

**Rules Committee Members**

*Chad Davis, Chair*

*Charles "Chuck" Anastos*

*Sonya Odell*

**TEXAS BOARD OF ARCHITECTURAL EXAMINERS**

**Rules Committee Meeting Agenda**

William P. Hobby State Office Building

333 Guadalupe Street

Tower II, Conference Room 350-L

Austin, Texas

**Wednesday, October 28, 2015**

2:30 P.M. to conclusion

1. Call to Order
2. Roll Call
3. Public Comment
4. Approval of minutes of the August 24, 2015 meeting of the Rules Committee (*Action*)
5. Discussion of contemplated changes regarding administrative penalties, warnings, and other sanctions, Rules 1.165, 3.165, 5.175, 1.177, 3.177, 5.187, 1.232, 3.232, and 5.242
6. Adjourn

TEXAS BOARD OF ARCHITECTURAL EXAMINERS  
Minutes of the Rules Committee Meeting

August 24, 2015

The William P. Hobby, Jr. Building  
333 Guadalupe Street, Tower III, Suite 102  
Austin, TX 78701

**1. Call to Order**

The Chair called the meeting of the Rules Committee to order at 1:30 p.m.

**2. Roll Call**

The Chair called the roll and declared a quorum of the Committee was present.

**Present Board Members:**

Michael (Chad) Davis, Chair

Charles (Chuck) Anastos

Davey Edwards

Sonya Odell

**Excused Absence:**

None

**TBAE Staff Present:**

Julie Hildebrand, Executive Director

Lance Brenton, General Counsel

Jack Stamps, Managing Investigator

Glenn Garry, Communications Manager

Mary Helmcamp, Registration Manager

Mike Alvarado, Registration Manager

Glenda Best, Operations Manager

Katherine Crain, Legal Assistant

**Public Members Present:**

David Lancaster

**3. Public Comment**

None

**4. Approval of minutes of the July 25, 2014 meeting of the Rules Committee**

A MOTION WAS MADE AND SECONDED (Edwards/Odell) TO APPROVE THE MINUTES FROM THE JULY 25, 2014 RULES COMMITTEE MEETING. THE MOTION PASSED UNANIMOUSLY WITH CHUCK ANASTOS ABSTAINING FROM THE VOTE.

**5. Registration of military service member, military veterans and expedited reciprocal registration of military spouses**

The General Counsel explained that SB 807 and SB 1307 recently passed during the last legislative session. He provided the language with the changes on pages 7-11 and the summary of the change on page 5. Essentially, SB 807 waives license and application fees

for some registrants and applicants and SB 1307 modifies definitions of active duty. Also, it grants agencies the authority to establish alternative methods for licensure and extends expedited licenses to military veterans and spouses. The draft amendments cover four different rules in the package.

Additionally, the agency must make a change to Rules 1.69, 3.69 and 5.79 to allow military personnel another 2 years to complete continuing education requirements. An amendment to rule 7.10 must be made as well in order to effect the fee schedule for these individuals.

A MOTION WAS MADE AND SECONDED (Anastos/Edwards) TO APPROVE THE DRAFT RULE CHANGES REGARDING THE MILITARY VETERANS AND MILIARY SPOUSES INCLUDING RULES 1.69, 3.69, 5.79 AND 7.1. THE MOTION PASSED UNANIMOUSLY.

6. **Discuss possible changes to Rule 5.202 – NCIDQ Interior Design Experience Program**  
The General Counsel explained to the committee that under the present rules, a candidate may complete the IDEP which was administered by NCIDQ. NCIDQ has since eliminated the program; therefore, the rules are obsolete and must be modified to delete the reference.

A MOTION WAS MADE AND SECONDED (Anastos/Edwards) TO APPROVE THE MODIFICATION RULES 5.31 AND 5.202 TO ELIMINATE REFERENCE TO THE IDEP PROGRAM. THE MOTION PASSED UNANIMOUSLY.

7. **Review Rule 1.52, relating to the Architectural Registration Examination Financial Assistance Fund and possibly amend Rule 7.10 to assess a fee upon architectural registration and renewal of architectural registration to provide funding for financial assistance to qualified applicants to cover the cost of the examination**

The General Counsel said that the program was created in 1999 by the Legislature. Until 2003, a sum of \$10 was collected by the architects. Since 2003, the agency has not collected any funds from the architects. The agency has been operating off the proceeds of the \$10 balance fund ever since 2003. The AREFAF will be depleted in the next 5 years. This item was discussed at length by the Board members.

A MOTION WAS MADE AND SECONDED (Anastos/Edwards) TO RECOMMEND TO THE BOARD THAT THEY ENACT A \$1.00 FEE TO THE ANNUAL ARCHITECTURAL RENEWAL FEES ALONG WITH WHATEVER MONIES WILL BE REQUIRED OVER A PERIOD OF THE NEXT FEW YEARS AND THAT THE AGENCY NOT INITIATE THE FIRST FEE AT LEAST OR UNTIL AFTER SEPTEMBER 1, 2017. THE MOTION PASSED UNANIMOUSLY.

8. **Amendments to Rule 7.7 requiring a request for rulemaking to be filed by a Texas resident (HB 763)**

The General Counsel stated that HB 763 passed this last session and it deals with eligibility for rulemaking. As currently written, agency rule 7.7 does not address the eligibility to file such petitions.

A MOTION WAS MADE AND SECONDED (Edwards/Odell) TO ADOPT THE RULE AS SET FORTH. THE MOTION PASSED UNANIMOUSLY.

**9. New Rule regarding tuition reimbursement (HB 3337)**

The General Counsel stated that HB 3337 was effective as of September 1, 2015. Furthermore, the Legislature has provided some changes to provide greater oversight of tuition reimbursement. Mr. Brenton gave the background on the bill and the requirements for each agency and explained that the agency is required to adopt rules. The agency currently does not have any rules regarding this matter.

A MOTION WAS MADE AND SECONDED (Anastos/Edwards) TO ADOPT NEW RULE 7.15 AS STATED. THE MOTION PASSED UNANIMOUSLY.

**The Committee took a break at 2:25 p.m. and reconvened at 2:30 p.m.**

**10. Disciplinary issues relating to unauthorized use of architectural seals**

The Board engaged in a lengthy discussion regarding whether to pass a rule or not and whether this rule conflicts with the statute. The Chair suggested that the committee take the proposed rule and redraft it. He stated that it may need to be reviewed more comprehensively and thought the rule should be tabled for discussion at another rules committee meeting.

A MOTION WAS MADE AND SECONDED (Anastos/Odell) TO TABLE THE DISCUSSION ON ITEM NUMBER 10 OF THE RULES COMMITTEE AGENDA. THE MOTION PASSED UNANIMOUSLY.

**11. How to evaluate foreign landscape architect degrees**

The General Counsel gave the background on the current rule and stated that the draft amendment was on pages 55 and 56. Furthermore, he stated that the changes are included in Board Rules 3.21 and 3.191 and gave a background of the rule.

A MOTION WAS MADE AND SECONDED (Edwards/Anastos) TO PROPOSE THIS RULE TO THE BOARD. THE MOTION PASSED UNANIMOUSLY.

**12. Discussion:**

**A. Continuing Education Rule and Violations**

The Committee discussed the “failure to maintain” rule at length. It was decided to have the General Counsel draft a modification to Board Rule 1.232 recommending a \$700 penalty for failure to maintain continuing education records with the caveat that the registrant must complete the continuing education hours.

**B. The sanction of business entities**

After the Committee’s discussion on the matter, the General Counsel recommended that the Committee not pass a rule on this issue and not take action against a business unless the agency has statutory authority to do so. The Executive Director agreed with the General Counsel and stated that we would have to pierce the corporate veil and it is almost impossible to do.

**C. Statutory limitations of fines in Chapter 1051, Section 1.177, Administrative Penalty Schedule**

The penalty schedule was discussed in general terms and the General Counsel discussed the agency's administrative penalties in comparison to other state agencies, and emphasized that administrative penalties are capped at \$5,000 per violation under the statute.

**13. Adjourn**

A MOTION WAS MADE AND SECONDED (Anastos/Edwards) TO ADJOURN THE MEETING AT 3:55 P.M. THE MOTION PASSED UNANIMOUSLY.

**The Committee adjourned at 3:55 p.m.**

APPROVED BY THE RULES COMMITTEE:

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MICHAEL CHAD DAVIS  
Chair

## Discussion of Disciplinary Issues

### Administrative Penalties, Warnings, and Reprimands

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#### Background

In August, the rules committee considered a draft amendment to Rule 1.177<sup>1</sup> 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.

In considering these changes, staff have discussed two other issues that are related to disciplinary sanctions: the issuance of warnings and the reference to reprimands in Rule 1.232 (relating to recommended penalties in disciplinary actions). These issues are discussed below.

#### Issues Presented:

##### Administrative Penalty Schedule (Rule 1.177)

The administrative penalties schedule is contained in **Rule 1.177**. This rule provides 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 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 have 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) 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.

In reviewing the proposal, please consider the following:

- Is the placement of each violation as minor, moderate, or major appropriate? Do you have any recommendations for reorganization?

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<sup>1</sup> 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 any recommended changes would be implemented in all three chapters.

- Do you agree with the penalty schedule? The maximum penalties have increased from \$500 to \$1,000 for minor violations and \$2,000 to \$3000 for moderate violations. This is partly based upon current Board practices, as well as to allow for greater flexibility within the \$0-\$5,000 range that has been established by the legislature.

### Warnings

The issuance of warnings is governed by **Rule 1.74**. A copy of Rule 1.174 is attached, including amendments for discussion and staff comments in the margins. The issue with Rule 1.174 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.

### 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 **Rule 1.232**. 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 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.

CHAPTER 1 ARCHITECTS

SUBCHAPTER I DISCIPLINARY ACTION

RULE §1.174 Complaint Process

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

- (1) the name of and contact information for the complainant unless evidence regarding a possible violation was submitted anonymously;
- (2) the name of the person against whom the complaint is filed;
- (3) the address, telephone number, Web site, or other contact information for the person against whom the complaint is filed, if available;
- (4) the date and location of the alleged violation that is the subject of the complaint;
- (5) a description of each alleged violation; and
- (6) the name, address, and telephone number for any known witness who can provide information regarding the alleged violation.

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

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

- (1) conduct a preliminary evaluation of the complaint within thirty (30) days to determine:
  - (A) Jurisdiction: whether the complaint provides information sufficient to establish probable cause for the Board's staff to believe an actionable violation might have occurred;
  - (B) Disciplinary History: whether there has been previous enforcement activity involving the person against whom the complaint has been filed; and
  - (C) Priority Level: the seriousness of the complaint relative to other pending enforcement matters;
- (2) provide the complainant and respondent with information which will permit review of the Board's policies and procedures from the Board's web site regarding complaint investigation and resolution. If the complainant or respondent requests a copy of the policies and procedures in written format a copy shall be mailed upon request.
- (3) notify the complainant and respondent of the status of the investigation at least quarterly unless providing notice would jeopardize an investigation; and
- (4) maintain a complaint file that includes at least:



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

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

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

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

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

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

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

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

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

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

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

(B) Unauthorized use of term "architect" or "architectural";

(C) Failure to respond to a Board inquiry;

(D) Failure to provide a statement of jurisdiction;

(E) Failure to seal documents or insert statement in lieu of seal;

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

(G) Practice of architecture while registration is delinquent;

(H) Failure to register or annually renew the registration of a business.

(I) Creation of misleading impression by an architect advertising for services.

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

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

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

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

(mk) If a complaint is dismissed, the complainant may submit to the Executive Director a written request 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

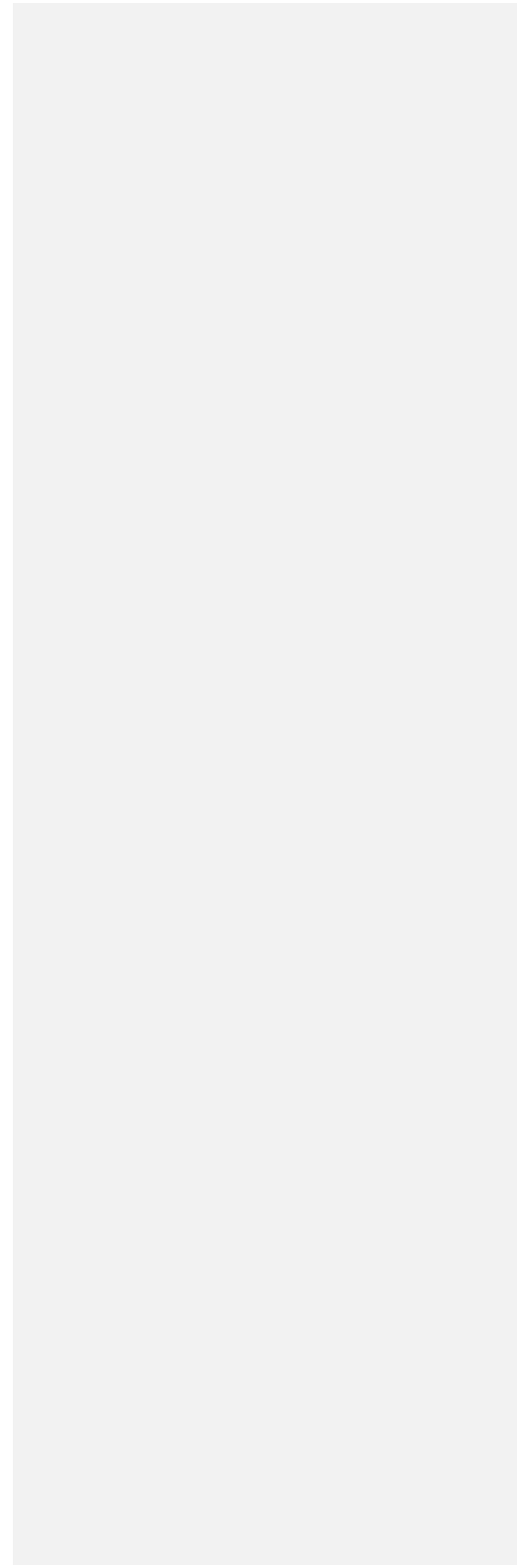
**Commented [LB3]:** This has been included on the list for Board member consideration. According to staff research, this is a violation that has previously resulted in a warning on about 18 occasions. However, this has not been a recent practice.

**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.

**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.

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



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

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

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

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

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

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

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

~~(B) Economic harm:~~

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

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

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

~~(C) Sanction history:~~

~~(i) Minor the respondent has not previously received a written warning, advisory notice or been 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.

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

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

(1) –For purposes of establishing whether a minor, moderate, or major penalty as described under subsection (2) of this rule is appropriate, 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.

**Commented [LB4]:** The categorization of violations as minor, moderate, or major was a joint effort between the legal and enforcement departments, with oversight from the executive director. The placement of violations is based on past precedent, as well as a preexisting document that identified the prioritization of investigations based on the seriousness of the conduct.

### Minor Violations

<u>Unauthorized duplication of registration certificate or failure to display registration certificate as required.</u>	<u>Rule 1.62</u>
<u>Failure to respond to a Board inquiry.</u>	<u>Rule 1.171</u>
<u>Failure to provide statement of jurisdiction.</u>	<u>Rule 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>Sec. 1051.752(2) and Rule 1.170</u>
<u>Use of a non-compliant seal by registrant.</u>	<u>Rule 1.102</u>
<u>Failure to register or annually renew the registration of a business.</u>	<u>Rule 1.124</u>

### Moderate Violations

<u>Unlawful practice by emeritus architect or practice of architecture while registration is inactive.</u>	<u>Rule 1.67</u> <u>Rule 1.68</u>
<u>Practice of architecture while registration is expired.</u>	<u>Rule 1.82(b)</u>
<u>Aiding or abetting an unregistered person in violating the Board’s laws and rules.</u>	<u>Sec. 1051.752(8)</u>
<u>Unauthorized use of term “architect” or “architectural.”</u>	<u>Sec. 1051.606 and</u> <u>Rule 1.123(c)</u>
<u>Failure to maintain a sealed document for ten years.</u>	<u>Rule 1.103(c)</u>
<u>Failure to seal documents or insert statement in lieu of seal.</u>	<u>Rule 1.103</u>
<u>Violation of prototypical design requirements</u>	<u>Rule 1.105</u>
<u>Failure to notify other architect of modification to sealed plans and/or failure to clearly indicate extent of modifications to sealed plans</u>	<u>Rule 1.104(d)</u>
<u>Removal of seal after issuance of documents</u>	<u>Rule 1.104(e)</u>

<u>Major Violations</u>	
<u>Submitting or soliciting a prohibited competitive bid under Govt. Code 2254.</u>	<u>Sec. 1051.203 and Rule 1.147</u>
<u>Offering, soliciting or receiving anything or any service as an inducement to be awarded publicly funded work.</u>	<u>Rule 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>Sec. 1051.752(7)</u>
<u>Dishonest practice in the practice of architecture by the holder of a certificate of registration.</u>	<u>Sec. 1051.752(6) and Rule 1.144</u>
<u>Using or attempting to use as the person's own the certificate of registration of another person.</u>	<u>Sec. 1051.752(9)</u>
<u>Affixation of seal by an architect on a document not prepared by or under the supervision of an architect, or failure to exercise responsible charge over the preparation of construction documents</u>	<u>Rule 1.104(a) and/or 1.122(c)&amp;(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>Rule 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>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>Sec. 1051.752(5) and Rule 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>Rule 1.216</u>
<u>Gross incompetency in the practice of architecture</u>	<u>Section 1051.752(4) And Rule 1.142</u>

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

(A) Minor violations--~~if the violation is minor in every category described in paragraph (1) of this section,~~ an administrative penalty of not more than \$~~51,000~~ shall be imposed.

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

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

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

**Commented [LB5]:** The range of penalty is established under subsection 1, and then the specific amount within the range is determined under subsection (3).

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

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

(6) Multiple Violations

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

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

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

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

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

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

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

**Commented [LB6]:** This retains the Board's ability to consider violations on a "per sheet" basis.

**Commented [LB7]:** 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

~~specifications shall be considered a separate violation for purposes of calculating and imposing administrative penalties.~~

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

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

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

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



## TITLE 22 EXAMINING BOARDS

## PART 1 TEXAS BOARD OF ARCHITECTURAL EXAMINERS

## CHAPTER 1 ARCHITECTS

## SUBCHAPTER L HEARINGS--CONTESTED CASES

## RULE §1.232 Board Responsibilities

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

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

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

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

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

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

(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, 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.

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

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

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

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

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

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

Figure: 22 TAC §1.232(j)

Violation	Rule(s) Cited	Recommended Penalty
Unauthorized duplication of certificate of registration or failure to display certificate of registration as required	§1.62	Administrative penalty <del>or reprimand</del>
Unlawful practice of architecture while registration is on emeritus status	§1.67(b)	Administrative penalty <del>and cease and desist order</del>
Practice of architecture while registration is inactive <del>or expired</del>	§1.68	Administrative penalty <del>and cease and desist order</del>
Failure to fulfill mandatory continuing education requirements	§1.69	Administrative penalty, <del>or</del> suspension, <del>or both</del>
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
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

**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.

<u>Failure to maintain a detailed record of continuing education activities</u>	<u>§1.69(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	§1.102 §1.104(c)	Administrative penalty <del>or</del> <u>reprimand</u>
Failure to seal documents	§1.103 §1.105 §1.122(c),(e)	Administrative penalty <del>or reprimand</del>
Failure to mark documents issued for purposes other than regulatory approval, permitting or construction as required	§1.103(b)	Administrative penalty <del>or reprimand</del>
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 (e)	<u>Administrative penalty and either</u> <del>s</del> <u>suspension or revocation</u>
Failure to take reasonable steps to notify sealing Architect of intent to modify that architect’s sealed documents	§1.104(d)	Administrative penalty <del>or reprimand</del>
Failure to indicate modifications or additions to a document prepared by another Architect	§1.104(b) and (d)	Suspension, administrative penalty, <u>or</u> <del>both</del> <del>or</del> <u>reprimand</u>
Removal of seal after issuance of documents	§1.104(e)	Administrative penalty <del>or reprimand</del>
Failure to maintain a document for 10 years as required	§1.103(g) §1.105(b) §1.122(d)	Administrative penalty <del>or reprimand</del>
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, <del>reprimand</del> , <del>or</del> suspension, <u>or both</u>
Violation of requirements regarding prototypical design	§1.105	Administrative penalty, <del>reprimand</del> , <del>or</del> suspension, <u>or both</u>
Failure to provide Statement of Jurisdiction	§1.106	Administrative penalty <del>or reprimand</del>
Failure to enter into a written agreement of association when required	§1.122	Administrative penalty <del>or reprimand</del>

**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.

Failure to exercise Supervision and Control over the preparation of a document as required	§1.122(c)	<del>Administrative penalty and either</del> <del>S</del> suspension, <del>or</del> revocation, <del>or</del> refusal to <del>renew registration</del>
Failure to exercise Responsible Charge over the preparation of a document as required	§1.122(e)	<del>Administrative penalty and either</del> <del>S</del> suspension <del>or</del> ; revocation, <del>or</del> refusal to <del>renew registration</del>
Failure of a firm, business entity, or association to register	§1.124(a) and (b)	Administrative penalty, <del>cease and desist order, or both</del>
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, <del>reprimand, or</del> suspension, <del>or both</del>
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, <del>cease and desist order, or both</del>
Gross incompetency	§1.142	<del>Administrative penalty and either</del> <del>S</del> suspension <del>or</del> ; revocation, <del>or</del> refusal to <del>renew registration</del>
Recklessness	§1.143	<del>Administrative penalty and either</del> <del>S</del> suspension <del>or</del> ; revocation, <del>or</del> refusal to <del>renew registration</del>
Dishonest practice	§1.144(a), (c)	<del>Administrative penalty and either</del> <del>S</del> suspension <del>or</del> revocation, <del>or</del> refusal to <del>renew registration</del>
Offering, soliciting or receiving anything or any service as an inducement to be awarded publicly funded work	§1.144( <del>bc</del> )	<del>Administrative penalty and either</del> <del>S</del> suspension, <del>or</del> revocation, and payment of restitution
Conflict of interest	§1.145	<del>Administrative penalty and either</del> Suspension, <del>or</del> revocation, <del>or</del> refusal to <del>renew registration</del>
Participating in a plan, scheme or arrangement to violate the Act or rules of the Board	§1.146(a)	Administrative penalty, suspension, <del>and/or</del> revocation, <del>or</del> refusal to <del>renew registration</del>

**Commented [LB7]:** 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.

Failure to provide information regarding an Applicant upon request; failure to report lost, stolen or misused architectural seal	§1.146(b), (c)	Administrative penalty <del>or reprimand</del>
Submission <u>or solicitation</u> of a competitive bid in violation of the Professional Services Procurement Act	§1.147	<u>Administrative penalty and either</u> <del>S</del> <u>suspension</u> <del>or</del> revocation
<del>Disclosure of fee information inconsistent with the Professional Services Procurement Act</del>	<del>§1.147</del>	<del>Administrative penalty or reprimand</del>
<u>Direct or indirect</u> <del>D</del> disclosure of <u>fee</u> information <del>with the intent to indirectly disclose fee information</del>	§1.147	<u>Administrative penalty and either</u> <del>S</del> <u>suspension</u> <del>or</del> revocation
Unauthorized practice or use of title "architect"	§1.123 §1.148	Administrative penalty, <del>denial of registration, or refusal to renew, reinstate, or reactivate registration</del>
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 title "architect", unlawful practice, or criminal convictions	§1.148 §1.149 §1.151	<del>Reprimand, a</del> Administrative penalty, suspension, <u>denial of application, denial of reapplication for up to five years, rejection, denial of right to reapply,</u> or probationary initial registration
Failure to submit a document as required by the Architectural Barriers Act	§1.170	<del>Reprimand or a</del> Administrative penalty
Failure to respond to a Board inquiry	§1.171	Administrative penalty
Unregistered individual engaging in construction observation for a nonexempt building	§1.217	Administrative penalty, <del>reprimand, denial registration or refusal to renew, reinstate, or reactivate registration</del>
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	<u>Administrative penalty and either</u> <del>S</del> <u>suspension</u> <del>or</del> revocation <del>or refusal to renew registration</del>

(k) The penalty for a violation of any of the statutory provisions or rules enforced by the Board may vary from the penalty recommended in subsection (j) of this section if justified by the circumstances of the matter or the disciplinary history of the respondent.

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

(m) If the Board or the administrative law judge determines that an administrative penalty is the appropriate sanction for a violation, the guidelines described in §1.177 of this chapter (relating to Administrative Penalty Schedule) shall be applied to determine the amount of the administrative penalty.