

TEXAS BOARD OF ARCHITECTURAL EXAMINERS

Board Meeting Agenda

The William P. Hobby Jr. Bldg., Tower III, Room 102

333 Guadalupe Street

Austin, Texas

Thursday, May 26, 2016

9:00 a.m. – Conclusion

1. Preliminary Matters

- A. Call to order Debra Dockery
- B. Roll call Paula Ann Miller
- C. Excused and unexcused absences Debra Dockery
- D. Determination of a quorum
- E. Recognition of guests
- F. Chair's opening remarks
- G. Public Comments

2. Approval of February 25, 2016 Board Meeting Minutes (Action)

Debra Dockery

3. Executive Director Report (Information)

Julie Hildebrand

- A. Summary of Executive Accomplishments (Information)
- B. Operating Budget/Scholarship: Presentation on 2nd quarter 2016 expenditures/revenues
- C. Report on conferences and meetings (Information)
 - I. NCARB Member MBE Workshop/Regional Summit
March 10-12
 - II. 2016 Texas ASLA Annual Conference – *April 28-29*
- D. Report on upcoming conferences and meetings (information)
 - I. NCARB Annual Business Meeting – June 16-18
 - II. Executive Leadership Program for Regulators – July 25-28
 - III. Building Officials Association of Texas – August 2-5
 - IV. METROCON16 Expo and Conference – August 11-12

4. Approval of the 2017 – 2021 Strategic Plan (Action)

Debra Dockery

5. Executive Director Performance Evaluation Process (Action)

Sonya Odell

6. General Counsel Report (Action)

Lance Brenton

A. Proposed Amendments for Adoption

- I. Regarding eligibility for architectural registration by reciprocity, relating to educational requirements. Rule 1.22
- II. Regarding eligibility for architectural registration by examination, relating to NCARB's overhaul of the intern development program. Rules 1.5, 1.191, and 1.192

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B. Draft Amendments for Proposal

Regarding administrative penalties, warnings, and other sanctions. Rules 1.174, 3.174, 5.184, 1.177, 3.177, 5.187, 1.232, 3.232, and 5.242

C. Discussion Item

Discussion of Issues Relating to Recusal of Board Members

7. Enforcement Cases (Action)

Review and possibly adopt ED's or Interim ED's recommendation in the following enforcement cases:

Julie Hildebrand
Lance Brenton

A. Registrant/Non-Registrant Cases

Cosco, Renee Love (#046-16I)
Goleski, Michael Paul (#005-16N)
Gustin, Wesley (#104-15A)
Hanness, Richard O. (#115-14A)
Nnadozie, Emmanuel Ogbonna (#130-14A)
Sanchez, Paul Anthony (#105-13I)

B. CE Cases

Asakura, Keiji (#051-16L)
Denny, Lindsey Jacqueline (#026-16I)
Elkins, Leslie Keith (#041-16I)
Field, William Scott (#093-14A)
Gonzalez, Robert Alexander (#067-16A)
Greenwood, Thomas A. (#061-16I)
Jones, Robert Todd (#027-16L)
Lee, John W. (#062-16A)
McFadin, Charlotte Celia (#050-16I)
Ng, Leng-Wa (#042-16A)
Ruggiero, Peter Michael (#052-16A)

A. Voluntary Surrender

Loessberg, Antoinette (#003-16I)

*The Board may meet in closed session pursuant to TEX. GOV'T
CODE ANN. §551.071(1) to confer with legal counsel*

8. Review of NCARB Resolutions and Delegation of Voting Authority to be Acted Upon at the NCARB 2016 Annual Meeting (Action)

Debra Dockery

A. Resolution 2016-01 Mutual Recognition Arrangement with Australia and New Zealand

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- B. Resolution 2016-02** *Certification Guidelines* Amendment – Revision of the Alternatives to the Education Requirements for Certification
- C. Resolution 2016-03** *Certification Guidelines* Amendment – Exam Equivalency for ARE 5.0
- D. Resolution 2016-04** *Certification Guidelines* Amendment – Five-Year Rolling Clock and Rolling Clock Extension Policy Updates
- E. Resolution 2016-05** *NCARB Legislative Guidelines and Model Law/Model Regulations* Amendment – Access to the ARE for Students Enrolled in an Integrated Path to Architectural Licensure Option
- F. Resolution 2016-06** *NCARB Legislative Guidelines and Model Law/Model Regulations* Amendment – Addition of Architect Emeritus Status
- G. Resolution 2016-07** *NCARB Legislative Guidelines and Model Law/Model Regulations* Amendment – Reference to Military-Trained Applicants
- H. Resolution 2016-08** *NCARB Legislative Guidelines and Model Law/Model Regulations and Certification Guidelines* Amendment – Updating the Name of the Intern Development Program
- I. Resolution 2016-09** *NCARB Bylaws* Amendment – Updating Name of Internship Committee
- J. Resolution 2016-10** *Certification Guidelines* Amendment – Approval of Changes to Program Requirements for the Intern Development Program

- 9. Budget Development for FY17 and Discussion of Internal Budget Policies** (*Action*) Julie Hildebrand
- 10. Upcoming Board Meeting** (*Information*) Debra Dockery
Wednesday, August 17, 2016
- 11. Chair’s Closing Remarks** Debra Dockery
- 12. Adjournment** Debra Dockery

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NOTE:

- ◆ *Items may not necessarily be considered in the order they appear on the agenda.*
- ◆ *Executive session for advice of counsel may be called regarding any agenda item under the Open Meetings Act, Government Code §551.*
- ◆ *Action may be taken on any agenda item.*

NOTICE OF ASSISTANCE AT PUBLIC MEETINGS

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services are required to call (512) 305-8548 at least five (5) work days prior to the meeting so that appropriate arrangements can be made.

FREQUENTLY USED ACRONYMS

| | |
|---------------|--|
| ACSA | Association of Collegiate Schools of Architecture |
| ADA | Americans with Disabilities Act |
| AIA | American Institute of Architects |
| AREFAF | Architect Registration Examination Financial Assistance Fund (Scholarship) |
| ASID | American Society of Interior Designers |
| ASLA | American Society of Landscape Architects |
| ARE | Architect Registration Examination |
| BOAT | Building Officials Association of Texas |
| CACB | Canadian Architectural Certification Board |
| CIDA | Council for Interior Design Accreditation (Formerly FIDER) |
| CLARB | Council of Landscape Architectural Registration Boards |
| GAA | General Appropriations Act |
| GRF | General Revenue Fund |
| IDCEC | Interior Design Continuing Education Council |
| IDEC | Interior Design Educators Council |
| IDP | Intern Development Program |
| IIDA | International Interior Design Association |
| LARE | Landscape Architect Registration Examination |
| MBA | Member Board Administrator (within NCARB) |
| NAAB | National Architectural Accreditation Board |
| NCARB | National Council of Architectural Registration Boards |
| CIDQ | Council for Interior Design Examination |
| OAG | Office of the Attorney General |
| SOAH | State Office of Administrative Hearings |
| SORM | State Office of Risk Management |
| TAID | Texas Association for Interior Design |
| TAS | Texas Accessibility Standards |
| TASB | Texas Association of School Boards |
| TBPE | Texas Board of Professional Engineers |
| TxA | Texas Society of Architects |
| TSPE | Texas Society of Professional Engineers |

TEXAS BOARD OF ARCHITECTURAL EXAMINERS
Minutes of February 25, 2016 Board Meeting
William P. Hobby Jr. Building, 333 Guadalupe Street
Tower III, Conference Room 102
Austin, TX 78701
9:00 a.m. until completion of business

AGENDA ITEMS

DESCRIPTIONS

1A.

Call to Order

Ms. Dockery called the meeting to order at 9:02 a.m.

1B.

Roll Call

Ms. Miller called the roll.

Present Board Members

| | |
|-------------------------|-------------------------------------|
| Debra Dockery | Chair |
| Paula Ann Miller | Secretary-Treasurer – Public Member |
| Charles (Chuck) Anastos | Architect Member |
| Sonya Odell | Registered Interior Design Member |
| Michael (Chad) Davis | Landscape Architect Member |
| Chase Bearden | Public Member |
| Jennifer Walker | Architect Member |
| Robert (Bob) Wetmore | Architect Member |

1C.

**Excused and Unexcused
absences**

None.

1D.

**Determination of a
Quorum**

A quorum was present.

1E.

Recognition of Guests

At this time, no guests were present, however the following arrived later in the meeting:
Jarrett Hill, Governor’s Officer (arrived at 9:50 a.m.);
Michael J. Armstrong, CEO of NCARB;
Katherine (Kathy) Hillegas, Council Relations Director of NCARB; and
David Lancaster, Senior Advocate for Texas Society of Architects
(arrived at 9:13 a.m.)

2.

**Introduction of New
Board Members**

Ms. Dockery acknowledged the recently appointed Board members and provided biographical information on each. Mr. Bearden, Ms. Walker and Mr. Wetmore introduced themselves.

At this time, Ms. Dockery acknowledged the staff members:
Julie Hildebrand, Executive Director
Lance Brenton, General Counsel
Glenn Garry, Communications Manager

Glenda Best, Operations Manager
Christine Brister, Human Resources Program Specialist
Kenneth Liles, Finance Manager
Jack Stamps, Managing Investigator
Dale Dornfeld, IT Manager
Mike Alvarado, Registration Manager
Steve Rodriguez, License & Permit Specialist
Katherine Crain, Legal Assistant
Julio Martinez, Network Specialist

**1F.
Chair's Opening
Remarks**

Ms. Dockery provided the Chair's opening remarks.

**1G.
Public Comment**

Michael Armstrong, CEO of NCARB, provided an update to the Board regarding NCARB programs.

**3.
Approval of Board
Meeting Minutes**

A MOTION WAS MADE AND SECONDED (Anastos/Bearden) TO APPROVE THE OCTOBER 29, 2015 BOARD MEETING MINUTES. THE MOTION PASSED UNANIMOUSLY.

**4.
Executive Director's
Report**

Ms. Hildebrand provided an update to the Board regarding the Summary of Executive Accomplishments, the Operating Budget, and the Scholarship fund. The Board did not have any comments on the Executive Director's Report.

**Report on Conferences
and Meetings**

Ms. Hildebrand provided a report on the following conferences and meetings:

- A. TxA 76th Annual Convention & Design Expo – Nov 5-7;
- B. 2015 Annual CIDQ Council of Delegates Meeting – Nov. 13-14;
- C. CLARB MBE Committee Meeting – Jan. 7-8;
- D. NCARB 2016 MBE Engagement Sessions – Jan. 15-16;
- E. Southern Conference of NCARB Educators & Practitioners Conference – Feb. 12-13

**Report on Upcoming
Conferences and
Meetings**

Ms. Hildebrand provided a report on the following upcoming conferences and meetings:

- A. NCARB MBE Workshop/Regional Summit – March 10-12
Ms. Dockery, Mr. Davis, Ms. Odell, Ms. Hildebrand and Mr. Stamps will attend the workshop in Savannah, Georgia.
- B. 2016 Texas ALSA Annual Conference – April 28-29
Ms. Hildebrand, Mr. Davis, Mr. Stamps and Mr. Alvarado will attend the conference in Galveston, Texas.

The Board did not have any comments on the Executive Director's report on conferences and meetings.

**5.
General Counsel Report**

Mr. Brenton stated that the following items have been published in the Texas Register and no comments were received by the agency. Therefore, these rules are presented for final adoption by the Board.

**5A.
Proposed Rules for
Adoption**

I. Relating to registration of military service members, military veterans, and military spouses, Board Rules 1.22, 3.22, 5.32, 1.29, 3.29, 5.39, 1.69, 3.69, 5.79, and 7.10.

A MOTION WAS MADE AND SECONDED (Davis/Anastos) TO ADOPT THE PROPOSED AMENDMENTS TO 22 TEX. ADMIN. CODE §§1.29, 3.29, 5.39, 1.22, 3.22, 5.32, 1.69, 3.69, 5.79, and 7.10 FOR PUBLICATION IN THE TEXAS REGISTER, WITH AUTHORITY FOR THE GENERAL COUNSEL TO MAKE EDITORIAL CHANGES AS NECESSARY TO CLARIFY RULE AND BOARD INTENT AND TO COMPLY WITH THE FORMATTING REQUIREMENTS OF THE TEXAS REGISTER. THE MOTION PASSED UNANIMOUSLY.

II. Relating to Elimination of Reference to NCIDQ IDEP Program, Board Rules 5.31 and 5.202.

A MOTION WAS MADE AND SECONDED (Odell/Wetmore) TO ADOPT THE PROPOSED AMENDMENTS TO 22 TEX. ADMIN. CODE §§5.31 AND 5.202 FOR PUBLICATION IN THE TEXAS REGISTER, WITH AUTHORITY FOR THE GENERAL COUNSEL TO MAKE EDITORIAL CHANGES AS NECESSARY TO CLARIFY RULE AND BOARD INTENT AND TO COMPLY WITH THE FORMATTING REQUIREMENTS OF THE TEXAS REGISTER. THE MOTION PASSED UNANIMOUSLY.

III. Relating to Eligibility to Petition for Rulemaking, Board Rule 7.7

A MOTION WAS MADE AND SECONDED (Anastos/Miller) TO ADOPT THE PROPOSED AMENDMENTS TO 22 TEX. ADMIN. CODE §7.7, FOR PUBLICATION IN THE TEXAS REGISTER, WITH AUTHORITY FOR THE GENERAL COUNSEL TO MAKE EDITORIAL CHANGES AS NECESSARY TO CLARIFY RULE AND BOARD INTENT AND TO COMPLY WITH THE FORMATTING REQUIREMENTS OF THE TEXAS REGISTER. THE MOTION PASSED UNANIMOUSLY.

IV. Relating to Employee Training Draft Rule 7.15

Mr. Brenton explained to the Board that the proposed rule mirrors the statute. The rule was proposed at the October Board meeting and the agency received no comments.

A MOTION WAS MADE AND SECONDED (Davis/Walker) TO ADOPT THE PROPOSED DRAFT RULE TO 22 TEX. ADMIN. CODE §7.15, FOR PUBLICATION IN THE TEXAS REGISTER, WITH AUTHORITY FOR THE GENERAL COUNSEL TO MAKE EDITORIAL CHANGES AS NECESSARY TO CLARIFY RULE AND BOARD

INTENT AND TO COMPLY WITH THE FORMATTING REQUIREMENTS OF THE TEXAS REGISTER. THE MOTION PASSED UNANIMOUSLY.

V. Relating to Consideration of Foreign Landscape Architecture Degrees, Rules 3.21 and 3.191.

Mr. Brenton explained to the Board that the proposed rule was approved at the October Board meeting, published in the Texas Register in December and no comments were received by the agency; therefore, it is staff's recommendation that the Board move to adopt rules 3.21 and 3.191 as proposed.

A MOTION WAS MADE AND SECONDED (Davis/Anastos) TO ADOPT THE PROPOSED AMENDMENTS TO 22 TEX. ADMIN. CODE §§3.21 AND 3.191 FOR PUBLICATION IN THE TEXAS REGISTER, WITH AUTHORITY FOR THE GENERAL COUNSEL TO MAKE EDITORIAL CHANGES AS NECESSARY TO CLARIFY RULE AND BOARD INTENT AND TO COMPLY WITH THE FORMATTING REQUIREMENTS OF THE TEXAS REGISTER. THE MOTION PASSED UNANIMOUSLY.

VI. Relating to Cleanup of Reference to \$200 Professional Fee, Rules 1.65, 3.65, and 5.75.

Mr. Brenton explained to the Board that the proposed amendments were approved by the Board in October and published in the Texas Register in December and no comments were received by the agency; therefore, it is staff's recommendation that the Board move to adopt rules 1.65, 3.65, and 5.75.

A MOTION WAS MADE AND SECONDED (Wetmore/Davis) TO APPROVE THE PROPOSED AMENDMENTS TO 22 TEX. ADMIN. CODE §§1.65, 3.65, AND 5.75 FOR PUBLICATION IN THE TEXAS REGISTER, WITH AUTHORITY FOR THE GENERAL COUNSEL TO MAKE EDITORIAL CHANGES AS NECESSARY TO CLARIFY RULE AND BOARD INTENT AND TO COMPLY WITH THE FORMATTING REQUIREMENTS OF THE TEXAS REGISTER. THE MOTION PASSED UNANIMOUSLY.

The Board took a break at 10:20 a.m. and reconvened at 10:35 a.m.

The Chair recognized Mr. Jarrett Hill from the Governor's office had joined the Board's meeting and Mr. David Lancaster had joined the Board too.

**5B.
Draft Amendments for
Proposal**

I. Regarding eligibility for architectural registration by reciprocity, relating to education requirements, Board Rule 1.22.

Mr. Brenton explained to the Board that the draft amendments for proposal would be presented and if the Board approved the draft amendments, then Staff would prepare them for publication in the Texas Register and publish them for public comments.

A MOTION WAS MADE AND SECONDED (Anastos/Davis) TO APPROVE PROPOSED NEW RULE 22 TEX. ADMIN. CODE §1.22 FOR PUBLICATION IN THE TEXAS REGISTER, WITH AUTHORITY FOR THE GENERAL COUNSEL TO MAKE EDITORIAL CHANGES AS NECESSARY TO CLARIFY RULE AND BOARD INTENT AND TO COMPLY WITH THE FORMATTING REQUIREMENTS OF THE TEXAS REGISTER. THE MOTION PASSED UNANIMOUSLY.

II. Regarding eligibility for architectural registration by examination, relating to NCARB's overhaul of the intern development program, Board Rules 1.5, 1.191, and 1.192.

Mr. Brenton explained that this was the second phase of the changes that NCARB is undertaking with regard to the IDP program. Previously, the number of the hours to complete IDP were reduced. This is the overhaul to the program which decreases the number of categories that must be completed by an applicant which requires a rule change by the Board.

A MOTION WAS MADE AND SECONDED (Davis/Walker) TO APPROVE PROPOSED NEW RULES 22 TEX. ADMIN. CODE §1.5, 1.191, and 1.192 FOR PUBLICATION IN THE TEXAS REGISTER, WITH AUTHORITY FOR THE GENERAL COUNSEL TO MAKE EDITORIAL CHANGES AS NECESSARY TO CLARIFY RULE AND BOARD INTENT AND TO COMPLY WITH THE FORMATTING REQUIREMENTS OF THE TEXAS REGISTER. THE MOTION PASSED UNANIMOUSLY.

Mr. Anastos had a question regarding the effective date of the rule and whether it was retroactive for candidates. Mr. Armstrong stated that the program was retroactive and the candidates' hours will migrate.

6.
Discussion Items

A. Discussion of Issues Relating to Recusal to Board Members

Mr. Brenton gave a short presentation to the Board regarding recusals of Board members. Ms. Dockery asked if she needed to recuse herself and leave the room. Mr. Brenton stated that it was not necessary to leave the room. Ms. Dockery requested that the General Counsel do more research on recusals and the effects of voting on cases and provide additional information to the Board.

B. Executive Director Performance Evaluation Process

Ms. Dockery stated that Ms. Hildebrand has been Executive Director of the agency for almost one year and the Board will need to perform an annual review of the Executive Director. She stated that prior to the previous Executive Director's retirement, the Board convened a committee to revise the performance review form and format. Ms. Dockery reestablished the committee to complete the work on the Executive Director review process and bring the form to the Board's May meeting for consideration. Furthermore, the full review will be done in August.

7. Review and possibly adopt Executive Director’s recommendation in the following enforcement cases:

Enforcement Cases

A. Non-Registrant Case **Rodriguez, Omar Eliezer (#149-14N)**

Mr. Brenton stated that based upon the investigation, Respondent violated Board Rule 1.123 by using the title “architect” on his Facebook page and the Facebook page for his firm and a \$4,000 administrative penalty was recommended.

A MOTION WAS MADE AND SECONDED (Davis/Anastos) TO ACCEPT STAFF’S RECOMMENDATION OF A \$4,000 ADMINISTRATIVE PENALTY. THE MOTION PASSED UNANIMOUSLY.

B. Registrant Cases **Marquez, Michael J. (#048-15A)**

Mr. Brenton stated that based upon the investigation, Respondent violated Board Rule 1.48(b) by practicing architecture when his registration was delinquent and stated that an administrative penalty of \$1,000 was recommended.

A MOTION WAS MADE AND SECONDED (Davis/Walker) TO ACCEPT STAFF’S RECOMMENDATION OF A \$1,000 ADMINISTRATIVE PENALTY. THE MOTION PASSED UNANIMOUSLY.

Todd, Markham W. (#046-15A)

Mr. Brenton stated that based upon the investigation, Respondent violated Board Rule 1.124(a) by failing to register his architectural business with the Board and stated that an administrative penalty of \$1,500 was recommended. Mr. Brenton stated that this violation was discovered as a result of another investigation instigated by the Board, but that investigation was dismissed for lack of evidence.

A MOTION WAS MADE AND SECONDED (Davis/Bearden) TO ACCEPT STAFF’S RECOMMENDATION OF A \$1,500 ADMINISTRATIVE PENALTY. THE MOTION PASSED UNANIMOUSLY.

Wallace, Kevin Laurance (#119-15A)

Mr. Brenton stated that based upon the investigation, Respondent violated Board Rules 1.123 and 1.82(b) by using the title “architect” and providing architectural services for twelve (12) projects at a time when his certificate of registration was not in good standing. Furthermore, Respondent violated Board Rule 1.102(b) by affixing a seal with an incorrect registration number on the construction documents for twelve (12) projects; and by violating Board Rule 1.101 by failing to affix his seal, signature and date of signing to two (2) sheets of construction documents for the project 10621 Ivalenes Hope Dr., Avery Ranch, Texas. An administrative penalty of \$4,500 was recommended.

A MOTION WAS MADE AND SECONDED (Davis/Anastos) TO ACCEPT STAFF'S RECOMMENDATION OF A \$4,500 ADMINISTRATIVE PENALTY. THE MOTION PASSED UNANIMOUSLY.

C. Registrant – CE Cases Mr. Brenton stated that the Board would hear the next 16 cases and vote on them together as follows:

Alberstadt, Milton Louis (#033-16A)

Baker, Gary Taylor (#004-16A)

Biegel, Steven L. (#019-16A)

Blankenship, Lance Ray (#080-15A)

Bodron, Thomas M. (#029-16I)

Dioun, Massoud M. (#036-16L)

Durham, Robert Wayne (#035-16A)

Elliott, William C. (#032-16A)

Featherston, Laura Ann (#013-16I)

Grassle, Robert C. (#034-16A)

Larson, Ted William (#062-15I)

Matthiesen, Jay Scott (#028-16A)

Patel, Narendra (#147-15A)

Rougeau, Rhonda M. (#030-16I)

Torres, Alfonso Ybarra (#024-16A)

West, Charles Moss (#018-16A)

A MOTION WAS MADE AND SECONDED (Anastos/Davis) TO ADOPT STAFF'S RECOMMENDATION AND PENALTIES TO APPROVE ALL OF THE CASES LISTED ON THE AGENDA UNDER CE CASES. THE MOTION PASSED UNANIMOUSLY.

**8.
Board Election**

Board Vice-Chair and Secretary/Treasurer

The Chair asked the Board if there were any nominations for the Board election. Mr. Davis nominated Sonya Odell as Vice-Chair. No further nominations were suggested.

THE BOARD VOTED ALL IN FAVOR FOR SONYA ODELL TO SERVE AS VICE-CHAIR OF THE BOARD.

The Chair stated that she would take nominations for Secretary-Treasurer. Mr. Davis nominated Paula Ann Miller to continue as Secretary-Treasurer. THE BOARD VOTED ALL IN FAVOR FOR PAULA ANN MILLER TO SERVE AS SECRETARY-TREASURER OF THE BOARD.

**9.
Board Committee
Assignments**

The Chair stated that she had made her committee assignments as follows:

Rules Committee

Chuck Anastos, Chair; Chad Davis, Sonya Odell, and Jennifer Walker as committee members.

Executive Director Evaluation Committee

Sonya Odell, Chair; Chase Bearden and Paula Ann Miller as committee members.

Legislative Review Committee

Chad Davis, Chair; Chuck Anastos, Chase Bearden and Bob Wetmore as committee members.

10. Upcoming Board Meeting Thursday, May 26, 2016 – Full Board & Budget Workshop

11. Chair’s Closing Remarks Ms. Dockery and Mr. Davis thanked the Executive Director and Staff on the work that had been done in preparation for the meetings.

12. Adjournment A MOTION WAS MADE AND SECONDED (Davis/Anastos) TO ADJOURN THE MEETING AT 11:24 A.M. THE MOTION PASSED UNANIMOUSLY.

APPROVED BY THE BOARD:

DEBRA J. DOCKERY, AIA
Chair, TEXAS BOARD OF ARCHITECTURAL EXAMINERS

Summary of Executive Accomplishments

May 26, 2015

Executive

1. Conducted Environmental Scan; prepared for the Strategic Planning Workshop; and prepared the first draft of the Strategic Plan for approval by the full Board.
2. Completed Customer Service Survey and analyzed results – 94% satisfaction rate and 7.6% response rate
3. Prepared and submitted the Quarterly SDSI Report
4. I would like to recognize and congratulate Christine Brister, on our staff, for working towards and receiving her certification as an HR Professional from the Society of Human Resource Professionals. Her work and additional knowledge will be an asset to the agency.
5. Please see my monthly Executive Director Updates for more details.

Presentations with Impressions:

1. Presentation on working with building professionals at the NCARB Regional Meeting (Jack)
2. General Presentation and Booth at the Texas American Society of Landscape Architects Annual Meeting (Julie and Glenn)
3. General Presentation at Gensler in Houston (Glenn)
4. General Presentation at Houston AIA with their “emerging professionals” in Houston (Glenn)

NCARB

1. I was elected to be the Member Board Executive Director to the NCARB Region 3 Board and will serve for one year beginning July 1, 2016.
2. I was appointed to serve on the NCARB Procedures and Documents Committee for their FY17. The committee reviews proposed resolutions, procedures, and documents for their impact on and consistency with Council policies and programs. It also interprets Council standards relating to the qualifications for NCARB certification and reviews impediments to interstate architectural practice and recommends ways to eliminate them.
3. IDP is now AXP (Architectural Experience Program). The program’s current 17 experience categories will be realigned into 6 experience areas that more accurately reflect the general areas of practice identified by the most recent Practice Analysis. The new areas also correspond to the new ARE 5.0 divisions. The new areas are:
 - a. Practice Management
 - b. Project Management
 - c. Program & Analysis
 - d. Project Planning & Design
 - e. Project Development & Documentation
 - f. Construction & Evaluation
4. Please review the NCARB Fast Facts for May 2016 for more updates.

Summary of Registration Department Accomplishments

| | Sep | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug |
|--------------------------------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|-----|-----|-----|-----|
| Examination Applications Received | 54 | 40 | 63 | 50 | 92 | 79 | 73 | 49 | | | | |
| Reciprocal Applications Received | 39 | 42 | 39 | 29 | 48 | 41 | 42 | 37 | | | | |
| Total Applications Received | 93 | 82 | 102 | 79 | 140 | 120 | 115 | 86 | | | | |
| Exam Scores Received/Entered | 373 | 368 | 318 | 367 | 365 | 391 | 347 | 448 | | | | |
| Examination Registrations Issued | 45 | 40 | 37 | 36 | 43 | 49 | 51 | 30 | | | | |
| Reciprocal Registrations Issued | 36 | 34 | 43 | 35 | 39 | 32 | 42 | 36 | | | | |
| Total Registrations Issued | 81 | 74 | 80 | 71 | 82 | 81 | 93 | 66 | | | | |
| Active Architects | 11,681 | 11,701 | 11,747 | 11,759 | 11,797 | 11,820 | 11,849 | 11,870 | | | | |
| Active Reg. Interior Designers | 3,760 | 3,733 | 3,719 | 3,701 | 3,686 | 3,661 | 3,647 | 3,635 | | | | |
| Active Landscape Architects | 1,464 | 1,465 | 1,468 | 1,470 | 1,465 | 1,472 | 1,481 | 1,479 | | | | |
| Total Active Registrants | 16,905 | 16,899 | 16,934 | 16,930 | 16,948 | 16,953 | 16,977 | 16,984 | | | | |
| CE Audits Conducted | 122 | 121 | 119 | 119 | 115 | 108 | 110 | 120 | | | | |
| CE Audits Referred for Investigation | 5 | 8 | 7 | 0 | 5 | 11 | 4 | 8 | | | | |
| Approved Scholarship Applications | 0 | 0 | 0 | 2 | 7 | 1 | 3 | 4 | | | | |
| Certificates of Standing | 15 | 9 | 12 | 10 | 6 | 9 | 8 | 14 | | | | |

- All new registrants were registered within one day of all documentation being received and the fee being deposited

Summary of Enforcement Accomplishments

As of October 16, 2015

| | Sep | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug |
|--|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| Cases Received and Opened | 21 | 15 | 11 | 5 | 8 | 13 | 7 | 8 | | | | |
| Cases Closed by Investigations | 11 | 13 | 6 | 2 | 1 | 2 | 9 | 2 | | | | |
| Cases Referred to Legal | 10 | 7 | 7 | 5 | 6 | 3 | 3 | 11 | | | | |
| Average Number of Days to Investigate | 77 | 68 | 73 | 71 | 87 | 93 | 82 | 84 | | | | |
| Cases Referred for Criminal Prosecution | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | | | | |
| Notices of Violation by Legal | 11 | 5 | 18 | 5 | 8 | 4 | 8 | 6 | | | | |
| Voluntary Surrenders by Legal | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | | | | |
| Disciplinary Action Entered by the Board | 0 | 19 | 0 | 0 | 0 | 20 | 0 | 0 | | | | |
| Warnings from Executive Director | 9 | 6 | 6 | 1 | 0 | 2 | 4 | 0 | | | | |
| Complaints Filed at SOAH | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 1 | | | | |

- Lance attended the Federation of Associations of Regulatory Boards Regulatory Law Conference.
- Lance attended the Government Law and Liability Conference presented by the Attorney General's Office.
- Substantial revisions were made to the Board Member Training Manual.
- Lance attended the Austin Bar Association Administrative Law Division's presentation on SOAH Proceedings.

**Texas Board of Architectural Examiners
Fiscal Year 2016 Budget
Scholarship Fund**

| | FY 2016 Budget | FY 2016 Actual Expenditures Sept. 1, 2015---Feb. 29, 2016 | FY 2016 Remaining Budget |
|---|-------------------|---|-----------------------------|
| Operating Fund Beginning Fund Balance: | - | - | 77,946.18 |
| Adjusted Beginning Balance | - | - | - |
| Scholarship Fund Beginning Balance | 98,985.57 | | |
| Total Beginning Scholarship Fund Balance | 98,985.57 | 98,985.57 | 77,946.18 |
| Expenditures: | | | |
| Operating Expenditures-Scholarship Payments | | 21,039.39 | - |
| Total Expenditures | | 21,039.39 | - |
| Excess/(Deficiency) of Rev. over Exp. | 98,985.57 | 77,946.18 | - |
| Fund Balance | 98,985.57 | 77,946.18 | 77,946.18 |

Number of Scholarships Awarded

42

Frequency per Fiscal Year----September 30, January 31, and May 31

Figure 1

Mission

The mission of the Texas Board of Architectural Examiners (TBAE) is to serve the State of Texas by protecting and preserving the health, safety, and welfare of the Texans who live, work, and play in the built environment through the regulation of the practice of architecture, landscape architecture, and interior design.

TBAE's Strategic Plan ensures that the agency not only carries out its mission, but also is:

1. Accountable to the public who uses and inhabits the built environment, registrants, and all other stakeholders.
2. Efficient by producing maximum results with no waste of collected funds and by identifying any function or provision that is redundant or not cost effective.
3. Effective by successfully fulfilling core functions, achieving performance measures, and implementing plans to continuously improve.
4. Providing excellent customer service.
5. Transparent such that agency actions can be understood by any Texan.

About TBAE

A. Agency Overview and Organizational Aspects

TBAE operates under the Self-Directed, Semi-Independent (SDSI) program established by the 77th Texas Legislature. TBAE's participation in SDSI removes the agency from the appropriations process, ensures accountability to stakeholders, and requires the agency to operate as a business. SDSI agencies must adopt their own budgets and establish registration fees to cover all operational costs. Additionally, each agency submits an annual payment (\$510,000 in TBAE's case) to the general revenue fund and pays for the services of other state agencies.

TBAE is overseen by a Board of nine gubernatorial appointees. Four Board members are registered architects, three are public members, one is a registered interior designer, and one is a registered landscape architect. The Chair is selected by the Governor from among the Board members, and typically the group meets four times a year to make or amend rules and decide enforcement cases.

TBAE has a staff of 19 full-time equivalent positions and operates with an annual budget of \$2.8M. TBAE Staff is divided into three broad functional units: Registration, Enforcement, and Administration. Each division is responsible for executing particular operational aspects of the Board's statutory charge and mission. While separation of the units allows staff to fully engage in their respective areas of expertise, close collaboration and cross-training allows the agency as a whole to remain flexible for most any event.

B. Current Year Activities

Through the third quarter of fiscal year 2016, TBAE is operating under a balanced budget, in spite of legislative mandates requiring an increase in agency expenses. As a result, for the xx year in a row, TBAE did not raise registration fees. In fact, in response to legislative action repealing the professional fee, TBAE decreased fees by \$200 per year. With such fiscal responsibility, TBAE has a healthy fund balance currently at 92% of its annual budget.

Looking at registration trends through the third quarter of this fiscal year, TBAE expects to see a xx% increase for active architect registrants, a xx% decrease for active registered interior designers and a xx% increase for active landscape architect registrants. It is also expected that TBAE will see more than xx new registrants from all three professions. These numbers closely track the registration trends in FY15. Specifically, TBAE has seen growth for architects and landscape architects for at least the previous seven years. TBAE believes that the continued decrease seen in registered interior designers is due to the 2013 legislative requirement for all registered interior designers to meet the current examination requirements by September 1, 2017.

In the enforcement unit, TBAE is on track to open approximately xx complaints. This number is in line with FY15 and previous years. Through the third quarter of FY16, the enforcement unit has closed xx cases, with xx resulting in disciplinary action by TBAE. This is a sharp increase over the number of cases closed and the number of disciplinary actions entered in FY15. The enforcement unit has worked hard to decrease the previous case load it experienced after the departure of its General Counsel and the Executive Director in FY15, a year in which the unit closed less cases than it received. Alongside the increased case closure rate, average days to complaint resolution is on track to decrease.

TBAE staff worked to implement all relevant legislation from the 84th Session, including the promulgation of rules and a new website section dedicated to military service members, veterans and their families. Staff also focused on special projects, including a new individual registration website, a new Annual Report on Trends, and its Continuity of Operations Plan. Additionally, the Executive Director focused on increasing the State of Texas' influence on the national organizations of regulatory boards for all three professions by her service on several committees and task forces.

Beginning in FY15 and continuing into FY16, TBAE has seen replacements in several key positions for both staff and the Board. Julie Hildebrand became the Executive Director on April 2, 2015 after the interim Executive Director had served since September 2014. The General Counsel position was filled on May 1, 2015 after being vacant since February 2015. Finally, TBAE's Registration Manager retired after 20 years of service in August 2015 and current staff was promoted to fill the position. In FY16, the terms of two architect board members expired, one of which terms was that of the long-standing Chair. They were replaced by two new members, and a new Chair was appointed by the governor. The new members received immediate training and were able to participate in the strategic planning process and board meetings.

C. External/Internal Assessment Issues and Trends

In conducting an external/internal assessment, the Board collected and analyzed information from several sources including an Industry Environmental Scan, Stakeholder Input Process, Customer Service Survey, Survey of Employee Engagement and separate Board Member and Management Strategic Planning Sessions. The Board conducted a thorough analysis of its past, current, and future position and its expectations for external and internal change. The following current and future major issues may affect the Board's operations and results in meeting the needs of its stakeholders.

- Thriving Talent Pool/Emerging Professionals
- Workforce Demographics
- Improvement to the Regulatory System
- Unregistered Practice
- Technology
- Globalization/International Practice
- Positive Construction Forecasts
- Ethics

TBAE Goals and Action Plans

Licensing Goal: TBAE will administer a licensing program to ensure that only qualified professionals become licensed in Texas.

Specific Action Items to be Achieved Throughout the Strategic Plan Period

1. Ensure the professional qualifications of those practicing the regulated professions by setting relevant requirements for education, experience, and examination.
2. Increase public and professional awareness of TBAE's mission, activities and services, with specific attention to the prevention of unregistered practice and the timely and appropriate registration of pre-professionals.
3. Improve the TBAE website to focus more on informing the public about the registration of the regulated professionals.
4. Improve relationships with related organizations in order to facilitate consistent regulation of the professions and further the Board's mission and goals.
5. Anticipate and respond to an evolving registrant pool, with specific attention to the following factors:
 - changing demographics of registrants, exam candidates, and future professionals;
 - examination requirements for registered interior designers; and
 - reduced registration fees and barriers to registration.
6. Review the current continuing education requirements and compliance program to evaluate whether the requirements are relevant to the current practice, and whether the agency is facilitating registrants' voluntarily compliance with continuing education requirements.
7. Review the current use of technology in the regulated professions and by the agency to ensure that state laws, rules, and services are keeping pace with the impacts of technology, and to improve operational efficiency, effectiveness, and customer service.
8. Improve data collection and analysis to better evaluate the successes and challenges of the agency's various services.
9. Continue to monitor and update TBAE rules to ensure alignment and relevancy, and eliminate redundancies and impediments.
10. Enhance organizational effectiveness and improve the quality of customer service in all programs, by instituting a Model Board Paradigm based on state and national standards with the aim of continuous operational improvement. TBAE will look to maximize administrative leanness, while not sacrificing agency agility and responsiveness.
11. Ensure that leadership succession planning is strong and that cross-component working groups are developed to ensure the continuity of agency effectiveness and efficiency.
12. Protect fiscal soundness through policies, procedures, and preparation for expected revenue and expenditure fluctuations, with a focus on linking revenue in ways more directly related to the expenditure.

TBAE's Licensing Goal and Action Plan Supports Each Statewide Objective Accountable • Efficient • Effective • Transparent • Customer Service

All of the Statewide Objective were considered as a roadmap in developing the Action Items listed above. Each Action Item speaks directly to at least one Statewide Objective, and most address more than one Statewide Objective. Taken together, the Action Items pursuant to the Licensing goal make great strides toward bolstering all of the State's Objectives and toward high performance overall.

Enforcement Goal: TBAE will protect the public health, safety, and welfare with an effective, responsive, and consistent enforcement program.

Specific Action Items to Achieved Throughout the Strategic Plan Period

1. Ensure that all complaints and known violations are investigated and appropriate voluntary or disciplinary action is taken against all violators.
2. Investigate and prosecute complaints in a thorough and timely manner.
3. Pursue registrants' compliance with disciplinary actions and conditions.
4. Establish regulatory standards of practice for the regulated professions.
5. Increase public and professional awareness of TBAE's mission, activities and services, to encourage a better understanding of the regulatory requirements, voluntary compliance with the regulatory requirements, and feedback on ways to continuously improve.
6. Improve the TBAE website to focus more on informing the public about the registration of the regulated professionals.
7. Improve relationships with related organizations in order to facilitate consistent regulation of the professions and further the Board's mission and goals.
8. Analyze and respond to incidents in the regulated professions that threaten the health, safety, and welfare of Texans.
9. Review the current use of technology in the regulated professions and by the agency to ensure that state laws, rules, and services are keeping pace with the impacts of technology, and to improve operational efficiency, effectiveness, and customer service.
10. Improve data collection and analysis to allow the Board and agency to better evaluate the successes and challenges of the agency's various services.
11. Continue to monitor and update TBAE rules to ensure alignment and relevancy, and eliminate redundancies and impediments.
12. Enhance organizational effectiveness and improve the quality of customer service in all programs, by instituting a Model Board Paradigm based on state and national standards with the aim of continuous operational improvement. TBAE will look to maximize administrative leanness, while not sacrificing agency agility and responsiveness.
13. Ensure that leadership succession planning is strong and that cross-component working groups are developed to ensure the continuity of agency effectiveness and efficiency.
14. Protect fiscal soundness through policies, procedures, and preparation for expected revenue and expenditure fluctuations, with a focus on linking revenue in ways more directly related to the expenditure.

TBAE's Enforcement Goal and Action Plan Supports Each Statewide Objective
Accountable • Efficient • Effective • Transparent • Customer Service

All of the Statewide Objective were considered as a roadmap in developing the Action Items listed above. Each Action Item speaks directly to at least one Statewide Objective, and most address more than one Statewide Objective. Taken together, the Action Items pursuant to the Enforcement goal make great strides toward bolstering all of the State's Objectives and toward high performance overall.

Redundancies and Impediments

| Service, Statute, Rule or Regulation (Provide Specific Citation, if applicable) | Describe why the Service, Statute, Rule or Regulation is Resulting in Inefficient or Ineffective Agency Operations | Provide Agency Recommendation for Modification or Elimination | Describe the Estimated Cost Savings or Other Benefit Associated with Recommended Change |
|--|--|---|---|
| None at this time (see below)* | NA | NA | NA |

*The TBAE has done a preliminary evaluation of the core services, state statutes, and state rules and regulations applicable to TBAE and does not recommend modifications or eliminations at this time. However, this type of self-evaluation is part of the culture of this agency. TBAE will continue its ongoing evaluation throughout the strategic planning period with the goal of reducing any barriers to the economic prosperity of Texas and making the agency more effective and efficient in achieving its core mission.

As part of its ongoing self-evaluation to eliminate redundancies and impediment this fiscal year, TBAE has reviewed its own rules and has made the following updates to improve the efficiency and effectiveness of the agency's operations.

- TBAE reduced the number of hours required to complete an architectural internship by eliminating about a year's worth of elective hours, with interns documenting only the hours in core experience areas.
- TBAE realigned the experience areas required for registration as an architect from 17 specific areas to six broad areas. The new experience areas will align with the newest version of the Architectural Registration Examination.
- TBAE expanded the registration possibilities for a landscape architect who graduated from a landscape architectural program located outside of the United States.
- TBAE removed references in rules to defunct internship programs for registered interior designers.

Proposed Amendments to Rule 1.22
Relating to Eligibility for Architect Registration by Reciprocity

Background

Rule 1.22 identifies the eligibility requirements for architect registration by reciprocity. Currently, Rule 1.22 states that an applicant for registration by reciprocity may show eligibility by either becoming NCARB certified, or by demonstrating completion of the intern development program (IDP) and the architect registration exam (ARE). The rule does not address an educational requirement for registration by reciprocity, and it has been previous practice to grant reciprocity eligibility to applicants without NAAB-accredited architecture degrees. However, this practice is arguably contrary to the Board's enabling law (and subsection (a) of Rule 1.22), which limits the Board's authority to grant reciprocity eligibility to an applicant registered in another state "that has licensure or registration requirements *substantially equivalent*" to Texas requirements, which has been defined as a professional degree in architecture from a NAAB-accredited program.

The proposed amendments to Rule 1.22, which were approved for proposal at the February Board meeting, would require applicants for reciprocity registration to demonstrate completion of a professional degree in architecture from a NAAB-accredited program, in addition to completion of the IDP and the ARE, thereby ensuring consistency between the requirements for initial and reciprocity registration. The rule would preserve the alternate path to registration through NCARB certification.

Rule Proposal and Comments

The proposed amendments were published in the Texas Register on April 8, 2016 (41 TexReg 2572). The Board received five comments on the proposed amendments, all of which expressed opposition to the immediate implementation of the rule. The comments are attached herein. Three comments were received from 2010 graduates of UTSA with bachelor's degrees in architecture, who have pursued registration under more permissive requirements in Arizona with the goal of qualifying for reciprocity in Texas. Each of these applicants is in the process of completing the ARE, and propose that the Board consider a period of transition that would allow similarly situated registrants additional time to pass the ARE and qualify for reciprocity.

Matthew Dyer, a 2008 graduate of Texas A&M with a four-year degree in Environmental Design, also commented on the rule. Mr. Dyer completed IDP in 2012, and states that he contacted TBAE in September 2014 to confirm that he would be eligible for reciprocity if he pursued registration in Colorado with his four year degree. Mr. Dyer also requests a transition period during which applicants without NAAB degrees can qualify for registration prior to implementation of the rule. Please note that Mr. Dyer has already submitted an application, which will be considered under the rule already in effect.

Finally, Jonathan Chades also commented on the rule. Mr. Chades states that he has recently moved to Texas from Florida to expand his employer's architectural firm. Because he is a graduate of a non-accredited architectural program, Mr. Chades opposes the rule change.

The submitted comments describe the potential hardship for hopeful reciprocity candidates who have relied upon the existing rule to make important decisions relating to education, occupation, and residency. On the other hand, some of the comments illustrate how Texas-educated residents have pursued out-of-state licensure for the sole reason of gaining Texas registration, thereby frustrating the Board's previous determination that a NAAB-accredited degree is the expected standard. Though this would rightly be called a loophole or workaround, it is apparent that this is a path to registration that was previously offered by board staff and on which a large number of people are now currently relying, and a sudden change to the rule could cause hardship for such individuals.

In light of the comments, Staff has prepared an alternative version of the rule change for consideration by the Board. This alternative would result in a two-stage adoption of educational requirements for reciprocity. First, applicants who apply and qualify for reciprocity registration before December 31, 2020 would be required to have completed a pre-professional bachelor's degree in architecture by a U.S. regionally accredited institution. Any applicant who applies or becomes qualified for reciprocity registration after that date would be required to complete a NAAB-accredited degree, as described under the initial registration rule. Under this deadline, a sufficiently-motivated, Spring-2016 graduate of a four-year program would be able to complete the requirement of 96 months of combined education and experience for registration in Arizona, pass the ARE, and complete IDP in time to apply for reciprocity in Texas. It would not be easy, but it would be possible. Therefore, this time period should be sufficient to allow any hopeful applicant who has already acted in reliance of the current rule a reasonable opportunity to complete the process.

Staff Recommendation

Given the potential hardship to individuals who have relied upon the previous interpretation of the rule, Staff recommends that the Board include a transition period for applicants with four-year degrees in architecture in adopting changes to the reciprocity requirements. If this is acceptable to the Board, Staff recommends that the Board move to withdraw the previously proposed amendments to 22 Texas Admin. Code §1.22, and move to approve the alternative draft amendments to 22 Tex. Admin. Code §1.22 for publication in the Texas register, with authority for the General Counsel to make editorial changes as necessary to clarify rule and Board intent and to comply with the formatting requirements of the Texas Register.

2
3 RULE §1.22 Registration by Reciprocal Transfer

4 (a) A person may apply for architectural registration by reciprocal transfer if the person holds an
5 architectural registration that is active and in good standing in another jurisdiction and the other
6 jurisdiction:

7 (1) has licensing or registration requirements substantially equivalent to Texas registration
8 requirements; or

9 (2) has entered into a reciprocity agreement with the Board that has been approved by the Governor of
10 Texas.

11 (b) In order to obtain architectural registration by reciprocal transfer, an Applicant must demonstrate
12 the following:

13 (1) the Applicant has:

14 (A) successfully completed a professional degree in architecture as described by §1.21(a)(1) of this
15 Subchapter;

16 ~~(A)(B)~~ successfully completed the Architect Registration Examination (ARE) or another architectural
17 registration examination which the National Council of Architectural Registration Boards (NCARB) has
18 approved as conforming to NCARB's examination standards; and

19 ~~(B)(C)~~ successfully completed the requirements of the Intern Development Program (IDP) or acquired
20 at least three years of acceptable architectural experience following registration in another jurisdiction;
21 or

22 (2) the Applicant has been given Council Certification by NCARB and such Council Certification is not
23 currently in an expired or revoked status.

24 (c) An Applicant who applies for architectural registration by reciprocity on or before December 31,
25 2020, and otherwise demonstrates satisfaction of all requirements for registration at that time, is not
26 required to complete a professional degree in architecture, as described by Rule §1.21(a)(1) of this
27 Subchapter, provided that the applicant has successfully completed a pre-professional bachelor's degree
28 in architecture by a U.S. regionally accredited institution. This subsection is repealed effective July 1,
29 2019.

30 ~~(c)~~ (d) An Applicant for architectural registration by reciprocal transfer must remit the required
31 registration fee to the Board within 60 days after the date of the tentative approval letter sent to the
32 Applicant by the Board.

2

3 RULE §1.22 Registration by Reciprocal Transfer

4 (a) A person may apply for architectural registration by reciprocal transfer if the person holds an
5 architectural registration that is active and in good standing in another jurisdiction and the other
6 jurisdiction:

7 (1) has licensing or registration requirements substantially equivalent to Texas registration
8 requirements; or

9 (2) has entered into a reciprocity agreement with the Board that has been approved by the Governor of
10 Texas.

11 (b) In order to obtain architectural registration by reciprocal transfer, an Applicant must demonstrate
12 the following:

13 (1) the Applicant has:

14 (A) successfully completed a professional degree in architecture as described by §1.21(a)(1) of this
15 Subchapter;

16 (B) successfully completed the Architect Registration Examination (ARE) or another architectural
17 registration examination which the National Council of Architectural Registration Boards (NCARB) has
18 approved as conforming to NCARB's examination standards; and

19 (CB) successfully completed the requirements of the Intern Development Program (IDP) or acquired at
20 least three years of acceptable architectural experience following registration in another jurisdiction; or

21 (2) the Applicant has been given Council Certification by NCARB and such Council Certification is not
22 currently in an expired or revoked status.

23 (c) An Applicant for architectural registration by reciprocal transfer must remit the required registration
24 fee to the Board within 60 days after the date of the tentative approval letter sent to the Applicant by
25 the Board.

April 19, 2016

Julie Hildebrand
Executive Director
Texas Board of Architectural Examiners
333 Guadalupe Street, Ste. 2-350
Austin, TX 78701

Dear Ms. Hildebrand:

It has recently been brought to my attention that TBAE is considering making modifications to the rules and regulations affecting the reciprocity process; more specifically reciprocity from a state with different educational requirements.

I am currently employed by Nextgen Architects as a full-time employee. I have been working in the industry for over six years, have completed NCARB's Internship Development Program, have started the licensing testing process, and I am planning on completing within the current year.

I graduated 'cum laude' from the University of Texas at San Antonio with a Bachelor of Science in Architecture. In the spring of 2009, I was fortunate enough to attend a semester abroad in Barcelona, Spain which allowed me to not only broaden my knowledge of architecture but also gain an appreciation that will forever be engraved in my mind. I graduated in the spring of 2010, which to my disadvantage, the economy was not at its best. This is when I decided to venture to California where I was able to acquire a brief internship with a general contractor, Corporate Contractors. After realizing the shortage of jobs in my field, I decided to move back to San Antonio, Texas where I was blessed to find a full-time job at PBK Architects. Since then, I have been able to successfully advance within my field. I first started as an Architectural Intern at PBK, later becoming an Assistant Project Manager within the same firm. In 2013 I had the opportunity to join Nextgen Architects as a founding member and currently serve as the BIM Project Manager for the firm. In order to maintain my professional growth, I attained LEED AP BD+C accreditation and CSI Construction Document Technologist Accreditation. After 3 years in the field I realized that I needed to pursue my architectural licensure in order to continue to attain my personal and professional goals.

Due to personal obligations, my options were limited and decided that I needed to seek approval for ARE testing without leaving my full-time job. Through research on the NCARB website, I noticed that there were several states that allowed me to start taking the ARE exams based on my current work experience and accomplishments. Arizona was one of the nearest states with an option of reciprocity with the state of Texas but by no means was it an easy process. I was required to submit my completed degree, demonstrate a minimum of three years of architectural experience, two letters of recommendation, one experience reference from a direct supervisor, and a detailed summary of qualifying experience. I was approved and began the taking my ARE exams.



As I understand, the final vote on this particular issue is scheduled to take place on the May 26, 2016 board meeting. I am deeply concerned how this may affect my professional career as well as those who have opted for this path of reliance upon TBAE's practice of accepting these types of reciprocity applications. After committing time and money to this long process, the newly emerged changes will prove detrimental to my career as well as my personal life. It is my wish, that at the very least, TBAE would consider a transition period before the changes take place. I'm a vested Texan who has built a personal and professional career in this state. It would be a shame if the ability to practice architecture as a licensed architect was taken away from me.

If you have any additional questions about my current situation, please contact me at:

email: dparedes@nextgenarchitects.com

phone: 915.727.6802

Kind regards,



Diana E. Paredes, Assoc. AIA, CDT, LEED AP BD+C
BIM Project Manager
Nextgen Architects

cc:

Lance Brenton
David Lancaster, Hon AIA.



April 29, 2016

Via Electronic Mail

Texas Board of Architectural Examiners
333 Guadalupe St.
Austin, TX 78701

Dear TBAE,

I appreciate you taking the time from your busy schedule to read this letter. It has recently been brought to my attention that TBAE is planning to make some modifications to the rules and regulations affecting the reciprocity process; more specifically, reciprocity from a state with different educational requirements.

I am a first generation American and a life long Texan. I paid for my own education through scholarships and student loans. I am currently employed by Open Studio Architecture as a full time employee. I have been working in the industry for over six years, have completed NCARB's Internship Development Program, and have started the licensing testing process. To date, I have passed 5 ARE exams and will complete the last two within the present year.

I am a magna cum laude graduate of UTSA, Bachelor of Science Architecture. I was the recipient of the LIFE award for most outstanding undergraduate architecture student. In 2009, I was also fortunate enough to do a study abroad semester in Italy which allowed me to not only broaden my knowledge of architecture but also to return to Texas with a different and unique perspective. I graduated in the spring of 2010, which to my disadvantage the economy was at a low point, however, through persistence I was blessed to find a full time job at a firm. Since then, I have been able to successfully make strides within the architecture field. I first started as an architectural intern at a small private firm and now I am currently a Project Manager at Open Studio Architecture. In order to maintain the momentum in my professional growth I attained LEED AP BD+C accreditation. After 3 years in an architecture firm, I learned that I needed to seek licensure in order to progress competitively in the field I had found I truly loved.

My only option at the time was to seek approval for ARE testing without leaving my full time job because of many financial obligations. Through research on the NCARB website, I saw that there were a couple of states that allowed me to start taking ARE exams based on work experience and accomplishments. Arizona was the closest and the least expensive option, but by no means was it an easy process. I had to submit my completed degree, demonstrate three years of architectural experience, have three letters of recommendations completed by my supervisors, and submit a detailed summary of qualifying experience. I was approved and promptly started on my path to licensure.

As I understand, the final vote is scheduled to take place in May's board meeting. I am deeply concerned about how this is going to affect not only myself but many other soon to be licensed architects within Texas who have chosen to rely upon TBAE's practice of accepting these types of reciprocity applications. After all this time, personal sacrifice, and money invested in this long process, the newly emerged changes will prove detrimental to my

Open studio architecture
The Finesilver Building
816 Camaron St., Suite 230
San Antonio, Texas 78212
T. 210.417.4307

professional and personal life. With all this said, I hope at the very least a period of transition is allowed before the final changes take place. I truly hope to finish my ultimate goal which is to practice in this great state of Texas as a licensed architect.

Feel free to contact me if you have any additional questions about my current situation.

You can reach me at:

email: maritza.alvarado03@gmail.com

phone: [956.358.8600](tel:956.358.8600)

Sincerely,



Maritza Alvarado

CC:

julie.hildebrand@tbae.state.tx.us

lance.brenton@tbae.state.tx.us

Open studio architecture
The Finesilver Building
816 Camaron St., Suite 230
San Antonio, Texas 78212
T. 210.417.4307

April 20, 2016

Texas Board of Architectural Examiners
333 Guadalupe St.
Austin, TX 78701

Dear TBAE,

I appreciate you taking the time from your busy schedule to read this letter. It has recently been brought to my attention that TBAE is planning to make some modifications to the rules and regulations affecting the reciprocity process; more specifically reciprocity from a state with different educational requirements.

I am currently employed by Stantec as a full time employee. I have been working in the industry for over six years, have completed NCARB's Internship Development Program, and have started the licensing testing process. I have passed 3 exams and am planning on competing the last two within the present year.

I am a cum laude graduate of UTSA, Bachelor of Science Architecture. I was also fortunate enough to do a study abroad semester in Italy which allowed me to not only broaden my knowledge of architecture but also gain an appreciation that will forever be engraved in my mind. I graduated in the Spring of 2010, which to my disadvantage the economy was not at its best, however, I was blessed to find a full time job at a firm. Since then, I have been able to successfully move up within my field. I first started as an architectural intern at a small private firm and now I am currently a Project Designer/BIM Project Lead at Stantec. In order to maintain the momentum in my professional growth I attained LEED AP BD+C accreditation and after 3 years in the field realized I must seek licensure in order to keep reaching my career and personal goals.

My only option at the time was to seek approval for ARE testing without leaving my full time job because of financial obligations. Through research on the NCARB website, I saw that there were a couple of states that allowed me to start taking ARE exams based on work experience and accomplishments. Arizona was the closest and the least expensive option, but by no means was it an easy process. I had to submit my completed degree, demonstrate three years of architectural experience, have three letters of recommendations completed by my supervisors, and submit a detailed summary of qualifying experience. I was approved and promptly started on my licensure path.

As I understand, the final vote on this particular issue is scheduled to take place in May's board meeting. I am deeply concerned how this is going to affect not only myself but many other soon to be licensed architects within Texas who have chosen this set path, in reliance upon TBAE's practice of accepting these

types of reciprocity applications. After all this time and money invested in this long process, the newly emerged changes will prove detrimental to my career as well as my personal life. With all this said, I hope at the very least a transition period is allowed before the final changes take place. I truly hope to finish my ultimate goal which is to practice in this great state of Texas as a licensed architect.

Feel free to contact me if you have any additional questions about my current situation.

You can reach me at

Personal Email: megan.monedero@gmail.com

Cell Phone: 915.449.0755

Best,

Megan Monedero

Designer
Stantec
20 East Greenway Plaza Suite 200 Houston TX 77046-2012





Stantec Architecture Inc.
200 E. Greenway Plaza, Suite 200, Houston TX 77046-2012

RECEIVED

2016 APR 28 AM 9:30

TEXAS BOARD OF
ARCHITECTURAL EXAMINERS

To: Julie Hildebrand
Executive Director
Texas Board of Architectural Examiners
333 Guadalupe, Suite 2-350
Austin, TX 78701

Re: Reciprocity Application and Implementation of New Rule

Dear Ms. Hildebrand,

I am a licensed Architect whose application for reciprocity whose reciprocity application is pending but has not been approved based on the recent rule change proposed to the Board for approval. I would like to take this opportunity to present my case to the Board. My sincere hope is that the Board will consider an alternative implementation strategy and timeline for this very impactful rule change.

I graduated from Texas A&M University in 2008 with a four-year Bachelors of Environmental Design, which is a non-NAAB accredited degree program. Additionally, I completed a Minor in Business, and graduated Summa Cum Laude. Following graduation in 2008, I began my professional career with SHW Group (now Stantec Architecture), where I am currently still employed. Over the past eight years I have gained experience in project design, documentation and management on a wide range of project types and sizes, from small additions to multi-building campuses. I completed the IDP process in 2012, and in 2014 I began exploring my options towards professional licensure. In September of 2014, I read the requirements for Reciprocal Registration on both NCARB's "Registration Board Requirements" webpage and the TBAE's "Architectural Registration by Reciprocal Transfer" webpage. Both of these websites indicated that applicants holding a valid Architectural license from another state could submit the required Certificate of Standing, application and fees, Proof of Legal Status, transcript and fingerprint documentation to the Board as a means of receiving reciprocal registration in Texas. To confirm this information, on September 29th, 2014, I called the TBAE's direct line (512-305-9000) and was directed to a Registration Coordinator, who verbally confirmed that an applicant with my specific pre-professional degree who completed the A.R.E. and held an Architectural license from another state could apply for and receive reciprocal registration in Texas.

Had this option not been available to me, I might have chosen an alternate path towards licensure, such as a 2 or 3 year NAAB-accredited graduate degree. If I had pursued this option, I might have completed the professional degree education requirement and become registered directly in Texas. However, since the reciprocal licensure path was available and directly validated by the TBAE, I elected to pursue this option and began the next steps in the reciprocity process. I



April 22, 2016
Page 2 of 3

applied for and took the A.R.E. through the State of Colorado, completing my final exam in October of 2015. With my exams completed, I applied for and received my Architectural license in Colorado (ARC 00404138) on November 6, 2015. At this time, I confirmed the “Architectural Registration by Reciprocal Transfer” requirements on TBAE’s website and began the application process. Throughout this application process I was in contact with Steve Ramirez, who confirmed receipt of each of the required application submissions. On February 17, 2016 I received an email from Steve that explained that the Board would be meeting on February 25, 2016 to review the approval of reciprocal applicants, and that “no approvals will be granted without a professional architectural degree until [the agency is] given direction on the matter from our board members.” I received a follow-up call from Steve on February 26th, 2016 after the Board meeting, confirming that the amendment proposal had been approved, and that my application for reciprocity would not be approved.

I want to encourage the Board to consider a more reasonable implementation method and timeline for the proposed rule change, as the implications of such a change impact my professional career in an immediate and drastic way. One example of how other organizations have handled similar transitions can be seen with NCARB. When NCARB enacts changes to the IDP program, the A.R.E., or other broad-reaching milestones in the path towards licensure, it gives its members months of advance notice with regular email communication advising of the pending change, the period of overlap between the old and new procedures, and the date that the old procedures will expire. The phasing in of IDP 2.0 and graduated conversion from the A.R.E. 4.0 to 5.0 are both instances of major changes accompanied by effective communication and implementation timelines. In my situation, Mr. Ramirez’ email on February 17th, 2016 informed me that my application for reciprocity would not be approved even though the Board had not yet met to discuss the proposed rule change is an example of an implementation timeline. To me, this sudden, unforeseen denial of my completed (and paid for) application for reciprocity does not align with TBAE’s usually progressive communication strategy, or with the implementation procedures of other national organizations. At the time I submitted my application for reciprocity (including all forms, fees, fingerprinting and other documentation), I met the requirements as published on both NCARB’s and TBAE’s websites. With my application all-but-approved, this abrupt rejection seems unreasonable.

Given my reliance on the TBAE’s published rules at the onset of my path towards reciprocity, the subsequent verbal confirmation by a TBAE Registration Coordinator, the completion of all IDP, A.R.E. and professional licensure requirements, and my completed application for reciprocity with the TBAE, I want to respectfully request that the Board review my case and approve my application. Please do not hesitate to contact me if any clarification or additional information is needed.



April 22, 2016
Page 3 of 3

Sincerely yours,

Matthew Dyer
Project Architect
Stantec Architecture
200 E. Greenway Plaza, Suite 200
Houston, TX 77046-2012

Lance Brenton

From: Mike Alvarado
Sent: Monday, May 02, 2016 8:23 AM
To: Lance Brenton
Cc: Julie Hildebrand
Subject: FW: Hearing in May-Requirements for Reciprocal Registration

Follow Up Flag: Follow up
Flag Status: Flagged

From: Steve M. Ramirez
Sent: Monday, May 02, 2016 8:16 AM
To: Mike Alvarado <mike.alvarado@tbae.state.tx.us>
Subject: FW: Hearing in May-Requirements for Reciprocal Registration

From: Jonathan Chades [<mailto:jnchades@me.com>]
Sent: Saturday, April 30, 2016 10:59 PM
To: Steve M. Ramirez <steve.ramirez@tbae.state.tx.us>
Subject: Hearing in May-Requirements for Reciprocal Registration

Dear Texas Board of Architects & Engineers,

I am writing to you in regards to the recent motion to deny a candidate (architect) from applying for reciprocal registration if that candidate does not hold a NAAB accredited degree. I am concerned because this decision affects me personally as well as many others that may be in the same position.

Unfortunately the architectural degree that I currently hold is not a NAAB accredited degree. Due to personal circumstances I cannot pursue to further my education to achieve such an accredited degree in order to satisfy this proposed requirement. Within the last year I became a registered architect and therefore cannot apply for an NCARB certificate through the BEA program for some time - even though I have close to 10 years of professional experience in the field prior to obtaining licensure. I ask that you please take this into consideration for those candidates such as myself who do not hold the educational standards but instead have supplemental real world experience to qualify for registration.

Because the current requirements of the TBAE allows architects without an accredited degree the ability to apply for reciprocal registration through endorsement, I have been granted the opportunity to pursue expanding my firm's practice to Texas with plans for immediate developments throughout the state in both private and public sectors. As a result my family and I have journeyed to Texas with plans to further my career as a registered architect in your great state. It would be very unfortunate if this proposed motion passes as it will close the only path available to me for reciprocal registration; thus impacting not only my career but my family's way of life and reason for relocating to begin with.

I hope that you consider the effects of this decision and pray for a ruling in favor of keeping the current requirements which do not depend upon an accredited degree. I look forward to processing my application for

reciprocal registration in the near future through the Texas Board of Architects & Engineers. Thank you for your time and attention.

Best Regards,
Jonathan N. Chades

Adoption of Proposed Amendments to Rules 1.5, 1.191, and 1.192
Relating to NCARB IDP Overhaul

Background

In February, the Board voted to propose amendments to Rules 1.5, 1.191, and 1.192, in order to implement NCARB’s “overhaul” of the IDP program. IDP Overhaul follows the IDP Streamline initiative from last year in which NCARB decreased the number of hours required to complete IDP from 5,600 to 3,740. IDP Overhaul will bring further changes to the IDP program by consolidating the 17 current IDP “experience areas” into six broad practice-based areas. Furthermore, the IDP Overhaul consolidates the three experience settings into two. A chart is attached which illustrates the forthcoming changes under IDP Overhaul.

Once IDP Overhaul takes effect on June 29, 2016, Board Rules 1.191 and 1.192 will become obsolete, as these rules make reference to the current division of IDP into 17 experience areas. Under the proposed amendments, rules 1.191 and 1.192 would be deleted in their entirety, leaving Rules 1.21 and 1.22, which simply require applicants to “successfully demonstrate completion of the Intern Development Program.” “Intern development program” is defined as “A comprehensive internship program established, interpreted, and enforced by NCARB.”

This would be more consistent with the Board’s processes, in that TBAE does not independently confirm whether an applicant has completed the required hours in each individual experience area. Rather, NCARB determines whether IDP has been completed, and then certifies such completion to staff. Because the Board does not independently analyze the applicant’s hours, and because the Board’s internship requirements do not differ from the requirements of NCARB, it is unnecessary to repeat the specific requirements of IDP in a separate rule. Furthermore, reference to NCARB IDP simplifies the process for applicants who are attempting to verify Texas registration requirements. Staff has discussed the issue with NCARB, and this is the method that most states use to lay out the IDP requirement.

Proposed Amendments

The proposed amendments were published in the April 8, 2016 edition of the *Texas Register* (41 TexReg 2570). No comments were received on the proposed rules, which are summarized as follows:

- Rules 1.191 and 1.192
 - Deletes both rules that are contained in Chapter 1, Subchapter J of the Board’s rules
- Rule 1.5(37)
 - Delete definition to “intern development training requirement,” which is the title of Subchapter J (which contains Rules 1.191 and 1.192).

Attached you will find the following supporting documents:

- NCARB's IDP Overhaul Graphic
- Copies of all rules proposed for amendment, with underline and strikethrough formatting indicating all changes

Staff Recommendation

Move to approve the proposed amendments to 22 Tex. Admin. Code §§ 1.5, 1.191, and 1.192 for final adoption.

1 SUBCHAPTER A SCOPE; DEFINITIONS

2 RULE §1.5 Terms Defined Herein

3 The following words, terms, and acronyms, when used in this chapter, shall have the following
4 meanings, unless the context clearly indicates otherwise.

5

6 (1) – (36) No change

7 ~~(37) Intern Development Training Requirement – Architectural experience necessary for an Applicant to~~
8 ~~obtain architectural registration by examination in Texas.~~

9 Renumber (38) – (74)

10

1 SUBCHAPTER J INTERN DEVELOPMENT TRAINING REQUIREMENT

2 RULE §1.191—Description of Experience Required for Registration by Examination

3 (a) Pursuant to §1.21 of this title (relating to Registration by Examination), an Applicant must
4 successfully demonstrate completion of the Intern Development Training Requirement by earning credit
5 for at least 3,740 Training Hours as described in this subchapter.

6 (b) An Applicant must earn credit for at least 260 Core Minimum Training Hours in the area of pre-design
7 in accordance with the following chart:

Figure: 22 TAC §1.191(b)

| Category 1: Pre-Design | Minimum Training Hours Required |
|---------------------------------|--|
| Programming | 80 |
| Site and Building Analysis | 80 |
| Project Cost and Feasibility | 40 |
| Planning and Zoning Regulations | 60 |
| Core Minimum Hours | 260 |

8

9 (c) An Applicant must earn credit for at least 2,600 Core Minimum Training Hours in the area of design in
10 accordance with the following chart:

Figure: 22 TAC §1.191(c)

| Category 2: Design | Minimum Training Hours Required |
|--------------------------------------|--|
| Schematic Design | 320 |
| Engineering Systems | 360 |
| Construction Cost | 120 |
| Codes and Regulations | 120 |
| Design Development | 320 |
| Construction Documents | 1,200 |
| Material Selection and Specification | 160 |
| Core Minimum Hours | 2,600 |

1

2 (d) An Applicant must earn credit for at least 720 Core Minimum Training Hours in the area of project
3 management in accordance with the following chart:

Figure: 22 TAC §1.191(d)

| Category 3: Project Management | Minimum Training Hours Required |
|---------------------------------------|--|
| Bidding and Contract Negotiation | 120 |
| Construction Administration | 240 |
| Construction Phase: Observation | 120 |
| General Project Management | 240 |
| Core Minimum Hours | 720 |

4

5 (e) An Applicant must earn credit for at least 160 Core Minimum Training Hours in the area of practice
6 management in accordance with the following chart:

Figure: 22 TAC §1.191(e)

| Category 4: Practice Management | Minimum Training Hours Required |
|--|--|
| Business Operations | 80 |
| Leadership and Service | 80 |
| Core Minimum Hours | 160 |

7

8 (f) An Applicant shall receive credit for Training Hours in accordance with the following chart:

Figure: 22 TAC §1.191(f)

| Experience Setting | Maximum Training Hours Awarded |
|--|--|
| Experience Setting A: Practice of Architecture | No limit |
| Training under the Supervision and Control of an IDP supervisor licensed as an architect in Texas or another jurisdiction with substantially similar licensing | Every Applicant must earn at least 1,860 Training Hours in Experience Setting A. |

| | |
|---|-------------------------------------|
| <p>requirements who works in an organization lawfully engaged in the Practice of Architecture.</p> | |
| <p>Academic Internships</p> <p>Must meet durational requirements and internship must be completed training in Experience Setting A or Experience Setting O.</p> | |
| <p>Training Setting O: Other Work Settings</p> <p>Supervision and Control of an IDP supervisor licensed as an architect in Texas or another jurisdiction with substantially similar licensing requirements who is employed in an organization not engaged in the Practice of Architecture.</p> <p>Supervision and Control of an IDP supervisor who is not licensed in the United States or Canada but who is engaged in the Practice of Architecture outside of the United States or Canada.</p> <p>Supervision and Control by a landscape architect or licensed professional engineer (practicing as a structural, civil, mechanical, fire protection, or electrical engineer in the field of building construction).</p> | <p>1,860 Training Hours</p> |
| <p>Training Setting S: Supplemental Experience</p> <p>Supplemental Experience for Core Hours Core hours earned through supplemental experience are applied to specific IDP experience areas.</p> <p>Design or Construction Related Employment Design or construction related activities under the direct supervision of a person experienced in the</p> | <p>930 Training Hours (Maximum)</p> |

| | |
|---|--|
| <p>activity (e.g. analysis of existing buildings; planning; programming; design of interior space; review of technical submissions; engaging in building construction activities).</p> <p>Leadership and Service Qualifying experience is pro bono, in support of an organized activity or in support of a specific organization. There must be an individual who can certify to NCARB that you have performed services in support of the organization.</p> | <p>80 Training Hours (Minimum) 320 Training Hours (Maximum)</p> |
| <p>Additional Opportunities for Core Hours A maximum of 40 core hours in each of the IDP experience areas may be earned by completing any combination of these experience opportunities:</p> <ol style="list-style-type: none"> 1. NCARB's Emerging Professional's Companion (EPC): Activities 2. NCARB's Professional Conduct Monograph 3. Construction Specifications Institute (CSI) Certificate Program: Certified Construction Specifier (CCS) and Certified Construction Contract Administrator (CCCA) 4. Community-Based Design Center/Collaborative 5. Design Competitions 6. Site Visit with Mentor | <p>600 Training Hours (Maximum)</p> |

1 SUBCHAPTER J INTERN DEVELOPMENT TRAINING REQUIREMENT

2 RULE §1.192 — Additional Criteria

3 ~~(a) One Training Hour shall equal one hour of acceptable experience. Training Hours may be reported in~~
4 ~~increments of not less than .25 of an hour.~~

5 ~~(b) An Applicant may earn credit for Training Hours after obtaining a high school diploma, General~~
6 ~~Education Degree (GED) equivalent, or other equivalent diploma or degree.~~

7 ~~(c) Every training activity, the setting in which it took place, and the time devoted to the activity must be~~
8 ~~verified by the person who supervised the activity.~~

OVERHAUL OF IDP EXPERIENCE AREA MAP

IDP Experience Areas Starting June 29, 2016

| Current Experience Areas | | | Hours | Practice Management | Project Management | Programming & Analysis | Project, Planning & Design | Project Development & Documentation | Construction & Evaluation |
|--------------------------|--------------------------|---------------------------------------|--------------|---------------------|--------------------|------------------------|----------------------------|-------------------------------------|---------------------------|
| Category | Current Experience Areas | | Hours | 160 | 360 | 260 | 1,080 | 1,520 | 360 |
| Pre-Design | 1A | Programming | 80 | | | | | | |
| | 1B | Site and Building Analysis | 80 | | | | | | |
| | 1C | Project Cost and Feasibility | 40 | | | | | | |
| | 1D | Planning and Zoning Regulations | 60 | | | | | | |
| Design | 2A | Schematic Design | 320 | | | | | | |
| | 2B | Engineering Systems | 360 | | | | | | |
| | 2C | Construction Cost | 120 | | | | | | |
| | 2D | Codes and Regulations | 120 | | | | | | |
| | 2E | Design Development | 320 | | | | | | |
| | 2F | Construction Documents | 1,200 | | | | | | |
| | 2G | Material Selection and Specifications | 160 | | | | | | |
| Project Management | 3A | Bidding and Contract Negotiation | 120 | | | | | | |
| | 3B | Construction Administration | 240 | | | | | | |
| | 3C | Construction Phase: Observation | 120 | | | | | | |
| | 3D | General Project Management | 240 | | | | | | |
| Practice Management | 4A | Business Operations | 80 | | | | | | |
| | 4B | Leadership and Service | 80 | | | | | | |
| Total Hours | | | 3,740 | 160 | 360 | 260 | 1,080 | 1,520 | 360 |

Consideration of Draft Amendments Relating to Disciplinary Issues:

Administrative Penalties, Warnings, and Reprimands

22 Tex. Admin. Code §§1.174, 3.174, 5.184, 1.177, 3.177, 5.187, 1.232, 3.232, and 5.242

Background

In August, the rules committee considered a draft amendment to Rule 1.177¹ that would have explicitly identified unauthorized use of an architectural seal as a “major” violation subject to the maximum \$5,000 administrative penalty allowable under our law. The committee was generally in favor of this change, but also expressed concern about other issues in the rule. Staff was asked to provide the committee with an alternate version of the rule that would provide more guidance on the appropriate levels of administrative penalties for other violations. Subsequently, staff identified two other issues relating to disciplinary sanctions: the issuance of warnings under Rule 1.174 and the reference to reprimands in Rule 1.232 (relating to recommended penalties in disciplinary actions). These issues were further discussed by the Rules Committee in February, and draft amendments have been developed for each of these rules in Chapters 1, 3, and 5. These rules are now presented to the Rules Committee and full Board for approval for proposal in the Texas Register.

Issues Presented:

Warnings

The issuance of warnings is governed by **Rules 1.174, 3.174, and 5.184**. Copies of these rules are attached, including amendments for discussion and staff comments in the margins. The issue with this rule is that it provides very broad authority for the issuance of warnings that gives staff little guidance in determining whether the issuance of a warning would be appropriate. It is staff’s recommendation that the Board specifically identify individual violations that would be appropriate for issuance of a warning. This would allow staff to act with greater confidence and consistency in implementing the Board’s policy determinations in issuing warnings.

Administrative Penalty Schedule (Rule 1.177)

The administrative penalties schedule is contained in **Rules 1.177, 3.177, and 5.187**. These rules provide the Board and staff with guidance in determining the appropriate amount of administrative penalties in settlement and contested case matters. As currently written, the rule attempts to define a given violation as major, moderate, or minor based upon the analysis of three factors: seriousness of misconduct, economic harm, and sanction history. As described in the

¹ Here, and elsewhere in this document, the reference to the chapter 1 rule relating to architects applies equally to the companion rules in chapters 3 and 5, and draft amendments have been drafted for all three chapters.

comments accompanying the rule text, this procedure often leaves staff and the Board with little guidance in determining an appropriate administrative penalty.

As an alternative, staff has drafted amendments for discussion which would specifically identify certain violations of the Board's laws and rules as minor, moderate, or major, with maximum penalties of \$1,000, \$3,000, and \$5,000, respectively. Each violation would then be considered individually on the factors contained in Board Rules 1.141(c) and 1.165(f) (and Chapter 3 and 5 equivalents) to arrive at a specific penalty amount within the recommended range. This approach has the advantage of providing staff with more objective guidance in recommending administrative penalties, while reserving the ability to consider each case individually.

Reprimands

A reprimand is an authorized disciplinary action under Tex. Occ. Code Sec. 1051.751 and is also listed as a recommended sanction in the Board's disciplinary guidelines in **Rules 1.232, 3.232, and 5.242**. However, it does not appear that the Board has issued a reprimand since 2004. Given that the issuance of reprimands is no longer within the Board's regular practice, removal of this sanction from the disciplinary guidelines should be considered. Otherwise, there is a risk that an Administrative Law Judge (ALJ) would recommend a reprimand as an appropriate penalty following a SOAH hearing. This would force the Board to decide whether to overrule the ALJ on sanction, which is a permissible action but one that arguably increases the likelihood of appeal in district court. Staff's recommendation is to update the disciplinary guidelines in order to achieve consistency with current practice.

Additional amendments for discussion include the alteration of procedural language in subsection (d), and the inclusion of language that clarifies the Board's authority to issue administrative penalties in addition to other sanctions. These proposals are more fully discussed in the comments accompanying the rule text.

Staff's Recommendation:

Staff recommends that the Board move to approve draft amendments to 22 Tex. Admin. Code §§1.174, 3.174, 5.184, 1.177, 3.177, 5.187, 1.232, 3.232, and 5.242 for proposal and publication in the Texas register, with authority for the General Counsel to make editorial changes as necessary to clarify rule and Board intent and to comply with the formatting requirements of the Texas Register.

- 1
- 2 CHAPTER 1 ARCHITECTS
- 3 SUBCHAPTER I DISCIPLINARY ACTION
- 4 RULE §1.174 Complaint Process
- 5 (a) A person may file a complaint by submitting the following information to the Board:
- 6 (1) the name of and contact information for the complainant unless evidence regarding a possible
- 7 violation was submitted anonymously;
- 8 (2) the name of the person against whom the complaint is filed;
- 9 (3) the address, telephone number, Web site, or other contact information for the person against
- 10 whom the complaint is filed, if available;
- 11 (4) the date and location of the alleged violation that is the subject of the complaint;
- 12 (5) a description of each alleged violation; and
- 13 (6) the name, address, and telephone number for any known witness who can provide information
- 14 regarding the alleged violation.
- 15 (b) A complaint should be submitted on the complaint form that may be obtained by accessing the form
- 16 on the Board's Web site or by contacting the Board's staff. If a completed complaint form is not
- 17 submitted, the Board's staff will not be able to initiate an investigation unless the Board's staff receives
- 18 information sufficient to establish probable cause to believe an actionable violation might have
- 19 occurred.
- 20 (c) Once a complaint has been received, the Board's enforcement staff shall:
- 21 (1) conduct a preliminary evaluation of the complaint within thirty (30) days to determine:
- 22 (A) Jurisdiction: whether the complaint provides information sufficient to establish probable cause for
- 23 the Board's staff to believe an actionable violation might have occurred;
- 24 (B) Disciplinary History: whether there has been previous enforcement activity involving the person
- 25 against whom the complaint has been filed; and
- 26 (C) Priority Level: the seriousness of the complaint relative to other pending enforcement matters;
- 27 (2) provide the complainant and respondent with information which will permit review of the Board's
- 28 policies and procedures from the Board's web site regarding complaint investigation and resolution. If
- 29 the complainant or respondent requests a copy of the policies and procedures in written format a copy
- 30 shall be mailed upon request.
- 31 (3) notify the complainant and respondent of the status of the investigation at least quarterly unless
- 32 providing notice would jeopardize an investigation; and
- 33 (4) maintain a complaint file that includes at least:

Rule 1.174

- 1 (A) the name of the person who filed the complaint unless the complaint was filed anonymously;
- 2 (B) the date the complaint was received by the Board's staff;
- 3 (C) a description of the subject matter of the complaint;
- 4 (D) the name of each person contacted in relation to the complaint;
- 5 (E) a summary of the results of the review and investigation of the complaint; and
- 6 (F) an explanation for the reason the complaint was dismissed if the complaint was dismissed without
- 7 action other than the investigation of the complaint.
- 8 (d) After the preliminary evaluation period, the Board's staff may contact the complainant, the
- 9 respondent, and any known witness concerning the complaint.
- 10 (e) After the preliminary evaluation period, the Board's staff shall take steps to dismiss the complaint or
- 11 proceed with an investigation of the allegation(s) against the respondent. A complaint may be referred
- 12 to another government agency if it appears that the other agency might have jurisdiction over the
- 13 issue(s) raised in the complaint.
- 14 (f) If the Board's staff proceeds with an investigation, the staff shall:
- 15 (1) investigate the complaint according to the priority level assigned to the complaint;
- 16 (2) notify the complainant and respondent that, as a result of the staff's preliminary evaluation of the
- 17 complaint, the staff has determined that the Board has jurisdiction over the allegations(s) described in
- 18 the complaint and has decided to proceed with an investigation of the allegation(s) against the
- 19 respondent; and
- 20 (3) gather sufficient information and evidence to determine whether there is probable cause to believe
- 21 that a violation of a statutory provision or rule enforced by the Board has occurred.
- 22 (g) The Board's staff may conduct an investigation regardless of whether a complaint form was received
- 23 as described in subsection (a) of this section.
- 24 (h) If the information and evidence gathered during an investigation are insufficient to establish
- 25 probable cause to believe that a violation has occurred, the Board's staff shall:
- 26 (1) dismiss the complaint;
- 27 (2) send notices to the complainant and respondent regarding the dismissal;
- 28 (3) if warranted, include in the respondent's notice a recommendation or warning regarding the
- 29 respondent's future conduct; and
- 30 (4) if a complaint is determined to be unfounded, state in the respondent's notice that no violation was
- 31 found.
- 32 (i) If the information and evidence gathered during an investigation are sufficient to establish probable
- 33 cause to believe that a violation has occurred, the Board's staff shall:
- 34 (1) seek to resolve the matter pursuant to §§1.165, 1.166 or 1.173 of this subchapter; or

Rule 1.174

1 (2) issue a warning in accordance with Subsection (j), to the respondent if the violation is the
 2 respondent's first violation and:

3 ~~(A) the respondent has not received a written warning or advisory notice from the Board;~~
 4 ~~(B) the respondent provided a satisfactory remedy which has eliminated any harm or threat to the~~
 5 ~~health or safety of the public; and~~

6 ~~(C) the guidelines for determining an appropriate penalty for the violation recommend an~~
 7 ~~administrative penalty or a reprimand as an appropriate sanction for the violation.~~

8 (j) A warning may be issued by the Executive Director only as follows:

9 (1) the violation is the Respondent's only violation of the Board's laws and rules;
 10 (2) the Respondent has not previously been subject to a Board warning or order;
 11 (3) the Respondent has provided a satisfactory remedy which has eliminated any harm or threat to the
 12 health or safety of the public; and

13 (4) The Respondent has committed one of the following violations:

14 (A) failure to provide or timely provide plans and specifications to TDLR under the requirements of
 15 Govt. Code Chap. 469 (Elimination of Architectural Barriers);

16 (B) Unauthorized use of term "architect" or "architecture";
 17 (C) Failure to respond to a Board inquiry;
 18 (D) Failure to provide a statement of jurisdiction;
 19 (E) Failure to seal documents or insert statement in lieu of seal;
 20 (F) Use of a non-compliant seal by registrant;
 21 (G) Practice of architecture while registration is delinquent;
 22 (H) Failure to register or annually renew the registration of a business; or
 23 (I) Creation of misleading impression by an architect advertising for services.

24 (k) The decision to issue a warning is at the sole discretion of the Executive Director and not available as
 25 a result of a contested case proceeding conducted pursuant to the Government Code Chapter 2001.

26 (l) Before a proposed settlement agreement may be approved by the Board:

27 ~~(1) the complainant, if known, must be notified of the terms of the agreement and the date, time, and~~
 28 ~~location of the meeting during which the Board will consider the agreement; and~~

29 ~~(2), the terms of the agreement must be reviewed by legal counsel for the Board to ensure that all legal~~
 30 ~~requirements have been satisfied.~~

31 (m) If a complaint is dismissed, the complainant may submit to the Executive Director a written request
 32 for reconsideration. The written request must explain why the complaint should not have been

Commented [LB1]: These provisions are retained below in subsection (j).

Commented [LB2]: The guidelines which are referred to here are contained in Rule 1.232. The issue is that many violations that would not normally be considered for a warning meet this requirement. This includes:

- Unauthorized use of a seal
- Unauthorized practice of architecture
- Unlawful practice of architecture by emeritus architect
- Continuing education violations
- Disclosure of fee information inconsistent with the PSPA

Commented [LB3]: This has been included on the list for Board member consideration. According to staff research, this is a violation that has previously resulted in a warning on about 18 occasions. However, this has not been a recent practice. 2/23/15 Rule Committee recommends this provision be removed

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Commented [LB4]: This is a violation on which we might receive a self-report. Would we want to reserve the possibility of a warning in this type of case? Possible alternatives – eliminate from the list; offer warnings only for limited period of practice i.e. less than a month or two; or leave as is. 2/23/15 Rule Committee recommends this provision be removed

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Commented [LB5]: This provision identifies a warning as a matter of agency discretion and not a sanction available for a SOAH ALJ.

Commented [LB6]: This provision is far more extensive than what is required under the statute, as well as standard practice by other agencies.

Rule 1.174

1 dismissed. The Executive Director may, but is not required to, respond to the request for
2 reconsideration.

Rule 1.174

1 CHAPTER 3 LANDSCAPE ARCHITECTS

2 SUBCHAPTER I DISCIPLINARY ACTION

3 RULE §3.174 Complaint Process

4 (a) A person may file a complaint by submitting the following information to the Board:

5 (1) the name of and contact information for the complainant unless evidence regarding a possible
6 violation was submitted anonymously;

7 (2) the name of the person against whom the complaint is filed;

8 (3) the address, telephone number, Web site, or other contact information for the person against
9 whom the complaint is filed, if available;

10 (4) the date and location of the alleged violation that is the subject of the complaint;

11 (5) a description of each alleged violation; and

12 (6) the name, address, and telephone number for any known witness who can provide information
13 regarding the alleged violation.

14 (b) A complaint should be submitted on the complaint form that may be obtained by accessing the form
15 on the Board's Web site or by contacting the Board's staff. If a completed complaint form is not
16 submitted, the Board's staff will not be able to initiate an investigation unless the Board's staff receives
17 information sufficient to establish probable cause to believe an actionable violation might have
18 occurred.

19 (c) Once a complaint has been received, the Board's enforcement staff shall:

20 (1) conduct a preliminary evaluation of the complaint within thirty (30) days to determine:

21 (A) Jurisdiction: whether the complaint provides information sufficient to establish probable cause for
22 the Board's staff to believe an actionable violation might have occurred;

23 (B) Disciplinary History: whether there has been previous enforcement activity involving the person
24 against whom the complaint has been filed; and

25 (C) Priority Level: the seriousness of the complaint relative to other pending enforcement matters;

26 (2) provide the complainant and respondent with information which will permit review of the Board's
27 policies and procedures from the Board's web site regarding complaint investigation and resolution. If
28 the complainant or respondent requests a copy of the policies and procedures in written format a copy
29 shall be mailed upon request.

30 (3) notify the complainant and respondent of the status of the investigation at least quarterly unless
31 providing notice would jeopardize an investigation; and

32 (4) maintain a complaint file that includes at least:

33 (A) the name of the person who filed the complaint unless the complaint was filed anonymously;

- 1 (B) the date the complaint was received by the Board's staff;
- 2 (C) a description of the subject matter of the complaint;
- 3 (D) the name of each person contacted in relation to the complaint;
- 4 (E) a summary of the results of the review and investigation of the complaint; and
- 5 (F) an explanation for the reason the complaint was dismissed if the complaint was dismissed without
6 action other than the investigation of the complaint.
- 7 (d) During the preliminary evaluation period, the Board's staff may contact the complainant, the
8 respondent, and any known witness concerning the complaint.
- 9 (e) After the preliminary evaluation period, the Board's staff shall take steps to dismiss the complaint or
10 proceed with an investigation of the allegation(s) against the respondent. A complaint may be referred
11 to another government agency if it appears that the other agency might have jurisdiction over the
12 issue(s) raised in the complaint.
- 13 (f) If the Board's staff proceeds with an investigation, the staff shall:
- 14 (1) investigate the complaint according to the priority level assigned to the complaint;
- 15 (2) notify the complainant and respondent that, as a result of the staff's preliminary evaluation of the
16 complaint, the staff has determined that the Board has jurisdiction over the allegation(s) described in
17 the complaint and has decided to proceed with an investigation of the allegation(s) against the
18 respondent; and
- 19 (3) gather sufficient information and evidence to determine whether there is probable cause to believe
20 that a violation of a statutory provision or rule enforced by the Board has occurred.
- 21 (g) The Board's staff may conduct an investigation regardless of whether a complaint form was received
22 as described in subsection (a) of this section.
- 23 (h) If the information and evidence gathered during an investigation are insufficient to establish
24 probable cause to believe that a violation has occurred, the Board's staff shall:
- 25 (1) dismiss the complaint;
- 26 (2) send notices to the complainant and respondent regarding the dismissal;
- 27 (3) if warranted, include in the respondent's notice a recommendation or warning regarding the
28 respondent's future conduct; and
- 29 (4) if a complaint is determined to be unfounded, state in the respondent's notice that no violation was
30 found.
- 31 (i) If the information and evidence gathered during an investigation are sufficient to establish probable
32 cause to believe that a violation has occurred, the Board's staff shall:
- 33 (1) seek to resolve the matter pursuant to §§3.165, 3.166 or 3.173 of this subchapter; or

1 (2) issue a warning in accordance with Subsection (j).to the respondent, if the violation is the
2 respondent's first violation and:

3 ~~—(A) the respondent has not received a written warning or advisory notice from the Board;~~
4 ~~—(B) the respondent provided a satisfactory remedy which has eliminated any harm or threat to the~~
5 ~~health or safety of the public; and~~

6 ~~—(C) the guidelines for determining an appropriate penalty for the violation recommend an~~
7 ~~administrative penalty or a reprimand as an appropriate sanction for the violation.~~

8 (j) A warning may be issued by the Executive Director only as follows:

9 (1) the violation is the Respondent's only violation of the Board's laws and rules;
10 (2) the Respondent has not previously been subject to a Board warning or order;
11 (3) the Respondent has provided a satisfactory remedy which has eliminated any harm or threat to the
12 health or safety of the public; and

13 (4) The Respondent has committed one of the following violations:

14 (A) failure to provide or timely provide plans and specifications to TDLR under the requirements of
15 Govt. Code Chap. 469 (Elimination of Architectural Barriers);

16 (B) Unauthorized use of term "landscape architect" or "landscape architecture";
17 (C) Failure to respond to a Board inquiry;
18 (D) Failure to provide a statement of jurisdiction;
19 (E) Use of a non-compliant seal by registrant;
20 (F) Failure to register or annually renew the registration of a business; or
21 (G) Creation of misleading impression by a landscape architect advertising for services.

22 (k) The decision to issue a warning is at the sole discretion of the Executive Director and not available as
23 a result of a contested case proceeding conducted pursuant to the Government Code Chapter 2001.

24 (l) Before a proposed settlement agreement may be approved by the Board:

25 ~~—(1) the complainant, if known, must be notified of the terms of the agreement and the date, time, and~~
26 ~~location of the meeting during which the Board will consider the agreement; and~~

27 ~~—(2), the terms of the agreement must be reviewed by legal counsel for the Board to ensure that all legal~~
28 ~~requirements have been satisfied.~~

29 (km) If a complaint is dismissed, the complainant may submit to the Executive Director a written request
30 for reconsideration. The written request must explain why the complaint should not have been
31 dismissed. The Executive Director may, but is not required to, respond to the request for
32 reconsideration.

1 CHAPTER 5 REGISTERED INTERIOR DESIGNERS

2 SUBCHAPTER I DISCIPLINARY ACTION

3 RULE §5.184 Complaint Process

4 (a) A person may file a complaint by submitting the following information to the Board:

5 (1) the name of and contact information for the complainant unless evidence regarding a possible
6 violation was submitted anonymously;

7 (2) the name of the person against whom the complaint is filed;

8 (3) the address, telephone number, Web site, or other contact information for the person against
9 whom the complaint is filed, if available;

10 (4) the date and location of the alleged violation that is the subject of the complaint;

11 (5) a description of each alleged violation; and

12 (6) the name, address, and telephone number for any known witness who can provide information
13 regarding the alleged violation.

14 (b) A complaint should be submitted on the complaint form that may be obtained by accessing the form
15 on the Board's Web site or by contacting the Board's staff. If a completed complaint form is not
16 submitted, the Board's staff will not be able to initiate an investigation unless the Board's staff receives
17 information sufficient to establish probable cause to believe an actionable violation might have
18 occurred.

19 (c) Once a complaint has been received, the Board's enforcement staff shall:

20 (1) conduct a preliminary evaluation of the complaint within thirty (30) days to determine:

21 (A) Jurisdiction: whether the complaint provides information sufficient to establish probable cause for
22 the Board's staff to believe an actionable violation might have occurred;

23 (B) Disciplinary History: whether there has been previous enforcement activity involving the person
24 against whom the complaint has been filed; and

25 (C) Priority Level: the seriousness of the complaint relative to other pending enforcement matters;

26 (2) provide the complainant and respondent with information which will permit review of the Board's
27 policies and procedures from the Board's web site regarding complaint investigation and resolution. If
28 the complainant or respondent requests a copy of the policies and procedures in written format a copy
29 shall be mailed upon request;

30 (3) notify the complainant and respondent of the status of the investigation at least quarterly unless
31 providing notice would jeopardize an investigation; and

32 (4) maintain a complaint file that includes at least:

33 (A) the name of the person who filed the complaint unless the complaint was filed anonymously;

- 1 (B) the date the complaint was received by the Board's staff;
- 2 (C) a description of the subject matter of the complaint;
- 3 (D) the name of each person contacted in relation to the complaint;
- 4 (E) a summary of the results of the review and investigation of the complaint; and
- 5 (F) an explanation for the reason the complaint was dismissed if the complaint was dismissed without
6 action other than the investigation of the complaint.
- 7 (d) After the preliminary evaluation period, the Board's staff may contact the complainant, the
8 respondent, and any known witness concerning the complaint.
- 9 (e) After the preliminary evaluation period, the Board's staff shall take steps to dismiss the complaint or
10 proceed with an investigation of the allegation(s) against the respondent. A complaint may be referred
11 to another government agency if it appears that the other agency might have jurisdiction over the
12 issue(s) raised in the complaint.
- 13 (f) If the Board's staff proceeds with an investigation, the staff shall:
- 14 (1) investigate the complaint according to the priority level assigned to the complaint;
- 15 (2) notify the complainant and respondent that, as a result of the staff's preliminary evaluation of the
16 complaint, the staff has determined that the Board has jurisdiction over the allegations(s) described in
17 the complaint and has decided to proceed with an investigation of the allegation(s) against the
18 respondent; and
- 19 (3) gather sufficient information and evidence to determine whether there is probable cause to believe
20 that a violation of a statutory provision or rule enforced by the Board has occurred.
- 21 (g) The Board's staff may conduct an investigation regardless of whether a complaint form was received
22 as described in subsection (a) of this section.
- 23 (h) If the information and evidence gathered during an investigation are insufficient to establish
24 probable cause to believe that a violation has occurred, the Board's staff shall:
- 25 (1) dismiss the complaint;
- 26 (2) send notices to the complainant and respondent regarding the dismissal;
- 27 (3) if warranted, include in the respondent's notice a recommendation or warning regarding the
28 respondent's future conduct; and
- 29 (4) if a complaint is determined to be unfounded, state in the respondent's notice that no violation was
30 found.
- 31 (i) If the information and evidence gathered during an investigation are sufficient to establish probable
32 cause to believe that a violation has occurred, the Board's staff shall:
- 33 (1) seek to resolve the matter pursuant to §§5.175, 5.176 or 5.183 of this subchapter; or

1 (2) issue a warning in accordance with Subsection (j). ~~to the respondent if the violation is the~~
2 ~~respondent's first violation and:~~

3 ~~—(A) the respondent has not received a written warning or advisory notice from the Board;~~

4 ~~—(B) the respondent provided a satisfactory remedy which has eliminated any harm or threat to the~~
5 ~~health or safety of the public; and~~

6 ~~—(C) the guidelines for determining an appropriate penalty for the violation recommend an~~
7 ~~administrative penalty or a reprimand as an appropriate sanction for the violation.~~

8 (j) A warning may be issued by the Executive Director only as follows:

9 (1) the violation is the Respondent's only violation of the Board's laws and rules;

10 (2) the Respondent has not previously been subject to a Board warning or order;

11 (3) the Respondent has provided a satisfactory remedy which has eliminated any harm or threat to the
12 health or safety of the public; and

13 (4) The Respondent has committed one of the following violations:

14 (A) failure to provide or timely provide plans and specifications to TDLR under the requirements of
15 Govt. Code Chap. 469 (Elimination of Architectural Barriers);

16 (B) Unauthorized use of term "registered interior designer";

17 (C) Failure to respond to a Board inquiry;

18 (D) Failure to provide a statement of jurisdiction;

19 (E) Use of a non-compliant seal by registrant;

20 (F) Failure to register or annually renew the registration of a business; or

21 (G) Creation of misleading impression by a registered interior designer advertising for services.

22 (k) The decision to issue a warning is at the sole discretion of the Executive Director and not available as
23 a result of a contested case proceeding conducted pursuant to the Government Code Chapter 2001.

24 (l) Before a proposed settlement agreement may be approved by the Board, ÷

25 ~~—(l) the complainant, if known, must be notified of the terms of the agreement and the date, time, and~~
26 ~~location of the meeting during which the Board will consider the agreement; and~~

27 ~~—(2) the terms of the agreement must be reviewed by legal counsel for the Board to ensure that all legal~~
28 ~~requirements have been satisfied.~~

29 (km) If a complaint is dismissed, the complainant may submit to the Executive Director a written request
30 for reconsideration. The written request must explain why the complaint should not have been
31 dismissed. The Executive Director may, but is not required to, respond to the request for
32 reconsideration.

1
2 TITLE 22 EXAMINING BOARDS
3 PART 1 TEXAS BOARD OF ARCHITECTURAL EXAMINERS
4 CHAPTER 1 ARCHITECTS
5 SUBCHAPTER I DISCIPLINARY ACTION
6 RULE §1.177 Administrative Penalty Schedule

7 If the Board determines that an administrative penalty is the appropriate sanction for a violation of any
8 of the statutory provisions or rules enforced by the Board, the following guidelines shall be applied to
9 guide the Board's assessment of an appropriate administrative penalty:

10 ~~(1) The Board shall consider the following factors to determine whether the violation is minor,~~
11 ~~moderate, or major:~~

12 ~~—(A) Seriousness of misconduct and efforts to correct the ground for sanction:~~

13 ~~—(i) Minor the respondent has demonstrated that he/she was unaware that his/her conduct was~~
14 ~~prohibited and unaware that the conduct was reasonably likely to cause the harm that resulted from the~~
15 ~~conduct or the respondent has demonstrated that there were significant extenuating circumstances or~~
16 ~~intervening causes for the violation; and the respondent has demonstrated that he/she provided a~~
17 ~~satisfactory remedy that alleviated or eliminated any harm or threat to the health or safety of the~~
18 ~~public.~~

19 ~~—(ii) Moderate the violation shows that the respondent knowingly disregarded a standard or practice~~
20 ~~normally followed by a reasonably prudent person under the same or similar circumstances. A violation~~
21 ~~of a Board order shall constitute, at a minimum, a moderate violation.~~

22 ~~—(iii) Major the conduct demonstrates gross negligence or recklessness or resulted in a threat to the~~
23 ~~health or safety of the public and the respondent, after being notified of the alleged violation~~
24 ~~intentionally refused or failed to take prompt and remedial action.~~

25 ~~—(B) Economic harm:~~

26 ~~—(i) Minor there was no apparent economic damage to property or monetary loss to the project~~
27 ~~owner or other involved persons and entities.~~

28 ~~—(ii) Moderate economic damage to property or monetary harm to other persons or entities did not~~
29 ~~exceed \$1,000, or damage exceeding \$1,000 was reasonably unforeseeable.~~

30 ~~—(iii) Major economic damage to property or economic injury to other persons or entities exceeded~~
31 ~~\$1,000.~~

32 ~~—(C) Sanction history:~~

33 ~~—(i) Minor the respondent has not previously received a written warning, advisory notice or been~~
34 ~~subject to other enforcement proceedings from the Board.~~

Commented [LB1]: While these factors are certainly relevant in considering the level of administrative penalty, Staff feels they should not be the primary test. Problems include:

- Difficulty of proving state of mind
 - Determination of negligence, gross negligence, and recklessness is subjective, and could result in battle of experts at hearing. This subjectivity and unpredictability is not conducive to staff/Board determinations of the appropriate penalty at settlement stage
- The tests are not necessarily mutually exclusive and/or collectively exhaustive
 - Possibility that one violation could qualify under two or more tests, i.e. both unaware conduct was prohibited nature but also negligent
 - Satisfies one part of the test but not another, i.e. in subsection (iii): threat to health and safety but not notified of alleged violation/did not refuse to take prompt remedial action

Commented [LB2]: Often, there is no economic harm, economic harm is impossible to quantify, or staff lacks evidence of economic harm. Obviously, this does not necessarily mean the violation is minor.

Rule 1.177

- 1 ~~(ii) Moderate – the respondent was previously subject to an order of the Board or other enforcement~~
 2 ~~proceedings which resulted in a finding of a violation of the laws or rules over which the TBAE has~~
 3 ~~jurisdiction.~~
- 4 ~~(iii) Major – the respondent has received at least two prior written notices or has been subject to two~~
 5 ~~disciplinary actions for violation of the rules and laws over which the TBAE has jurisdiction.~~
- 6 (1) –In determining whether a minor, moderate, or major penalty is imposed under subsection (2) of
 7 this rule, the following classifications shall apply:

Commented [LB3]: Given the difficulties discussed above, it is possible in many cases that a clear answer might not be available for “seriousness of misconduct” or “economic harm.” That would leave the determination to be made on this factor alone. Most cases don’t have disciplinary history, which could result in an otherwise serious violation being considered a “minor” violation.

| <u>Minor Violations</u> | |
|--|--|
| <u>Unauthorized duplication of registration certificate or failure to display registration certificate as required.</u> | <u>§1.62</u> |
| <u>Failure to respond to a Board inquiry.</u> | <u>§1.171</u> |
| <u>Failure to provide statement of jurisdiction.</u> | <u>§1.106</u> |
| <u>Failure to provide or timely provide plans and specifications to TDLR under the requirements of Govt. Code Chap. 469 (Elimination of Architectural Barriers).</u> | <u>Tex. Occ. Code Sec. 1051.752(2) and §1.170</u> |
| <u>Use of a non-compliant seal by registrant.</u> | <u>§1.102</u> |
| <u>Failure to register or annually renew the registration of a business.</u> | <u>§1.124</u> |
| <u>Moderate Violations</u> | |
| <u>Unlawful practice by emeritus architect or practice of architecture while registration is inactive.</u> | <u>§1.67</u> <u>§1.68</u> |
| <u>Practice of architecture while registration is expired.</u> | <u>§1.82(b)</u> |
| <u>Aiding or abetting an unregistered person in violating the Board’s laws and rules.</u> | <u>Tex. Occ. Code Sec. 1051.752(8)</u> |
| <u>Unauthorized use of term “architect” or “architectural.”</u> | <u>Tex. Occ. Code Sec. 1051.606 and §1.123(c)</u> |
| <u>Failure to maintain a sealed document for ten years.</u> | <u>§1.103(c)</u> |
| <u>Failure to seal documents</u> | <u>§1.103</u> <u>§1.105</u> <u>§1.122(c),(e)</u> |
| <u>Failure to mark documents issued for purposes other than regulatory approval, permitting or construction as required</u> | <u>§1.103(b)</u> |
| <u>Violation of prototypical design requirements</u> | <u>§1.105</u> |
| <u>Failure to take reasonable steps to notify sealing Architect of intent to modify that architect’s sealed documents and/or failure to clearly indicate extent of modifications to sealed plans</u> | <u>§1.104(d)</u> |

| | |
|---|------------------|
| <u>Failure to comply with requirements relating to preparation of only a portion of a document</u> | <u>§1.104(b)</u> |
| <u>Removal of seal after issuance of documents</u> | <u>§1.104(e)</u> |
| <u>Failure to enter into a written agreement of association when required</u> | <u>§1.122</u> |
| <u>Failure to timely notify the Board upon dissolution of a business entity or association of loss of lawful authority to offer or provide architecture</u> | <u>§1.124(c)</u> |

Major Violations

| | |
|---|--|
| <u>Submitting or soliciting a prohibited competitive bid under Govt. Code 2254, or direct or indirect disclosure of fee information</u> | <u>Tex. Occ. Code Sec. 1051.203 and §1.147</u> |
| <u>Offering, soliciting or receiving anything or any service as an inducement to be awarded publicly funded work.</u> | <u>§1.144(c)</u> |
| <u>Giving false or forged evidence to the board or a board member in obtaining or assisting another person to obtain a certificate of registration.</u> | <u>Tex. Occ. Code Sec. 1051.752(7)</u> |
| <u>Dishonest practice in the practice of architecture by the holder of a certificate of registration.</u> | <u>Tex. Occ. Code Sec. 1051.752(6) and §1.144</u> |
| <u>Using or attempting to use as the person's own the certificate of registration of another person.</u> | <u>Tex. Occ. Code Sec. 1051.752(9)</u> |
| <u>Affixation of seal by an architect on a document not prepared by or under the supervision and control of the architect</u> | <u>§1.104(a)</u> |
| <u>Failure to exercise Supervision and Control or Responsible Charge over the preparation of a document, as required</u> | <u>§1.122(c) or (e)</u> |
| <u>Use of an architect's seal, or a copy or replica of an architect's seal without the architect's consent.</u> | <u>§1.104(c)</u> |
| <u>Engaging in the practice of architecture as defined by Sec. 1051.001(7)(A), (B), or (C) without a registration and not exempted by Sec. 1051.606.</u> | <u>Tex. Occ. Code Sec. 1051.701(a)</u> |
| <u>Recklessness in the practice of architecture, including recklessness in the construction or alteration of a building by an architect designing, planning, or observing the construction or alteration.</u> | <u>Tex. Occ. Code Sec. 1051.752(5) and §1.143</u> |
| <u>Failure to report a course of action taken against an Architect's advice which may have a materially adverse effect on the safe use of a completed building</u> | <u>§1.216</u> |
| <u>Gross incompetency in the practice of architecture</u> | <u>Tex. Occ. Code Section 1051.752(4) And §1.142</u> |

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(2) After determining whether the violation is minor, moderate, or major, the Board shall impose an administrative penalty as follows:

Rule 1.177

1 (A) Minor violations--~~if the violation is minor in every category described in paragraph (1) of this~~
2 ~~section~~, an administrative penalty of not more than \$~~5~~1,000 shall be imposed.

3 (B) Moderate violations--~~if the violation is moderate in any category described in paragraph (1) of this~~
4 ~~section~~, an administrative penalty of not more than \$~~2~~3,000 shall be imposed.

5 (C) Major violations--~~if the violation is major in any category described in paragraph (1) of this section~~
6 ~~or if the Board determines that the facts of the case indicate a higher penalty is necessary in order to~~
7 ~~deter similar misconduct in the future~~, an administrative penalty of not more than \$5,000 shall be
8 imposed.

9 (3) In determining the specific amount of an administrative penalty within the minor, moderate, or
10 major range, the Board shall consider the factors outlined in Board Rules 1.141(c) and/or 1.165(f).

11 (4) If a violation of the Board's laws or rules is not specifically defined in subsection (1) as a minor,
12 moderate, or major violation, the Board shall consider the factors outlined in Board Rules 1.141(c)
13 and/or 1.165(f) in determining an appropriate administrative penalty.

14 (5) Previous Disciplinary History - If the respondent was previously found to have violated the Board's
15 laws or rules in a warning or Order of the Board, then any subsequent disciplinary action may be
16 considered at the next higher level of severity.

17 (6) Multiple Violations

18 (A) The administrative penalty ranges discussed in subsection (2) are to be applied to each individual
19 violation of the Board's laws and rules. If a respondent has violated multiple laws and/or rules, or has
20 committed multiple violations of a single law or rule, the Respondent shall be subject to a separate
21 administrative penalty for each violation.

22 (B) Each sheet of architectural plans and specifications created or issued in violation of the Board's
23 laws and rules shall be considered a separate violation for purposes of calculating the total
24 administrative penalty under subsection (6)(A).

25 (C) In the case of a continuing violation, each day a violation continues or occurs shall be considered a
26 separate violation for purposes of calculating the total administrative penalty under subsection (6)(A).

27 (7) The administrative penalties set out in this section may be considered in addition to any other
28 disciplinary actions, such as revocation, suspension, or refusal to renew a registration.

29 (48) If the facts of a case are unique or unusual, the Board may suspend the guidelines described in this
30 section.

31 (D) Because of the threat to human health, safety and well-being which necessarily arises out of a
32 Nonregistrant preparing and issuing architectural plans and specifications the Board possesses a
33 compelling interest in ensuring that architectural plans and specifications are prepared and issued only
34 by a registered architect or by a person who is working under the active and documented Supervision
35 and Control of a registered Architect when required by law. If the evidence establishes that Architectural
36 plans and specifications for a project that is not exempt from the Architects' Practice Act were prepared
37 by a person who is not registered to engage in the Practice of Architecture and was not working under
38 the active and documented Supervision and Control of an Architect the violation shall be presumed to

Commented [LB4]: The range of penalty is established under subsection 1, and then the specific amount within the range is determined under subsection (3).

Commented [LB5]: This retains the Board's ability to consider violations on a "per sheet" basis.

Commented [LB6]: Previously, the Board has entered orders which include administrative penalties in addition to other sanctions. It is appropriate to establish this practice in the rule

1 be a major violation and each sheet of architectural plans or separate section of the specifications shall
2 be considered a separate violation for purposes of calculating and imposing administrative penalties.

3 ~~—(E) Because of the threat to human health, safety and welfare which necessarily arises from
4 Nonregistrants engaging in the Practice of Architecture the Board has a compelling interest in ensuring
5 that only those persons who are registered to engage in the Practice of Architecture or whose work is
6 conducted under the active and documented Supervision and Control of a registered architect engage in
7 the Practice of Architecture. If the evidence establishes that an Architect has sealed architectural plans
8 and separately numbered section of the specifications without having exercised active and documented
9 Supervision and Control of the Nonregistrants's activities the Board shall presume such conduct by the
10 sealing architect to be a major violation and each sheet of architectural plans or separate section of the
11 specifications shall be considered a separate violation for purposes of calculating and imposing
12 administrative penalties.~~

13 ~~—(F) The agency is responsible for protecting the public's health, safety and welfare by interpreting and
14 enforcing the Architects' Practice Act. In fulfilling this statutory duty the Board depends upon, and
15 expects, that Registrants and Applicants will provide complete, truthful and accurate information to the
16 Board upon request. This prompt and accurate provision of information is essential to protecting the
17 public's health, safety and welfare.~~

18 ~~—(G) An Architect, Candidate, or Applicant who fails, without good cause, to provide information to
19 the Board under provision of §1.171 of this subchapter (relating to Responding to Request for
20 Information) is presumed to be interfering with and preventing the Board from fulfilling its
21 responsibilities. For these reasons a violation of §1.171 of this subchapter shall be considered a
22 moderate-minor violation if a complete response is not received within 30 days after receipt of the
23 Board's written inquiry. Any An further additional 15 day delay constitutes a moderate-major violation,
24 and eEach 15 day delay thereafter shall be considered a major violation of these rules.~~

25 ~~—(3) In order to determine the appropriate amount in a penalty range described in paragraph (2) of this
26 section, the Board shall consider the factors described in paragraph (1) of this section.~~

27 ~~(4) If the facts of a case are unique or unusual, the Board may suspend the guidelines described in this
28 section.~~

29

Commented [LB7]: This provision was considered for deletion by the rules committee on 2/23/16. However, after discussion, it was determined the provision should be retained. Revisions are offered to clear up ambiguity.

1 CHAPTER 3 LANDSCAPE ARCHITECTS

2 SUBCHAPTER I DISCIPLINARY ACTION

3 RULE §3.177 Administrative Penalty Schedule

4 If the Board determines that an administrative penalty is the appropriate sanction for a violation of any
5 of the statutory provisions or rules enforced by the Board, the following guidelines shall be applied to
6 guide the Board's assessment of an appropriate administrative penalty:

7

8 ~~—(1) The Board shall consider the following factors to determine whether the violation is minor,
9 moderate, or major:~~

10 ~~—(A) Seriousness of misconduct and efforts to correct the ground for sanction:~~

11 ~~—(i) Minor—the respondent had demonstrated that he/she was unable that his/her conduct was
12 prohibited and unaware that the conduct was reasonably likely to cause the harm that resulted from the
13 conduct or the respondent has demonstrated that there were significant extenuating circumstances or
14 intervening causes for the violation; and the respondent has demonstrated that he/she provided a
15 satisfactory remedy that alleviated or eliminated any harm or threat to the health or safety of the
16 public.~~

17 ~~—(ii) Moderate—the violation shows that the respondent knowingly disregarded a standard or practice
18 normally followed by a reasonably prudent person under the same or similar circumstances. A violation
19 of a Board order shall constitute, at a minimum, a moderate violation.~~

20 ~~—(iii) Major—the conduct demonstrates gross negligence or recklessness or resulted in a threat to the
21 health or safety of the public and the respondent, after being notified of the alleged violation
22 intentionally refused or failed to take prompt and remedial action.~~

23 ~~—(B) Economic harm:~~

24 ~~—(i) Minor—there was no apparent economic damage to property or monetary loss to the project
25 owner or other involved persons and entities.~~

26 ~~—(ii) Moderate—economic damage to property or monetary harm to other persons or entities did not
27 exceed \$1,000, or damage exceeding \$1,000 was reasonably unforeseeable.~~

28 ~~—(iii) Major—economic damage to property or economic injury to other persons or entities exceeded
29 \$1,000.~~

30 ~~—(C) Sanction history:~~

31 ~~—(i) Minor—the respondent has not previously received a written warning, advisory notice or been
32 subject to other enforcement proceedings from the Board.~~

33 ~~—(ii) Moderate—the respondent was previously subject to an order of the Board or other enforcement
34 proceedings which resulted in a finding of a violation of the laws or rules over which the TBAE has
35 jurisdiction.~~

1 — (iii) Major ~~the respondent has received at least two prior written notices or has been subject to two~~
2 ~~disciplinary actions for violation of the rules and laws over which the TBAE has jurisdiction.~~

3 (1) In determining whether a minor, moderate, or major penalty is imposed under subsection (2) of
4 this rule, the following classifications shall apply:

Minor Violations

| | |
|--|---|
| <u>Unauthorized duplication of registration certificate or failure to display registration certificate as required.</u> | <u>§3.62</u> |
| <u>Failure to respond to a Board inquiry.</u> | <u>§3.171</u> |
| <u>Failure to provide statement of jurisdiction.</u> | <u>§3.106</u> |
| <u>Failure to provide or timely provide plans and specifications to TDLR under the requirements of Govt. Code Chap. 469 (Elimination of Architectural Barriers).</u> | <u>Tex. Occ. Code Sec. 1052.252(8) and §3.170</u> |
| <u>Use of a non-compliant seal by registrant.</u> | <u>§3.102</u> |
| <u>Failure to register or annually renew the registration of a business.</u> | <u>§3.124</u> |

Moderate Violations

| | |
|---|--|
| <u>Unlawful practice by emeritus landscape architect or practice of landscape architecture while registration is inactive.</u> | <u>§3.67</u> <u>§3.68</u> |
| <u>Practice of landscape architecture while registration is expired.</u> | <u>§3.82(b)</u> |
| <u>Aiding or abetting an unregistered person in violating the Board's laws and rules.</u> | <u>Tex. Occ. Code Sec. 1052.252(10)</u> |
| <u>Unauthorized use of term "landscape architect" or related term</u> | <u>Tex. Occ. Code Sec. 1052.151(b) and §3.123(c)</u> |
| <u>Failure to maintain a sealed document for ten years.</u> | <u>§3.103(c)</u> |
| <u>Failure to seal documents or insert statement in lieu of seal.</u> | <u>§3.103</u> |
| <u>Violation of prototypical design requirements</u> | <u>§3.105</u> |
| <u>Failure to notify another landscape architect of modification to sealed plans and/or failure to clearly indicate extent of modifications to sealed plans</u> | <u>§3.104(d)</u> |
| <u>Failure to comply with requirements relating to preparation of only a portion of a document</u> | <u>§3.104(b)</u> |
| <u>Removal of seal after issuance of documents</u> | <u>§3.104(e)</u> |
| <u>Failure to enter into a written agreement of association when required</u> | <u>§3.122</u> |
| <u>Failure to timely notify the Board upon dissolution of a business entity or association of loss of lawful authority to offer or provide architecture</u> | <u>§3.124(c)</u> |

Major Violations

| | |
|---|--|
| <u>Offering, soliciting or receiving anything or any service as an inducement to be awarded publicly funded work.</u> | <u>§3.144(c)</u> |
| <u>Using fraud or deceit or giving false or forged evidence to the board or a board member in obtaining or assisting another person to obtain a certificate of registration.</u> | <u>Tex. Occ. Code Sec. 1052.252(2) or (3)</u> |
| <u>Acting dishonestly in the practice of landscape architecture.</u> | <u>Tex. Occ. Code Sec. 1052.252(9) and §3.144</u> |
| <u>Using or attempting to use as the person's own the certificate of registration of another person.</u> | <u>Tex. Occ. Code Sec. 1052.252(4)</u> |
| <u>Use of the term "engineer," "professional engineer," or related term or otherwise creating the impression that one is authorized to practice engineering unless the person is registered under Occupations Code Chapter 1001</u> | <u>Tex. Occ. Code Sec. 1052.252(5)</u> |
| <u>Use of the term "surveyor" or related term or otherwise creating the impression that one is authorized to practice surveying unless the person is registered under Occupations Code Chapter 1071</u> | <u>Tex. Occ. Code Sec. 1052.252(6)</u> |
| <u>Affixation of seal by a landscape architect on a document not prepared by or under the supervision and control of the landscape architect</u> | <u>§3.104(a) and/or §3.122(c)&(e)</u> |
| <u>Failure to exercise Supervision and Control or Responsible Charge over the preparation of a document, as required</u> | <u>§3.122(c) or (e)</u> |
| <u>Use of a landscape architect's seal, or a copy or replica of a landscape architect's seal, without the landscape architect's consent.</u> | <u>§3.104(c)</u> |
| <u>Engaging in the practice of landscape architecture without a registration and not exempted by Sec. 1052.003.</u> | <u>Tex. Occ. Code Sec. 1052.151(a)</u> |
| <u>Recklessness in the practice of landscape architecture.</u> | <u>Tex. Occ. Code Sec. 1052.752(7) and §3.143</u> |
| <u>Gross incompetency in the practice of landscape architecture</u> | <u>Tex. Occ. Code Section 1052.252(7) and §3.142</u> |
| <u>Failure to report a course of action taken against the landscape architect's advice as required</u> | <u>§3.106(d)</u> |

1

2 (2) After determining whether the violation is minor, moderate, or major, the Board shall impose an
3 administrative penalty as follows:

4 (A) Minor violations--~~if the violation is minor in every category described in paragraph (1) of this~~
5 ~~section,~~ an administrative penalty of not more than ~~\$500-1,000~~ shall be imposed.

6 (B) Moderate violations--~~if the violation is moderate in any category described in paragraph (1) of this~~
7 ~~section,~~ an administrative penalty ~~or of~~ not more than ~~\$23,000~~ shall be imposed.

1 (C) Major violations--~~if the violation is major in any category described in paragraph (1) of this section~~
2 ~~or if the Board determines that the facts of the case indicate a higher penalty is necessary in order to~~
3 ~~deter similar misconduct in the future,~~ an administrative penalty of not more than \$5,000 shall be
4 imposed.

5 (3) In determining the specific amount of an administrative penalty within the minor, moderate, or
6 major range, the Board shall consider the factors outlined in Board Rules 3.141(c) and/or 3.165(f).

7 (4) If a violation of the Board's laws or rules is not specifically defined in subsection (1) as a minor,
8 moderate, or major violation, the Board shall consider the factors outlined in Board Rules 3.141(c)
9 and/or 3.165(f) in determining an appropriate administrative penalty.

10 (5) Previous Disciplinary History - If the respondent was previously found to have violated the Board's
11 laws or rules in a warning or Order of the Board, then any subsequent disciplinary action may be
12 considered at the next higher level of severity.

13 (6) Multiple Violations

14 (A) The administrative penalty ranges discussed in subsection (2) are to be applied to each individual
15 violation of the Board's laws and rules. If a respondent has violated multiple laws and/or rules, or has
16 committed multiple violations of a single law or rule, the Respondent shall be subject to a separate
17 administrative penalty for each violation.

18 (B) Each sheet of plans and specifications created or issued in violation of the Board's laws and rules
19 shall be considered a separate violation for purposes of calculating the total administrative penalty
20 under subsection (6)(A).

21 (C) In the case of a continuing violation, each day a violation continues or occurs shall be considered a
22 separate violation for purposes of calculating the total administrative penalty under subsection (6)(A).

23 (7) The administrative penalties set out in this section may be considered in addition to any other
24 disciplinary actions, such as revocation, suspension, or refusal to renew a registration.

25 (8) If the facts of a case are unique or unusual, the Board may suspend the guidelines described in this
26 section.

27 ~~—(D) Because of the threat to human health, safety and well-being which necessarily arises out of a~~
28 ~~Nonregistrant preparing and issuing landscape architectural plans and specifications the Board~~
29 ~~possesses a compelling interest in ensuring that landscape architectural plans and specifications are~~
30 ~~prepared and issued only by registered landscape architect or by a person who is working under the~~
31 ~~active and documented Supervision and Control of a registered Landscape Architect when required by~~
32 ~~law. If the evidence establishes that Landscape Architectural plans and specifications for a project that is~~
33 ~~not exempt from the Landscape Architects' Practice Act were prepared by a person who is not~~
34 ~~registered to engage in the Practice of Landscape Architecture and was not working under the active~~
35 ~~and documented Supervision and Control of a Landscape Architect the violation shall be presumed to be~~
36 ~~a major violation and each sheet of architectural plans or separate section of the specifications shall be~~
37 ~~considered a separate section of the specifications shall be considered a separate violation for purposes~~
38 ~~of calculating and imposing administrative penalties.~~

1 ~~—(E) Because of the threat to human health, safety and welfare which necessarily arises from~~
2 ~~Nonregistrants engaging in the Practice of Landscape Architecture the Board has a compelling interest in~~
3 ~~ensuring that only those persons who are registered to engage in the Practice of Landscape Architecture~~
4 ~~or whose work is conducted under the active and documented Supervision and Control of a registered~~
5 ~~Landscape Architect engage in the Practice of Landscape Architecture. If the evidence establishes that a~~
6 ~~Landscape Architect has sealed landscape architectural plans and separately numbered section of the~~
7 ~~specifications without having exercised active and documented Supervision and Control of the~~
8 ~~Nonregistrants's activities the Board shall presume such conduct by the sealing landscape architect to be~~
9 ~~a major violation and each sheet of landscape architectural plans or separate section of the~~
10 ~~specifications shall be considered a separate violation for purposes of calculating and imposing~~
11 ~~administrative penalties.~~

12 ~~—(F) The agency is responsible for protecting the public's health, safety and welfare by interpreting and~~
13 ~~enforcing the Landscape Architects' Practice Act. In fulfilling this statutory duty the Board depends upon,~~
14 ~~and expects, that Registrants and Applicants will provide complete, truthful and accurate information to~~
15 ~~the Board upon request. This prompt and accurate provision of information is essential to protecting the~~
16 ~~public's health, safety and welfare.~~

17 ~~-(9) -(G) A Landscape Architect, Candidate, or Applicant who fails, without good cause, to provide~~
18 ~~information to the Board under the provision of §3.171 of this subchapter (relating to Responding to~~
19 ~~Request for Information) is presumed to be interfering with and preventing the Board from fulfilling its~~
20 ~~responsibilities. For these reasons a A violation of §3.171 of this subchapter shall be considered a~~
21 ~~minor~~oderate~~ violation if a complete response is not received within 30 days after receipt of the Board's~~
22 ~~written inquiry. An additionally further 15 day delay constitutes a moderate~~ajor~~ violation, and, eEach 15~~
23 ~~day delay thereafter shall be considered a separate major violation of these rules.~~

24 ~~-(3) In order to determine the appropriate amount in a penalty range described in paragraph (2) of this~~
25 ~~section, the Board shall consider the factors described in paragraph (1) of this section.~~

26 ~~-(4) If the facts of a case are unique or unusual, the Board may suspend the guidelines described in this~~
27 ~~section.~~

1 CHAPTER 5 REGISTERED INTERIOR DESIGNERS

2 SUBCHAPTER I DISCIPLINARY ACTION

3 RULE §5.187 Administrative Penalty Schedule

4 If the Board determines that an administrative penalty is the appropriate sanction for a violation of any
5 of the statutory provisions or rules enforced by the Board, the following guidelines shall be applied to
6 guide the Board's assessment of an appropriate administrative penalty:

7

8 ~~—(1) The Board shall consider the following factors to determine whether the violation is minor,
9 moderate, or major:~~

10 ~~—(A) Seriousness of misconduct and efforts to correct the ground for sanction:~~

11 ~~—(i) Minor—the respondent has demonstrated that he/she was unaware that his/her conduct was
12 prohibited and unaware that the conduct was reasonably likely to cause the harm that resulted from the
13 conduct or the respondent has demonstrated that there were significant extenuating circumstances or
14 intervening causes for the violation; and the respondent has demonstrated that he/she provided a
15 satisfactory remedy that alleviated or eliminated any harm or threat to the health or safety of the
16 public.~~

17 ~~—(ii) Moderate—the violation shows that the respondent knowingly disregarded a standard or practice
18 normally followed by a reasonably prudent person under the same or similar circumstances. A violation
19 of a Board order shall constitute, at a minimum, a moderate violation.~~

20 ~~—(iii) Major—the conduct demonstrates gross negligence or recklessness or resulted in a threat to the
21 health or safety of the public and the respondent, after being notified of the alleged violation
22 intentionally refused or failed to take prompt and remedial action.~~

23 ~~—(B) Economic harm:~~

24 ~~—(i) Minor—there was no apparent economic damage to property or monetary loss to the project
25 owner or other involved persons and entities.~~

26 ~~—(ii) Moderate—economic damage to property or monetary harm to other persons or entities did not
27 exceed \$1,000, or damage exceeding \$1,000 was reasonably unforeseeable.~~

28 ~~—(iii) Major—economic damage to property or economic injury to other persons or entities exceeded
29 \$1,000.~~

30 ~~—(C) Sanction history:~~

31 ~~—(i) Minor—the respondent has not previously received a written warning, advisory notice or been
32 subject to other enforcement proceedings from the Board.~~

33 ~~—(ii) Moderate—the respondent was previously subject to an order of the Board or other enforcement
34 proceedings which resulted in a finding of a violation of the laws or rules over which the TBAE has
35 jurisdiction.~~

1 — (iii) Major ~~the respondent has received at least two prior written notices or has been subject to two~~
 2 ~~disciplinary actions for violation of the rules and laws over which the TBAE has jurisdiction.~~

3 (1) In determining whether a minor, moderate, or major penalty is imposed under subsection (2) of this
 4 rule, the following classifications shall apply:

| <u>Minor Violations</u> | |
|--|---|
| <u>Unauthorized duplication of registration certificate or failure to display registration certificate as required.</u> | <u>§5.72</u> |
| <u>Failure to respond to a Board inquiry.</u> | <u>§5.181</u> |
| <u>Failure to provide statement of jurisdiction.</u> | <u>§5.115</u> |
| <u>Failure to provide or timely provide plans and specifications to TDLR under the requirements of Govt. Code Chap. 469 (Elimination of Architectural Barriers).</u> | <u>Tex. Occ. Code Sec. 1053.252(8) and §5.180</u> |
| <u>Use of a non-compliant seal by registrant.</u> | <u>§5.112</u> |
| <u>Failure to register or annually renew the registration of a business.</u> | <u>§5.134</u> |
| <u>Moderate Violations</u> | |
| <u>Use of title “registered interior designer” while on emeritus status</u> | <u>§5.77</u> |
| <u>Practice of interior design while registration is inactive.</u> | <u>§5.78</u> |
| <u>Practice of interior design while registration is expired.</u> | <u>§5.92(b)</u> |
| <u>Aiding or abetting an unregistered person in violating the Board’s laws and rules.</u> | <u>Tex. Occ. Code Sec. 1053.252(7)</u> |
| <u>Unauthorized use of term “registered interior designer.”</u> | <u>Tex. Occ. Code Sec. 1053.101 and §5.133(c)</u> |
| <u>Failure to maintain a sealed document for ten years.</u> | <u>§5.113(c)</u> |
| <u>Failure to seal documents or insert statement in lieu of seal.</u> | <u>§5.113</u> |
| <u>Failure to notify another registered interior designer of modification to sealed plans and/or failure to clearly indicate extent of modifications to sealed plans</u> | <u>§5.114(d)</u> |
| <u>Failure to comply with requirements relating to preparation of only a portion of a document</u> | <u>§5.114(b)</u> |
| <u>Removal of seal after issuance of documents</u> | <u>§5.114(e)</u> |
| <u>Failure to enter into a written agreement of association when required</u> | <u>§5.132</u> |
| <u>Failure to timely notify the Board upon dissolution of a business entity or association of loss of lawful authority to offer or provide architecture</u> | <u>§5.134(c)</u> |
| <u>Major Violations</u> | |

| | |
|---|---|
| <u>Offering, soliciting or receiving anything or any service as an inducement to be awarded publicly funded work.</u> | <u>§5.154(c)</u> |
| <u>Using fraud or deceit in obtaining a certificate of registration, or giving false or forged evidence to the Board or a Board member in obtaining or assisting another person to obtain a certificate of registration</u> | <u>Tex. Occ. Code Sec. 1053.252(3) or (9)</u> |
| <u>Acting dishonestly in the practice of interior design by the holder of a certificate of registration.</u> | <u>Tex. Occ. Code Sec. 1053.252(11) and §5.154</u> |
| <u>Advertising in a manner that tends to deceive or defraud the public</u> | <u>Tex. Occ. Code Sec. 1053.252(6)</u> |
| <u>Using or attempting to use as the person's own the certificate of registration of another person.</u> | <u>Tex. Occ. Code Sec. 1053.252(10)</u> |
| <u>Affixation of seal by a registered interior designer on a document not prepared by or under the supervision and control of the registered interior designer</u> | <u>§5.114(a) and/or §5.132(c)&(e)</u> |
| <u>Failure to exercise Supervision and Control or Responsible Charge over the preparation of a document, as required</u> | <u>§5.132(c) or (e)</u> |
| <u>Use of a registered interior designer's seal, or a copy or replica of a registered interior designer's seal without the registered interior designer's consent.</u> | <u>§5.114(c)</u> |
| <u>Recklessness in the practice of interior design.</u> | <u>Tex. Occ. Code Sec. 1053.252(4) and §5.153</u> |
| <u>Failure to report a course of action taken against a registered interior designer's advice as required</u> | <u>§5.115(d)</u> |
| <u>Gross incompetency in the practice of interior design</u> | <u>Tex. Occ. Code Section 1053.252(4) and §5.152(c)</u> |

1

2 (2) After determining whether the violation is minor, moderate, or major, the Board shall impose an
3 administrative penalty as follows:

4 (A) Minor violations--~~if the violation is minor in every category described in paragraph (1) of this~~
5 ~~section,~~ an administrative penalty of not more than \$~~1,05~~00 shall be imposed.

6 (B) Moderate violations--~~if the violation is moderate in any category described in paragraph (1) of this~~
7 ~~section,~~ an administrative penalty of not more than \$~~32,~~000 shall be imposed.

8 (C) Major violations--~~if the violation is major in any category described in paragraph (1) of this section~~
9 ~~or if the Board determines that the facts of the case indicate a higher penalty is necessary in order to~~
10 ~~deter similar misconduct in the future,~~ an administrative penalty of not more than \$5,000 shall be
11 imposed.

12 – (3) ~~In determining the specific amount of an administrative penalty within the minor, moderate, or~~
13 ~~major range, the Board shall consider the factors outlined in Board Rules 5.151(c) and/or 5.175(f).~~

1 (4) If a violation of the Board's laws or rules is not specifically defined in subsection (1) as a minor,
2 moderate, or major violation, the Board shall consider the factors outlined in Board Rules 5.151(c)
3 and/or 5.175(f) in determining an appropriate administrative penalty.

4 (5) Previous Disciplinary History - If the respondent was previously found to have violated the Board's
5 laws or rules in a warning or Order of the Board, then any subsequent disciplinary action may be
6 considered at the next higher level of severity.

7 (6) Multiple Violations

8 (A) The administrative penalty ranges discussed in subsection (2) are to be applied to each individual
9 violation of the Board's laws and rules. If a respondent has violated multiple laws and/or rules, or has
10 committed multiple violations of a single law or rule, the Respondent shall be subject to a separate
11 administrative penalty for each violation.

12 (B) Each sheet of architectural plans and specifications created or issued in violation of the Board's
13 laws and rules shall be considered a separate violation for purposes of calculating the total
14 administrative penalty under subsection (6)(A).

15 (C) In the case of a continuing violation, each day a violation continues or occurs shall be considered a
16 separate violation for purposes of calculating the total administrative penalty under subsection (6)(A).

17 (7) The administrative penalties set out in this section may be considered in addition to any other
18 disciplinary actions, such as revocation, suspension, or refusal to renew a registration.

19 (48) If the facts of a case are unique or unusual, the Board may suspend the guidelines described in this
20 section.

21 ~~(D) Because of the threat to human health, safety and well-being which necessarily arises from a~~
22 ~~Nonregistrant representing himself or herself to be registered as a Registered Interior Designer the~~
23 ~~Board possesses a compelling interest in ensuring that only those persons who are permitted by statute~~
24 ~~and rule to use the title "registered interior designer" do so. If the evidence establishes that a person~~
25 ~~not registered as a Registered Interior Designer has represented himself or herself as a registrant, the~~
26 ~~violation shall be classified as a major violation and each sheet of Interior Design plans or separate~~
27 ~~section of the specifications shall be considered a separate violation for purposes of calculating and~~
28 ~~imposing administrative penalties.~~

29 ~~—(E) The agency is responsible for protecting the public's health, safety and welfare by interpreting and~~
30 ~~enforcing the Interior Designers' Registration Law. In fulfilling this statutory duty the Board depends~~
31 ~~upon, and expects, that Registrants, Candidates and Applicants will provide complete, truthful and~~
32 ~~accurate information to the Board upon request. This prompt and accurate provision of information is~~
33 ~~essential to protecting the public's health, safety and welfare.~~

34 ~~(F9) A Registered Interior Designer, a Candidate, or an Applicant who fails, without good cause, to~~
35 ~~provide information to the Board under §5.181 of this subchapter (relating to Responding to Request for~~
36 ~~Information) is presumed to be interfering with and preventing the Board from fulfilling its~~
37 ~~responsibilities. For these reasons a~~ violation of §5.181 of this subchapter shall be considered a
38 ~~moderate-minor~~ violation if a complete response is not received within 30 days after receipt of the

1 ~~Board's written inquiry~~ the violation. Any ~~additional 15 day further~~ delay constitutes a ~~major-moderate~~
2 violation, ~~and~~. ~~e~~Each 15 day delay thereafter shall be considered a separate violation of these rules.

3 ~~(3) In order to determine the appropriate amount in a penalty range described in paragraph (2) of this~~
4 ~~section, the Board shall consider the factors described in paragraph (1) of this section.~~

5 ~~(4) If the facts of a case are unique or unusual, the Board may suspend the guidelines described in this~~
6 ~~section.~~

1
2 TITLE 22 EXAMINING BOARDS
3 PART 1 TEXAS BOARD OF ARCHITECTURAL EXAMINERS
4 CHAPTER 1 ARCHITECTS
5 SUBCHAPTER L HEARINGS--CONTESTED CASES
6 RULE §1.232 Board Responsibilities

7 (a) The Board shall investigate Contested Case matters and attempt to resolve Contested Cases
8 informally as provided in Subchapter I of this chapter (relating to Disciplinary Action). However, if a
9 Contested Case is not settled informally pursuant to Subchapter I of this chapter, it shall be referred to
10 SOAH for a formal hearing to determine whether there has been a violation of any of the statutory
11 provisions or rules enforced by the Board.

12 (b) A formal hearing shall be conducted in accordance with the Rules of Procedure of SOAH.

13 (c) After a formal hearing of a Contested Case, the SOAH administrative law judge who conducted the
14 formal hearing shall prepare a proposal for decision and submit it to the Board so that the Board may
15 render a final decision with regard to the Contested Case. The proposal for decision shall include
16 findings of fact and conclusions of law.

17 ~~(d) Any party of record in a Contested Case who is adversely affected by the proposal for decision may~~
18 ~~file exceptions and briefs within 20 days after the date of service of the proposal for decision. Replies to~~
19 ~~exceptions and briefs may be filed within 15 days after the date for the filing of exceptions and briefs.~~
20 ~~Exceptions, briefs, and replies shall be filed with the Board and copies shall be served on the~~
21 ~~administrative law judge and on all other parties in the same manner as for serving other documents in~~
22 ~~a Contested Case. If a party submits proposed findings of fact or conclusions of law, the proposal for~~
23 ~~decision shall include a ruling on each proposed finding or conclusion.~~

24 (e) Any party of record in a Contested Case may request an oral hearing before the Board. A request for
25 an oral hearing shall be filed with the Board and copies shall be served on the administrative law judge
26 and on all other parties in the same manner as for serving other documents in a Contested Case. The
27 Board, in its sole discretion, shall determine whether to grant or deny a request for an oral hearing. If a
28 request for an oral hearing is granted, each party of record shall be allotted 30 minutes to make an oral
29 presentation to the Board. The oral presentation shall be confined to matters contained within the
30 administrative record.

31 (f) Upon the expiration of the time provided for the filing of exceptions and briefs or, if exceptions and
32 briefs are filed, upon the 10th day following the time provided for the filing of replies to exceptions and
33 briefs, the Board may render a decision to finally resolve a Contested Case. The Board may change a
34 finding of fact or conclusion of law made by an administrative law judge or may vacate or modify an
35 order issued by an administrative law judge only if the Board determines:

36 (1) that the administrative law judge did not properly apply or interpret applicable law, agency rules,
37 written policies, or prior administrative decisions;

Commented [LB1]: These procedures are governed by the SOAH rules, and TBAE does not have authority to override those rules. Staff recommends removal of this provision.

Commented [LB2]: Under Sec. 2001.141(e), an agency may adopt a rule requiring an ALJ to make a ruling on proposed findings of fact and conclusions of law supplied by the parties. Staff recommends adoption of the amendment to allow for this procedure.

Rule 1.232

- 1 (2) that a prior administrative decision on which the administrative law judge relied is incorrect or
 2 should be changed; or
- 3 (3) that a technical error in a finding of fact should be changed.
- 4 (g) If the Board makes a change to a finding of fact or conclusion of law or vacates or modifies an order
 5 pursuant to subsection (f) of this section, the Board must state in writing the specific reason and the
 6 legal basis for the change.
- 7 (h) The Board shall issue a written order regarding the Board's decision to finally resolve a Contested
 8 Case that is not settled informally. The written order shall include findings of fact and conclusions of law
 9 that are based on the official record of the Contested Case. The written order may adopt by reference
 10 the findings of fact and conclusions of law made by an administrative law judge and included in the
 11 proposal for decision submitted to the Board.
- 12 (i) Motions for rehearing and appeals may be filed and judicial review of final decisions of the Board may
 13 be sought pursuant to the Administrative Procedure Act. The party who appeals a final decision in a
 14 Contested Case shall be responsible for the cost of the preparation of the original or a certified copy of
 15 the record of the agency proceeding that is required to be sent to the reviewing court.
- 16 (j) The Board and the administrative law judge who presides over the formal hearing in a Contested Case
 17 shall refer to the following guidelines to determine the appropriate penalty for a violation of any of the
 18 statutory provisions or rules enforced by the Board:

Figure: 22 TAC §1.232(j)

| Violation | Rule or Statutory Rule(s) Cited | Recommended Penalty |
|---|---------------------------------|--|
| Unauthorized duplication of certificate of registration or failure to display certificate of registration as required | §1.62 | Administrative penalty or reprimand |
| Unlawful practice of architecture while registration is on emeritus status | §1.67(b) | Administrative penalty and cease and desist order |
| Practice of architecture while registration is inactive or expired | §1.68 or §1.82(b) | Administrative penalty and cease and desist order |
| Failure to fulfill mandatory continuing education requirements | §1.69 | Administrative penalty, or suspension, or both |
| Failure to timely complete required continuing education program hours | §1.69(b) | Administrative penalty of \$500; subject to higher penalties or suspension for second or subsequent offenses |

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Commented [LB3]: According to our research, a reprimand has not been issued since 2004, which was about the time the Board began issuing warnings. Since this is not a sanction that we use, Staff's recommendation is to remove it from the guidelines so that it isn't relied upon by SOAH.

Commented [LB4]: A cease and desist letter is not normally associated with a disciplinary sanction. Rather, a cease and desist letter is usually issued at the beginning of an investigation, if at all. Staff recommends elimination of cease and desist as a disciplinary sanction for all violations.

| | | |
|--|--|--|
| Falsely reporting compliance with mandatory continuing education requirements | §1.69(g) | Administrative penalty of \$700; subject to higher penalties or suspension for second or subsequent offenses |
| Failure to maintain a detailed record of continuing education activities | §1.69(g)(1) | Administrative penalty of \$700; subject to higher penalties for second or subsequent offenses |
| Failure to use appropriate seal or signature Use of non-compliant seal by registrant | §1.102 §1.104(e) | Administrative penalty or reprimand |
| Failure to seal documents | §1.103 §1.105 §1.122(c),(e) | Administrative penalty or reprimand |
| Failure to mark documents issued for purposes other than regulatory approval, permitting or construction as required | §1.103(b) | Administrative penalty or reprimand |
| Sealing or authorizing the sealing of a document prepared by another without Supervision and Control or Responsible Charge – “plan stamping” | §1.104(a) and (b) §1.122(c) and or (e) | Administrative penalty and either s Suspension or revocation |
| Failure to take reasonable steps to notify sealing Architect of intent to modify that architect’s sealed documents | §1.104(d) | Administrative penalty or reprimand |
| Failure to indicate modifications or additions to a document prepared by another Architect | §1.104(b) and (d) | Administrative penalty, s Suspension, administrative penalty or both, or reprimand |
| Removal of seal after issuance of documents | §1.104(e) | Administrative penalty or reprimand |
| Failure to maintain a document for 10 years as required | §1.103(g) §1.105(b) §1.122(d) | Administrative penalty or reprimand |
| Unauthorized use of a seal or a copy or replica of a seal or unauthorized modification of a document | §1.104 (b) and (c) | Administrative penalty, reprimand, or suspension, or both |
| Failure to comply with requirements relating to preparation of only a portion of a document | §1.104(b) | Administrative penalty, suspension, or both |

Commented [LB5]: Implementation of the Rules Committee recommendation from August regarding claims of lost or stolen CE documentation.

Commented [LB6]: It is a common practice for the Board to issue an administrative penalty in addition to a suspension, so Staff recommends changing the language to reflect this practice.

Commented [LB7]: Consistency between cells as suggest by Mr. Anastos

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| Violation of requirements regarding prototypical design | §1.105 | Administrative penalty, reprimand, or suspension, or both |
| Failure to provide Statement of Jurisdiction | §1.106 | Administrative penalty or reprimand |
| Failure to enter into a written agreement of association when required | §1.122 | Administrative penalty or reprimand |
| Failure to exercise Supervision and Control over the preparation of a document as required | §1.122(c) | Administrative penalty and either S suspension, or revocation, or refusal to renew registration |
| Failure to exercise Responsible Charge over the preparation of a document as required | §1.122(e) | Administrative penalty and either S suspension or, revocation, or refusal renew registration |
| Failure of a firm, business entity, or association to register | §1.124(a) and (b) | Administrative penalty, cease and desist order, or both |
| Failure to timely notify the Board upon dissolution of a business entity or association of loss of lawful authority to offer or provide architecture | §1.124(c) | Administrative penalty, reprimand, or suspension, or both |
| Offering or rendering the Practice of Architecture by and through a firm, business entity or association that is not duly registered | §1.124 §1.146(a)(2)(B) | Administrative penalty, cease and desist order, or both |
| Gross incompetency | Tex. Occ. Code §1051.752(4), §1.142 | Administrative penalty and either S suspension, or, revocation, or refusal to renew registration |
| Recklessness | Tex. Occ. Code §1051.752(5) §1.143 | Administrative penalty and either S suspension, or, revocation, or refusal to renew registration |
| Dishonest practice | Tex. Occ. Code §1051.752(6) §1.144(a), (b), (e) | Administrative penalty and either S suspension, or revocation, or refusal to renew registration |
| Offering, soliciting or receiving anything or any service as an inducement to be awarded publicly funded work | §1.144(b c) | Administrative penalty and either S suspension, or revocation, and payment of restitution |

Commented [LB8]: According to subsection (l) below, where revocation is a recommended penalty, it also includes refusal to renew, so it is unnecessary to list both in the guidelines.

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| Conflict of interest | §1.145 | Administrative penalty and either Suspension, or revocation, or refusal to renew registration |
| Participating in a plan, scheme or arrangement to violate the Act or rules of the Board | §1.146(a) | Administrative penalty, suspension, and/or revocation, or refusal to renew registration |
| Failure to provide information regarding an Applicant upon request; failure to report lost, stolen or misused architectural seal | §1.146(b), (c) | Administrative penalty or reprimand |
| Submission <u>or solicitation</u> of a competitive bid in violation of the Professional Services Procurement Act, <u>or direct or indirect disclosure of fee information</u> | §1.147 | Administrative penalty and either S suspension, or revocation |
| Disclosure of fee information inconsistent with the Professional Services Procurement Act | §1.147 | Administrative penalty or reprimand |
| Unauthorized practice or use of title "architect" | §1.123 §1.148 | Administrative penalty, denial of registration, or refusal to renew, reinstate, or reactivate registration |
| Criminal conviction | §1.149 | Suspension or revocation |
| Gross incompetence caused by substance abuse | §1.150 | Indefinite suspension until respondent demonstrates terminating suspension will not imperil public safety, <u>followed by probated suspension if appropriate</u> |
| Violation by Applicant regarding unlawful use of the title "architect", unlawful practice, or criminal convictions | §1.148 §1.149 §1.151 | Reprimand, a Administrative penalty, suspension, <u>revocation, denial of application, denial of reapplication for up to five years, and/ rejection, denial of right to reapply,</u> or probationary initial registration |
| Failure to submit a document as required by the Architectural Barriers Act | Tex. Occ. Code §1051.752(2), §1.170 | Reprimand or a Administrative penalty |
| Failure to respond to a Board inquiry | §1.171 | Administrative penalty |
| <u>Giving false or forged evidence to the Board or a Board member in obtaining or assisting another person to obtain a certificate of registration</u> | Tex. Occ. Code §1051.752(7) | <u>Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/or probationary initial registration</u> |

Commented [LB9]: Relocated above.

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| <u>Using or attempting to use as the person's own the certificate of registration of another person.</u> | <u>Tex. Occ. Code §1051.752(9)</u> | <u>Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/or probationary initial registration</u> |
| Unregistered individual engaging in construction observation for a nonexempt building | §1.217 | Administrative penalty, reprimand, <u>denial of application, denial of reapplication for up to five years, and/or probationary initial registration</u> denial registration or refusal to renew, reinstate, or reactivate registration |
| Failure to report course of action likely to have material adverse effect on safe use of building or failure to refuse to consent to the course of action | §1.216 | Administrative penalty and either suspension, or revocation or refusal to renew registration |
| <u>Aiding or abetting an unregistered person in violating Occupations Code Chapters 1051, 1052, or 1053</u> | <u>Tex. Occ. Code §1051.752(9)</u> | <u>Administrative penalty equivalent to that which would be appropriate for the underlying conduct by the unregistered person, and/or suspension or revocation</u> |
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- 2 (k) The penalty for a violation of any of the statutory provisions or rules enforced by the Board may vary
3 from the penalty recommended in subsection (j) of this section if justified by the circumstances of the
4 matter or the disciplinary history of the respondent. If the Respondent has previously been subject to
5 disciplinary action before the Board, more severe discipline may be imposed.
- 6 (l) For any violation where revocation is recommended as an appropriate penalty for the violation,
7 refusing to renew the respondent's certificate of registration also shall be an appropriate penalty for the
8 violation.
- 9 (m) If the Board or the administrative law judge determines that an administrative penalty is the
10 appropriate sanction for a violation, the guidelines described in §1.177 of this chapter (relating to
11 Administrative Penalty Schedule) shall be applied to determine the amount of the administrative
12 penalty.

1 CHAPTER 3 LANDSCAPE ARCHITECTS

2 SUBCHAPTER K HEARINGS--CONTESTED CASES

3 RULE §3.232 Board Responsibilities

4 (a) The Board shall investigate Contested Case matters and attempt to resolve Contested Cases
5 informally as provided in Subchapter I of this chapter (relating to Disciplinary Action). However, if a
6 Contested Case is not settled informally pursuant to Subchapter I of this chapter, it shall be referred to
7 SOAH for a formal hearing to determine whether there has been a violation of any of the statutory
8 provisions or rules enforced by the Board.

9 (b) A formal hearing shall be conducted in accordance with the Rules of Procedure of SOAH.

10 (c) After a formal hearing of a Contested Case, the SOAH administrative law judge who conducted the
11 formal hearing shall prepare a proposal for decision and submit it to the Board so that the Board may
12 render a final decision with regard to the Contested Case. The proposal for decision shall include
13 findings of fact and conclusions of law.

14 ~~(d) Any party of record in a Contested Case who is adversely affected by the proposal for decision may~~
15 ~~file exceptions and briefs within 20 days after the date of service of the proposal for decision. Replies to~~
16 ~~exceptions and briefs may be filed within 15 days after the date for the filing of exceptions and briefs.~~
17 ~~Exceptions, briefs, and replies shall be filed with the Board and copies shall be served on the~~
18 ~~administrative law judge and on all other parties in the same manner as for serving other documents in~~
19 ~~a Contested Case. If a party submits proposed findings of fact or conclusions of law, the proposal for~~
20 ~~decision shall include a ruling on each proposed finding or conclusion.~~

21 (e) Any party of record in a Contested Case may request an oral hearing before the Board. A request for
22 an oral hearing shall be filed with the Board and copies shall be served on the administrative law judge
23 and on all other parties in the same manner as for serving other documents in a Contested Case. The
24 Board, in its sole discretion, shall determine whether to grant or deny a request for an oral hearing. If a
25 request for an oral hearing is granted, each party of record shall be allotted 30 minutes to make an oral
26 presentation to the Board. The oral presentation shall be limited to matters contained in the
27 administrative record.

28 (f) Upon the expiration of the time provided for the filing of exceptions and briefs or, if exceptions and
29 briefs are filed, upon the 10th day following the time provided for the filing of replies to exceptions and
30 briefs, the Board may render a decision to finally resolve a Contested Case. The Board may change a
31 finding of fact or conclusion of law made by an administrative law judge or may vacate or modify an
32 order issued by an administrative law judge only if the Board determines:

33 (1) that the administrative law judge did not properly apply or interpret applicable law, agency rules,
34 written policies, or prior administrative decisions;

35 (2) that a prior administrative decision on which the administrative law judge relied is incorrect or
36 should be changed; or

37 (3) that a technical error in a finding of fact should be changed.

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- 1 (g) If the Board makes a change to a finding of fact or conclusion of law or vacates or modifies an order
 2 pursuant to subsection (f) of this section, the Board must state in writing the specific reason and the
 3 legal basis for the change.
- 4 (h) The Board shall issue a written order regarding the Board's decision to finally resolve a Contested
 5 Case that is not settled informally. The written order shall include findings of fact and conclusions of law
 6 that are based on the official record of the Contested Case. The written order may adopt by reference
 7 the findings of fact and conclusions of law made by an administrative law judge and included in the
 8 proposal for decision submitted to the Board.
- 9 (i) Motions for rehearing and appeals may be filed and judicial review of final decisions of the Board may
 10 be sought pursuant to the Administrative Procedure Act. The party who appeals a final decision in a
 11 Contested Case shall be responsible for the cost of the preparation of the original or a certified copy of
 12 the record of the agency proceeding that is required to be sent to the reviewing court.
- 13 (j) The Board and the administrative law judge who presides over the formal hearing in a Contested Case
 14 shall refer to the following guidelines to determine the appropriate penalty for a violation of any of the
 15 statutory provisions or rules enforced by the Board:

Figure: 22 TAC §3.232(j)

| Violation | Rule(s) Cited | Recommended Penalty |
|---|---------------|--|
| Unauthorized duplication of certificate of registration or failure to display certificate of registration as required | §3.62 | Administrative penalty or reprimand |
| Unlawful practice of landscape architecture while registration is on emeritus status | §3.67(b) | Administrative penalty and cease and desist order |
| Practice of landscape architecture while registration is inactive or expired | §3.68 | Administrative penalty |
| Failure to fulfill mandatory continuing education requirements | §3.69 | Administrative penalty, or suspension, <u>or both</u> |
| Failure to timely complete required continuing education program hours | §3.69(b) | Administrative penalty of \$500; subject to higher penalties or suspension for second or subsequent offenses |
| Falsely reporting compliance with mandatory continuing education requirements | §3.69(g) | Administrative penalty of \$700; subject to higher penalties or suspension for second or subsequent offenses |

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| <u>Failure to maintain a detailed record of continuing education activities</u> | <u>§3.69(g)(1)</u> | <u>Administrative penalty of \$700; subject to higher penalties for second or subsequent offenses</u> |
| <u>Failure to use appropriate seal or signature</u> <u>Use of non-compliant seal by registrant</u> | §3.102 §3.104(e) | Administrative penalty or reprimand |
| Failure to seal documents | §3.103 §3.105 §3.122(c), (e) | Administrative penalty or reprimand |
| Failure to mark documents issued for purposes other than regulatory approval, permitting or construction as required | §3.103(b) | Administrative penalty or reprimand |
| Sealing or authorizing the sealing of a document prepared by another without Supervision and Control or Responsible Charge – “plan stamping” | §3.104(a) and (b) §3.122(c) and (e) | Suspension <u>Administrative penalty and either suspension</u> or revocation |
| Failure to take reasonable steps to notify sealing Landscape Architect or of intent to modify that Landscape Architect’s sealed documents | §3.104(d) | Administrative penalty or reprimand |
| Failure to indicate modifications or additions to a document prepared by another Landscape Architect | §3. 104(e) | Administrative penalty, <u>suspension, or both</u> or reprimand |
| Removal of seal after issuance of documents | §3.104(e) | Administrative penalty or reprimand |
| Failure to maintain a document for 10 years as required | §3.103(g) §3.105(b) §3.122(d) | Administrative penalty or reprimand |
| Unauthorized use of a seal or a copy <u>or replica</u> of a seal or unauthorized modification of a document | §3.104 (b) and (c) | Administrative penalty, <u>reprimand or suspension, or both</u> |
| <u>Failure to comply with requirements relating to preparation of only a portion of a document</u> | <u>§3.104(b)</u> | <u>Administrative penalty, suspension, or both</u> |

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| Violation of requirements regarding prototypical design | §3.105 | Administrative penalty, reprimand or suspension, <u>or both</u> |
| Failure to provide Statement of Jurisdiction | §3. 105 106 | Administrative penalty or reprimand |
| Failure to report a course of action taken against the <u>landscape architect's</u> respondent's advice as required | §3.106(d) | Suspension <u>Administrative penalty and either suspension or,</u> revocation or refusal to <u>renew registration</u> |
| Failure to enter into a written agreement of association when required | §3.122 | Administrative penalty or reprimand |
| Failure to exercise Supervision and Control over the preparation of a document as required | §3.122(c) | <u>Administrative penalty, and either</u> Suspension or, revocation, or refusal to <u>renew registration</u> |
| Failure to exercise Responsible Charge over the preparation of a document as required | §3.122(e) | <u>Administrative penalty and either</u> Suspension or, revocation, or refusal to <u>renew registration</u> |
| Failure of a firm, business entity, or association to register | §3.124(a) and (b) | Administrative penalty, cease and desist order, or both |
| Failure to timely notify the Board upon dissolution of a business entity or association of loss of lawful authority to offer or provide landscape architecture | §3.124(c) | Administrative penalty, reprimand, or <u>suspension</u> <u>suspension, or both</u> |
| Offering or rendering Landscape Architecture by and through a firm, business entity or association that is not duly registered | §3.124 §3.146(a)(2)(B) | Administrative penalty, cease and desist order, or both |
| Gross incompetency | <u>Tex. Occ. Code §1052.252(7)</u> §3.142 | <u>Administrative penalty and either suspension or revocation</u> Suspension, revocation, or refusal to <u>renew registration</u> |
| Recklessness | <u>Tex. Occ. Code §1052.252(7)</u> §3.143 | <u>Administrative penalty and either suspension or revocation</u> Suspension, |

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| | | revocation, or refusal to renew registration |
| Dishonest practice | <u>Tex. Occ. Code §1052.252(9) §3.144(a), (b), (e)</u> | <u>Administrative penalty and either suspension or revocation</u> Suspension or revocation, or refusal to renew registration |
| Offering, soliciting or receiving anything or any service as an inducement to be awarded publicly funded work | §3.144(bc) | <u>Administrative penalty, suspension, and/or revocation</u> Suspension or revocation and payment of restitution |
| Conflict of interest | §3.145 | <u>Administrative penalty and either suspension or revocation</u> Suspension, revocation, or refusal to renew registration |
| Participating in a plans, scheme or arrangement to violate the Act or the rules of the Board | §3.146(a) | <u>Administrative penalty, suspension and/or revocation</u> Administrative penalty, suspension, revocation, or refusal to renew registration |
| Failure to provide information regarding an Applicant upon request; failure to report lost, stolen or misused landscape architectural seal | §3.146(b), (c) | Administrative penalty or reprimand |
| Submission of a competitive bid in violation of the Professional Services Procurement Act | §3.147 | Suspension or revocation |
| Disclosure of fee information inconsistent with the Professional Services Procurement Act | §3.147 | Administrative penalty or reprimand |
| Disclosure of information with the intent to indirectly disclose fee information | §3.147 | Suspension or revocation |
| Unauthorized practice or use of title "landscape architect" | §3.123 §3.148 | <u>Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/or probationary initial registration</u> Administrative penalty, denial of |

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| | | registration, or refusal to renew, reinstate, or reactivate registration |
| Criminal conviction | §3.149 | Suspension or revocation |
| Gross incompetence caused by substance abuse | § 4 3.150 | Indefinite suspension until respondent demonstrates terminating suspension will not imperil public safety, followed by <u>probated suspension if appropriate</u> |
| Violation by Applicant regarding unlawful <u>use</u> of title “landscape architect”, unlawful practice, or criminal convictions | §3.148 §3.149 §3.151 | Reprimand, administrative <u>Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/rejection, denial of right to reapply,</u> or probationary initial registration |
| Failure to submit a document as required by the Architectural Barriers Act | Tex. Occ. Code §1052.252(8) §3.170 | A Reprimand or administrative penalty |
| Failure to respond to a Board inquiry | §3.171 | Administrative penalty |
| <u>Using fraud or deceit in obtaining a certificate of registration, or giving false or forged evidence to the Board or a Board member in obtaining or assisting another person to obtain a certificate of registration</u> | Tex. Occ. Code §1052.252(2) or (3) | <u>Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/or probationary initial registration</u> |
| <u>Using or attempting to use as the person's own the certificate of registration of another person.</u> | Tex. Occ. Code §1052.252(4) | <u>Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/or probationary initial registration</u> |
| <u>Use of the term “engineer,” “professional engineer,” or related term or otherwise creating the impression that one is authorized to practice engineering unless the person is registered under Occupations Code Chapter 1001</u> | Tex. Occ. Code §1052.252(5) | <u>Administrative Penalty</u> |
| <u>Use of the term “surveyor” or related term or otherwise creating the impression that one is authorized to practice surveying unless the person</u> | Tex. Occ. Code §1052.252(6) | <u>Administrative Penalty</u> |

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| <u>is registered under Occupations Code Chapter 1071</u> | | |
| <u>Aiding or abetting an unregistered person in violating Occupations Code Chapters 1051, 1052, or 1053</u> | <u>Tex. Occ. Code §1052.252(10)</u> | <u>Administrative penalty equivalent to that which would be appropriate for the underlying conduct by the unregistered person, and/or suspension or revocation</u> |

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- 2 (k) The penalty for a violation of any of the statutory provisions or rules enforced by the Board may vary
- 3 from the penalty recommended in subsection (j) of this section if justified by the circumstances of the
- 4 matter or the disciplinary history of the respondent. If the Respondent has previously been subject to
- 5 disciplinary action before the Board, more severe discipline may be imposed.
- 6 (l) For any violation where revocation is recommended as an appropriate penalty for the violation,
- 7 refusing to renew the respondent's certificate of registration also shall be an appropriate penalty for the
- 8 violation.
- 9 (m) If the Board or the administrative law judge determines that an administrative penalty is the
- 10 appropriate sanction for a violation, the guidelines described in §3.177 shall be applied to determine the
- 11 amount of the administrative penalty.
- 12

1 CHAPTER 5 REGISTERED INTERIOR DESIGNERS

2 SUBCHAPTER K HEARINGS--CONTESTED CASES

3 RULE §5.242 Board Responsibilities

4 (a) The Board shall investigate Contested Case matters and attempt to resolve Contested Cases
5 informally as provided in Subchapter I of this chapter (relating to Disciplinary Action). However, if a
6 Contested Case is not settled informally pursuant to Subchapter I of this chapter, it shall be referred to
7 SOAH for a formal hearing to determine whether there has been a violation of any of the statutory
8 provisions or rules enforced by the Board.

9 (b) A formal hearing shall be conducted in accordance with the Rules of Procedure of SOAH.

10 (c) After a formal hearing of a Contested Case, the SOAH administrative law judge who conducted the
11 formal hearing shall prepare a proposal for decision and submit it to the Board so that the Board may
12 render a final decision with regard to the Contested Case. The proposal for decision shall include
13 findings of fact and conclusions of law.

14 ~~(d) Any party of record in a Contested Case who is adversely affected by the proposal for decision may~~
15 ~~file exceptions and briefs within 20 days after the date of service of the proposal for decision. Replies to~~
16 ~~exceptions and briefs may be filed within 15 days after the date for the filing of exceptions and briefs.~~
17 ~~Exceptions, briefs, and replies shall be filed with the Board and copies shall be served on the~~
18 ~~administrative law judge and on all other parties in the same manner as for serving other documents in~~
19 ~~a Contested Case. If a party submits proposed findings of fact or conclusions of law, the proposal for~~
20 ~~decision shall include a ruling on each proposed finding or conclusion.~~

21 (e) Any party of record in a Contested Case may request an oral hearing before the Board. A request for
22 an oral hearing shall be filed with the Board and copies shall be served on the administrative law judge
23 and on all other parties in the same manner as for serving other documents in a Contested Case. The
24 Board, in its sole discretion, shall determine whether to grant or deny a request for an oral hearing. If a
25 request for an oral hearing is granted, each party of record shall be allotted 30 minutes to make an oral
26 presentation to the Board. The oral presentation shall be confined to matters contained within the
27 administrative record.

28 (f) Upon the expiration of the time provided for the filing of exceptions and briefs or, if exceptions and
29 briefs are filed, upon the 10th day following the time provided for the filing of replies to exceptions and
30 briefs, the Board may render a decision to finally resolve a Contested Case. The Board may change a
31 finding of fact or conclusion of law made by an administrative law judge or may vacate or modify an
32 order issued by an administrative law judge only if the Board determines:

33 (1) that the administrative law judge did not properly apply or interpret applicable law, agency rules,
34 written policies, or prior administrative decisions;

35 (2) that a prior administrative decision on which the administrative law judge relied is incorrect or
36 should be changed; or

37 (3) that a technical error in a finding of fact should be changed.

1 (g) If the Board makes a change to a finding of fact or conclusion of law or vacates or modifies an order
 2 pursuant to subsection (f) of this section, the Board must state in writing the specific reason and the
 3 legal basis for the change.

4 (h) The Board shall issue a written order regarding the Board's decision to finally resolve a Contested
 5 Case that is not settled informally. The written order shall include findings of fact and conclusions of law
 6 that are based on the official record of the Contested Case. The written order may adopt by reference
 7 the findings of fact and conclusions of law made by an administrative law judge and included in the
 8 proposal for decision submitted to the Board.

9 (i) Motions for rehearing and appeals may be filed and judicial review of final decisions of the Board may
 10 be sought pursuant to the Administrative Procedure Act. The party who appeals a final decision in a
 11 Contested Case shall be responsible for the cost of the preparation of the original or a certified copy of
 12 the record of the agency proceeding that is required to be sent to the reviewing court.

13 (j) The Board and the administrative law judge who presides over the formal hearing in a Contested Case
 14 shall refer to the following guidelines to determine the appropriate penalty for a violation of any of the
 15 statutory provisions or rules enforced by the Board:

| Figure: 22 TAC §5.242(j) | | |
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| Violation | Rule(s) Cited | Recommended Penalty |
| Unauthorized duplication of certificate of registration or failure to display certificate of registration as required | §5.72 | Administrative penalty or reprimand |
| Using the title “Registered Interior Designer” while on emeritus status | §5.77(b) | Administrative penalty and cease and desist order |
| Practice of Interior Design while registration is inactive <u>or expired</u> | §5.78 <u>or</u> <u>§5.92(b)</u> | Administrative penalty and cease and desist order |
| Failure to fulfill mandatory continuing education requirements | §5.79 | Administrative penalty or suspension |
| Failure to timely complete required continuing education program hours | §5.79(b) | Administrative penalty of \$500; subject to higher penalties or suspension for second or subsequent offenses |
| Falsely reporting compliance with mandatory continuing education requirements | §5.79(g) | Administrative penalty of \$700; subject to higher penalties for second or |

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| | | subsequent offenses |
| <u>Failure to maintain a detailed record of continuing education activities</u> | <u>§5.79(g)(1)</u> | <u>Administrative penalty of \$700; subject to higher penalties for second or subsequent offenses</u> |
| Failure to use appropriate seal or signature <u>Use of non-compliant seal by registrant</u> | §5.112 §5.114(c) | Administrative penalty or <u>reprimand</u> |
| Failure to seal documents | §5.113 §5.132(c) and (e) | Administrative penalty or <u>reprimand</u> |
| Failure to mark documents issued for purposes other than regulatory approval, permitting or construction as required | §5.113(b) | Administrative penalty or <u>reprimand</u> |
| Sealing or authorizing the sealing of a document prepared by another without Supervision and Control or Responsible Charge – “plan stamping” | §5.114(a) and (b) §5.132(c) and (e) | <u>Administrative penalty and either § suspension or revocation</u> |
| Failure to take reasonable steps to notify sealing Registered Interior Designer of intent to modify sealed documents | §5.114(d) | Administrative penalty or <u>reprimand</u> |
| Failure to indicate modifications to or portion of document prepared by Registered Interior Designer | §5.114(b) and (d) | A <u>Suspension, administrative penalty, suspension, or both</u> or <u>reprimand</u> |
| Removal of seal after issuance of documents | §5.114(e) | Administrative penalty or <u>reprimand</u> |
| Failure to maintain a document for 10 years as required | §5.113(c) §5.132(d) | Administrative penalty or <u>reprimand</u> |
| Unauthorized use of a seal or a copy or replica of a seal or unauthorized modification of a document | §5.114(b) and (c) | Administrative penalty, reprimand, or <u>suspension, or both</u> |
| <u>Failure to comply with requirements relating to preparation of only a portion of a document</u> | <u>§5.115(b)</u> | <u>Administrative penalty, suspension, or both</u> |

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| Failure to provide Statement of Jurisdiction | §5.115(a) | Administrative penalty or reprimand |
| Failure to report a course of action taken against the interior designer respondent 's advice as required | §5.115(d) | <u>Administrative penalty and either §suspension, or revocation, or refusal to renew registration</u> |
| Failure to enter into a written agreement of association when required | §5.132 | Administrative penalty or reprimand |
| Failure to exercise Supervision and Control over the preparation of a document as required | §5.132(c) | <u>Administrative penalty and either §suspension or, revocation, or refusal to renew registration</u> |
| Failure to exercise Responsible Charge over the preparation of a document as required | §5.132(e) | <u>Administrative penalty and either §suspension or, revocation, or refusal to renew registration</u> |
| Failure of a firm, business entity, or association to register | §5.134(a) and (b) | Administrative penalty or reprimand |
| Failure to timely notify the Board upon dissolution of a business entity or association or upon loss of the entity or association lawful authority to use the title "registered interior designer" | §5.134(c) | Administrative penalty, cease and desist order, or both |
| Representing an unregistered firm, business entity or association which is not registered as a Registered Interior Designer firm | §5.134 | Administrative penalty, cease and desist order, or both |
| Gross incompetency | §5.152 | <u>Administrative penalty and either §suspension or, revocation, or refusal to renew registration</u> |
| Recklessness | §5.153 | <u>Administrative penalty and either §suspension or, revocation, or refusal to renew registration</u> |
| Dishonest practice | §5.154(a), (c) | <u>Administrative penalty and either §suspension or, revocation, or refusal to renew registration</u> |

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| Offering, soliciting or receiving anything or any service as an inducement to be awarded publicly funded work | §5.154(b) | <u>Administrative penalty and either § suspension or revocation and payment of restitution</u> |
| Conflict of interest | §5.155 | <u>Administrative penalty and either § suspension or revocation or refusal to renew registration</u> |
| Participating in a plan, scheme, or arrangement to violate the Act or rules of the Board | §5.156(a) | Administrative penalty, suspension, <u>and/or revocation, or refusal to renew registration</u> |
| Failure to provide information regarding an Applicant upon request; failure to report lost, stolen, or misused registered interior design seal | & §5.156(b), (c) | Administrative penalty or reprimand |
| Unauthorized practice or use of title "registered interior designer" | §5.133 §5.157 | Administrative penalty, denial of registration, or refusal to renew, reinstate, or reactive registration |
| Criminal conviction | §5.158 | Suspension or revocation |
| Gross incompetency caused by substance abuse | §5.159 | Indefinite suspension until respondent demonstrates terminating suspension will not imperil public safety, <u>followed by probated suspension if appropriate</u> |
| Violation by Applicant regarding unlawful use of the title "registered interior designer," unlawful practice or criminal convictions | §5.157 §5.158 §5.160 | <u>A Reprimand, administrative penalty, suspension, revocation, rejection denial of application, denial of reapplication for up to five years right to reapply, and/or probationary initial registration</u> |
| Failure to submit a document as required by the Architectural Barriers Act | <u>Tex. Occ. Code §1053.252(8)</u> §5.180 | <u>A Reprimand or administrative penalty</u> |
| Failure to respond to a Board inquiry | §5.181 | Administrative penalty |

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| <u>Using fraud or deceit in obtaining a certificate of registration, or giving false or forged evidence to the Board or a Board member in obtaining or assisting another person to obtain a certificate of registration</u> | <u>Tex. Occ. Code §1053.252(3) or (9)</u> | <u>Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/or probationary initial registration</u> |
| <u>Practicing in a manner detrimental to the public health, safety, or welfare</u> | <u>Tex. Occ. Code §1053.252(5)</u> | <u>Administrative penalty, suspension, or revocation</u> |
| <u>Using or attempting to use as the person's own the certificate of registration of another person.</u> | <u>Tex. Occ. Code §1053.252(10)</u> | <u>Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/or probationary initial registration</u> |
| <u>Advertising in a manner that tends to deceive or defraud the public</u> | <u>Tex. Occ. Code §1053.252(6)</u> | <u>Administrative penalty, suspension, or revocation</u> |
| <u>Aiding or abetting an unregistered person in violating Occupations Code Chapters 1051, 1052, or 1053</u> | <u>Tex. Occ. Code §1053.252(7)</u> | <u>Administrative penalty equivalent to that which would be appropriate for the underlying conduct by the unregistered person, and/or suspension or revocation</u> |

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2 (k) The penalty for a violation of any of the statutory provisions or rules enforced by the Board may vary
3 from the penalty recommended in subsection (j) of this section if justified by the circumstances of the
4 matter or the disciplinary history of the respondent. If the Respondent has previously been subject to
5 disciplinary action before the Board, more severe discipline may be imposed

6 (l) For any violation where revocation is recommended as an appropriate penalty for the violation,
7 refusing to renew the respondent's certificate of registration also shall be an appropriate penalty for the
8 violation.

9 (m) If the Board or the administrative law judge determines that an administrative penalty is the
10 appropriate sanction for a violation, the guidelines described in §5.187 of this title (relating to
11 Administrative Penalty Schedule) shall be applied to determine the amount of the administrative
12 penalty.

**TEXAS BOARD OF ARCHITECTURAL EXAMINERS
SUMMARY OF PROPOSED
ENFORCEMENT ACTION**

This document is an internal document relating to an uncontested case to be considered by the Texas Board of Architectural Examiners. This document is prepared to inform, advise and assist the Board in addressing this uncontested case.

Case Number: 046-16I
Respondent: Renee Love Cosco
Location of Respondent: Houston, Texas
Instrument: Revised Report and Notice of Violation

Findings:

- Renee Love Cosco (hereafter “Respondent”) is a registered interior designer in Texas with registration number 3503.
- Respondent is the Principal and owner of *Inclusion Interior + Design*.
- During the period June 1, 2015 through December 30, 2015, Respondent’s Texas registered interior design registration was delinquent and not in good standing due to a failure to take necessary steps to renew it.
- On or about October 3, 2015, Respondent entered into a contract with the complainant to remodel her kitchen located at 3006 Fontana Drive, Houston, Texas. At that time, Respondent identified herself as a registered interior designer, and used the appellation “RID” next to her name on the contract for services and her business card.
- In addition, Respondent failed to provide a Statement of Jurisdiction on the Contract with her client pursuant to Board Rule 5.115(a).

Applicable Statutory Provisions and Rules:

- By utilizing the title registered interior designer at a time when the Respondent’s registration was delinquent, Respondent violated Board Rule 5.157(c).
- By failing to include a Statement of Jurisdiction on the contract that she entered into with her client on October 3, 2015, Respondent violated Board Rule 5.115(a).

Action Recommended by Executive Director:

- The Executive Director recommends an administrative penalty of **\$500**.

**TEXAS BOARD OF ARCHITECTURAL EXAMINERS
SUMMARY OF PROPOSED
ENFORCEMENT ACTION**

This document is an internal document relating to an uncontested case to be considered by the Texas Board of Architectural Examiners. This document is prepared to inform, advise, and assist the Board in addressing this uncontested case.

Case Number: 005-16N
Respondent: Michael Paul Goleski
Location of Respondent: Carrollton, Texas
Date of Complaint Received: September 10, 2015
Instrument: Report and Notice of Violation

Findings:

- Michael Paul Goleski (hereafter “Respondent”) was first registered to engage in the practice of architecture in 1986.
- In August 3, 1990, Respondent’s Texas architectural registration expired due to his failure to submit renewal materials and fees.
- On or about March 26, 2015, and possibly earlier, the Respondent created a website for Goleski Architectural Design in Dallas, Texas. The website was created prior to Respondent’s reinstatement as an architect.
- On or about August 21, 2015, Respondent prepared and issued architectural plans for permitting to the City of Southlake for a project identified as *Spa Habitat* located at 1131 Southlake Blvd., Southlake, Texas. The plans were stamped with an architectural seal bearing Mr. Goleski’s name, and the title block contained business information for “*Goleski Architectural Design.*” Neither the Respondent nor the business were registered with the Board at the time the documents were issued.
- On September 2, 2015, Respondent passed the final section of the ARE examination in order to become registered as architect again in Texas.
- On October 7, 2015, Respondent’s Texas architectural registration was reinstated.

Applicable Statutory Provisions and Rules:

- A person may not engage in the practice of architecture or offer or attempt to engage in the practice of architecture unless the person is registered as an architect. TEX. OCC. CODE ANN. § 1051.701(a) (West 2012).
- The Board may impose an administrative penalty upon Respondent based upon statutory criteria. TEX. OCC. CODE ANN §§1051.451 & 1051.452 (West 2012).

Action Recommended by Executive Director:

- Based upon the nature and character of Respondent’s activities and his acceptance of responsibility and cooperation during the investigation of this case the Executive Director recommends, and Respondent is prepared to accept, imposition of an administrative penalty in the sum of **\$2,000** to be paid within thirty (30) days of the Board’s issuance of its Final Order.

**TEXAS BOARD OF ARCHITECTURAL EXAMINERS
SUMMARY OF PROPOSED
ENFORCEMENT ACTION**

This document is an internal document relating to an uncontested case to be considered by the Texas Board of Architectural Examiners. This document is prepared to inform, advise, and assist the Board in addressing this uncontested case.

Case Number: 104-15A
Respondent: Wesley Gustin
Location of Respondent: McKinney, Texas
Date of Complaint Received: June 24, 2015
Instrument: Revised Report and Notice of Violation

Findings:

- Wesley Gustin (hereafter “Respondent”) is a registered architect in Texas with registration number 19146.
- On March 15, 2015, John Hamilton (a non-registrant hereafter “Hamilton”) issued construction plans on a project entitled *Cowboy Up Men’s Salon* in Southlake, Texas. The plans were issued with a fraudulent architectural seal containing John Hamilton’s name and the registration number 10135.
- On March 27, 2015, Hamilton applied for a building permit for a project identified as *Taco Ocho* located at 3750 Long Prairie Road, Suite 105, Flower Mound, Texas 75028. Subsequently, on April 17, 2015, Hamilton submitted a set of architectural plans for the project on which a fraudulent architectural seal was affixed bearing the name John Hamilton and registration number 10135. The City of Flower Mound rejected the plans and did not issue a permit for construction. Thereafter, Hamilton contacted Respondent’s firm to provide plans under seal for permitting purposes with the City of Flower Mound.
- On May 12, 2015, a building official for the city of Southlake contacted the Texas Board of Architectural Examiners to inquire about the validity of the architectural seal that had been affixed to the plans for *Cowboy Up Men’s Salon*. Subsequently, these plans were rejected by the City of Southlake.
- On May 19, 2015, Hamilton contracted with the Respondent for Respondent to provide architectural plans under seal on the project *Cowboy Up Men’s Salon*.
- On May 21, 2015, Respondent signed, sealed and dated five (5) sheets of architectural plans which had been prepared by Hamilton for the design and construction of a project identified as *Cowboy Up Men’s Salon* located at 2140 E. Southlake Blvd., Bldg. O, Suite 105, Southlake, Texas. The plans were nearly identical to those originally submitted by John Hamilton prior to Respondent’s involvement in the project.
- On May 29, 2015, Respondent signed, sealed and dated eight (8) sheets of architectural plans which had been prepared by Hamilton for the design and construction of a project identified as *Taco Ocho Restaurant* located at 3750 Long Prairie Road, Suite 105, Flower Mound, Texas 75028. These plans were nearly identical to those originally submitted by Hamilton prior to the involvement of Respondent on this project.
- The first time that Respondent saw any of these architectural plans was after they had been completely drawn by Hamilton. Respondent was not involved in any aspect of their development prior to his review of the complete plan sheets, and Respondent is

unable to provide documentation of frequent and detailed communication with Hamilton indicating supervision and control of the work during the original preparation of the plans.

Applicable Statutory Provisions and Rules:

- By affixing his architectural seal to construction documents which were not prepared by Respondent or under Respondent's supervision and control, Respondent violated 22 TEX. ADMIN. CODE §1.104(a) which prohibits an architect from affixing his/her seal to a document unless it was prepared by the architect or under the architect's supervision and control.
- The Board may impose an administrative penalty upon Respondent based upon statutory criteria. TEX. OCC. CODE ANN §§1051.451 & 1051.452 (West 2012).

Action Recommended by Executive Director:

- Based upon the nature and character of Respondent's activities and his acceptance of responsibility and cooperation during the investigation of this case the Executive Director recommends, and Respondent is prepared to accept, imposition of an administrative penalty in the sum of **\$10,000**. The initial payment of \$5,500 to be made by June 30, 2016 and the remainder to be paid in monthly installments of \$250 until paid in full.

**TEXAS BOARD OF ARCHITECTURAL EXAMINERS
SUMMARY OF PROPOSED
ENFORCEMENT ACTION**

This document is an internal document relating to an uncontested case to be considered by the Texas Board of Architectural Examiners. This document is prepared to inform, advise, and assist the Board in addressing this uncontested case.

Case Number: 115-14A
Respondent: Richard O. Haness
Location of Respondent: Dallas, Texas
Date of Complaint Received: April 3, 2014
Instrument: Report and Notice of Violation

Findings:

- Richard O. Haness (hereafter “Respondent”) is a registered architect in Texas with registration number 4675.
- On April 4, 2012, Respondent issued construction documents for the renovation of an existing space for a project located at 4601 Old Shepard Place, Dallas, Texas.
- A Texas Accessibility Standards review of the plans issued by Respondent was performed by Registered Accessibility Specialist (hereafter “RAS”), Jeffery L. Kelley. On May 2, 2012. Mr. Kelley issued a report notifying the building owner of a number of unacceptable failures within the plans to comply with accessibility requirements. This report was also transmitted to Respondent.
- After being informed of the deficiencies in the plans by the owner and the RAS, Respondent failed to issue a revised set of construction documents to correct the deficiencies. Subsequently, construction commenced based on the original plans.
- On or about September 12, 2013, after the project was constructed, a Texas Accessibility Standards inspection was performed and an Inspection Report issued by RAS Michael J. Tanguay. The Inspection Report identified multiple unacceptable violations that required correction in order to comply with the Architectural Barriers Act, Texas Government Code, Chapter 469 and the 2012 Texas Accessibility Standards. Post construction repairs to the project for compliance were in excess of \$1,000.
- Subsequent to the Texas Accessibility Standards inspection, Respondent issued revised, sealed plans which were intended to correct the deficiencies noted in the report. Respondent failed to retain copies of the sealed plans as required by Board Rule 1.103(c).
- On or about April 7, 2014, the Board’s investigator contacted the Respondent about this investigation. After the Respondent provided an initial response, the investigator sent a follow-up letter to the Respondent on July 24, 2014 requesting additional information. This inquiry was re-sent to the Respondent by email on August 6, 2015 and September 15, 2015 due to a failure to respond. The Respondent failed to respond to these inquiries until September 24, 2015.

Applicable Statutory Provisions and Rules:

- By failing to make revisions to construction documents in response to a TAS plan review that indicated his design was non-compliant with accessibility standards,

Respondent practiced grossly incompetent architecture as defined by 22 TEX. ADMIN. CODE §1.142(c)(2).

- By failing to make revisions to construction documents in response to a TAS plan review that indicated his design was non-compliant with accessibility standards, Respondent engaged in the reckless practice of architecture as defined by 22 TEX. ADMIN. CODE §1.143(b).
- By failing to retain a copy of sealed documents for a period of at least 10 years, Respondent violated 22 TEX. ADMIN. CODE §1.103(c).
- By failing to respond to a Board inquiry within thirty (30) days, Respondent violated 22 TEX. ADMIN. CODE §1.171.
- The Board may impose an administrative penalty upon Respondent based upon statutory criteria. TEX. OCC. CODE ANN §§1051.451 & 1051.452 (West 2012).

Action Recommended by Executive Director:

- Based upon the nature and character of Respondent's activities and his acceptance of responsibility and cooperation during the investigation of this case the Executive Director recommends, and Respondent is prepared to accept, imposition of an administrative penalty in the sum of **\$6,000**.

**TEXAS BOARD OF ARCHITECTURAL EXAMINERS
SUMMARY OF PROPOSED
ENFORCEMENT ACTION**

This document is an internal document relating to an uncontested case to be considered by the Texas Board of Architectural Examiners. This document is prepared to inform, advise, and assist the Board in addressing this uncontested case.

Case Number: 130-14A
Respondent: Emmanuel Ogbonna Nnadozie
Location of Respondent: Houston, TX
Date of Complaint Received: May 15, 2014
Instrument: Revised Report and Notice of Violation

Findings:

- Emmanuel Ogbonna Nnadozie (hereafter “Respondent”) is a registered architect in Texas with registration number 14745.
- On March 17, 2014, Respondent entered into a contract with complainants to provide architectural drawings for a dining room extension to be submitted to the HOA and City of Missouri City for approval and construction permitting.
- On April 16, 2014, Respondent issued a set of construction documents for a project identified as a “Dining Room Addition” located at 3131 Villa Lane, Missouri City, Texas. He failed to affix his seal or indicate on the plan sheets that they were not to be used for regulatory approval, permitting or construction.
- During the course of this investigation, Respondent failed to respond to two Board inquiries within 30 days.

Applicable Statutory Provisions and Rules:

- By failing to affix his seal or indicate on the plan sheets that they were not for regulatory approval, permitting or construction, Respondent violated Board Rule 1.101.
- By failing to answer and produce documents to two (2) Board inquiries within 30 days, Respondent violated Board Rule 1.171.

Action Recommended by Executive Director:

- The Executive Director recommends, and Respondent is prepared to accept the imposition of an administrative penalty in the sum of **\$2,000**.