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## Ethics Lesson: Breach of Confidentiality

*This article does not represent a determination by the Ethics Committee of an actual case. One of the responsibilities of the Ethics Committee is to enhance member awareness about the **Code of Professional Ethics** and **Code of Environmental Ethics**, which contain important principles relating to members' duties to clients and to other members. While there may be additional licensing, legal, or legally actionable factors in these hypotheticals, the Ethics Committee's comments address only the implications with regard to ASLA ethical codes; the discussions of these hypotheticals by the Ethics Committee do not constitute legal advice.*

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Sam Whiney was recently laid off from Blue Sky Design, a landscape architecture and civil engineering firm. Soon after, Whiney submitted a complaint to the ASLA Ethics Committee alleging he was unsuccessful at obtaining examples of his work from Blue Sky Design, a potential violation of Rule 1.109 of the Code of Professional Ethics. The complaint was filed against Howie Wertuno, the principal landscape architect at Blue Sky.



Based on the documentation provided by Whiney, the Ethics Committee accepted the complaint. In accordance with its Rules of Procedure, the Ethics Committee sent a notice to both Wertuno and Whiney indicating acceptance of the complaint and stressed the required confidential nature of the complaint.

A few weeks later, Whiney was attending a local meeting of his ASLA chapter where he mentioned his complaint being filed and accepted and that he could not wait to hear how Wertuno was going to be admonished by ASLA. Ah, sweet revenge. However, Wertuno learned

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about the public disclosure of the complaint, was able to verify such disclosure in writing from another landscape architect who was at the meeting when the disclosure occurred, and filed a countercomplaint with the ASLA Ethics Committee against Whiney for his breach of confidentiality pertaining to the complaint.

By publicly disclosing information about his ethics complaint, has Sam Whiney violated the ASLA Code of Professional Ethics?

Here is the relevant section of the ASLA Code of Professional Ethics:

Rule 1.109 Members shall not reveal information obtained in the course of their professional activities that they have been asked to maintain in confidence or that could affect the interests of another adversely. Unique exceptions: to stop an act that creates harm; a significant risk to public health, safety, and welfare that cannot otherwise be prevented; to establish claims or defense on behalf of Members; or in order to comply with applicable law, regulations, or with the Code.

Membership in ASLA is a professional activity. The *Rules of Procedure for Filing and Resolution of a Complaint* with the ASLA Ethics Committee states: "The complainant, by filing the complaint, agrees to confidentiality with regard to the complaint and shall avoid public disclosure or discussion of the complaint. A breach of confidentiality may result in the complaint being dismissed." Further, the notice of acceptance of the ethics complaint by the Ethics Committee reinforced the confidential nature of the complaint. With his disclosure of his ethics complaint against Howie Wertuno, Sam Whiney is in violation of Rule 1.109 of the Code of Professional Ethics pertaining to confidentiality.

## Comments

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