

**NOTICE OF INTENT**  
**Office of the Governor**  
**Board of Architectural Examiners**

Rules of Conduct (LAC 46:I.1901)

Notice is hereby given that the Board of Architectural Examiners, in accordance with the provisions of R.S. 49:950 et seq., and through the authority granted in R.S. 37:144(C), proposes to amend LAC 46:I.1901 pertaining to the rules of conduct of architects.

The proposed Rule amends, restates, and clarifies the existing rules of conduct to ensure that they remain relevant to contemporary architectural practice and ensure the expected professional and ethical conduct of architects found in law remain focused on the protection of the health, safety, and welfare of the public. The proposed rules are modeled after the Model Rules of Conduct favorably voted upon by the Member Boards of the National Council of Registration Boards during the 2018 NCARB Annual Business Meeting.

The proposed changes to LAC 46:I.1901.A are primarily clarifications concerning the competence of an architect. More specifically, proposed changes to existing LAC 46:I.1901.A.1 add to the first sentence the clause “primary duty is to protect the public’s health, safety, and welfare,” and add to the second sentence the clause “[i]n discharging that duty, an architect,” delete “which is,” and replace the word “of” with “in.” The proposed changes to existing LAC 46:I.1901.A.2 in the first sentence replace the word “all” with “the,” add the word “federal,” and replace the word “municipal” with “local,” and in the second sentence add the words “law and.” The proposed changes to existing LAC 46:I.1901.A.3 replace the words “undertake to” with “perform,” replace the words “he or she” with “the architect,” and replace the clause “as consultants, are qualified by education, training, and experience” with “has the necessary knowledge and skill.” The proposed changes to the first sentence of existing LAC 46:I.1901.A.4 replace the words “[n]o person” with “[a]n architect shall not,” replace the words “such person’s” with “the architect’s,” and delete the clause “by physical or mental disabilities,” and add a second sentence, “[t]he assessment of impairment should be performed by an appropriately qualified professional.” The commentaries to proposed LAC 46:I.1901.A.1 and LAC 46:I.1901.A.4 are new. The existing commentaries to LAC 46:I.1901.A are deleted, except the existing commentary to existing LAC 46:I.1901.A.3 is retained.

The proposed changes to LAC 46:I.1901.B are primarily clarifications to the existing rules concerning conflict of interest. More specifically, the proposed changes to LAC 46:I.1901.B.1 replace the word “for” with “in connection with,” replace “to and agreed to (such disclosure and agreement to be in writing)” with “waived in writing,” and replace “interested parties” with “parties.” Existing LAC 46:I.1901.B.2 is deleted. Proposed LAC 46:I.1901.B.2 is existing LAC 46:I.1901.B.3, except the words “in return” are deleted, the words “in connection with a project” are added, and the second sentence is new. Proposed LAC 46:I.1901.B.3 is new; it contains part of existing LAC 46:I.1901.B.2. The proposed changes to LAC 46:I.1901.B.4 replace the word “[w]hen” with “[a]n architect when,” add the clause “by agreement of the parties,” add the word “independent,” replace the word “and” with “or as,” and delete the words “an architect” and “favoring neither party to the contract.” Proposed LAC 46:I.1901.B.5 concerns the relationship between an AXP Supervisor and a candidate for licensure, and it is new. The commentaries to proposed LAC 46:I.1901.B.2, LAC 46:I.1901.B.4, and LAC 46:I.1901.B.5 are new. The existing commentaries to LAC 46:I.1901.B are deleted, except the existing commentary to existing LAC 46:I.1901.B.1 is retained.

The proposed changes to LAC 46:I.1901.C are primarily clarifications to the existing rules concerning full disclosure. More specifically, proposed LAC 46:I.1901.C.1 is new. Proposed LAC 46:I.1901.C.2 are changes to existing LAC 46:I.1901.C.1, replacing the word “questions” with “matters,” and replacing the clause “when he or she is being compensated for making such statement or when he or she” with “if the architect is being compensated for making such statements.” Proposed LAC 46:I.1901.C.3 are changes to existing LAC 46:I.1901.C.2, replacing the clauses requiring an architect to “accurately represent to a prospective or existing client or employer his or her” and “and the scope of his or her responsibility in connection with work for which he or she is claiming credit” with a prohibition against the architect misrepresenting “the architect’s qualifications, capabilities, and experience or that of the architect’s firm.” Proposed 46:I.1901.C.4 is a clarification of existing LAC 46:I.1901.C.3, replacing “[t]he architect” with “[a]n architect,” and changing the prohibition against an architect misrepresenting or exaggerating “his or her associate’s academic or professional qualifications” or the scope of “his or her degree of responsibility in or for

the subject matter or prior assignments” with a prohibition against an architect misrepresenting or overstating the architect’s responsibility “in connection with work for which the architect or the architect’s firm is claiming credit.” The third sentence of existing LAC 46:I.1901.C.3 is made commentary. The first sentence of proposed LAC 46:I.1901.C.5.a is a clarification of the first sentence of existing LAC 46:I.1901.C.4.a, replacing the words “his or her” with “an architect,” replacing the word “taken” with “made,” adding the words “federal,” “and adversely,” and “health and,” and replacing the word “municipal” with “local.” Proposed LAC 46:I.1901.C.5.i, ii, and iii are clarifications of existing LAC 46:I.1901.C.4.i, ii, and iii, changing reporting “the decision to the local building inspector or other public official charged with the enforcement of the applicable state or municipal building laws and regulations” to reporting “the decision to the official charged with enforcement of building laws and regulations,” replacing the word “his” with “the architect’s,” and replacing “terminate his services” with “terminate the provision of services.” Proposed LAC 46:I.1901.C.5.b is existing LAC 46:I.1901.C.4.b. Proposed 46:I.1901.C.6 is a clarification of existing LAC 46:I.1901.C.5, changing the provision that an architect shall not “deliberately make a materially false statement or fail deliberately to disclose a material fact requested” to a provision that an architect shall not “make a false statement or fail to disclose a material fact requested by the board,” replacing the words “his or her” with “the architect’s,” and changing the words “registration” to “licensure.” Proposed 46:I.1901.C.7 is a clarification of existing LAC 46:I.1901.C.6 which currently provides that an architect shall not assist the application for registration of a person known by an architect to be unqualified; the proposed Rule clarifies that an architect “shall not knowingly sign any verification document related to licensure that contains false or misleading information and shall not assist in the application for licensure of a person known by the architect to be unqualified.” Proposed LAC 46:I.1901.C.8 is new. Proposed LAC 46:I.1901.C.9 clarifies the requirement contained in existing LAC 46:I.1901.C.7 that an architect “possessing knowledge of a violation of these rules by another architect shall report such knowledge to the board.” All existing commentaries to existing LAC 46:I.1901.C are deleted.

The proposed Rule changes to LAC 46:I.1901.D are primarily clarifications to the existing rules concerning compliance with laws. The proposed rules replace in existing LAC 46:I.1901.D.1 the provision that an architect shall not “in the conduct of his or her architectural practice knowingly violate any state or federal criminal law” with the provision that an architect shall not violate “the law of the United States or any U.S. jurisdiction that in any way relates to the conduct of the architect’s practice.” Proposed LAC 46:I.1901.D.2 is new. Proposed LAC 46:I.1901.D.3 clarifies existing LAC 46:I.1901.D.3 by replacing the word “registration” with “licensing,” replacing the words “his/her” with “the architect’s,” replacing “United States” with “U.S.,” and adding a second sentence. Existing LAC 46:I.1901.D.2 is moved to proposed LAC 46:I.1901.D.4. Proposed LAC 46:I.1901.D.5 concerns certain conduct of an employer engaged in the practice of architecture, and it is new. All commentaries to existing LAC 46:I.1901.D are deleted.

Proposed LAC 46:I.1901.E concerns an architect sealing documents, and it is new. Proposed LAC 46:I.1901.E.1 sets forth the general Rule concerning an architect sealing technical submissions, and E.2 sets forth exceptions to the general Rule. Proposed LAC 46:I.1901.E.3 sets forth rules related to the sealing of prototypical building documents. Existing LAC 46:I.1901.E, which concerns the conduct of any branch office of a firm rendering architectural services, is deleted. The existing commentary to existing LAC 46:I.1901.E is deleted, and no commentaries to proposed LAC 46:I.1901.E are being proposed.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL STANDARDS**  
**Part I. Architects**

**Chapter 19. Rules of Conduct: Violations**

**§1901. Rules of Conduct**

**A. Competence**

1. In practicing architecture, an architect’s primary duty is to protect the public’s health, safety, and welfare. In discharging this duty, an architect shall act with reasonable care and competence, and shall apply the technical knowledge and skill ordinarily applied by architects in good standing, practicing in the same locality.

COMMENTARY This rule is based on the common law “standard of care” that has been accepted by courts in this country for over 100 years in judging the performance of architects.

2. In designing a project, an architect shall take into account the applicable federal, state, and local building laws and regulations. While an architect may rely on the advice of other professionals (e.g., attorneys, engineers, and other qualified persons) as to the intent and meaning of such laws and regulations, once having obtained such advice, an architect shall not knowingly design a project in violation of such laws and regulations.
3. An architect shall perform professional services only when the architect, together with those whom the architect may engage has the necessary knowledge and skill in the specific technical areas involved.

COMMENTARY While an architect is licensed to undertake any project which falls within the definition of the practice of architecture, as a professional, the architect must understand and be limited by the limitations of his or her own capacity and knowledge. Where an architect lacks experience, the rule supposes that he or she will retain consultants who can appropriately supplement his or her own capacity. If an architect undertakes to do a project where he or she lacks knowledge and where he or she does not seek such supplementing consultants, the architect has violated the rule.

4. An architect shall not be permitted to practice architecture if, in the board's judgment, the architect's professional competence is substantially impaired. The assessment of impairment should be performed by an appropriately qualified professional.

COMMENTARY This rule empowers the board to act preemptively in the interest of public health, safety, and welfare when the board becomes concerned that an architect's competence may be impaired, rather than waiting until the impaired competence causes harm.

## B. Conflict of Interest

1. An architect shall not accept compensation in connection with services from more than one party on a project unless the circumstances are fully disclosed and waived in writing by all parties.

COMMENTARY This rule recognizes that in some circumstances an architect may receive compensation from more than one party involved in a project but that such bifurcated loyalty is unacceptable unless all parties have understood it and accepted it.

2. An architect shall not solicit or accept compensation from material or equipment suppliers for specifying or endorsing their products in connection with a project. As used herein, "compensation" shall mean customary and reasonable business hospitality, entertainment, or product education.

COMMENTARY Unlike Rule B.1, this rule does not provide for waiver by agreement. Customary and reasonable business hospitality, entertainment, and product education may be determined by jurisdictional ethics laws, company policies, and tax guidelines. In Louisiana, a Code of Governmental Ethics is found at La. R.S. 42:1101 et seq.

3. An architect shall not perform professional services in the face of a conflict of interest that is not fully disclosed and waived in writing by all parties. An architect has a conflict of interest when:
  - a. the architect has or may acquire a financial or other interest in the project, someone participating in it, or any component of it; or
  - b. the architect's judgment may be adversely affected by a relationship with another party.
4. An architect, when acting by agreement of the parties as the independent interpreter of building contract documents or as the judge of contract performance, shall render decisions impartially.

COMMENTARY This rule governs the construction industry relationship where the architect is to act impartially as the interpreter of building contract documents and/or the judge of contract performance, even though paid by the owner. The rule recognizes that these roles are not inevitable and that there may be circumstances (for example, where the architect has an interest in the owning entity) in which the architect may appropriately decline to act in either of these two roles.

5. An architect serving as an AXP Supervisor for a candidate for licensure shall not have, nor enter into, any relationship with the candidate that would interfere with the objectivity of the AXP Supervisor's certification of the candidate's experience.

COMMENTARY AXP Supervisors should balance their duty to protect the public with their role in licensure candidate development. Balancing these duties make the AXP Supervisors' objectivity critical.

## C. Full Disclosure

1. An architect shall not make statements that are misleading, deceptive, or false.
2. An architect making public statements on architectural matters shall disclose if the architect is being compensated for making such statements or has an economic interest in the issue.
3. An architect shall not misrepresent the architect's qualifications, capabilities, and experience or that of the architect's firm.
4. An architect shall not misrepresent or overstate the scope of the architect's responsibility in connection with work for which the architect or the architect's firm is claiming credit.

COMMENTARY Brochures or other presentations incidental to the solicitation of employment shall not misrepresent pertinent facts concerning employer, employees, associates joint ventures, or his/her or their past accomplishments with the intent and purpose of enhancing his/her qualifications or his/her work.

- 5.a. If, in the course of an architect's work on a project, the architect becomes aware of a decision made by the architect's employer or client, against the architect's advice, which violates applicable federal, state, or local building laws and regulations and which will, in the architect's judgment, materially and adversely affect adversely the health and safety of the public, the architect shall:
  - i. refuse to consent to the decision, and
  - ii. report the decision to the official charged with enforcement of building laws and regulations,
  - iii. in circumstances where the architect reasonably believes that other such decisions will be taken notwithstanding the architect's objection, terminate the provision of services with reference to the project unless the architect is able to cause the matter to be resolved by other means.
- b. In the case of a termination in accordance with §1901.C.5.a.iii, the architect shall have no liability to his or her client or employer on account of such termination.

COMMENTARY In the circumstances described, the architect is compelled to report the matter to the appropriate building official even though to do so may adversely affect the client's interests. The rule specifically intends to exclude matters of safety during the course of construction that are the obligation of the contractor.

6. An architect shall not make a false statement or fail to disclose accurately and completely a material fact lawfully requested by the board in connection with the architect's application for licensure or renewal.
  7. An architect shall not knowingly sign any verification document related to licensure that contains false or misleading information and shall not assist in the application for licensure of a person known by the architect to be unqualified.
  8. An architect possessing knowledge of a licensure candidate's qualifications for licensure shall cooperate with the candidate, the board, and/or NCARB by responding appropriately and in a timely manner regarding those qualifications.
  9. An architect possessing knowledge of a violation of the jurisdiction's laws or rules governing the practice of architecture by another shall report such knowledge to the board. It is the professional duty of the architect to do so.
- D. Compliance with Laws
1. An architect shall not violate the law of the United States or any U.S. jurisdiction that in any material way relates to the conduct of the architect's practice.
  2. An architect shall not engage in conduct involving fraud or deliberate disregard of the rights of others.
  3. An architect shall comply with the licensing laws and regulations governing the architect's professional practice in any U.S. jurisdiction. An architect may be subject to disciplinary action if the architect is disciplined in any other U.S. jurisdiction.
  4. An architect shall neither offer nor make any payment or gift with the intent of influencing an official's judgment in connection with a prospective or existing project in which the architect is interested.
  5. An employer engaged in the practice of architecture found by a court or administrative tribunal to have violated the law of the United States or any U.S. jurisdiction protecting the rights of persons working for the employer, such as those pertaining to harassment, discrimination, and unfair competition, shall be subject to discipline.

E. Sealing Documents

1. An architect shall seal only those technical submissions that were prepared under the architect's responsible control except as noted in Rules E.2 and E.3 below.
2. An architect of record may seal technical submissions not required by law to be prepared by an architect including information supplied by manufacturers, suppliers, installers, or contractors, when that information is intended to be incorporated into the architect of record's technical submissions and the architect of record has reviewed such information and can reasonably trust its accuracy.
3. An architect of record may seal prototypical building documents prepared by an architect licensed in any U.S. jurisdiction, but only if the architect of record determines that such documents are in compliance with the requirements of the project's jurisdiction and incorporates them into the architect of record's own technical submissions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144-45.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 29:572 (April 2003), amended LR 31:3159 (December 2005), LR 45:

### **Family Impact Statement**

In accordance with sections 953 and 974 of title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the proposed Rules:

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

### **Poverty Impact Statement**

The proposed Rule should not have any foreseeable impact on any child, individual, or family as defined by R.S. 49:973. In particular, there should be no known or foreseeable effect on:

1. household income, assets, and financial security;
2. early childhood development and preschool through postsecondary education development;
3. employment and workforce development;
4. taxes and tax credits; or
5. child and dependent care, housing, health care, nutrition, transportation, or utilities assistance.

### **Small Business Analysis**

The proposed Rule is not anticipated to have an adverse impact on small businesses as defined in the Regulatory Flexibility Act.

### **Provider Impact Statement**

The proposed Rule does not have any known or foreseeable impact on providers as defined in HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the provider to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

### **Public Comments**

Interested persons may submit written comments to Katherine E. Hillegas by mail or by hand-delivery to 9625 Fenway Avenue, Suite B, Baton Rouge, LA 70809. Public comments must be dated and include the original signature of the person submitting the comment. All comments must be received by the close of business on December 10, 2018.

Katherine E. Hillegas  
Executive Director

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: Rules of Conduct**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There are no anticipated implementation costs or savings to state or local governmental units as a result of the proposed rule change.

The proposed rule changes codify current practices and clarify existing rules of conduct to ensure they remain relevant to contemporary architectural practice. Additionally, the proposed rule establishes guidelines regarding the relationship of an architect serving as an Architectural Experience Program (AXP) supervisor for a candidate for licensure.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There may be an increase in revenues to the extent fines are assessed and collected, however the impact is expected to be nominal. Existing rule provides for disciplinary actions, which includes the levying of fines when rules of conduct are violated. The proposed rule change regarding the relationship of an architect serving as an AXP supervisor for a candidate for licensure will be subject to existing disciplinary actions if violated.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is no anticipated impact to costs or economic benefits to directly affected persons or non-governmental groups as a result of the proposed rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition and employment as a result of the proposed rule change.

Katherine E. Hillegas  
Executive Director  
1811#027

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office