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Whatcha Gonna Do?



### To sign or not to sign? That is the question.

Student member **Nita Job** was nervous about finding her first job as a landscape architect. The economy was slow, and she had amassed significant debts during her college education. "Wantemall, Inc." seemed a particularly good prospect for employment. It was a busy firm, located in a fast-growing city, and Job went all out to impress the firm's interviewer at the job fair. A week later, she was thrilled to receive a letter from the interviewer inviting her to a "deal-closing" interview with Wantemall principal and CEO **Para Noid, ASLA**.

Para Noid was amicable enough and obviously impressed with Job's portfolio, barely blinking an eye when Job requested moving expenses, major medical benefits, her ASLA membership dues, and a rather high starting salary. Everything looked and sounded good, so Job agreed to take the position. Imagine her consternation, though, when Noid shoved a document across the conference room table and urged her to read it quickly and sign it in order to finalize the employment contract.

The language was all "legalese" to Job. Essentially, the contract stated that--unless the termination was involuntary--once Job left Wantemall she agreed not to work for another firm or compete against Wantemall as a sole proprietor within 20 miles of the city for a period of 6 months. In other words, it was what Job's Professional Practice teacher had warned about, a "Non-Compete" or "Non-Practice" agreement.

Job really wanted to work for Wantemall and it seemed unlikely that she would want to leave soon anyway, but she fretted over the situation. It seemed Noid didn't trust his employees or maybe didn't feel confident enough about his firm's abilities to compete in the marketplace. Should Job sign the agreement? Was it ethical, or even legal, for Noid to require such an agreement as a condition of employment? Isn't it restraint of trade to prohibit an individual from earning a living using their skills? Could Noid legally deny Job the position based on her failure to sign?

Job did not sign, the offer was not rescinded, and she accepted the position with Wantemall. After Noid backed off the requirement, Job worked as his junior assistant for many years. The subject never came up between them again, although talk around the watercooler touched briefly on how everyone else signed the agreement, fearing loss of their jobs if they objected.

Eventually, Job received her license and left the firm to form her own company in the area. Sometimes she worked with Wantemall, and sometimes she competed against them without legal incident.

This case points out the need to concentrate on sound professional practice rather than worrying about someone taking work away. Para Noid's status as a worthy mentor for a young landscape architect is also questionable. Is productivity enhanced if termination is a constant issue?

When professionals leave firms, they must respect the contractual relationships entered into by their former employer and refrain from interfering with ongoing contracts--even if they were the landscape architect responsible for the project. This obligation is clearly stated in **R1.111** of the [ASLA Code of Professional Ethics](#).

Job's experience underscores the need to consult a lawyer about the legality of employment conditions. **R1.102** clearly states,

*In the conduct of their professional practice, Members 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.*

Ethical issues aside, a lawyer should be consulted to determine the legal boundaries of any non-compete agreement.

*Editor's note: One of the objectives of the ASLA Ethics Committee is to educate members about the ASLA Code and Guidelines for Professional Conduct. The code contains important principles relating to duties to clients and to members of the Society. Contact the Ethics Committee by emailing [ethics@asla.org](mailto:ethics@asla.org) or by writing:*

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