



Exhibit A: Proposed Changes to the *NCARB Rules of Conduct*

2018 NCARB Annual Business Meeting
May 2018

National Council of Architectural Registration Boards

1801 K Street NW, Suite 700K, Washington, DC 20006

Tel: 202/783-6500 | Fax: 202/783-0290

www.ncarb.org

MODEL RULES OF CONDUCT

FOREWORD

INTRODUCTION

GUIDING PRINCIPLES

RULE 1 COMPETENCE

RULE 2 CONFLICT OF INTEREST

RULE 3 FULL DISCLOSURE

RULE 4 COMPLIANCE WITH LAWS

RULE 5 ~~RULES OF PROFESSIONAL CONDUCT~~ **SIGNING AND SEALING DOCUMENTS**

FOREWORD

These Model Rules of Conduct are published by the National Council of Architectural Registration Boards (NCARB) as a recommended set of rules for Member Boards—the jurisdictional licensing boards—having the authority to promulgate and enforce rules of conduct applicable to those licensed in their jurisdiction.

INTRODUCTION

These rules of conduct are published by NCARB as a recommended set of rules for Member Boards having the authority to promulgate and enforce rules of conduct applicable to their registrants:

Immediately following the 1975 Annual Meeting, the Board of Directors charged the NCARB Committee on Professional Conduct with drafting a set of rules of conduct for use by Member Boards. The Committee worked on these rules over an 18-month period. Initially, the Committee searched the existing rules of several of its Member Boards. From this search, a preliminary set of rules of conduct covering a multitude of matters was prepared. The preliminary rules were finally revised to a draft set of rules in February 1976. That draft was submitted to representatives of various governmental agencies and professional organizations in March 1976. On the basis of informal comment received at that time, the rules were again revised. In November 1976, another series of hearings with governmental officials was held and further revisions were made:

Thereafter, these rules were distributed broadly with requests for comment, and in February 1977 the Committee on Professional Conduct, taking into account the comments received, revised, and redrafted the rules into their present form. The rules were approved by the Member Boards at the 1977 Annual Meeting. At the 1982 NCARB Annual Meeting one amendment to these rules of conduct was approved, adding a new Section 5.1 and renumbering subsequent items accordingly:

Certain Committee assumptions are clarified as follows:

- It is the Committee's belief that a set of rules of conduct, which will be the basis for policing and disciplining members of the profession, should be "hard-edged" rules and should not include those precatory injunctions which are often found in a list of professional obligations. For example, the Committee believes that it is an obligation of all registered architects to assist interns in their development. But the Committee could not conceive of making the failure to perform that obligation the basis for revocation of registration, suspension of registration, or reprimand. Thus, the rules set forth below have all been subjected to the critical test of whether or not an architect violating any one of the rules should be subject to discipline. It is the Committee's judgment that the rules proposed are all rules for which it is appropriate to command compliance and threaten sanctions:
- The Committee views these rules as having as their objective the protection of the public and not the advancement of the interests of the profession of architecture. The Committee believes, however, the profession is advanced by requiring registration holders to act in the public interest. There are, however, various rules of conduct found in many existing state board rules which seem more directed at protecting the profession than advancing the public interest. Such a rule is the prohibition against allowing one architect to supplant another until he/she has adequate proof that the first architect has been

properly discharged. Without doubt, such a rule makes the practice more civilized, more orderly, and, under some circumstances, exposes a client to less risk. On the other hand, it was frequently pointed out to the Committee that clients may often wish to verify the competence of a retained architect by engaging a second architect, and it hardly seems appropriate for governmental regulation to prevent that from occurring. Similarly, prohibitions against brokers selling architects' services, fee competition, advertising, free sketches, and the like, seem more appropriately included in professional ethical standards than in rules to be enforced by state agencies.

In protecting the public, there are two general areas of concern. First, non-architects (beginning with the client and including all other members of the construction industry) dealing with an architect should be protected against misrepresentation, fraud, and deceit. It has long been recognized as a proper function of government to protect the consumer of services from such wrongful behavior. Second, the users of a project on which the architect has worked must be protected from a building which is unsafe. This kind of protection by a governmental agency has an even longer history:

- The Committee sought to avoid burdening the architect with standards of conduct which were unreasonable to expect. At the same time, the Committee took into account the fact that the public views the architect or, in the case of an engineering project, the engineer as the only registered professional involved in a leadership position in the construction process, and relies on the registered professional to help safeguard the public interest. Rule 3.3, derived from a similar rule found in the Alaska State Board's rules of conduct, recognizes the special responsibility of the registered architect. In this regard, the architect is not unlike the lawyer who, while enjoined to defend vigorously the position of his/her client, must under certain circumstances abandon his/her partisan effort on behalf of his/her client by virtue of his/her duty as an officer of the court to advance the cause of justice. Similarly, accountants have in recent years been compelled to insist on positions that are not in their client's interest but that are necessary in order to provide the public with full disclosure. So the architect has a fiduciary duty to his/her client, while at the same time has a supervening duty to the public.
- As has been stated above, these rules are intended to point out those areas of behavior for which an architect risks being disciplined by his/her state board. The enforcement of these rules is the subject of a paper titled "Procedural Requirements for Discipline of Architects by State Architectural Registration Boards," prepared and distributed by the Professional Conduct Committee. Enforcement, of course, raises quite special problems. State registration boards are notoriously understaffed and underfunded. Nonetheless, the Committee believes the experience of some of our Member Boards in using available resources to assist in enforcement will provide guidance to other state boards that have despaired of being able to enforce rules of conduct in the past. The paper on enforcement suggests strategies by which the state boards can police the profession and can effectively enforce these rules. The Committee, however, does not believe that an infraction of each of these rules will yield the same punishment. Obviously, any disciplinary body takes into account a multitude of mitigating circumstances. In addition, a first infraction of some of the rules would, in all likelihood, not result in disciplinary action. For example, very few responsible and honorable architects avoid negligence completely in their careers. On the other hand, the board must have the right to discipline and, if necessary, revoke the

registration of an architect with a demonstrated record of incompetence.

- The Committee struggled with the question of the necessary proximity between the act proscribed and the public interest involved. As an example, we can pick out three points on a line all leading to unsafe structures which the public clearly has an interest in preventing. The first point, for purposes of this illustration, is architects bidding against each other on the basis of fee. There is evidence that buildings constructed from the work of architects who have won the job on the basis of a low fee have more problems than buildings generally. As a second point on the line, buildings designed by architects who suffer from substantial physical or mental disabilities contain a much higher risk of defects than buildings generally. As a final point on the line, there is the architect who has been chronically negligent in his/ her past projects and is likely to perform with similar negligence in the future. The Committee was compelled to ask itself whether the odds were sufficiently high in connection with the competitive bidding issue to warrant a registration board attempting to protect the public at that point on the line. A similar question was raised concerning the architect whose competence is physically or mentally impaired. In a sense, disciplining the architect after the defective building had been discovered was the least effective way of protecting the public. This kind of inquiry resulted in the Committee's deleting any reference to competitive bidding in its rules but retaining a rule concerning physical or mental disabilities on the grounds that the protection of the public required that the board have power to step in when it has evidence that such a condition exists and is likely to impair the competence of the architect. Similar inquiries were made in connection with many of the other rules set forth in this document.

In July 1975, following a directive from delegates at its Annual Business Meeting, NCARB began to develop rules on professional conduct that it could recommend to its Member Boards. The committee conducted extensive research, produced several drafts, and conducted reviews with various governmental agencies and professional organizations in March 1976 and again in November 1976. In February 1977, the committee finalized the first version of NCARB's *Model Rules of Conduct* and subsequently gained their acceptance and approval by its Member Boards at the Annual Business Meeting in June 1977.

Over a two-year period, NCARB undertook a study of the conduct rules of various jurisdictions and other learned professions, held in-depth interviews with a number of government consumer affairs officials, and carried out other research inquiries. These efforts led to the formulation of NCARB's *Model Rules of Conduct*. Their substance was drawn from the following series of considerations:

- The Rules, which will serve as the basis for the regulating and disciplining of architects, should be mandatory rules and should not include aspirational rules that often comprise the codes of professional associations;
- The Rules should have as their objective the protection of the public and not the advancement of the interests of the profession of architecture;
- The architect should not be burdened unfairly with rules and expectations that are unreasonable. The public, however, expects to find an architect in a leadership position on a construction project to protect its interests. Consequently, while the architect is primarily enjoined to serve a client's best interests, the architect also has a supervening duty to the public; and

- The *Rules* are intended to set out those areas of behavior for which an architect risks being disciplined, including suspension or revocation of the privilege to practice, by a jurisdictional licensing board.

As a result of these considerations, NCARB's *Model Rules of Conduct*, as approved and recommended to its Member Boards who have the authority to promulgate such rules, center on five areas: competence, conflict of interest, full disclosure, compliance with laws, and signing and sealing documents. Over time, NCARB's *Model Rules of Conduct* have been revised to ensure they remain relevant to contemporary practice and to ensure the expected professional and ethical conduct of architects found in law remains focused on the protection of the health, safety, and welfare of the public.

GUIDING PRINCIPLES FOR THE DEVELOPMENT OF NCARB's MODEL RULES OF CONDUCT

- A. A set of rules of conduct, which will be the basis for regulating and disciplining members of the profession, should be mandatory rules and should not include those aspirational rules that are often found in a list of obligations promoted by a professional association.
- B. The objective of these *Model Rules of Conduct* is the protection of the public health, safety, and welfare. There are two general areas of concern. First, non-architects (beginning with the client and including all other members of the construction industry) dealing with an architect should be protected against misrepresentation, fraud, and deceit. Second, the users of a project on which the architect has worked must be protected from a building which is unsafe.
- C. These *Model Rules of Conduct*, when referenced to “law,” are concerned only with violations of U.S. law and not with violations of the laws of other nations. It would be extremely difficult for a jurisdictional licensing board to obtain suitable evidence of the interpretation of foreign laws and it is not unusual for such laws to be at odds with the laws of the United States.
- D. These *Model Rules of Conduct* address the conduct of the architect irrespective of the architect’s having been convicted under a criminal law. An architect is subject to discipline by the jurisdictional licensing board whether or not the architect has been convicted by a court of law.
- E. The public views the architect as the primary registered design professional involved in the planning and design of a building project and relies on the architect to help safeguard the public interest. While architects are obligated to defend vigorously the position of their clients, architects may be compelled to insist on positions that are not in their clients’ interest in order to protect the health, safety, and welfare of the public.
- F. The public expects that professions will be guided by a commonly accepted standard of conduct and that architects will assume a primary role in ensuring ethical conduct by their colleagues. For example, this principle is the foundation of the requirements to report violations found in Rule 3.9. An architect’s accountability in this regard extends to the actions of parties external to their practice and to their practice colleagues. Accordingly, for the purposes of these *Model Rules of Conduct*, any architect who, alone or with others, is in charge of a firm’s architectural practice will be deemed to have violated these rules if the firm has violated these rules.
- G. Architects who act as Architectural Experience Program (AXP) Supervisors of candidates for licensure play a critical role in the protection of the public and a central role in the training of future license holders. NCARB and the jurisdictional licensing boards rely on AXP Supervisors to both confirm that the expected experience has been gained and to serve as the primary “quality assurance” guarantor regarding the efficacy of the candidate’s experience. Accordingly, these *Model Rules of Conduct* include several provisions intended to protect the integrity of the experience verification process and other elements of the qualifications reporting system that jurisdictional licensing boards rely on when making licensure decisions.

RULE 1 COMPETENCE

- 1.1 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 knowledge and skill which is ordinarily applied by architects of in good standing; practicing in the same locality.¹

COMMENTARY

Although many of the existing state board rules of conduct fail to mention standards of competence, it is clear that the public expects that incompetence will be disciplined and, where appropriate, will result in revocation of the license. Rule 1.1 sets forth the common law standard which existed in this country for 100 years or more in judging the performance of architects. While some courts have stated that an architect, like the manufacturer of goods, warrants that his/her design is fit for its intended use, this rule specifically rejects the minority standard in favor of the standard applied in the vast majority of jurisdictions that the architect need be careful but need not always be right. In an age of national television, national universities, a national registration exam, and the like, the reference to the skill and knowledge applied in the same locality may be less significant than it was in the past when there was a wide disparity across the face of the United States in the degree of skill and knowledge which an architect was expected to bring to his/her work. Nonetheless, the courts have still recognized this portion of the standard, and it is true that what may be expected of an architect in a complex urban setting may vary from what is expected in a more simple, rural environment.

- 1.2 In designing a project, an architect shall take into account all the applicable federal, state, and municipal 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.

COMMENTARY

It should be noted that the rule is limited to applicable state and municipal building laws and regulations. Every major project being built in the United States is subject to a multitude of laws in addition to the applicable building laws and regulations. As to these other laws, it may be negligent of the architect to have failed to take them into account, but the rule does not make the architect specifically responsible for such other laws. Even the building laws and regulations are of sufficient complexity that the architect may be required to seek the interpretation of other professionals. The rule permits the architect to rely on the advice of such other professionals.

- 1.3 An architect shall undertake to perform professional services only when he/she the architect, together with those whom the architect may engage as consultants, is qualified by education, training, and experience, has the necessary knowledge and skill in the

¹ 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.

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/her own capacity and knowledge. Where an architect lacks experience, the rule supposes that he/she will retain consultants who can appropriately supplement his/her own capacity. If an architect chooses to undertake a project where he/she lacks knowledge and where he/she does not seek such supplementing consultants, the architect has violated the rule.

- 1.4 No person **An architect** shall **not** be permitted to practice architecture if, in the board's **Board's** judgment, such person's **the architect's** professional competence is substantially impaired by physical or mental disabilities. **The assessment of impairment should be performed by an appropriately qualified professional.²**

COMMENTARY

Here the state registration board is given the opportunity to revoke or suspend a license when the board has suitable evidence that the license holder's professional competence is impaired by physical or mental disabilities. Thus, the board need not wait until a building fails in order to revoke the license of an architect whose addiction to alcohol, for example, makes it impossible for that person to perform professional services with necessary care.

²*This rule empowers the Board to act preemptively in the interest of public health, safety, and welfare when the Board becomes aware of an architect's impaired competence rather than waiting until the impaired competence causes harm.*

RULE 2 CONFLICT OF INTEREST

- 2.1 An architect shall not accept compensation in connection with services from more than one party on a project (and never in connection with specifying or endorsing materials or equipment) unless the circumstances are fully disclosed to and agreed to (such disclosure and agreement to be **and waived** in writing) by all interested 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.

- 2.2 If an architect has any business association or direct or indirect financial interest which is substantial enough to influence his/her judgment in connection with the performance of professional services, the architect shall fully disclose in writing to his/her client or employer the nature of the business association or financial interest, and if the client or employer objects to such association or financial interest, the architect will either terminate such association or interest or offer to give up the commission or employment.

COMMENTARY

Like 2.1, this rule is directed at conflicts of interest. It requires disclosure by the architect of any interest which would affect the architect's performance.

- 2.3² An architect shall not solicit or accept compensation from material or equipment suppliers in connection with **for** specifying or endorsing their products **in connection with a project**. As used herein, "compensation" shall not mean customary and reasonable business hospitality, entertainment, or product education.³

COMMENTARY

This rule appears in most of the existing state standards. It is absolute and does not provide for waiver by agreement. Customary and reasonable business hospitality, entertainment, and product education, while not furnishing a clear definition of what is and is not allowed is nevertheless well understood by state ethics laws, company policies, and tax guidelines that wish to allow what is usual and appropriate in the industry in terms of dining, entertainment, and travel while ruling out lavish or excessive expenditures.

- 2.3 **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.**

- 2.4 **When an architect, when acting by agreement of the parties as the independent interpreter of building contract documents and or as the judge of contract performance, an architect shall**

³*Unlike Rule 2.1, 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.*

render decisions impartially, favoring neither party to the contract.⁴

COMMENTARY

This rule applies only when the architect is acting as the interpreter of building contract documents and the judge of contract performance. 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 those two roles. In general, however, the rule governs the customary construction industry relationship where the architect, though paid by the owner and owing the owner his/her loyalty, is nonetheless required, in fulfilling his/her role in the typical construction industry documents, to act with impartiality.

2.5 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.⁵

⁴*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*AXP Supervisors are required to balance their duty to protect the public with their role in licensure candidate development. Balancing these duties makes the AXP Supervisors' objectivity critical.*

RULE 3 FULL DISCLOSURE

3.1 ~~An architect shall not make misleading, deceptive, or false statements or claims that are misleading, deceptive, or false.~~

3.12 An architect making public statements on architectural questions ~~matters~~ shall disclose when he/she if the architect is being compensated for making such statements or when he/she has an economic interest in the issue.

COMMENTARY

Architects frequently and appropriately make statements on questions affecting the environment in the architect's community. As citizens and as members of a profession acutely concerned with environmental change, they doubtless have an obligation to be heard on such questions. Many architects may, however, be representing the interests of potential developers when making statements on such issues. It is consistent with the probity which the public expects from members of the architectural profession that they not be allowed under the circumstances described in the rule to disguise the fact that they are not speaking on the particular issue as an independent professional but as a professional engaged to act on behalf of a client.

3.23 ~~An architect shall accurately represent to a prospective or existing client or employer his/her not misrepresent the architect's qualifications, capabilities, and experience or that of the architect's firm and the scope of his/her responsibility in connection with work for which he/she is claiming credit.~~

COMMENTARY

Many important projects require a team of architects to do the work. Regrettably, there has been some conflict in recent years when individual members of that team have claimed greater credit for the project than was appropriate to their work done. It should be noted that a young architect who develops his/her experience working under a more senior architect has every right to claim credit for the work which he/she did. On the other hand, the public must be protected from believing that the younger architect's role was greater than was the fact.

3.4 An architect shall accurately represent to a prospective or existing client or employer his/her qualifications, capabilities, experience, and not misrepresent or overstate the scope of his/her the architect's responsibility in connection with work for which he/she the architect or the architect's firm is claiming credit.

COMMENTARY

Many important projects require a team of architects to do the work. Regrettably, there has been some conflict in recent years when individual members of that team have claimed greater credit for the project than was appropriate to their work done. It should be noted that a young architect who develops his/her experience working under a more senior architect has every right to claim credit for the work which he/she did. On the other hand, the public must be protected from believing that the

younger architect's role was greater than was the fact.

- 3.35 If, in the course of an architect's work on a project, an **the** architect becomes aware of a decision taken **made** by his/her **the architect's** employer or client, against the architect's advice, which violates applicable **federal, state, or municipal** ~~local~~ building laws and regulations and which will, in the architect's judgment, materially and adversely affect the **health and safety, and welfare of** the public, of the finished project, the architect shall:⁶
- (i) **(a)** ~~report 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; **refuse to consent to the decision,** and~~
 - (ii) **(b)** ~~refuse to consent to the decision, and **report the decision to the** local building inspector or other public **official charged with enforcement of** the applicable state or municipal **building laws and regulations,** and~~
 - (iii) **(c)** in circumstances where the architect reasonably believes that other such decisions will be taken notwithstanding his/her **the architect's** objection, terminate his/her **the provision of** services with reference to the project unless the architect is able to cause the matter to be resolved by other means.

In the case of a termination in accordance with Clause (iii), the architect shall have no liability to his/her client or employer on account of such termination.

COMMENTARY

This rule holds the architect to the same standard of independence which has been applied to lawyers and accountants. In the circumstances described, the architect is compelled to report the matter to a public official even though to do so may substantially harm the architect's Note that the circumstances are violations of building laws which adversely affect the safety of the finished project. While a proposed technical violation of building laws (e.g., a violation which does not affect the public safety) will cause a responsible architect to take action to oppose its implementation, the Committee specifically does not make such a proposed violation trigger the provisions of this rule. The rule specifically intends to exclude safety problems during the course of construction which are traditionally the obligation of the contractor. There is no intent here to create a liability for the architect in this area. Clause (iii) gives the architect the obligation to terminate his/her services if he/she has clearly lost professional control. The standard is that the architect reasonably believes that other such decisions will be taken notwithstanding his/her objection. The rule goes on to provide that the architect shall not be liable for a termination made pursuant to Clause (iii). Such an exemption from contract liability is necessary if the architect is to be free to refuse to participate on a project in which such decisions are being made.

- 3.46 An architect shall not **deliberately** make a false statement or fail **deliberately** to disclose accurately and completely a material fact lawfully requested **by the Board** in connection with **the architect's** his/her application for **licensure** registration or renewal.

COMMENTARY

⁶*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.*

The registration board which grants registration or renews registration on the basis of a misrepresentation by the applicant must have the power to revoke that registration.

- ~~3.5~~ An architect shall not assist the application for registration of a person known by the architect to be unqualified in respect to education, training, experience, or character.
- 3.7 An architect possessing knowledge of an applicant's qualifications for registration shall cooperate with the applicant, the Board and/ or NCARB by responding appropriately regarding those qualifications when requested to do so. An architect shall provide timely verification of employment and/or experience earned by an applicant under his or her supervision if there is reasonable assurance that the facts to be verified are accurate. ~~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.
- ~~3.8~~ An architect possessing knowledge of an licensure candidate's applicant's qualifications for licensure registration shall cooperate with the candidate applicant, the Board, and/ or NCARB by responding appropriately and in a timely manner regarding those qualifications, when requested to do so. An architect shall provide timely verification of employment and/or experience earned by an applicant under his or her supervision if there is reasonable assurance that the facts to be verified are accurate. ~~An architect shall not knowingly sign any verification document that contains false or misleading information.~~
- ~~3.9~~ An architect possessing knowledge of a violation of these rules jurisdiction's laws or rules governing the practice of architecture by another architect shall report such knowledge to the Board. It is the professional duty of the architect to do so.

RULE 4 COMPLIANCE WITH LAWS

- 4.1 An architect shall not, in the conduct of his/her architectural practice, knowingly violate any state or federal criminal 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.

COMMENTARY

This rule is concerned with the violation of a state or federal criminal law while in the conduct of the registrant's professional practice. Thus, it does not cover criminal conduct entirely unrelated to the registrant's architectural practice. It is intended, however, that rule 5.4 will cover reprehensible conduct on the part of the architect not embraced by rule 4.1. At present, there are several ways in which Member Boards have dealt with this sort of rule. Some have disregarded the requirement that the conduct be related to professional practice and have provided for discipline whenever the architect engages in a crime involving "moral turpitude."

The Committee declined the use of that phrase, as its meaning is by no means clearly or uniformly understood. Some Member Boards discipline for felony crimes and not for misdemeanor crimes. While the distinction between the two was once the distinction between serious crimes and technical crimes that distinction has been blurred in recent years. Accordingly, the Committee specifies crimes in the course of the architect's professional practice, and, under 5.4, gives to the Member Board discretion to deal with other reprehensible conduct. Note that the rule is concerned only with violations of state or federal criminal law. The Committee specifically decided against the inclusion of violations of the laws of other nations. Not only is it extremely difficult for a Member Board to obtain suitable evidence of the interpretation of foreign laws, it is not unusual for such laws to be at odds with the laws, or, at least, the policy of the United States. For example, the failure to follow the dictates of the "anti-Israel boycott" laws found in most Arab jurisdictions is a crime under the laws of most of those jurisdictions; while the anti-Israel boycott is contrary to the policy of the government of the United States and following its dictates is illegal under the laws of the United States.

- 4.2 An architect shall not engage in conduct involving fraud or deliberate wanton disregard of the rights of others.

- 4.3 An architect shall comply with the registration licensing laws and regulations governing his/her the architect's professional practice in any U.S. jurisdiction. An architect may be subject to disciplinary action if, based on grounds substantially similar to those which lead to disciplinary action in this jurisdiction, the architect is disciplined in any other U.S. jurisdiction.

COMMENTARY

Here, again, for the reasons set out under 4.1, the Committee chose to limit this rule to United States jurisdictions.

- 4.4 An architect shall neither offer nor make any payment or gift to a government official (whether elected or appointed) with the intent of influencing an the official's judgment in connection with a prospective or existing project in which the architect is interested.

COMMENTARY

Rule 2 tracks a typical bribe statute. It is covered by the general language of 4.1, but it was the Committee's view that 4.2 should be explicitly set out in the rules of conduct. Note that all of the rules under this section look to the conduct of the architect and not to whether or not the architect has actually been convicted under a criminal law. An architect who bribes a public official is subject to discipline by the state registration board, whether or not the architect has been convicted under the state criminal procedure.

- 4.45 An employer engaged in the practice of architecture shall not have been found by a court or an administrative tribunal to have violated any applicable federal or state law the law of the United States or any U.S. jurisdiction protecting the rights of persons working for the employer with respect to fair labor standards or with respect to maintaining a workplace free of, such as those pertaining to harassment, discrimination: [States may choose instead to make specific reference to the “Federal Fair Labor Standards Act of 1938, as amended” and the “Equal Employment Opportunity Act of 1972, as amended” and to state laws of similar scope.], and unfair compensation, shall be subject to discipline. For purposes of this rule, any registered architect employed by a firm engaged in the practice of architecture who is in charge of the firm's architectural practice, either alone or with other architects, shall be deemed to have violated this rule if the firm has violated this rule.

RULE 5 ~~RULES OF PROFESSIONAL CONDUCT~~ SIGNING AND SEALING DOCUMENTS

~~5.1 Each office engaged in the practice of architecture shall have an architect resident and regularly employed in that office:~~

5.1 An architect shall sign and seal only those technical submissions that were prepared under the architect's responsible control except as noted in rule 5.2 and 5.3.

~~5.2 An architect may sign and seal technical submissions only if the technical submissions were:~~

~~(i) prepared by the architect;~~

~~(ii) prepared by persons under the architect's responsible control;~~

~~(iii) prepared by another architect registered in the same jurisdiction if the signing and sealing architect has reviewed the other architect's work and either has coordinated the preparation of the work or has integrated the work into his/her own technical submissions; or~~

~~(iv) prepared by another architect registered in any United States jurisdiction and holding the certification issued by the National Council of Architectural Registration Board if~~

~~(a) the signing and sealing architect has reviewed the other architect's work and has integrated the work into his/her own technical submissions and~~

~~(b) the other architect's technical submissions are prototypical building documents:~~

~~— An architect may also sign and seal drawings, specifications, or other work which is not required by law to be prepared by an architect if the architect has reviewed such work and has integrated it into his/her own technical submissions:~~

~~— "Responsible control" shall be that amount of control over and detailed professional knowledge of the content of technical submissions during their preparation as is ordinarily exercised by a registered architect applying the required professional standard of care, including but not limited to an architect's integration of information from manufacturers, suppliers, installers, the architect's consultants, owners, contractors, or other sources the architect reasonably trusts that is incidental to and intended to be incorporated into the architect's technical submissions if the architect has coordinated and reviewed such information. Other review, or review and correction, of technical submissions after they have been prepared by others does not constitute the exercise of responsible control because the reviewer has neither control over nor detailed professional knowledge of the content of such submissions throughout their preparation.~~

~~— Any registered architect signing or sealing technical submissions not prepared by that architect but prepared under the architect's responsible control by persons not regularly employed in the office where the architect is resident, shall maintain and make available to the board upon request for at least five years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the architect's control over and detailed knowledge of such technical submissions throughout their preparation. Any registered architect signing or sealing technical submissions integrating~~

the work of another architect into the registered architect's own work as permitted under clauses (iii) or (iv) above shall maintain and make available to the board upon request for at least five years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the registered architect's review of and integration of the work of such other architect's work into his/her own technical submissions, and that such review and integration met the required professional standard of care:

COMMENTARY

This provision reflects current practice by which the architect's final construction documents may comprise the work of other architects as well as that of the architect who signs and seals professional submissions. The architect is permitted to apply his/her seal to work over which the architect has both control and detailed professional knowledge, and also to work prepared under the direct supervision of another architect whom he/she employs when the architect has both coordinated and reviewed the work.

- 5.2 An architect of record may sign and seal technical submissions not required by law to be prepared by an architect including information supplied by manufacturers, suppliers, installers, contractors, or from the architect of record's consultants, 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.
- 5.3 An architect of record may sign and 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.
- ~~5.3 An architect shall neither offer nor make any gifts, other than gifts of nominal value (including, for example, reasonable entertainment and hospitality), with the intent of influencing the judgment of an existing or prospective client in connection with a project in which the architect is interested.~~

COMMENTARY

This provision refers to "private bribes" (which are ordinarily not criminal in nature) and the unseemly conduct of using gifts to obtain work. Note that the rule realistically excludes reasonable entertainment and hospitality and other gifts of nominal value.

- ~~5.4 An architect shall not engage in conduct involving fraud or wanton disregard of the rights of others:~~

COMMENTARY

Violations of this rule may involve criminal conduct not covered by 4.1, or other reprehensible conduct which the board believes should warrant discipline. A state board must, in any disciplinary matter, be able to point to a specific rule which has been violated. An architect who is continuously involved in nighttime burglaries (no

connection to his/her daytime professional practice) is not covered by 4.1 (crimes committed “in the conduct of his/her architectural practice”). Serious misconduct, even though not related to professional practice, may well be grounds for discipline. Lawyers commenting on the rules had little trouble with the standard set in 5.4; it applies to conduct which would be characterized as wicked, as opposed to minor breaches of the law. While each board must “flesh out” the rule, murder, rape, arson, burglary, extortion, grand larceny, and the like would be conduct subject to the rule, while disorderly conduct, traffic violations, tax violations, and the like would not be considered subject to the rule.

5.5 ~~An architect shall not make misleading, deceptive, or false statements or claims.~~

COMMENTARY

An architect who fails to accurately and completely disclose information, even when not related to the practice of architecture, may be subject to disciplinary actions if the board concludes that the failure was serious and material.