



MEETING MINUTES CALIFORNIA ARCHITECTS BOARD

December 11, 2019
Los Angeles

A. CALL TO ORDER / ROLL CALL / ESTABLISHMENT OF A QUORUM

On December 11, 2019, Board President, Sylvia Kwan, called the meeting to order at 9:35 a.m. and Executive Officer (EO), Laura Zuniga, called roll.

Board Members Present

Sylvia Kwan, President
Tian Feng, Vice President
Nilza Serrano, Secretary
Denise Campos (arrived at 9:52 a.m.)
Malcolm "Brett" Gladstone
Pasqual Gutierrez
Ebony Lewis
Robert C. Pearman, Jr.
Charles "Sonny" Ward, III

Six members of the Board present constitute a quorum. There being nine members present at the time of roll, a quorum was established.

Guests Present

David E. Barker, Esq., Collins Collins Muir + Stewart LLP
Mark Christian, Director of Government Relations, American Institute of Architects, California (AIA California)
D. Michael Hamner, Professor & Chair, East Los Angeles College (ELAC)
Jon S. Wreschinsky, Vice Chair, Landscape Architects Technical Committee (LATC)

Staff Present

Laura Zuniga, Executive Officer (EO)
Marccus Reinhardt, Program Manager Examination/Licensing
Tim Rodda, Program Manager Administration/Enforcement
Trish Rodriguez, LATC Program Manager
Tara Welch, Attorney III, Department of Consumer Affairs (DCA)
Gabrial Nessar, Administration Analyst
Mike Sanchez, Television Specialist, DCA

B. PRESIDENT'S PROCEDURAL REMARKS AND BOARD MEMBER INTRODUCTORY COMMENTS

Ms. Kwan 1) announced that the meeting is being webcast, 2) thanked ELAC for hosting the Board, 3) recognized LATC Vice Chair, Jon Wreschinsky, is in

attendance, 4) welcomed new Board members Brett Gladstone and Sonny Ward, and 5) reminded members that all motions and seconds will be repeated for the record, and votes on all motions will be taken by roll-call.

C. UPDATE ON THE DEPARTMENT OF CONSUMER AFFAIRS (DCA)

Ms. Zuniga informed the Board that Assistant Deputy Director, Karen Nelson, no longer serves the Department. Ms. Zuniga read a letter from newly appointed DCA Director, Kimberly Kirchmeyer, in which Ms. Kirchmeyer 1) outlined her focus on: a) client services and satisfaction, b) effective teamwork, and c) data transparency and action; 2) announced that the next quarterly meeting between the DCA Executive Office and board/bureau EOs is scheduled for December 16, 2019, when departmental goals and updates will be shared and provided; 3) informed of personnel changes to the DCA leadership team, to include the departures of a) Chief Deputy Director, Christopher Shultz, b) Deputy Director, Christopher Castrillo, c) Deputy Director for Legislation, Dennis Cuevas-Romero, and d) Ms. Nelson; 4) publicized recent updates to the on-line *Board Member Resources Center*, and 5) revealed the new departmental publication, *DCA We Are Listening*.

D. PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

There were no comments from the public.

F.* PRESENTATION ON ARCHITECTURAL COPYRIGHT – DAVID E. BARKER, ESQ., COLLINS COLLINS MUIR + STEWART LLP

Mr. Barker provided an overview on architectural copyrights. He explained that architects are authors of their plans; however, ownership of a copyright is different from ownership of the plans.

Exclusive rights of copyright include ability to reproduce plans, to prepare derivative work based upon the copyrighted work, and to distribute copies of the copyrighted work. All those rights belong to owner of the copyright. Copyrights are established under federal law, while California law is about licenses and contracts.

Health and Safety Code section 19851 controls when building departments can release copies of plans. Departments cannot release a copy of plans without the permission of the owner and the original designer.

Some terms to look out for in contracts are “Fair Use” when a copyrighted document is used for teaching or educational purpose. Also “Work for Hire,” which is anything made by employee in the course and scope of employment. That work product is owned by the firm, not by an individual. If there is an agreement signed by the parties before the work that is created that says the work will be a work made for hire, the client then owns the copyright.

As soon as architects start creating a design, they own it. However, although architects hold copyright automatically, if there is going to be legal action architects should file for copyright and go through the process to easily demonstrate their copyright.

E. PRESENTATION ON EAST LOS ANGELES COLLEGE

Professor D. Michael Hamner provided the Board with a presentation on the ELAC architecture program. Mr. Hamner also provided members with his biographical information that included a connection to the local area in which the school is located. He further provided members with a historical summation of the ELAC program and its growth over the past 13 years.

Mr. Hamner listed some of the universities ELAC serves, which include seven of the 2018 top ten schools. He noted that 270 students have transitioned to university architecture programs and, of those, 97% graduated. Mr. Hamner introduced students who accompanied him to the presentation and described them as demographically representative of the population within the ELAC architecture program; however, he noted that the program is evenly split along the lines of gender. He explained the amount of support the ELAC program has received from local major architecture firms and universities. Mr. Hamner added that ELAC averages 24 students per year who transition to university-level programs. He closed the presentation with an explanation of the methodology used by ELAC to professionally and personally develop its architecture students.

Ms. Campos complimented the program and stated that ELAC serves the community well.

G. REVIEW AND POSSIBLE ACTION ON SEPTEMBER 11, 2019 BOARD MEETING MINUTES

Ms. Kwan asked for comments concerning the minutes of the September 11, 2019 Board meeting. Ms. Zuniga noted a technical correction on page one.

- **Denise Campos moved to approve the September 11, 2019 Board meeting minutes with a technical correction on page one.**

Robert C. Pearman, Jr. seconded the motion.

There were no comments from the public.

Members Campos, Feng, Gladstone, Gutierrez, Lewis, Pearman, Serrano, Ward and President Kwan voted in favor of the motion. The motion passed 9-0.

H. ELECTION OF 2020 BOARD OFFICERS

Ms. Kwan referred this agenda item to the Nominations Committee members, Pasqual Gutierrez and Ebony Lewis. Mr. Gutierrez presented the Committee's recommended slate of officers for 2020:

Nominations Committee Recommended Slate of Officers for 2020

Tian Feng – President

Denise Campos – Vice President

Nilza Serrano – Secretary

Mr. Feng and Mses. Campos and Serrano accepted the Committee's nominations.

- **Robert Pearman moved to elect Tian Feng for President, Denise Campos for Vice President, and Nilza Serrano for Secretary for 2020.**

Ebony Lewis seconded the motion.

There were no comments from the public.

Members Campos, Feng, Gladstone, Gutierrez, Lewis, Pearman, Serrano, Ward and President Kwan voted in favor of the motion. The motion passed 9-0.

I. DISCUSS AND POSSIBLE ACTION ON RECOMMENDATION REGARDING 2019 OCTAVIUS MORGAN DISTINGUISHED SERVICE AWARDS

Ms. Kwan explained the nature of the Octavius Morgan Distinguished Service Award and the requirements to be nominated. She summarized for members the contributions over the past two decades of Kirk Miller, the 2019 nominee for the award.

- **Tian Feng moved to award Kirk Miller the Octavius Morgan Distinguished Service Award for 2019 and to use Board member personal funds to pay for the cost of the award.**

Sylvia Kwan seconded the motion.

There were no comments from the public.

Members Campos, Feng, Gladstone, Gutierrez, Lewis, Serrano, Ward, and President Kwan voted in favor of the motion. Member Pearman was absent at the time of the vote. The motion passed 8-0.

J. EXECUTIVE OFFICER’S REPORT – UPDATE ON BOARD’S ADMINISTRATION / MANAGEMENT, EXAMINATION, LICENSING, AND ENFORCEMENT PROGRAMS

Ms. Zuniga informed the Board that its next Professional Qualifications Committee (PQC) meeting is scheduled for January 23, 2020. She also noted that an update on the November 19, 2019, Communications Committee meeting will be provided under Agenda Item O. Ms. Zuniga reminded the Board that the DCA is transitioning to a new budgeting program and that final fiscal data for fiscal year 2017-18 is still unavailable. She anticipated this data will be released prior to the next Board meeting when Budget Office staff will present a comprehensive budget update to the Board. Ms. Zuniga reported that Business Modernization is still being developed and that departmental leadership is now considering whether boards will be organized into cohorts to minimize costs; she noted an estimated project completion date of November 1, 2022. Ms. Zuniga reported that updates to the *Building Official Information Guide* are now complete and are available online. She also announced that the Board has expanded its social media presence to include *LinkedIn*.

Ms. Serrano opined the Architect Registration Examination (ARE) pass/fail statistics for 2019 have not improved from the previous year. Mr. Feng expressed a similar view and noted the importance of comparative studies of California candidate performance versus that of candidates in other large states. He suggested the Board may soon become involved in exploring solutions to this perceived problem. Ms. Zuniga reminded the Board that the issue is referred to the PQC. She recommended the PQC consider the impact of the Board’s multiple pathways approach to licensure on ARE performance. The Board discussed the 1) distinction between ARE candidates who a) received architectural education from California institutions, and b) did not fulfill their education requirements in California but are geographically present while taking the examination; 2) availability of detailed ARE candidate demographic data to generate comparative statistics (e.g., accredited degree versus non-accredited degree program candidates); and 3) need for a deeper assessment of the architect pipeline in California’s current economic climate.

Ms. Zuniga reported that 14 qualified licensed architects were recruited to serve as subject matter experts to provide evaluation on the Board’s enforcement cases. She also reported that the Board’s three-year Strategic Plan goals and objectives are being addressed by its various committees.

K. REVIEW, DISCUSS, AND POSSIBLE ACTION ON DRAFT NATIONAL COUNCIL OF ARCHITECTURAL REGISTRATION BOARDS (NCARB) MODEL LAW

Ms. Zuniga presented the draft of the NCARB Model Law. She stated that the first comment period had passed but that NCARB had asked each member jurisdiction

to review the draft, and that there will be additional opportunities to comment. Ms. Zuniga noted that the Model Law continues to require an accredited degree as a requirement for licensure, while California has additional pathways to licensure.

Mr. Feng asked if the PQC could review the draft at its next meeting. Ms. Zuniga agreed to place on the agenda.

Mr. Gutierrez noted that the NCARB Model Law Task Force continues to work on the draft and released an updated version after the Board meeting materials were printed. He stated it is important to consider the Model Law and Model Regulations together. He further noted it is up to the Board to determine if it wants to accept additional pathways to licensure.

Mr. Pearman asked when California passed its Practice Act and if it was based on the Model Law. Ms. Zuniga stated she did not believe California's law was based on the Model Law.

L. UPDATE AND POSSIBLE ACTION ON LEGISLATION REGARDING:

1. Assembly Bill (AB) 476 (B. Rubio, 2019) Department of Consumer Affairs: Task Force: Foreign-Trained Professionals

Ms. Zuniga presented this item as an update only and informed the Board the Governor vetoed the bill.

2. AB 626 (Quirk-Silva, 2019) Conflicts of Interest

Ms. Zuniga presented this item and reminded the Board they had requested the opportunity to review and discuss further. Mr. Feng suggested the Board wait and see if the bill is amended further before taking a position. Mark Christian, AIA California, said that would be good option, as we do not yet know what the new language would look like.

Mr. Gladstone asked Mr. Christian about how the state got to point that this type of activity was considered a conflict of interest, and Mr. Christian replied that it was through court rulings on Government Code section 1090.

Ms. Kwan mentioned there are two schools of thought generally on conflict of interest. Architects would like to be able to continue their work, while the other view is that early participation creates an unfair advantage. Mr. Christian said that the building trades are concerned if architects are going to do construction management.

3. Senate Bill (SB) 601 (Morrell, Chapter 854, Statutes of 2019) State Agencies: Licenses: Fee Waiver

Ms. Zuniga presented this item for update only.

4. SB 608 (Glazer, Chapter 376, Statutes of 2019) Architects and Landscape Architects

Ms. Zuniga presented this item for update only and reminded the Board this was the bill that extended the Board's sunset date and made related changes to the Practice Act.

Mr. Gutierrez asked that the Board take California Community Colleges into consideration when developing continuing education (CE) requirements. He also asked that staff include information in the practice brief about the written contract requirements and specifically the exemption from the written contract requirement for work with public agencies.

M. DISCUSS AND POSSIBLE ACTION ON 2020 LEGISLATIVE PROPOSAL ON IMPLEMENTATION OF FINGERPRINTING REQUIREMENT

Ms. Zuniga presented this item. She explained that SB 608 requires both the Board and LATC to begin fingerprinting applicants, and that while SB 608 included additional language for the Board to implement the requirement, the bill did not include similar language for LATC. This proposal would add that language to the Landscape Architects Practice Act.

- **Nilza Serrano moved to approve the legislative proposal to implement the fingerprint requirement.**

Robert Pearman seconded the motion.

There were no comments from the public.

Members Campos, Feng, Gladstone, Gutierrez, Lewis, Pearman, Serrano, Ward, and President Kwan voted in favor of the motion. The motion passed 9-0.

N. DISCUSS AND POSSIBLE ACTION ON RETIRED LICENSE:

1. Proposed Amendment to California Code of Regulations (CCR), Title 16, Division 2, Article 7, Section 144, Fees

Mr. Reinhardt reminded the Board that, at its September 11, 2019 meeting, staff was directed to research administrative costs associated with retiring an architect license. He reported that staff worked with the DCA Budget Office to determine such costs using a methodology specified in the State Administrative Manual. Mr. Reinhardt recommended a \$40 fee for issuance of a retired license. Ms. Kwan subsequently provided new Board members with a brief background on the issue prior to voting on the motion.

Mr. Christian asked whether the fee includes the cost of the wall certificate issued to a retired architect. The Board advised the fee includes all related costs.

- **Robert Pearman moved to approve the proposed regulatory changes to CCR section 144 and set the fee for a retired architect license at \$40; direct the EO to take all steps necessary to initiate the rulemaking process; authorize the EO to make any technical or nonsubstantive changes to the rulemaking package; notice the proposed text for a 45-day comment period and, if no adverse comments are received during the 45-day comment period and no hearing is requested, adopt the proposed regulatory changes as modified.**

Denise Campos seconded the motion.

Members Campos, Feng, Gladstone, Gutierrez, Lewis, Pearman, Serrano, Ward, and President Kwan voted in favor of the motion. The motion passed 9-0.

2. 2020 Legislative Proposal to Amend Business and Professions Code Section 5600.4

Ms. Zuniga presented this item. She stated this proposal arose from reviewing the retired license fee and a determination that existing law only provides a path for a retired license holder whose license had been expired for more than five years to reinstate their license. This change would be to establish a pathway for retired licensee holder whose license has been expired for less than five years to reinstate their license to active status.

Mr. Gutierrez asked if the licensee would be required to complete CE. Ms. Zuniga said they would not be required to complete any CE for the time period in which their license was in retired status.

Mr. Pearman asked if the retired license holder would have to pay a delinquency fee to reinstate. Mr. Reinhardt stated that the delinquency fee does not need to be paid if they were not delinquent in their renewal or reinstatement, and further explained that the change is needed to allow a retired license holder to reinstate without taking the California Supplemental Examination in order to restore their license to active status, if their license had not been retired for more than five years.

Tara. Welch clarified the change is only to further define the reinstatement process for a retired license holder.

- **Tian Feng moved to approve the legislative proposal.**

Robert Pearman seconded the motion.

There were no comments from the public.

Members Campos, Feng, Gutierrez, Lewis, Pearman, Serrano, Ward, and President Kwan voted in favor of the motion. Member Gladstone was absent at the time of the vote. The motion passed 8-0.

O. UPDATE ON NOVEMBER 19, 2019 COMMUNICATIONS COMMITTEE MEETING

Ms. Campos, Chair of the Communications Committee, provided an update on the meeting held on November 19, 2019. She reported that the Committee discussed the Board's stakeholders, its target audiences, and how to use the Board's social media assets more effectively. Ms. Campos expressed the Committee's view that the *California Architects* newsletter published more frequently with less content will better fill the needs of its subscribers. She requested the Board begin building publicity through earned media, particularly following national or natural disasters. Ms. Campos additionally asked the Board for clarification on what it would like to be communicated that is not already being addressed.

P. LANDSCAPE ARCHITECTS TECHNICAL COMMITTEE (LATC) REPORT

1. Update on September 5, 2019 and November 8, 2019 LATC Meetings

Trish Rodriguez updated the Board on the past two LATC meetings held on September 5, 2019 and November 8, 2019. She explained that the purpose of the September LATC meeting was to prepare for the Council of Landscape Architectural Registration Boards (CLARB) Annual Meeting and approve the elections ballot and resolutions. Ms. Kwan asked for an explanation of CLARB, and Ms. Rodriguez explained that CLARB was similar to the NCARB in that CLARB administers the national examination for landscape architects. She reported that during the November LATC meeting, a presentation from the Office of Professional Examination Services (OPES) was given regarding the Occupational Analysis (OA) process. She noted that the approved contract for the OA was also included in the meeting packet. Mr. Gutierrez observed that CLARB's Model Law was the basis for NCARB's Model Law.

2. Review and Possible Action to Approve Proposed Amendments to the LATC Member Administrative Manual

Ms. Rodriguez reported that the LATC Member Administrative Manual, which was part of the submission to the Sunset Report in December 2018, was approved with additional edits by the Board in June 2019. She explained that

the LATC Manual incorporated language from the Board approved manual, and the LATC worked with DCA legal to include additional language explaining that members are appointed to four-year terms and no member may serve for more than two consecutive terms. Ms. Rodriguez informed that a copy of the LATC Member Administrative Manual with the proposed changes is provided for the Board's consideration.

- **Nilza Serrano moved to approve the proposed amendments to the LATC Member Administrative Manual.**

Ebony Lewis seconded the motion.

Mr. Feng inquired about the process to approve the LATC Member Administrative Manual, to which Ms. Rodriguez clarified that the LATC approved additional edits to the Manual and the LATC Manual was modeled after language in the Board's. Mr. Ward asked whether the Board had reviewed the LATC Manual previously, and Ms. Zuniga replied that the Board reviewed the Manual last year and the additional edits were being included because the LATC's statute was different than the Board's.

Ms. Welch advised that members may abstain from voting on this item; however, enough information was provided in the meeting materials to make an informed decision.

Members Campos, Feng, Gutierrez, Lewis, Pearman, Serrano, Gladstone, and President Kwan voted in favor of the motion. Member Ward abstained. The motion passed 8-0-1.

3. Review and Possible Action on Proposed Amendments to CCR, Title 16, Division 26, Article 1, Sections 2655 Substantial Relationship Criteria and 2656 Criteria for Rehabilitation

Ms. Welch reported that regulations are being enacted in response to recently passed legislation related to the criteria for consideration of a crime and when it is substantially related to the practice. She explained that the regulations would also include formal discipline for professional misconduct and revisions to criteria used when considering rehabilitation of an applicant who is denied a license or licensee who has been put on probation, and revisions to the criteria used to assess whether formal discipline is necessary. Ms. Welch reported that the Office of Administrative Law (OAL) requested text changes, and that she is working with OAL to determine what additional information is required for the rulemaking documents to satisfy their concerns, and any necessary modifications for the rulemaking text. She elaborated that they have worked on several revisions to the text that OAL identified as non-substantive, and they are still working with OAL on other items to determine whether additional changes are necessary and non-substantive. Ms. Welch informed that the

LATC has already completed the 45-day comment period for their regulatory package, and the LATC is ready to submit the final rulemaking package for approval by the DCA and the Business, Consumer Services and Housing Agency (Agency). She further explained that once the draft language satisfies OAL's concerns and other necessary documentation is submitted, then a 15-day public notice would be required of the additional documents, and once complete, the package would be under review for final approval and enactment by OAL.

Q. REVIEW AND POSSIBLE ACTION ON PROPOSED AMENDMENTS TO CCR, TITLE 16, DIVISION 2, ARTICLE 2, SECTIONS 110 SUBSTANTIAL RELATIONSHIP CRITERIA AND 110.1 CRITERIA FOR REHABILITATION

Ms. Welch stated that the regulatory package for the Board is ready for the 45-day comment period, and the same process as the LATC's regulation would be followed, leading potentially to 15-day public review, and then review by the DCA and approval by OAL. She noted that if OAL identifies substantive changes that need to be made to the text, then the Board would need to review the modified text. Ms. Welch also cautioned that the regulations need to be on file with the Secretary of State by July 1, 2020, stating that a teleconference may be necessary to approve changes requested by OAL. Lastly, she updated the Board that the DCA has a new regulations unit to assist with the regulatory packages.

R. REVIEW OF FUTURE BOARD MEETING DATES

The Board discussed potential meeting dates and locations for the upcoming year.

S. CLOSED SESSION - PURSUANT TO GOVERNMENT CODE SECTIONS 11126(A)(1), (C)(3), AND (F)(4), AND 11126.1, THE BOARD WILL MEET IN CLOSED SESSION TO:

- 1. Review and Possible Action on September 11, 2019 Closed Session Minutes**
- 2. Deliberate and Vote on Disciplinary Matters**
- 3. Perform Annual Evaluation of its Executive Officer**
- 4. Adjourn Closed Session**

T. RECONVENE OPEN SESSION

The Board reconvened in Open Session.

U. ADJOURNMENT

The meeting adjourned at 2:14 p.m.

** Agenda items for this meeting were taken out of order to accommodate presenters of items. The order of business conducted herein follows the transaction of business.*