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June 10, 2005

Ms. Angeline C. Kinnaird
Program Director
Colorado Board of Examiners of Architects
1560 Broadway, Suite 1300
Denver, CO 90202

Re: Complaint: Johnson/Myrin

Dear Ms. Kinnaird:

Your records are correct in reflecting that I am not licensed as an architect in Colorado. I have not, however, ever represented myself, either directly or indirectly, to be a licensed architect, nor have I used the term “architect” in connection with any trade or business, nor have I have ever engaged in any activity which is restricted by law to the practice of licensed architects.

This letter will respond in detail to the knowingly-false allegations set forth by attorney Cuthbert Myrin as part of his one-man political smear campaign designed to influence a municipal election in Aspen. As this letter will demonstrate, no one – including Mr. Myrin – has been confused about my licensing status, about my profession, or about my business activities. The allegations set forth in Mr. Myrin’s Complaint are devoid of any factual support and are demonstrably false.

While I hope that this information will comprehensively answer any questions which you may have regarding this matter, please to not hesitate to contact me if you have any questions or require any additional information.

I apologize for the lengthy nature of this submission, but I believe that charges of criminal misconduct – even politically motivated, clearly bogus charges – must be responded to thoroughly and comprehensively.

1. Background on my training and current profession

I was trained as an architect at the University of Kentucky, School of Architecture, graduating with a five-year professional Bachelor’s of Architecture in 1996.

I moved to Colorado in 1999 and worked as an architectural intern at Zehren & Associates in Avon for one year, and then in the same capacity for Bill Poss & Associates in Aspen during the period 2001-2003. While working for Bill Poss’ firm I realized that my interests lay in areas other than the practice of architecture and I decided not, at the present time, to pursue the registration exam or to pursue a career in architecture. I am now employed in the Aspen retail outlet of Snaidero, an Italian high-end kitchen cabinetry business.

I am not engaged in the practice of architecture, I am not using the term “architect” in connection with any trade or business, and I am not engaged in any activity which is restricted by law to the practice of licensed architects. As discussed more fully below, I have never held myself out to be a licensed architect and no one – not one single person – has been confused or deceived into believing that I am a licensed architect or that I am offering any type of architectural services.

2. The context in which this Complaint was filed

The Complaint was filed by attorney Cuthbert Myrin as a political smear campaign intended to alter the outcome of this spring's municipal election in Aspen. The political nature of Mr. Myrin's personal vendetta is clear on its face from the statement in his letter to your office urging that "Anything you can do to clarify the Board's position on such conduct in the short time prior to the conclusion of the current election would be beneficial." (see Tab 1).

In this spring's municipal elections in Aspen Mr. Myrin ran for the position of Mayor, finishing a distant fourth. In that same election I ran for a position on the City Council. Mr. Myrin raised his allegations for the first time in the midst of a televised debate during the run-off election debate among the candidates for City Council. Mr. Myrin rose from the audience to accuse me of the crime of falsely representing myself to be an architect in violation of the provisions of the Colorado state licensing laws (see Tab 2).

As detailed in this letter, and as Mr. Myrin is fully aware, those allegations are unsubstantiated by any evidence and are completely and utterly false.

3. I am not engaged in the practice of architecture, I am not using the term "architect" in connection with any business, and I have never represented myself to be an architect

As noted above, although I was trained as an architect and worked as an architectural intern for two firms, I have not been engaged in architectural work for several years. When I was engaged in architectural work it was as an architectural intern for a licensed architect.

I have never held myself out to be a licensed architect or as being authorized to render any type of architect services. (A copy of my business card is attached as Tab 3.)

I have not used the term "architect" in connection with any work I have performed, nor have I used that term in any solicitation of business.

I am not a practicing architect and have never pretended to be one.

I am not engaged in any of the acts specified in the § 12-4-102(5)(a) definition of the "practice of architecture" (specifically: I am not involved in the planning or design of buildings, the preparation of construction contract documents including working drawings and specifications for the construction of buildings, nor am I involved in the observation of construction pursuant to any agreements). I have also not engaged in any of the acts of professional service as set forth in § 12-4-102(5)(b).

As detailed below, no one has been confused into believing that I am a licensed or practicing architect.

4. There has been no confusion and no harm regarding my professional status

This Complaint did not come from a client, from an architect, from a contractor, or even from an individual who mistakenly believed that I am a licensed or practicing architect.

The Complaint came instead from the law office of an embittered political opponent who has been fully aware at all times that I am not a licensed architect, that I have never held myself out as such, and that I have never engaged in the unauthorized practice of architecture.

In order to eliminate even the possibility of confusion as to my credentials or profession I wrote to Mr. Myrin immediately upon receiving a copy of his Complaint requesting the names of anyone who might have mistakenly believed that I am a licensed architect so that I could promptly contact such individuals to correct their misunderstanding (see Tab 4). Mr. Myrin replied with the vague statement that he knew three people who were confused, but he failed to provide their names (see Tab 5). By declining to identify even one of those three individuals, Mr. Myrin deprived me of the opportunity to confirm his allegations and to contact those individuals to clarify my credentials and profession. It is now clear that Mr. Myrin invented those anonymous individuals in the same manner in which he invented the claims against me.

To avoid any possible confusion or misunderstanding on this point, I wrote to Mr. Myrin again specifically reiterating my belief that those phantom individuals do not exist but were instead invented by him as part of his trumped up charges (see Tab 6). Mr. Myrin responded by denying my allegation but then indirectly confirming the allegation by once again ignoring my express request for confirmation that those individuals actually exist (see Tab 7).

This exchange of correspondence demonstrates that attorney Cuthbert Myrin, contrary to the allegations in his Complaint, at no time believed that I have engaged in the unlicensed practice of architecture nor does he personally believe that I have ever deceived any third party into believing that I am a licensed architect. It further demonstrates that no third party has ever been confused on any of these points.

Independent of Mr. Myrin's false allegations, there has been no confusion

My efforts to avoid confusion about my profession or professional status are demonstrated by the fact that prior to the first election, and well prior to Mr. Myrin's filing of this Complaint, I asked both local newspapers in Aspen not to describe me as "Architect Jack Johnson" (see Tab 5, ¶ 5). While that description by a newspaper does not constitute any violation of Section 12-4, I made the request because I am not working in the field of architecture and thus "Architect Jack Johnson" is not the best shorthand description of who I am or what I do.

When Mr. Myrin first raised his allegations during the televised debate on May 17th, both Aspen papers reported my response:

"I am not a licensed architect. I have a five-year professional architecture degree. One has to complete three years of internship, which I have done as well. [Mr. Myrin]'s right, if I were attempting to go out and tell people that I was an architect so that I could get work as an architect, I probably would be guilty of misrepresenting myself. (But) I am not in the business of soliciting any architecture work whatsoever." (See Tab 9.)

As a result, from the very moment at which Mr. Myrin first made his allegation the facts were presented and any possibility of confusion was immediately eliminated.¹

Aspen is a small town and even people who do not know me personally are aware that I am not engaged in the practice of architecture and that I have never held myself out in any context as being a licensed architect. The community is equally aware that the false criminal allegations filed by Mr. Myrin were part of a political smear campaign. Mr. Myrin has been repeatedly chastised in letters to the editor of both local papers for his bad faith actions (see Tabs 10-12); and by columnists for both papers (see Tabs 13-14).

Mr. Myrin bases his Complaint in large part on a letter to the Editor from Sara Garton which stated that I have been "a Hickory House bartender, an architect, and a kitchen designer." (See Tab 15). Mr. Myrin did not, however, take the easy and necessary step of checking with Ms. Garton to determine whether she mistakenly believed that I am a licensed architect or that I am engaged in the practice of architecture. As the attached letter from Ms. Garton proves, she has never been confused about these issues; she was merely using layman's terms to refer to the period of time during which I was employed as an architectural intern by Bill Poss & Associates architects in Aspen. (See Tab 16)

Attached are letters from three prominent members of the Aspen community attesting to the fact that I am not engaged in the practice of architecture, that I am not using the term "architect" in connection with any trade or business, and that I am not holding myself out to be a licensed architect. The letters are from the Honorable Helen Klanderud, Mayor of Aspen (Tab 17), John Worcester, Aspen City Attorney (Tab 18), and Tony Hershey, Esq.,

¹ It is worth noting Mr. Myrin filed this Complaint three days *after*, not before, the issue was clarified by my immediate response to his question and by the subsequent press coverage of that response.

former member of the Aspen City Council and currently an Assistant District Attorney with jurisdiction including Aspen (Tab 19).

Also attached are letters from four prominent architects in the Aspen area, including the architect for whom I worked as an architectural intern, independently confirming that I am not engaged in the practice of architecture, that I am not using the term “architect” in connection with any trade or business, that I am not representing myself as a licensed architect, and that they are not personally aware of anyone who mistakenly believes that I am a licensed architect. The letters are from Mr. Bill Poss (ARC-302239 – Tab 20), Mr. William S. Pollock (ARC-203329 – Tab 21), Mr. Ralph Dupps (ARC-203418 – Tab 22), and Mr. Patrick Leeds (ARC-203467 – Tab 23).

Mr. Myrin does not submit a single piece of evidence nor does he offer a single witness demonstrating that I am holding myself out as a licensed or practicing architect or that I have engaged in any of the acts forbidden by the statute.

To the contrary, the evidence submitted with this letter clearly demonstrates that I have not violated any provision of the statute and that there has not been even a single instance of confusion regarding my credentials or my business activities.

5. The provisions of the Colorado statute

Cuthbert Myrin acknowledges that I have not violated Section 115 which deals with use of the title “architect”. He instead bases his allegation solely on Section 113. (See Tab 5, ¶ 1.)

Keeping in mind that Section 102(1) specifically defines the term “architect” as used in the statute to mean a licensed architect, Section 113 provides that it is a misdemeanor for an individual to engage in conduct which is intended or reasonably might be expected to mislead the public to believe that such person is a licensed architect, or to advertise, represent, or hold oneself out in any manner as a licensed architect, or to engage in the unauthorized practice of architecture.

I have never engaged in any of those prohibited actions.

If the statute were read with eyes closed to the explicit definitional provision of Section 102(1), as Mr. Myrin did in his Complaint and as he has done on a repeated basis to the Aspen newspapers, Section 113 of the statute, rather than being an effective consumer protection and public safety measure, would instead be in direct conflict with the First Amendment.

The purpose and intent of the statute is to protect current and prospective clients, and the public in general, against unlicensed architects engaging in architectural work.² It is an effective and valuable consumer protection, public safety, and anti-fraud measure.

The statute is clearly not intended to remove the word “architect” from common speech and there is no provision of the statute that purports to do so. By analogy, a lawyer who is not licensed by this state cannot practice law here, an accountant who is not licensed cannot render accounting services, a realtor who is not licensed cannot engage in real estate transactions, a barber who is not licensed cannot render barber services. But that does not mean that they are not lawyers or accountants or realtors or barbers; it only means that they may not engage in those professions and they may not, either directly or indirectly, solicit business or engage in those professions without being properly licensed.

This interpretation is underscored by an article in the online edition of Colorado State Board of Architect Examiners’ “ArchitectNews”, dated Winter 2004, entitled “Are Your Project

² This is made clear by the very first provision of the statute, § 12-4-101, which provides: “The regulatory authority established by this article is necessary to safeguard the life, health, property, and public welfare of the people of this state and to protect them against unauthorized, unqualified, and improper practice of architecture.”

Architects *Really* Architects?” The article confirms the goals of the statute by stating: “Misrepresenting the professional status of project personnel tarnishes a firm’s reputation and misleads clients and the public.”

As noted in my letter to the editor of the Aspen newspapers in the wake of Mr. Myrin’s ambush allegation during the televised debate: I am trained as an architect, people (including my mother) have referred to me as an architect, but I have never, at any time, taken any action which could confuse people into believing that I am authorized to practice architecture in Colorado. (A copy of that letter was attached to Mr. Myrin’s Complaint and is Tab 24 to this submission.³)

Mr. Myrin cites no evidence that I have violated § 113, he brings forth not a single witness who believes I have violated § 113, and the evidence attached to this letter underscores that I have not, at any time, violated either the letter or intent of § 113.

It has been long been settled in the courts that, consistent with the First and Fourteenth Amendments to the Constitution, a state may prescribe that only persons possessing reasonably necessary qualifications may practice a profession embracing areas of legitimate state concern. See *Dent v. West Virginia*, 129 U.S. 114, 9 S. Ct. 231, 32 L. Ed. 623 (1889). Likewise it has long been settled that a legislature may delegate considerable discretion in its exercise to an administrative board to make determinations both as to the knowledge and skill which entitles an individual to practice a particular profession. *Douglas v. Noble*, 261 U.S. 165, 43 S. Ct. 303, 67 L. Ed. 590 (1923). Consistent with these longstanding rules a state may regulate deceptive or misleading actions by an individual regarding his licensing status.

The law does not, however, permit this Board to take the actions urged by Mr. Myrin: it does not permit the Board to delete Section 102(1) from the statute and thus to prohibit *all* uses of the word “architect” except in connection with the licensed practice of architect, especially where there is no intent to deceive or confuse, there is no evidence of deceit or confusion, and there is no possibility of any such deceit or confusion.⁴

³ The heart of Mr. Myrin’s Complaint regards a letter which I sent to the Aspen newspapers in response to his ambush allegations. Mr. Myrin announces in the first paragraph of his Complaint that I stated in that letter “I am an architect.” However Mr. Myrin removes this sentence from its context. The letter in fact stated: “I am an architect. That is my training. It is how my mother describes me to her friends... I have not, however, ever solicited clients for architectural work, nor have I ever undertaken architectural work which requires a licensed architect.” (See Tab 22) The letter could not have made it any more clear that I am not engaged in the practice of architecture, that I am not soliciting any type of business, that I am not using the term “architect” in connection with any trade or business, and that I was merely offering an accurate description of my educational training.

It is worth noting that § 100.005(1) of the Rules and Regulations Of Procedure Colorado State Board of Examiners of Architects provides: “Advertisement - The attempt by publication, dissemination, solicitation, or circulation, except letterhead, business cards and complimentary telephone white pages listings whether by visual, oral, electronic, or written means to induce, directly or indirectly any person to enter into an agreement with an architect.” In other words, a letter to the editor of a newspaper which is not intended to induce anyone to enter into an agreement regarding architecture is not one of the contexts in which the statutory restrictions on the use of the word “architect” apply.

⁴ Mr. Myrin’s proposed reading of the statute, with § 102(1) deleted, defies the purpose and intent of the statute. But more importantly, Mr. Myrin is encouraging the Board to modify the statute in clear violation of the law. Mr. Myrin ignores case law which has held that this Board lacks the authority to modify the statute. See *Lorance v. Colorado State Bd. of Exmrs. of Architects*, 35 Colo. App. 177, 532 P.2d 382 (1974) (holding that, unless expressly or impliedly authorized by statute, an administrative board cannot change or modify existing statutes. The court ruled that if the clear words of the statute could be circumvented by this Board then the court would be authorizing the Board to ignore the plain meaning of the statute and would be conferring legislative powers on the Board.).

6. Prior proceedings of this Board

In order to determine whether the Board has faced allegations of this type in the past I reviewed the editions of the Board's *ArchitectNews* newsletter which are available on your website (Winter 2004 and Spring 2005), and the online minutes of the Board's meetings (January 23, March 26, May 28, July 22, September 24, and December 3, 2004; January 28 and March 25, 2005), and the online disciplinary records of the Colorado Department of Regulatory Agencies

While the minutes of the meetings of this Board do not provide the details of specific cases, there are two cases reported in those minutes which may provide some guidance (see Tab 25).

On March 25, 2005, the Board concluded that a newspaper article that listed an unlicensed individual as an "architect designer" did not constitute an apparent license law violation and the Complaint was unanimously dismissed.

A slightly different case came before the Board on July 22, 2004. That case involved a complaint regarding a newsletter article listing an individual as an Architect for Melton Construction. The matter was dismissed with a Do Not Endorse letter to the individual and a copy to the president of the construction company. While that case was apparently resolved with only a letter, there is a key difference from the facts here: that individual was engaged in the construction business and consumers, contractors, and the public could have been confused by the use in that context of the term "architect" into believing that the individual was a practicing architect or that the construction firm employed a licensed and practicing architect.

The lack of merit to Mr. Myrin's Complaint is further demonstrated by a review of the online disciplinary records of the Colorado Department of Regulatory Agencies. Those records do not reveal a single instance of an individual being censured for using the term "architect" to describe his educational training where the individual using that term has never represented himself as being a licensed architect, never used the term "architect" in connection with any trade or business, and has never engaged in any activity which is restricted by law to the practice of licensed architects.

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Conclusion

In conclusion, I hope you will see this false allegation for what it is: a meritless political smear aimed at influencing the outcome of an election for public office.

I believe that Cuthbert Myrin's actions as an attorney in filing criminal allegations against me, allegations which he knows to be untrue and which are unsupported by even a single piece of relevant evidence, are so reprehensible and unethical that I am planning to file an ethics complaint with the Colorado State Bar (see Tab 8).

I again assure you that I am not representing myself as a licensed architect, that I am not soliciting clients or business as an architect, that I am not using the term "architect" in connection with any business or commercial activities of any type, that I am not engaged in the practice of architecture, and that I am not involved in any activities which are reserved to licensed architects by Colorado law.

Sincerely,

Jack Johnson

ATTACHMENT LIST

Cover letter to Mr. Myrin's Complaint

1	Cover letter from the Law Office of Cuthbert Myrin (dated May 24, 2005)
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Debate transcript

2	Excerpts from debate transcript; Debate Between Candidates In Run-Off Election For Aspen City Council, Aired Live On Grassroots Public Television (Ch 12), Aspen, May 17, 2005
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Business card

3	Copy of my business card
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Correspondence With Mr. Myrin regarding Mr. Myrin's meritless Complaint

4	Letter from Jack Johnson to Mr. Myrin (dated May 23 rd)
5	Email from Mr. Myrin to Jack Johnson (dated May 26 th)
6	Letter from Jack Johnson to Mr. Myrin (dated May 27 th)
7	Email from Mr. Myrin to Jack Johnson (dated June 1 st)
8	Letter from Jack Johnson to Mr. Myrin (dated June 6 th)

News coverage of the response to Mr. Myrin's allegations

9	Aspen Daily News article dated May 18, 2005
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Letters to the Editors of the Aspen newspapers criticizing Mr. Myrin's meritless filing

10	letter by Frank Peters captioned " <i>Architect accusations a smear campaign</i> " (Aspen Daily News, May 24 th)
11	letter by James DeFrancia captioned " <i>Architect argument pointless</i> " (Aspen Daily News, May 24 th)
12	letter Ruth Kruger captioned " <i>Poor Loser?</i> " (Aspen Times, May 24 th)

Columnists from the Aspen newspapers criticizing Mr. Myrin's meritless filing

13	Su Lum column entitled " <i>The Jack attack</i> " (Aspen Times, May 25 th)
14	Dave Danforth column entitled " <i>In Aspen, moron license now required</i> " (Aspen Daily News May 22 nd)

Letters from Sara Garton

15	letter from Sara Garton to the Aspen Times (dated May 20 th), as attached to Mr. Myrin's Complaint
16	letter from Sara Garton to the Board in response to Mr. Myrin's false allegations

Letters from members of the Aspen community attesting that I am not holding myself out to be a licensed architect and am not engaged in the practice of architecture

17	letter from the Honorable Helen Klanderud, Mayor of Aspen
18	letter from John P. Worcester, Aspen City Attorney
19	letter from Tony Hershey, former member of the Aspen City Council and currently an Assistant District Attorney with jurisdiction including Aspen

Letters from Licensed Architects in Aspen attesting that I am not violating the provisions of Section 102-4

20	Mr. Bill Poss (License ARC-302239)
21	Mr. William S. Pollock (License ARC-203329)
22	Mr. Ralph Dupps (License ARC-203418)
23	Mr. Patrick Leeds (License ARC-203467)

My letter to the Editors of the Aspen newspapers

24	Letter from Jack Johnson to Editors of both Aspen newspapers in response to Mr. Myrin's allegations raised during a televised campaign debate (May 20, 2005)
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Minutes of the Colorado Board of Examiners of Architects

25	Minutes of the Colorado Board of Examiners of Architects: Disciplinary matters addressed on Thursday, July 22, 2004, and on Friday, March 25, 2005
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