



**MEETING MINUTES
CALIFORNIA ARCHITECTS BOARD
REGULATORY AND ENFORCEMENT COMMITTEE**

January 25, 2022
Teleconference Meeting

Committee Members Present

Ronald A. Jones, Chair
Robert C. Pearman, Jr., Vice Chair (left early)
Robert Chase
Sylvia Kwan

Committee Members Absent

Steven Winkel

Board Staff Present

Laura Zuniga, Executive Officer
Alicia Kroeger, Program Manager, Enforcement
Jane Kreidler, Program Manager, Administrative
Marccus Reinhardt, Program Manager, Examinations/Licensing
Annamarie Fernandez, Enforcement Technician
Coleen Galvan, Communications Analyst
Darren Dumas, Examination/Licensing Analyst
Idris Ahmed, Enforcement Analyst
Jasmine Steinwert, Enforcement Analyst
Jesse Bruinsma, Continuing Education Analyst
Michael Sganga, Lead Enforcement Analyst
Katie Wiley, Enforcement Analyst

DCA Staff

David Bouilly, Host
Mike Sanchez, Television Specialist, Office of Public Affairs

Guests

Cary Bernstein, Director San Francisco, The American Institute of Architects, California (AIACC)
Mark Christian, Director of Government Relations, AIACC
Mark Paone, VP of Strategic Planning & Research, AIACC
Rona Rothenberg, President, AIACC
Tian Feng, Board President (left early)

A. Call to Order / Roll Call / Establishment of a Quorum

Regulatory and Enforcement Committee (REC) Chair Ronald A. Jones., called the meeting to order at 12:05 p.m.

Robert Pearman called the roll. There being four members present at the time of roll, a quorum was established.

B. Chair’s Procedural Remarks and Committee Member Introductory Comments

Mr. Jones announced the meeting is being held by teleconference and pursuant to the provisions of Governor Gavin Newsom’s Executive Order N-1-22, dated January 5, 2022 a physical meeting location is not being provided.

Mr. Jones welcomed everyone and acknowledged and appreciated the service provided by former committee members Cheryl DeMarco, Robert Ho, and Sheran Voigt. New member Robert Chase provided a self-introduction. Mr. Jones also noted that Mr. Pearman served as committee chair for several years and wanted to recognize his contributions.

C. Public Comment on Items Not on the Agenda

Mr. Jones opened the floor for public comment regarding items not specified on the meeting agenda. No comments were received.

D. Review and Possible Action on November 5, 2020 REC Meeting Minutes

Mr. Jones asked if there were any questions, comments, or changes to the November 5, 2020 REC Meeting Minutes. There were none.

Robert Pearman moved to approve the November 5, 2020 REC Meeting Minutes.

Sylvia Kwan seconded the motion.

Members Kwan, Pearman, and Chair Jones voted in favor of the motion. Member Chase abstained. The motion passed 3-0-1.

E. Discuss and Possible Action on 2022-2024 Strategic Plan Objective to:

Mr. Jones provided an overview of the Board’s tasks as it pertains to consumer protection where he defined consumer protection as the practice of safeguarding

buyers of goods and services in the public against unfair practices in the market place.

These objectives will narrow the committee's focus over the next few years and break them into specific categories. Mr. Jones sees them as 1) enforcement mechanisms; 2) educate licensees and consumers about roles, responsibilities, and expectations; and 3) monitoring unlicensed individuals and how they promote themselves. Mr. Jones would like to lean on the historical knowledge of Mr. Chase and Steven Winkel for guidance on these particular areas. Mr. Jones suggested that the Committee narrow their efforts to three elements: education, enforcement, and monitoring to establish achievable goals. Mr. Jones sought to verify the current process to determine how it can be expanded.

1. Provide more detail on decisions made in enforcement cases in the Executive Officer report during board meetings and inform consumers.

Mr. Jones would like to determine how the opinions are formed and how to inform consumers of the standards. Laura Zuniga explained that staff can put information into the next report to determine the Board members expectations are met.

Mr. Pearman discussed that there is an Executive Officer Report provided to the Board where this information is available. He stated that it is a matter of highlighting the information in an informative and educational manner to distribute it to the website and to the Committee. This material should focus on key items that licensees can avoid and provide consumers with awareness of expectations for licensees.

Mr. Jones asked if the enforcement process could be easily defined, specifically, if there was consistency of violations and application of the investigation and enforcement process. Mr. Chase offered that he felt that the decisions of case closure and fines have been consistent. Mr. Pearman interjected that the expanded statistics would offer additional clarity to determine and explain any areas of variations.

Mr. Jones pondered how decisions are reached and wished to understand the complaint process.

Ms. Zuniga offered that providing the types of cases and complaints that come to the Board would provide perspective on the totality of cases and determinations that staff make.

Mr. Jones requested a process narrative of enforcement cases received by the Board to help identify what is subjective and objective. The hope is a better understanding will assist with narrowing the gap between subjectivity and objectivity.

Ms. Kwan mentioned that these discussions have been held in closed session and Board members do not always agree with recommendations at first, but approximately 90 percent of the time the members come around to understand the recommendation provided. Ms. Kwan noted that licensees often do not fight a decision, they come to realize the violations of the Architects Practice Act (Act) and accept the verdict, including the outcome and the fine without too much resistance. There are a few that may appeal the final outcome.

Mr. Jones reflected that it would be important to understand the violations and the fine as it applies to the Act. He feels it is important to understand both the process and the application used to close each case. Staff report clear findings, but it is not clear if there is a blatant disregard for the requirements or a misunderstanding of the requirements by architects.

Ms. Kwan stated that cases are often initiated by clients of the architect and they are never opened due to a licensee self-reporting. There are several ways clients can get assistance by taking the licensee to court with a civil claim, small claims court, or by submitting a complaint to the Board. The Board needs to carefully review the evidence because sometimes it is a he said, she said dynamic. Most of the actions take place when the architect does not meet the contractual obligations and they have already been paid by their client. Ms. Zuniga concurred that complaints are usually based on a contractual dispute.

Mr. Jones added that there are two parallel lanes in the profession, the practice of architecture (design, development, construction documentation, and construction administration) and the business of architecture (business or contractual component). He is an advocate for tying together continuing education with professional practices.

Mr. Pearman remarked that mitigating factors, source of the complaint, or how the amount of the fine (minimum/maximum) and how that was decided would be helpful information to include in the enforcement process presentation. Mr. Jones agreed and stated that objectives one and five are tied together and will support each other in providing feedback.

Mr. Chase commented that the Act specifies three different levels of violations and fine amounts. This Act determines the minimum and maximum citation

amount per type of violation as referenced in the California Code of Regulations section 152 (Citations).

2. Develop narrative discussions and case studies of common violations to educate and inform consumers and architects on what violations to avoid.

Mr. Jones pointed out two key elements 1) most cases are against unlicensed residential designers, as opposed to large firm practitioners who are protected by the veil of their employer's corporate structure and 2) roughly 25 percent of all violations apply to unlicensed individuals.

Ms. Zuniga explained this objective may take a little more effort to identify what type of information can be retrieved from the enforcement cases and transform that into an educational narrative.

Mr. Jones believes education should be available to licensees and consumers. He would like to be able to capture the most common types of violations and the types of construction so the Committee can focus a targeted campaign to reach specific types of professionals. Mr. Chase commented that contract violations are the most prominent violation due to lack of communication between the licensee and the client.

Mr. Jones suggested the mechanisms for education will include printed and digital, such as printed publications and small video vignettes. Mr. Pearman inquired if there are any volunteer senior architect types that could counsel a licensee as part of discipline to provide hands on practical advice and knowledge on how to run the business side and suggested that we work with The American Institute of Architects (AIA) or other organization to find a similar type of program.

Mr. Jones explained that once we identify where licensees are lacking knowledge then we can direct violators to specific coursework. Ms. Zuniga stated that we could explore this option. Ms. Kwan added that a video or seminar with best business practices of architecture would be useful to prevent violations. Mr. Jones agreed the the Board needs to identify the vehicles to communicate and educate including reaching out to colleges and universities for assistance.

Alicia Kroeger mentioned the Board has published the *Architect Licensure Handbook* which could be updated with information on common violations, prevention, and compliance. Mr. Jones questioned if there are ways during the renewal process to acknowledge actions such as providing a Business Entity Report Form (BERF) or reviewing a informational document. Ms. Zuniga clarified that during the renewal process the Board can publicize information, but she was not sure there was a way for the licensee to attest to the completion of the item

and staff can research that request. Mr. Jones wanted to know if the renewal process could include a BERF confirmation.

Ms. Kwan suggested the use of architect consultants or Board staff to provide questions for the California Supplemental Exam (CSE) which the Board has control over to include questions, such as “are you familiar with the architects handbook?” Mr. Jones wondered if there was still a professional practice category. Ms. Zuniga agreed to check with the Licensing Unit on the matter.

3. Better educate practitioners on standards of practice during the renewal process to protect the public.

Mr. Jones described that he wants licensees to be aware of their roles and responsibilities. He often wonders if these licensees in violation of services and professional practices are due to ignorance or negligence. Mr. Jones wants a better understanding whether those in violation are from malfeasance or ignorance with the intent provide educational resources that will help reduce future violations.

Ms. Zuniga explained that staff can identify and develop required information to be included in the renewal process. The intent is to educate licensees of requirements and recent changes to the law. Committee members are welcome to provide feedback of topics that may be included in the educational resources.

4. Educate the public and practitioners regarding their rights and roles when contracts are signed.

Mr. Jones explained this objective is to educate consumers of the connections between the licensee and services provided to the consumer by licensed professionals. Architects often contract their services through developers, contractors, and design build entities. The Committee is asked to clarify the relationship between the consumer and the architect in those structures and to ensure both parties understand their roles in the relationship.

Mr. Jones described himself as a residential design professional that mostly designs houses. He explained that contracts involving other parties provide the most challenges for consumers. Additionally, he questions who is responsible to the consumer when a gap exists. Mr. Chase commented that issues do arise when you have an architect who contracted with a developer and there is not a contract between the architect and the consumer that buys the home. The law states the architect must have a contract with the client, and in some cases the client is the developer, not the consumer. Ms. Kwan suggested that the contract be between the consumer and the architect and would outline the expectations

for the relationship and contractual terms. Mr. Jones and Ms. Kwan emphasized the importance and need of educational videos pertaining to these issues.

Mr. Jones noted that it is not uncommon for a home owner in a subdivision to contact the architect for the plans to their home. To release the plans the home owner would need authorization from the client (developer) to release those plans to the home owner.

5. Review the current threshold for fines to determine if they are appropriate to deter violations.

Mr. Jones discussed that the threshold for fine amounts are tied to the violation. He opined there should be some correlation between the fine amount and the type of violation.

Ms. Zuniga requested the Committee to provide feedback on the amounts included in the fine structure, and specifically how it should evolve.

6. Monitor social media to proactively enforce against unlicensed advertising.

Mr. Jones pointed out that about one third of violations involve unlicensed individuals and questioned how we monitor unlicensed practice. Based on the minutes from prior meetings, it is clear that many of the unlicensed individuals fail to pay their fines. Mr. Jones stated there is not a lot of recourse, because it is expensive and cumbersome to pursue collection on fines ensued by unlicensed individuals.

Ms. Zuniga explained that this objective can be completed by staff, but requested the Committee provide a scope for for a better understanding of achieving this objective.

Mr. Jones pointed out there is software that could assist staff with determining those who are unlicensed and advertise online. The software is capable of a mass online search, but he was unsure of the requirements of using this software and it's capability.

Ms. Kwan commented that social media is used to advertise architectural services for unlicensed individuals. Ms. Zuniga confirmed these types of complaints do get reported to the Board by consumers, or noticed by staff. Mr. Jones restated that a huge portion of violations come from unlicensed individuals advertising architectural services. Ms. Kroeger pointed out that advertising cases are also generated from other architects when they notice a

website or business card of an unlicensed individual offering and/or providing architectural services. She questioned if the Enforcement Unit had the man power to search and monitor the internet for these types of offenses. Ms. Kroeger mentioned the Board is currently working on a regulation that requires licensees to include their license number on any advertisements with the intent to more efficiently to determine the individuals who are licensed.

Mr. Jones referred to the *Building Official Information Guide* and pointed out that he felt that was important for building officials to report violations of unlicensed individuals. He further stated the importance and obligation of a writer to confirm the individual is licensed before publishing an article. Mr. Chase commented that in the past he has contacted an author and/or an editor of an article and requested a correction to the article when an error is made by identifying the individual as an architect.

Mr. Jones would like to know the current process of staff for monitoring to determine how it could be improved. Ms. Zuniga suggested that staff could reach out to other boards to examine their best practices. Mr. Chase recognized the challenges for Board staff to request corrections for professional service categories on various social media platforms by unlicensed individuals. Mr. Jones discussed the possibility of co-publishing documents with other organizations such as AIA or the California Building Officials (CALBO).

Mr. Pearman requested that Mr. Jones identify the software program that allows an easier search of the internet to determine the unlicensed individuals advertising architectural services. Additionally, he suggested that after the regulation for adding a license number to all advertising becomes effective publications for consumers can be created to include directions of how to determine an advertisement for architectural services is a licensed professional.

F. Discussion and Possible Action on Revising the Building Official Information Guide

Cary Bernstein discussed some concerns AIA has with the *Building Official Information Guide* and is requesting revisions. AIA sent a letter dated July 27, 2021, to the Board that focused on unlicensed individuals regarding Business and Professions Code (BPC) section 5538 (Planning or Design Affecting Safety of Building or Its Occupants; Nonstructural Store Front or Interior Alterations or Additions Excepted) and Chapter 16 Structural Design, Building Code section 1613 (Earthquake Loads). Unlicensed individuals are not permitted to furnish or design plans for alterations or structures for renovations or those that require other types of engineering beyond conventional woodframe construction. The building code has been updated to include the primary structure along with secondary and

tertiary structures including parts that are fixed to a building. For example, suspended ceilings in commercial spaces requires seismic attachments. AIA believes this would prevent unlicensed individuals from pursuing work and obtaining building permits.

Mark Paone with AIA is asking that the Board to align the Building Code and BPC 5538 regarding work allowed by unlicensed individuals. Mr. Paone explained that he believes BPC section 5538 is written wisely and focuses on seismic forces, but it does not define building elements like the Building Code. The Building Code is constantly updated. He used an example of earthquakes that occurred in the 1980s and 1990s where research shows which building elements experience seismic forces.

BPC section 5538 and Building Code section 1613.1 use almost identical language to describe non-structural elements of a building, which are commonly referred to as tenant improvements (TI). These changes make unlicensed individuals ineligible for the non-seismic exemption in BPC section 5538. During the last update made in 1990 to BPC section 5538 were not updated in the code.

AIA would like the *Building Official Information Guide* to be updated to include a reference to Building Code 1613.1 everytime BPC section 5538 is mentioned and specifically outline which elements do and do not experience seismic forces.

Ms. Kwan agreed that many building officials would not be aware of the elements that do and do not experience seismic forces.

Mr. Jones questioned if these are common violations for commercial projects and suggested engagement between building officials and CALBO.

Mr. Chase stated that when reaching out to building officials there needs to be consistency between what is in the Act and what is in statute. Mr. Chase suggested a better approach would be to reach out to CALBO and convey this information to the building officials. Mr. Chase mentioned that Mark Christian with AIA commonly attends CALBO on AIA's behalf.

Mr. Paone stated that CALBO wanted clarification from the Board on this issue.

Ms. Zuniga interjected that this is the first time she has heard of this request from CALBO and will have staff look into it.

Mr. Paone summarized that he is concerned about safety. Specifically on high rises that are impacted by earthquakes. There was a hospital recently that did not suffer

primary damage due to an earthquake but suffered 150 million dollars in interior damage.

Ms. Bernstein stated that she is just as concerned with smaller scale buildings including residential and commercial projects, and unenforced masonry buildings as commercial TI projects.

Mr. Chase explained that it is building department's design review's responsibility to confirm if a licensed architect is required for a project.

Rona Rothenberg commented that she has been in practice for several decades and she has seen a pattern in the types of common violations. It is the client's burden to verify that professional is licensed. Engage through small and large firms to ensure they are aware of the standards of care. She also referred to Civil Code section 2782.8(a) regarding duty to defend so practitioners of all levels are aware of the standards of practice. This will be beneficial to the public to ensure health, welfare, and life safety.

Mr. Jones asked that staff look into this topic a little further.

I. Adjournment

The meeting adjourned at 1:53 p.m.