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April 24, 2006
Ethics: Moonlighting

An ethical question for members, with guidance from the ASLA Ethics Committee and its legal counsel.

Hal Lattimoon had a full-time job as a landscape architect at Daiwerk Associates; however, he felt the financial package was somewhat lacking. To supplement his income, he began moonlighting for clients in the evenings. While Lattimoon did not think he was doing anything wrong, he neglected to discuss the moonlighting with his boss, Payne Little.

Moonlighting may be acceptable if all parties are aware of the practice and consent to guidelines or conditions, and as long as moonlighting does not compete with a firm's practice or an employee's job performance.

One of Lattimoon's completed moonlighting projects included the design and construction of a private, residential swimming pool with a deck area and retaining wall. A very short time after completion of the project, the client, Lovey D'Poole, noticed the wall was deteriorating in several places. D'Poole notified Lattimoon about the deficiencies in the wall construction, but he responded that his contract was completed and he wanted a new contract to determine how the wall could be fixed. Lattimoon also stated that he had no liability insurance so any attempt to sue him would be fruitless.



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Out of frustration, D'Poole contacted Mr. Little at Daiwerk Associates to complain about the quality of work provided by his employee, Hal Lattimoon. Not knowing anything about the project or the moonlighting practices of Lattimoon, Little told D'Poole that Daiwerk Associates accepted no responsibility for the project deficiencies.

Hal Lattimoon was not forthcoming with the information to his client that the work was being done solely by him as an individual, that he was doing the work in the evenings, and that he did not have liability insurance to cover his moonlighting activities. The ASLA Code of ethics addresses this issue in the following passage:

R1.202 Members shall make full disclosure during the solicitation and conduct of a project of the roles...of all project team members...including availability of...liability coverage....

R1.204 Members shall convey to their clients their capacity to produce work, their availability during normal working hours, their insurance coverage for general liability and errors and omissions insurance, and their ability to provide other construction or supervisory services.

Moonlighting may be acceptable if all parties are aware of the practice and consent to guidelines or conditions, and as long as moonlighting does not compete with a firm's practice or an employee's job performance. However, there are numerous considerations associated with moonlighting, many of which go beyond ethical issues:

1. Moonlighting by an employee may transfer liability to the employer.
2. Moonlighting can fatigue the employee, cause poor job performance, and create risk in the day job.
3. Moonlighting can place the employee in competition with the employer for business and raise questions by clients about discipline in the operation of the business.
4. Moonlighting can create dissension and loss of loyalty within the ranks of employees.
5. Moonlighting may lead to misrepresentations since a client may not realize that the rest of the firm is not involved with a project.

In this situation, Lattimoon would very likely be fired, and his former employer could file a complaint with the ASLA Ethics Committee. Both Lattimoon and Daiwerk Associates should prepare for the probability of being sued by D'Poole.

