



MINNESOTA BOARD OF
ARCHITECTURE ■ ENGINEERING ■ LAND SURVEYING
LANDSCAPE ARCHITECTURE ■ GEOSCIENCE ■ INTERIOR DESIGN

March 5, 2019

Legislative Reference Library
645 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155

Re: In The Matter of the Proposed Rules of the Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design Governing Professional Conduct; Revisor's ID Number R-04449

Dear Librarian:

The Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design ("Board") intends to adopt rules governing professional conduct. We plan to publish a Dual Notice of Intent to Adopt Rules without a Public Hearing Unless 25 or More Persons Request a Hearing in the April 1, 2019, State Register.

The Board has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Board is sending the Library an electronic copy of the Statement of Need and Reasonableness prior to mailing our Dual Notice.

If you have questions, please contact me at 651-757-1511.

Yours very truly,

A handwritten signature in blue ink that reads "Andrea Barker".

Andrea Barker
Assistant Executive Director

Enclosure: Statement of Need and Reasonableness

Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture,
Geoscience and Interior Design

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to Rules Governing Professional Conduct; Minnesota Rules, Chapter
1805

Revisor's ID Number R-04449

INTRODUCTION

The nature of the proposed rules of the Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design ("Board") is to amend its current rules that generally pertain to all licensees and certificate holders. The proposed rules will update and clarify the rules of professional conduct.

ALTERNATIVE FORMAT

Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Andrea Barker at the Board of AELSLAGID, 85 E. 7th Place, Suite 160, St. Paul, MN 55101, 651-757-1511, Fax: 651-297-5310, and email: andrea.barker@state.mn.us. TTY users may call the Board at (800) 627-3529.

STATUTORY AUTHORITY

This rulemaking is an amendment of rules for which the Legislature has not revised the statutory authority, so Minnesota Statutes, section 14.125, does not apply.

The Board's statutory authority to adopt the rules is stated in Minnesota Statutes section 326.06, which provides:

326.06 General powers and duties of Board.

Each member of the board shall receive a certificate of appointment from the governor, and, before beginning a term of office, shall file with the secretary of state the constitutional oath of office. The board shall adopt and have an official seal, which shall be affixed to all licenses granted; shall make all rules, not inconsistent with law, needed in performing its duties; and shall fix standards for determining the qualifications of applicants for certificates, which shall not exceed the requirements contained in the curriculum of a recognized school of architecture, landscape architecture, engineering, geoscience, or interior design. The board shall make rules to define classes of buildings with respect to which persons performing services described in section 326.03, subdivision 2, may be exempted from the provisions of

sections 326.02 to 326.15, by a finding of no probable risk to life, health, property or public welfare.

Under this statute, the Board has the necessary statutory authority to adopt the proposed rules.

BACKGROUND INFORMATION

Over the years, other than the addition of various professions under the Board's jurisdiction, Minnesota Rules, Chapter 1805, known as the Rules of Professional Conduct, has not been modified since it was originally adopted in the mid-1980s. This rule package clarifies, updates, and modernizes the Rules of Professional Conduct to create more meaningful and enforceable rules.

The Board is a member of several national organizations including the National Council of Architectural Registration Boards (NCARB), the National Council of Examiners for Engineering and Surveying (NCEES), and the Council of Landscape Architectural Registration Boards (CLARB), each of which publish Model Rules and Regulations. Significant research and collaboration between the national organizations and its member boards goes into creating the model rules and are considered to be the "ideal rules" for regulation of the profession. These publications are intended for use by member boards in creating their own jurisdiction-specific rules and regulations.

The Board thoroughly reviewed and compared each of these three organization's models rules regarding professional conduct. The proposed modifications to the Board's Rules of Professional Conduct are a result of many years of research and discussion.

REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) below quote these factors and then give the agency's response.

"(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule"

The classes of persons affected by and benefiting from the proposed modifications to the rules include all licensees, certificate holders, corporations, and partnerships subject to the Board's regulation. A line item in the Board's budget covers the cost of the rulemaking. The Board does not anticipate an increase in the cost to comply with or enforce these rules.

“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”

The probable costs to the Board include the costs associated with rulemaking in general. The Board does not anticipate an increase or decrease in the cost of enforcing the rules. It also does not anticipate any probable costs to any other agency because the Board is the only entity charged with the implementing and enforcing the proposed rules.

“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”

The purpose of the proposed rule modifications is to clarify and update existing language. Rule writing is the only method that exists to achieve these goals.

“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”

The rules serve to protect the public health, safety and welfare by ensuring that licensees and certificate holders abide by prescribed rules of conduct. Administrative rules are the only method available to the Board to define the requirements.

“(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”

There are no probable costs for governmental units, businesses, or individuals to comply with the proposed rules. Modifications to the rules offer clarity and updates to existing requirements. The package does not contain changes to fees for application, licensure, or certification.

“(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals”

The consequences of not adopting the proposed rules include outdated and confusing language remaining in the rules.

“(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference”

No relationship exists between these rules and federal regulations.

“(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. . . . ‘[C]umulative effect’ means the impact that results

from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”

Neither federal regulations nor other Minnesota state laws address the areas covered in the proposed rules. This consideration is not applicable for these rules.

PERFORMANCE-BASED RULES

Minnesota Statutes, sections 14.002 and 14.131, require that the SONAR describe how the agency, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.

To safeguard life, health and property, and promote the public welfare, the Board provides reasonable assurance that persons practicing architecture, engineering, land surveying, landscape architecture, geology, and soil science and persons using the title certified interior designer are competent, ethical practitioners qualified through education, examination and experience. Additionally, as an official licensing entity, the Board is charged with implementing those statutes and rules which specifically regulate the practice of and title use for these professions.

The proposed rule amendments embodied in this Statement of Need and Reasonableness emphasize superior achievement in meeting the Board’s regulatory objectives with maximum flexibility for the regulated party and the Board in meeting those goals. Chapter 1805, the Rules of Professional Conduct, has not been updated for over 20 years. While many aspects of professional conduct have not changed, it is critical that the rules remain current with the changing nature of the practice of the professions.

The proposed amendments allow for maximum flexibility to the regulated parties and to the Board in meeting its goals by ensuring that the rules are up-to-date. Licensees and certificate holders must be able to understand the requirements for their professional conduct in order to be able to follow the rules. The Board must be able to enforce the rules consistently and fairly. Finally, the rules must protect the public by ensuring that practitioners are ethical and competent. The proposed amendments meet these requirements by clarifying confusing language, delineating a licensee or certificate holder’s responsibility in protecting the public, and defining the conduct a licensee or certificate holder must exhibit.

ADDITIONAL NOTICE

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in a letter by Administrative Law LauraSue Schlatter, dated February 14, 2019.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the Minnesota Chapter of the American Institute of Architects (“AIA”), the professional society representing architects regulated by this Board.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the Minnesota Society of Professional Engineers (“MSPE”) and the American Council of Engineering Companies of Minnesota (“ACEC/MN”), the two largest professional societies representing professional engineers regulated by this Board.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the Minnesota Society of Professional Surveyors (“MSPS”), the professional society representing land surveyors regulated by this Board.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the Minnesota Association of County Surveyors (“MACS”), the group that represents land surveyors regulated by this Board who are working for Minnesota local county governments.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the Minnesota Chapter of the American Society of Landscape Architects (“MASLA”), the professional society representing landscape architects regulated by this Board.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the Minnesota Section of the American Institute of Professional Geologists (“AIPGMN”), the professional society representing professional geologists regulated by this Board.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the Minnesota Association of Professional Soil Scientists (“MAPSS”), the professional society representing professional soil scientists regulated by this Board.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the Northland Chapter of the International Interior Design Association (“IIDA”) and the Minnesota Chapter of the American Society of Interior Designers (“ASID”), the two professional societies representing certified interior designers regulated by this Board.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the National Council of Architectural Registration Boards (“NCARB”), the national council representing architects regulated by this Board.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the National Council of Examiners for Engineering and Surveying (“NCEES”), the national council representing professional engineering and land surveyors regulated by this Board.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the Council of Landscape Architectural Registration Boards (“CLARB”), the national council representing landscape architects regulated by this Board.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the National Association of State Boards of Geology (“ASBOG”), the national council representing professional geologists regulated by this Board.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the National Council of Soil Science Examiners (“CSSE”), the national council representing professional soil scientists regulated by this Board.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the Council for Interior Design Qualification (“CIDQ”), the national council representing certified interior designers regulated by this Board.

The Board will post the Dual Notice of Intent to Adopt and the proposed rule change on the Board’s website.

A postcard notification of the proposed rule changes with the website address where recipients will find the Dual Notice of Intent to Adopt, official language of the proposed rule and SONAR will be mailed to all current licensees and certificate holders.

Our Notice Plan includes giving notice required by statute. We will mail the proposed rules and the Notice of Intent to Adopt to everyone who has registered to be on the Board's rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. We will also give notice to the Legislature per Minnesota Statutes, section 14.116.

Our Notice Plan did not include notifying the Commissioner of Agriculture because the rules do not affect farming operations per Minnesota Statutes, section 14.111.

CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Board will consult with Minnesota Management and Budget (MMB). We will do this by sending MMB copies of the documents that we send to the Governor’s Office for review and approval on the same day we send them to the Governor’s office. We will do this before the Board’s publishing the Notice of Intent to Adopt. The documents will include: the Governor’s Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The Board will submit a copy of the cover correspondence and any response received from Minnesota Management and Budget to OAH at the hearing or with the documents it submits for ALJ review.

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

As required by Minnesota Statutes, section 14.128, subdivision 1, the Board has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The Board has determined that they do not because the rules pertain to individuals licensed or certified by this Board, not to governmental entities. Compliance with the rules falls on these individuals and enforcement of the rules falls solely on the Board.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

Agency Determination of Cost

As required by Minnesota Statutes, section 14.127, the Board has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Board has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city.

The Board has made this determination based on the probable costs of complying with the proposed rule, as described in the Regulatory Analysis sections on pages 2 to 4 of this SONAR.

LIST OF WITNESSES

If these rules go to a public hearing, the Board anticipates that any of the current Board members could potentially offer testimony in support of the need for and reasonableness of the rules. The Board will identify one individual to speak on behalf of the Board with others available for questions.

RULE-BY-RULE ANALYSIS

Note: Throughout Chapter 1805, the proposed changes include adding the terms “certified interior designer” and “certificate holder” to make it clear that individuals certified as Certified Interior Designers in Minnesota are subject to the Rules of Professional Conduct in the same manner as all other individuals licensed by the Board in other professions.

1805.0100 PROFESSIONAL CONDUCT

Subpart 1. **Purpose.** This ~~rule of chapter on~~ professional conduct is adopted for the purpose of implementing the laws and rules governing the practice of architecture, engineering, land surveying, landscape architecture, and geoscience ~~including Minnesota Statutes, section 326.111,~~ and the title use of certified interior design.

The proposed changes to subpart 1 are housekeeping in nature. There is no need to include the reference to Minnesota Statutes, section 326.111, since it is a law governing the practice of the professions and therefore covered earlier in the sentence.

Subpart 2: **Scope.** This ~~rule chapter~~ is applicable to and binding upon each person, corporation, or partnership subject to the regulatory jurisdiction of the board ~~and each person subject to the control of the licensee.~~

Modifications to subpart 2 include removing the phrase “and each person subject to the control of the licensee.” The Board does not have jurisdiction over non-licensees therefore, this chapter cannot be binding upon individuals who are not licensed or certified by the Board, whether or not they are under the control of a licensee.

Subp. 3. ~~Imputed knowledge of~~ professional responsibility.

~~Each licensee who holds a certificate of licensure issued by the board is charged with knowledge of this rule. In the exercise of the privileges and rights granted by the certificate of licensure, the licensee shall conform professional conduct to the public and to the board in accordance with the provisions of this rule, and shall, as a condition of licensure, subscribe to and agree to conduct the practice in accordance with the provisions of this rule.~~

A. The professional conduct of a licensee or certificate holder must accord with this chapter.

B. When providing professional services, the licensee’s or certificate holder’s primary responsibility is the protection of the public’s health, safety and welfare.

The title of subpart 3 has been changed to “professional responsibility” with two items delineating a licensee’s or certificate holder’s professional responsibility. Item A requires the conduct of licensees and certificate holders to be in accordance with this chapter. It is not necessary to state that they are charged with the knowledge of the rule. Licensees and certificate holders are automatically subject to the rules of the Board and it is unnecessary to restate that fact in rule.

Item B makes it clear that a licensee or certificate holder’s primary responsibility in providing professional services is the protection of the public’s health, safety, and welfare. Protection of the public is the reason that licensure and certification exists, therefore, it is important for those providing professional services to acknowledge and understand this as their primary responsibility.

1805.0200 ~~PERSONAL CONDUCT.~~ OBLIGATION TO PROVIDE FULL DISCLOSURE.

The heading of this part is modified to more accurately represent the subparts under it.

Subpart 1. **Public confidence and personal integrity statements.**

- A. A licensee or certificate holder shall avoid any act ~~which that~~ may diminish public confidence in the profession and shall, at all times, conduct himself or herself, in all relations with clients and the public, so as to maintain its reputation for professional integrity.
- B. A licensee or certificate holder shall be objective and truthful in all professional plans, reports, statements, testimony, or other documents. The licensee or certificate holder shall include all relevant and pertinent information in such documents or testimony and express professional opinions publicly only when they are founded upon an adequate knowledge of the facts and a competent evaluation of the subject matter.

The title for subpart 1 has been changed to better reflect the content and it is split into two items, A and B, for clarity. Item A contains the language that was already part of subpart 1 and simply adds the term "certificate holder." Item B is new language derived from language in the NCARB, NCEES, and CLARB model laws and rules. In order to protect the public health, safety, and welfare, the rule requires that licensees and certificate holders be objective and truthful and to only make public statements when the licensee or certificate holder is knowledgeable of the facts and subject matter. The public relies on these statements.

Subp. 1a. **Credit** A licensee or certificate holder shall accurately represent the qualifications, education, training, or experience and the scope of responsibility in connection with work for which the licensee or certificate holder is claiming credit, as well as that of their employer, employees, or associates.

This subpart has been added to ensure that licensees and certificate holders are not falsely representing themselves or others to the public.

Subp. 2. **False statements and nondisclosure.** A licensee or certificate holder shall not ~~submit~~ make a materially false statement or fail to disclose a material fact requested in connection with the an application for certification, or licensure, or renewal in this state or any other state.

Changes to subpart 2 are housekeeping in nature.

Subp. 3. **Knowledge of unqualified applicants.**

- A. A licensee or certificate holder shall not ~~further the~~ endorse an application for certification or licensure of another person known by the licensee or certificate holder to be unqualified in respect to character, education, experience, or other relevant factor.

B. A licensee or certificate holder possessing knowledge of an applicant’s qualifications for examination, licensure, or certification shall cooperate with the applicant and the board by responding regarding those qualifications when requested to do so. A licensee or certificate holder shall provide verification of employment and experience earned by an applicant under supervision if there is reasonable assurance that the facts to be verified are accurate. A licensee or certificate holder shall not knowingly sign a verification document that contains false or misleading information.

Subpart 3 has been amended to include two items. Item A contains the original language of the subpart with housekeeping modifications for clarity. Item B contains language from the national councils’ model laws and rules requiring licensees and certificate holders to cooperate with the Board and to provide verification of employment and experience of applicants when requested to do so. This item requires that licensees and certificate holders be truthful in their verifications. Verifications of experience are one of the requirements of initial licensure. Falsified or misleading information in a verification of employment could lead to licensure or certification of an unqualified individual, resulting in potential harm to the public. The Board is charged with ensuring that individuals are qualified for licensure or certification by verifying an applicant’s completion of the education, examination, and experience requirements. The Board must rely on the supervisors of each applicant to provide honest and accurate verifications of employment and experience.

Subp. 3a. **Knowledge of improper conduct by others.** A licensee or certificate holder possessing knowledge of any acts prohibited by this chapter, chapter 1800, or Minnesota Statutes, section 326.02 to 326.15, by another licensee, certificate holder, or unlicensed individual shall report such knowledge to the board.

Upon questioning by the board or its representative during an official inquiry into an alleged act, a licensee or certificate holder shall disclose any knowledge the licensee or certificate holder may have in the matter.

The language for subpart 3a has been moved from part 1805.0600 and modified slightly. It makes sense to include this subpart under the overall heading of “Obligation to Provide Full Disclosure” since the licensee or certificate holder is obligated to report their knowledge of another individual’s acts that may be a violation of the Board’s statutes and rules. The reporting licensee or certificate holders does not need to make a determination on whether an actual violation of statutes or rules occurred – only that another license or certificate holder acted in a way prohibited by the Board’s statutes and rules.

Subp. 4. **General prohibitions.** A licensee or certificate holder shall not:

- A. circumvent a rule of professional conduct through actions of another;
- B. engage in illegal conduct involving moral turpitude;
- C. engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

- D. engage in conduct that adversely reflects on the licensee's fitness to practice the profession; or
- E. permit the licensee's or certificate holder's name or seal to be affixed to plans, specifications, or other documents ~~which that~~ were not prepared by or under the direct supervision of the licensee or certificate holder.

The changes to subpart 4 are housekeeping in nature.

1805.0300 CONFLICT OF INTEREST.

Subpart 1. **Employment.** A licensee or certificate holder shall ~~avoid accepting~~ not accept a ~~commission~~ project where duty to the client or the public would conflict with the personal interest of the licensee or certificate holder or the interest of another client. Prior to accepting ~~such employment~~ a project, the licensee or certificate holder shall disclose to a prospective client such facts as may give rise to a conflict of interest.

Subp. 2. **Compensation.** A licensee or certificate holder shall not accept compensation for services relating or pertaining to the same project from more than one party unless there is a unity of interest between or among the parties to the project and unless the licensee or certificate holder makes full disclosure and obtains the express consent of all parties from whom compensation will be received.

Subp. 3. **Gifts.**

- A. A licensee or certificate holder shall not, directly or indirectly, solicit or accept any compensation, gratuity, or item of value from contractors, their agents, material or equipment suppliers, or other persons dealing with the client or employer in connection with the work for which the licensee or certificate holder has been retained without the knowledge and approval of the client or the employer.
- B. A licensee or certificate holder shall neither offer nor make any payment or gift to a government official, whether elected or appointed, with the intent of influencing the official's judgment in connection with a prospective or existing project in which the licensee or certificate holder is interested or involved.

Subp. 4. **Interpretations.** When acting as the interpreter of project contract documents or as the judge of contract performance, a licensee or certificate holder shall render decisions impartially, using the professional judgment of their licensed or certified discipline.

The changes to subparts 1 and 2 are housekeeping in nature. Subpart 3 has been divided into two items. Item A contains the original language of the subpart with some minor modifications. Item B contains new language from the national councils' model laws and rules prohibiting licensees and certificate holders from bribing a government official.

The language in subpart 4 is also new language derived from the national councils' model laws and rules. A contract is between the owner and the contractor, however, the designer of record could serve as interpreter of a contract in a disagreement before an owner and contractor go to arbitration. The designer of record must pay attention to any potential conflict of interest when interpreting contract documents, remain neutral, and perform in an ethical and professional manner. The licensee's or certificate holder's responsibility is to the public protection of the citizens of Minnesota – not to the owner or the contractor.

1805.0400 IMPROPER SOLICITATION OF EMPLOYMENT.

A. A licensee or certificate holder shall seek and engage in only the professional work or employment the professional is competent and qualified to perform by reason of education, training, or experience.

~~A licensee shall not falsify or misrepresent the extent of the licensee's education, training, experience, or qualifications to any person or to the public; nor misrepresent the extent of the licensee's responsibility in connection with any prior employment.~~

~~A licensee shall not transmit, distribute, or publish or allow to be transmitted, distributed, or published, any false or misleading information regarding the licensee's own qualifications, training, or experience or that of his or her employer, employees, associates, or joint venturers.~~

B. A licensee or certificate holder shall not tender any gift, pay, or offer to pay, directly or indirectly, anything of substantial value, whether in the form of a commission or otherwise, as an inducement to secure employment. A licensee or certificate holder is not prohibited from paying a commission to a licensed employment agency for securing a salaried position.

This subpart is divided into items A and B for clarity. The stricken language has been modified and included in part 1805.0200.

1805.0500 FALSE OR MALICIOUS STATEMENTS.

A licensee or certificate holder shall not make ~~no~~ false or malicious statements ~~which that~~ may have the effect, directly or indirectly, or by implication, of injuring the personal or professional reputation or business of another member of the profession.

Changes to this rule are housekeeping in nature.

~~**1805.0600 KNOWLEDGE OF IMPROPER CONDUCT BY OTHERS.**~~

~~A licensee who has knowledge or reasonable grounds for believing that another member of the profession has violated any statute or rule regulating the practice of the profession shall have the duty of presenting such information to the board.~~

~~A licensee, when questioned concerning any alleged violation on the part of another person by any member or authorized representative of the board commissioned or delegated to conduct an official inquiry, shall neither fail nor refuse to divulge such information as the licensee may have relative thereto.~~

The language for this rule part has been moved to 1805.0200.

1805.0650 COMPETENCE

Subp. 1. **Standards of competence.** In practicing architecture, engineering, land surveying, landscape architecture, geoscience, or using the title of certified interior designer, each licensee or certificate holder shall act with reasonable care and competence and shall apply the knowledge and skill that is ordinarily applied by such professionals.

Subp. 2. **Conformance with state and local laws and regulations.** In providing professional services, a licensee or certificate holder shall take into account applicable state and local laws and regulations. While a licensee or certificate holder may rely on the advice of other professionals as to the intent and meaning of such regulations, once having obtained the advice, the licensee or certificate holder shall not violate such laws and regulations.

Subp. 3. **Qualifications for performing professional services.** A licensee or certificate holder shall perform professional services only when the licensee or certificate holder, together with those whom the licensee or certificate holder may engage as consultants, are qualified by education, training, and experience in the specific technical areas involved.

The language for part 1805.0650 is new language based on language in the NCARB Model Rules. The language helps to protect the public health, safety, and welfare by describing standards that licensees and certificate holders must follow to ensure that professional work is completed properly.

1805.0700 ACTION BY OTHER JURISDICTION. COMPLIANCE WITH LAWS

Subpart. 1. **Violation of laws.** Convictions of a felony without restoration of civil rights, or ~~the revocation or suspension of the certificate of licensure of a~~ disciplinary action taken against a licensee or certificate holder by another jurisdiction, if for cause which in the state of Minnesota would constitute a violation of law or of these rules, shall be deemed to be a violation of these rules of professional conduct.

Subp. 2. **Incompetence.** ~~Any~~ A licensee or certificate holder adjudged mentally incompetent by a court of competent jurisdiction shall, until restored to mental competency, be deemed to be incompetent to practice the profession within the meaning of Minnesota Statutes, section 326.11, subdivision 2.

This rule has been renamed to better reflect the content of the rule. Additionally, it has

been divided into two items for clarity. The remaining changes are housekeeping in nature.

1805.0800 EMPLOYMENT ~~ON THE BASIS OF MERIT~~ PRACTICES.

A licensee or certificate holder, as an employer, shall refrain from engaging in any discriminatory employment practice prohibited by law ~~and shall, in the conduct of the business,~~ employ professional personnel solely upon the basis of merit.

This rule has been modified to simply require that licensees and certificate holders follow employment law and refrain from discrimination in hiring practices. While merit is important when considering who to hire, it is not the sole factor in determining which individual is best suited to the position, therefore it is inappropriate to require in rule.

1805.0900 PROFESSIONAL MISCONDUCT.

Misconduct within the meaning of Minnesota Statutes, section 326.11, subdivision 1, shall include any act or practice in violation of the rules of professional conduct ~~as set forth in parts 1805.0100 to 1805.0800~~ 1805.1800 this chapter. A licensee or certificate holder shall not engage in conduct involving bribery, collusion, corruption, fraud, or malice.

Most changes to this rule are housekeeping in nature. The last sentence was added to help define conduct that would be considered professional misconduct.

1805.1500 REGISTRATION.

No corporation, partnership, or other firm engaged in the practice of architecture, engineering, land surveying, landscape architecture, ~~or~~ geoscience, or two or more of these professions, shall contract with or accept employment for professional services of an architectural, engineering, land surveying, landscape architectural, or geoscience character as defined in Minnesota Statutes, sections 326.02 to 326.15, unless a member or employee of the corporation, partnership, or other firm in responsible charge of the work is registered and licensed under ~~the provisions of~~ Minnesota Statutes, sections 326.02 to 326.15, to practice the profession called for by the employment.

The changes to this rule are housekeeping nature.

1805.1600 RESPONSIBLE CHARGE AND DIRECT SUPERVISION.

Subpart 1. **Responsible charge; defined.** A person in responsible charge of architectural, engineering, land surveying, landscape architectural, geoscience, or certified interior design work as used in Minnesota Statutes, section 326.14 means the person who determines and reviews design policy criteria, including technical aspects, advises with the client, ~~superintends~~ has direct supervision of subordinates during the course of the work and, in general, the person whose professional skill and judgment are embodied in the plans, designs, and advice involved

in the work. Plans and specifications for buildings, structures, or projects of standard design which have been designed outside the state shall bear the certification of the design professional licensed in another United States licensing jurisdiction. In addition, a Minnesota licensed architect, professional engineer, land surveyor, landscape architect, professional geologist, professional soil scientist, or certified interior designer shall review the design and certify that it is appropriate to the site on which construction is proposed and is in compliance with the State Building Code adopted by the Department of Administration where the building code is in effect.

The changes to the first part of this subpart are housekeeping in nature. The second part of this subpart was in conflict with the provisions of Chapter 1800. Minnesota Rule 1800.4200, subpart 1a, item D, states, "A licensee or certificate holder shall not affix a signature or certification to any plan or document not prepare under the licensee's or certificate holder's responsible charge."

Subp. 2. **Direct supervision; defined.** A person in "direct supervision" of work as referred to in Minnesota Statutes, section 326.12, subdivision 3, means that person who is the employer, an employee of the same firm, or who is under contract to or from another firm and who is in responsible charge of the technical aspects of the architectural, engineering, land surveying, landscape architectural, geoscience, or certified interior design work in progress, and whose professional skill and judgment are embodied in the plans, specifications, reports, plats, or other documents required to be certified pursuant to that subdivision. A person in direct supervision of work directs the work of other licensees, ~~interns, draftspeople,~~ unlicensed professionals, technicians, and clerical persons assigned to that work and is in responsible charge of the project comprising the work being supervised.

Changes to this subpart are housekeeping in nature.

CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

2.15.17
Date

Doreen Johnson
Doreen Johnson
Executive Director