?

Who keeps the phone number?



Who gets the address?

What happens to the errors and omissions policy?

Who pays for the insurance "tail"?

How is credit for collaborative projects shared?

### **How did Selzum, Designzit & Buildwell resolve their differences?**

The ASLA Code of Professional Ethics requires that credit be given to each partner for his/her role in a project: Buildwell for specs and field observation, Designzit for design, etc. Ongoing projects are subject to negotiation of an agreement among the partners and the clients. While Selzum was responsible for all project acquisition, he cannot leave an equal partnership with all of the work. The former partners need to determine how the liability for errors or omissions in their joint projects will be shared. Their insurer may provide an ever-decreasing, single-premium policy, sometimes called a "tail," that diminishes toward the end of the period of liability. A pre-partnership agreement with "push and shove" clauses might have made the separation easier.

Each principal owns what they contributed to the whole and can take credit for it.

See ASLA Code of Professional Ethics. Pertinent rules include:

R1.101 Honesty.

R1.105 Credit others

R1.106 Be careful not to mislead about future results.

R1.108 Accurately define qualifications

R1. 202 Ensure full disclosure of everyone's role

R1. 204 A warning to "moonlighters."

R1. 301 Broaden our capabilities.

And remember that pre-partnership agreement--it's a good thing.

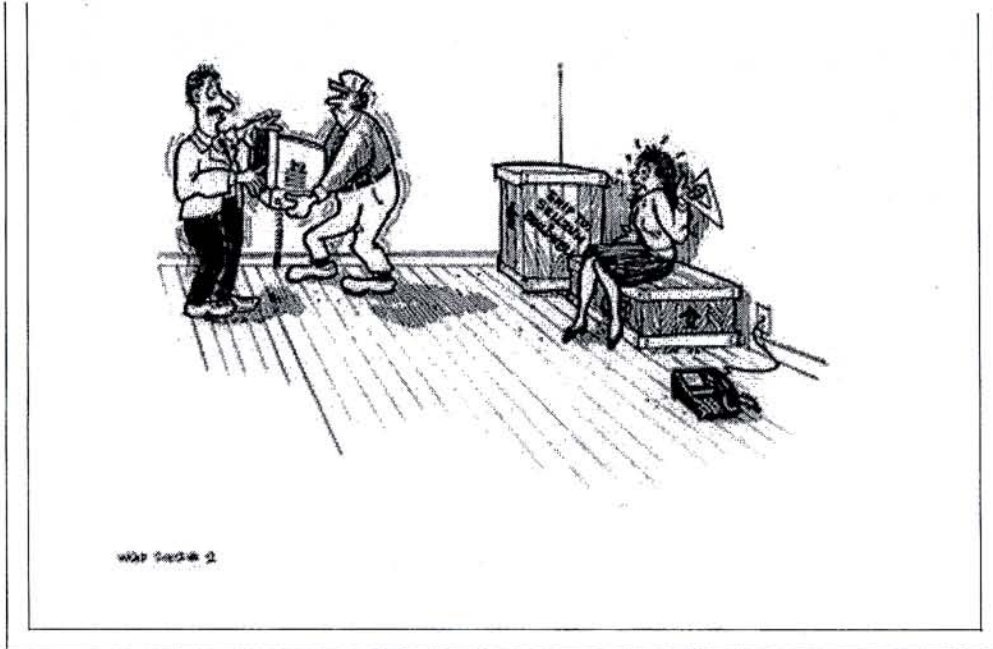
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[Message From The Leadership](#) [What's New](#) [Regional News](#) [Ethics](#) [ASLA](#)



# Partnership Lost

## Part Three



[Read Part One](#)   [Read Part Two](#)

Remember the ongoing saga of Designzit, Buildwell, and Selzum? Sellzum now claims, "Designzit stole my client. We agreed that she should keep the phone number, but I certainly expected her to forward any calls for us to our new numbers! The other day, I discovered Designzit is doing a project for my client, Deepaw Ketts. She stole my client! He called our old phone number looking for me, and now she is doing the project he was calling me to do!"

Sellzum contacted the ASLA Ethics Committee complaining about the "inappropriate and unethical action by Designzit."

How do you feel? Was she violating our Code of Professional Ethics? Read the next issue to see how the unhappy former partners resolve their ongoing differences. To be continued . . .

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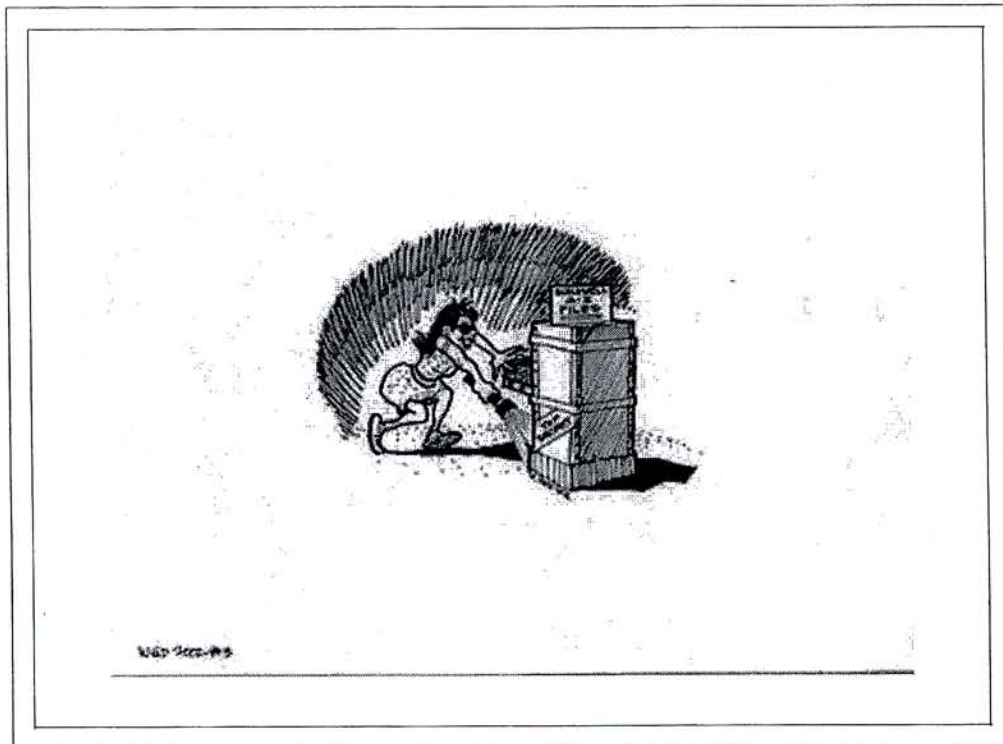




## Whatcha Gonna Do?

# Partnership Lost

Part Four



[Read Part One](#)   [Read Part Two](#)   [Read Part Three](#)

### Stolen Client?

Did Sellzum have all of the information when he complained to the ASLA Ethics Committee? One of the objectives of the Ethics Committee in conflict resolution is to collect facts on all sides of each issue and determine how each party can receive fair treatment.



When the partnership broke up, it was agreed that Designzit would keep the original office location and phone number, so it was expected that clients such as Deepaw Ketts would call that number. The information revealed that Sellzum had successfully managed projects for Deepaw Ketts and he expected to continue that relationship with his new firm "Sellzum and Offen." He had every right to expect the referral from his former partner.

The evidence, however, indicated that when Deepaw Ketts was told that Sellzum had formed a new firm and what the new phone number was, he asked Designzit if she provided a full service for housing projects. She acknowledged that she did but that, ethically, she must refer him to the new firm. Mr. Deepaw Ketts responded that he appreciated that, but would like to come over that afternoon with the survey and see if they could not work out an agreement.

Once the design studies were under way, Designzit realized that there was significant interface with the "Main Street Revitalization Plan" being done by Townscapes, LLC. In fact, she was doing several other concept plans, the combination of which could have a wonderful impact on the proposed revitalization plan through pedestrian linkages and wetland corridor preservation. Designzit was excited by the combination of projects and the potential outcome. So she went to the town planner and pitched her new firm as being the best equipped to do the plan because she was already doing several ancillary projects. The analysis had not gone so far as to make it unreasonable for her new company to provide the service, considering the improved design potentials she saw.

While Sellzum was upset about losing the Housing Commission - as we all are when another is selected for a major project - Designzit had acted properly with her referral, and it was the client's decision as to the firm he would hire on a totally new endeavor.

"That may be," said Sellzum. "However, the details that were on the construction documents were not created by Designzit, but rather by Buildwell. First she stole my client and now she steals our details. She should do her own."

How do you feel? Is it "black and white" or "shades of gray?" And what about that town planner? How should he respond to the possibility she has presented for those potentially improved concepts? Should Designzit have approached the town planner about the possibility of taking over the work of Townscapes?

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