

Professional Conduct Committee: Rules of Procedure

(Approved by the Board of Directors 9/21/2018)

I. Introduction and Purpose.

These Rules of Procedure set forth the procedures followed by the National Council of Architectural Registration Boards (“NCARB”) with respect to the professional conduct of individuals who hold an NCARB Certificate, individuals who previously held an NCARB Certificate and are on “inactive” status, individuals who seek to obtain an NCARB Certificate (e.g., candidates for the Architectural Registration Examination® (“ARE”)), and individuals who participate in or seek to participate in other NCARB programs (e.g., the Architectural Experience Program (“AXP”), the Education Alternative, and the Foreign Architect programs). The term “Record Holder” may be used to describe any individual who is covered by these Rules of Procedure.

The NCARB Professional Conduct Committee (“PCC”) is charged by the NCARB Board of Directors (the “NCARB Board”) to review the conduct of Record Holders and recommend sanctions when the PCC has found misconduct. These Rules of Procedure set forth the framework for PCC’s operation and may be supplemented by internal PCC operational guidelines consistent with these Rules.

The processes described herein are meant to provide procedural fairness to individuals faced with potential sanctions, while permitting NCARB to maintain and enforce standards of professional conduct. These processes are not meant to replicate formal governmental criminal or civil proceedings. Record Holders facing sanctions are permitted to be represented by an attorney engaged at their expense.

II. General Provisions.

- A. PCC Structure. The PCC shall be composed of individuals appointed by the NCARB Board or any individual delegated with the authority to make such appointments, for a term as set forth by the appointing NCARB Board or individual. Appointees shall be referred to as “PCC Members”. PCC Members may include, among others, persons who serve or have served as executives, members, and other representatives of a Member Board. A Chair of the PCC shall be appointed by the NCARB Board or any individual delegated with the authority to make such appointment. This person shall be known as the “PCC Chair”. The PCC shall have charges assigned to it on an annual basis by the NCARB Board and shall report regularly as required by the NCARB Board.
- B. Proceedings. The PCC shall meet regularly in person or by teleconference to review cases reported by Member Boards and/or NCARB staff and to conduct other business as may be deemed appropriate. The PCC Chair shall work with the assigned NCARB staff liaison (“NCARB Staff Liaison”) and counsel (“NCARB Counsel”) to establish agendas in advance of each meeting.
- C. Conflicts of Interest. PCC Members shall review the agenda and other advance reading materials in preparation for each meeting and advise the PCC Chair, NCARB Staff

Liaison, and/or NCARB Counsel if an actual or potential conflict of interest may exist. Any individual with an actual or potential conflict shall abstain from the discussion and voting on any such matter. A PCC Member who is employed by or serves as a member of a Member Board shall abstain from discussing or acting on any matter arising out of the state or jurisdiction represented by that Member Board.

- D. Other Proceedings. Regardless of the status of a matter before the PCC, NCARB shall at all times be entitled to take any other action, including but not limited to pursuing judicial or administration proceedings, against any Record Holder or other person. In addition to the particular sanctions provided for in these Rules of Procedure and in the *Policy and Procedures for Testing Irregularities*, NCARB independently may seek damages, injunctive relief, or other remedies available to NCARB at law and equity.
- E. NCARB Board Reporting. The PCC shall, on a regular basis, provide to the NCARB Board a report of all recent case dispositions. When applicable, NCARB Board members shall observe conflict of interest procedures when considering such matters.
- F. Correspondence. Any notice or other official correspondence to Record Holders shall be made by certified mail, return receipt requested, or by an overnight delivery service, such as Federal Express or UPS, with a signature required.

III. Member Board Reporting.

With regard to individuals holding an NCARB Certificate, the PCC relies on and acts on reporting done by each NCARB Member Board (“Member Board”). Each Member Board is required by the NCARB Bylaws to report each case in which the Member Board has revoked or suspended an architect’s registration (the term “registration” as used in this document is meant to refer to an architect’s licensure in a particular jurisdiction, regardless of what term that jurisdiction may use) for cause other than nonpayment of renewal fees or failure to file information with the Member Board, or in which the Member Board or a court makes a finding, not reversed on appeal, that the Architect has, in the conduct of architectural practice, violated the laws and/or regulations.

IV. Prohibited Conduct, Sanctions, and Case Procedures.

- A. Prohibited Conduct.
 - 1. Conduct Subject to Mandatory Certificate Revocation. The Bylaws of NCARB provide that NCARB shall revoke an architect’s NCARB Certificate (“Certificate”) if:
 - (a) A Member Board has at any time revoked the architect’s registration for a cause other than nonpayment of renewal fees or failure to file information with the member board; or

- (b) Facts are subsequently revealed which show that the architect was actually ineligible for the Certificate at the time of certification.

Upon being informed of a registration revocation, the staff of NCARB will, in the case of Section 1(a) above, return a copy of the action to the Member Board with a letter asking such board to confirm that its action has not been appealed. When the confirmation that no appeal was received by the Member Board, NCARB staff will notify the PCC. The PCC will then confirm that the Certificate revocation is one which is subject to Section 1(a) above and shall direct NCARB staff to send a final determination to the architect informing the architect that their NCARB Certificate has been revoked.

In the case of Section 1(b) above, before making a final determination as to whether the individual has been ineligible for a Certificate at the time of certification, NCARB staff shall send a show cause letter as set forth in section IV.B.3. to the Record Holder. If the final determination of the PCC is that the individual was ineligible for the Certificate, then NCARB staff will notify the architect that their Certificate has been revoked.

2. Applicable Conduct Subject to Discretionary Discipline for an NCARB Certificate Holder. The Bylaws of NCARB provide that NCARB may revoke an architect's Certificate if:
 - (a) A Member Board or a court makes a finding, not reversed on appeal, that the architect (i) has, in the conduct of their architectural practice, violated the law, or (ii) has engaged in conduct involving wanton disregard for the rights of others;
 - (b) The architect has surrendered or allowed to lapse their registration in connection with disciplinary action pending or threatened, or a Member Board has denied the architect registration for a cause other than the failure to comply with the educational, experience, age, citizenship, or other technical qualifications for registration in such jurisdiction; or
 - (c) The architect has willfully misstated a material fact in a formal submission to NCARB (including, without limitations, applications for a Certificate and annual reports for renewal of a Certificate).

In the event of conduct described in this section, the PCC shall follow the procedures in section IV.B.1-4 and impose sanctions as described in section IV.B.5. or recommend that the NCARB Board impose applicable sanctions.

3. Conduct Subject to Discretionary Discipline for Applicants. NCARB Bylaws provide that NCARB shall obtain and record factual data including but not limited to an applicant's character. NCARB has adopted as one of its standards for holding a Certificate that an applicant must be of good

character as verified by employers, architects, and Member Boards. The PCC may consider the following as grounds for denial of certification based on character:

- (a) Revocation or suspension of the applicant's registration by any Member Board for a cause other than nonpayment of renewal fees or failure to file information or to meet other administrative requirements for continued registration;
- (b) A finding by a Member Board or court, not reversed on appeal, that the architect
 - (i) Has, in the conduct of his or her architectural practice, violated the law, or
 - (ii) Engaged in conduct involving fraud or wanton disregard for the rights of others;
- (c) Conviction of the architect of a felony or a crime involving fraud or wanton disregard for the rights of others;
- (d) Surrender or lapse of the architect's registration in connection with disciplinary action pending or threatened;
- (e) Denial of registration by a Member Board for a cause other than failure to comply with the educational, experience, age, citizenship, or other technical qualifications for registration in such jurisdiction;
- (f) Willful misstatement of a material fact in a formal submission to NCARB, including without limitation any submissions regarding continuing education hours on any application for a Certificate or renewal thereof;
- (g) Evidence of incompetence, dishonesty, or unlawful conduct, not adequately refuted, related to the practice of architecture or involving fraud or wanton disregard of the rights of others; or
- (h) A finding by NCARB that a candidate has violated the Candidate Agreement for the ARE[®] and/or NCARB's *Policy and Procedures for Testing Irregularities*.

In the event of conduct described in this section, the PCC shall follow the procedures in section IV.B.1-4 and impose sanctions as set forth in section IV.B.5. or recommend that the NCARB Board impose applicable sanctions.

4. Conduct Subject to Discretionary Discipline for All Other Matters. Any Record Holder may be subject to sanctions for conduct including:
 - (a) Misstatement of a material fact in a formal submission to NCARB; or
 - (b) Misstatement of NCARB information (including, for example, falsely claiming to hold Certificate status).

In the event of conduct described in this section, the PCC shall follow procedures in section IV.B.1-4. and may impose sanctions as set forth in section IV.B.5. or recommend that the NCARB Board impose sanctions.

5. Conduct Subject to Discretionary Discipline Related to Examination Irregularities. Conduct covered under the NCARB *Policy and Procedures for Testing Irregularities* shall be subject to discretionary discipline under the terms of that document.
6. Minor Infractions. Minor Infractions by Record Holders as reported to NCARB by Member Boards shall include:
 - (a) Consent actions in which there may be agreed-upon penalties but no finding or agreement that the law has been violated;
 - (b) Corporate or firm registration violations;
 - (c) Practicing architecture in a jurisdiction before registration in such jurisdiction followed by registration in such jurisdiction;
 - (d) Disciplinary actions on account of failure to pay taxes or to furnish child support or other like civil violations;
 - (e) Disciplinary actions following nonpayment of renewal fees or failure to file information or to meet other administrative requirements for continued registration;
 - (f) Violations relating to technical submissions such as imprinting instead of signing signatures, printing rather than wet-stamping seals, title-block mistakes, and the like; and
 - (g) Disciplinary action in one state that is based solely on the disciplinary action of another state (provided that such prior state's disciplinary action had been reported to and considered by the PCC).

In the event of conduct described in this section, the PCC shall follow procedures in section IV.B.2.

B. Procedures.

1. ARE[®] Conduct. Upon being informed of conduct described in NCARB *Policy and Procedures for Testing Irregularities*, NCARB staff shall initiate proceedings as set forth in that document.
2. Minor Infractions. Upon being informed of circumstances that may be a Minor Infraction as set forth in section IV.A.6., NCARB staff may, in its discretion, decide to take no action or to issue a warning letter to the Record Holder. NCARB staff shall report all Minor Infractions to the PCC promptly.
3. Show Cause Letter. Upon being informed of circumstances that appear to be in violation of the provisions set forth in sections IV.A.1(b), IV.A.2., IV.A.3, or IV.A.4., NCARB staff shall notify the applicable Record Holder of such circumstances. Such notification shall:
 - (a) Contain all documents—including, for example, Member Board decision and these Rules of Procedure—that are relevant to the matter;
 - (b) State which provisions of these Rules of Procedure are alleged to have been violated;
 - (c) State that the Record Holder has 30 calendar days to respond in writing and show cause and/or submit relevant information as to why the Record Holder should not be subject to sanctions; and
 - (d) Provide clear instructions to the Record Holder regarding how to submit a written response.
4. PCC Deliberation. Upon receipt of the show cause response from the Record Holder or, upon passage of the 30-day time frame without receipt of a response, NCARB staff shall provide to the PCC, at least seven days prior to the meeting at which the matter will be considered, the Record Holder's response and show cause correspondence to the PCC Members. The PCC will consider whether it finds the Record Holder's conduct to be in violation of one or more specific provisions of these Rules of Procedure and/or the NCARB Model Rules of Conduct. The PCC may, in its discretion, withhold a final decision on a particular matter if it determines that further clarification or information would be needed.

5. Sanctions.

- (a) Review Standard. The PCC shall use the standard of preponderance of the evidence (“more likely than not”) when deciding whether it believes a violation has been shown.
- (b) Role of PCC and NCARB Board. If the PCC determines a violation occurred, it shall determine which sanction is appropriate. If a proposed sanction requires approval by the NCARB Board, NCARB staff shall prepare appropriate notice documents for consideration by the NCARB Board. When a proposed sanction is issued by the PCC not requiring approval by the NCARB Board, the PCC shall direct staff to take such actions necessary to inform the Record Holder and implement such sanctions.
- (c) Available Sanctions. The sanctions available to the PCC are (note that one or more may be applied in any case):
 - (i) Recommend Certificate revocation to NCARB Board;
 - (ii) Recommend Certificate suspension for a period of time to NCARB Board;
 - (iii) Recommend public reprimand to NCARB Board;
 - (iv) Place Record Holder on probation for a period of one year, allowing the PCC to set appropriate conditions, such as, requiring the Record Holder to make an apology (NCARB Board approval not required);
 - (v) Require that Record Holder take certain ethics education courses (NCARB Board approval not required); and
 - (vi) Issue private reprimand to Record Holder (NCARB Board approval not required).
- (d) Publicity. A public reprimand and/or Certificate revocation shall include the name of the affected Record Holder and a brief description of the conduct leading to the sanctions. Said information shall be published in the appropriate NCARB publications and NCARB web page as determined by NCARB staff for a period of one year. NCARB staff may also share publicly case studies regarding matters considered under these Rules of Procedures that were not subject to a public reprimand sanction, provided that the identifying information (such as, the name of the Record Holder) is not included.

- (e) Timing. A sanction shall become effective immediately upon notice to and receipt by the Record Holder of final documentation from NCARB.
 - (f) Notice to Member Boards. NCARB staff shall notify each applicable Member Board when an individual Record Holder has been sanctioned and shall update NCARB's disciplinary records accordingly.
6. Appeals. Petition for relief from sanctions hereunder shall be submitted by the affected Record Holder to the PCC for review and may only be submitted for purposes of demonstrating newly revealed evidence that is contrary to the factual information previously presented and would invalidate the basis for those sanctions. Petitions for relief shall not be submitted for purposes of seeking a re-evaluation of evidence previously presented or the sanctions imposed or for consideration of other evidence or circumstances that do not invalidate the basis for the prior disciplinary action. Upon receipt of a petition for relief permitted hereunder, NCARB staff or the PCC may, in its discretion, request the petitioner or any Member Board to submit additional relevant evidence. NCARB Staff or the PCC may defer consideration and decision pending receipt of such information or other evidence that would demonstrate that the original basis for the prior disciplinary action was invalid. The petitioner shall be notified of the action taken hereunder. The submission of any petition for relief hereunder shall not, during its pendency, suspend or defer the implementation of the disciplinary action previously taken. The procedures for petitions for relief under this section III.B.6. are in addition to the procedures set forth in section III.B.7. for reinstatement of a revoked Certificate and reapplication after a denied Certificate.
7. Reinstatement or Reversal of Denial.
- (a) Reinstatement.
 - (i) Revoked Certificate. A Certificate previously revoked may be considered for reinstatement if the cause of the revocation has been removed, corrected, or otherwise remedied. NCARB shall only consider an application for reinstatement after 24 months following the effective date of revocation. Upon receiving an application for reinstatement, the PCC will consider the matter. The PCC may, in its discretion, request the applicant or any Member Board to submit relevant information in connection with the application for reinstatement that would warrant

reinstatement. The PCC may defer consideration and decision pending receipt of such information. In making such determination, the PCC may consider grounds relevant to denial of the Certificate based on character under section IV.A.3. The PCC by a vote of a majority of its present voting members, shall recommend to the NCARB Board to accept or deny the reinstatement application. The NCARB Board may vote to accept the PCC's recommendation or take other action as the NCARB Board may decide. The applicant shall be notified of the action taken. If the action is to reinstate, then upon the applicant's paying the established fee and complying with all other NCARB requirements, the Certificate will be reinstated.

- (ii) Suspended Certificate. An architect whose Certificate has been suspended will have the Certificate reinstated automatically after the period of suspension has ended, unless conditions and/or stipulations were included as part of the original suspension. If conditions and/or stipulations were included as part of the original suspension, the architect must demonstrate that those conditions and/or stipulations have been met prior to reinstatement being approved pursuant to the NCARB Board recommendation(s).

- (b) Reversal of Denial. In the case of a denial of Certificate, an applicant may re-apply for the Certificate if the cause of the denial has been removed, corrected, or otherwise remedied. The PCC shall not consider re-applications for a Certificate until twelve months following the effective date of the denial.