

Chapter A-E 3

PROCEDURE AND PRACTICE

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History: Chapter A-E 3 as it existed on December 31, 1973 was repealed and a new Chapter A-E 3 was created effective January 1, 1974.

A-E 3.01 Scope. The rules in this chapter govern the procedure of the examining board of architects, professional engineers, designers and land surveyors in the following matters:

- (1) Alleged violations of chapter 443, Wis. Stats., and alleged violations of rules promulgated thereunder;
- (2) Petitions for rules under section 227.015, Wis. Stats.;
- (3) Petitions for declaratory rulings under section 227.06, Wis. Stats.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.02 Action by sections. Matters of interest to only one section of the board shall be acted upon solely by the interested section. Matters of interest to more than one section shall be acted upon by joint meetings of the interested sections. Whether a matter is of interest to more than one section shall be determined by the executive committee.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.025 Definitions. For the purposes of these rules:

(1) "Board" means the Wisconsin examining board of architects, professional engineers, designers and land surveyors or any of its sections.

(2) "Board Counsel" means an attorney employed by the board

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to represent the public interest in matters brought before the board and to counsel the board.

(3) "Board Secretary" or "Secretary" means the executive secretary of the board.

(4) "Certificate" means a certificate of registration as an architect, professional engineer or land surveyor, certificate-of-record as an engineer-in-training, or permit as a designer, or other grant of authority, certificate or permit issued or subject to suspension or revocation by the board or any of its sections.

(5) "Complainant" means the person who signs a formal complaint.

(6) "Formal Complaint" means a complaint which meets the requirements of section A-E 3.03.

(7) "License" means any permit, certificate or other indication of registration granted by the board.

(8) "Party" in any disciplinary matter includes in its meaning the respondent and the board when performing an adversary function. A complainant is not a party to any disciplinary matter. In a disciplinary matter, the board counsel represents the board's adversary function.

(9) "Person" means any individual, partnership, corporation association or unit of government.

(10) "Respondent" means the person complained against in a formal complaint.

(11) "Registration Law" means chapter 443 of the Wis. Stats., and rules promulgated thereunder.

(12) "Disciplinary Action" means revocation or suspension of a license, or reprimand of a licensee.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.03 Formal complaints. Proceedings to revoke or suspend a license or to reprimand a licensee may be initiated by any person or by the board upon the filing with the board secretary of an original and 2 copies of a complaint which contains:

(1) The name and address of the complaining party as well as the name and address of any person complained against;

(2) A plain and concise statement of the facts which together indicate that the person complained against has violated provisions of chapter 443, Wis. Stats. or rules promulgated by the board;

(3) A demand in essentially the following form: "Wherefore, complainant demands that the _____ section of the Examining Board hear evidence relevant to matters recited herein and determine whether the license of respondent should be revoked or suspended, or whether respondent should receive an official reprimand".

(4) The signature of the complainant and a verification in the form prescribed in section 236.25, Wis. Stats, except that a complaint authorized by the board or any of its sections need not contain a verification.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.04 Style of pleadings. All pleadings, notices, orders and other papers filed in matters before the examining board of architects, professional engineers, designers and land surveyors shall be captioned "BEFORE THE EXAMINING BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS", and shall be entitled "IN THE MATTER OF THE _____ LICENSE OF _____, RESPONDENT.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.05 Informal complaints. Information known to any person which, if true, would indicate a violation of the registration law shall be submitted in writing to the board staff for verification or investigation.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.06 Communications. All correspondence, telephone calls, and other forms of communication concerning board business shall be directed to the examining board office in Madison, Wisconsin.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.07 Investigation. Upon receipt of an informal complaint the board staff shall, without informing the board of any of the particulars:

- (1) Verify or investigate the matter;
- (2) Compile all related evidence of probative value.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.08 Investigatory subpoena power and investigative demand.

(1) As part of any investigation the board counsel may request that the board secretary or any board member issue a subpoena to require the attendance of persons and the production of evidence in any matter pending or to be examined into by the board.

(2) After a formal or informal complaint has been received, the board secretary or any board member may issue a subpoena upon his determination that the scope of the subpoena is reasonable and that the use of the subpoena is likely to result in the discovery of relevant evidence.

(3) In lieu of a subpoena, the board secretary or any board member may execute and cause to be served upon such person a civil investigative demand requiring the person to produce any relevant documentary material for inspection and copying.

(4) A subpoena issued under this section shall be captioned "BEFORE THE EXAMINING BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS" and shall be entitled "IN THE MATTER OF THE INVESTIGATION OF _____".

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.09 Commencement of actions by formal complaint. (1) Upon receipt of a formal complaint, other than a formal complaint authorized by motion of the board, the board secretary shall have the complaint verified or investigated and within 30 days from the receipt thereof and without notifying the respondent, shall present the com-

plaint to the board for a determination of whether the complaint is unfounded or trivial.

(a) If a majority of the members of the board determine that the complaint is not unfounded or trivial the matter shall be set for hearing and the board secretary shall proceed according to the manner set forth in section A-E 3.09 (2), (a)-(c).

(b) If a majority of the members of the board determine that the complaint is unfounded or trivial, the board shall:

1. Issue a written order dismissing the matter, in which the board shall state the reasons for its decision.

2. Notify the complainant of the board's decision.

(2) Upon receipt of a formal complaint authorized by the board the board secretary shall:

(a) Set a date and time for hearing agreeable to the board;

(b) Prepare a notice of hearing in the form prescribed in section A-E 3.11;

(c) Serve the notice of hearing together with a copy of the complaint on the respondent in the manner described in section A-E 3.12.

(3) Receipt of a formal complaint by the board secretary constitutes filing the complaint.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.10 Commencement of actions by informal complaint. Upon completion of the investigation provided for in section A-E 3.07, the board staff shall evaluate the evidence to determine its substantive value. The board counsel shall then:

(1) If the complaint has no foundation in fact, inform the person providing the information that the evidence of a violation is insufficient to warrant further action, after which said person may proceed under section A-E 3.03 and section A-E 3.09, or

(2) In all other cases transmit, in memorandum form, to the board, without identifying the person complained against, a summary of the facts discovered which shows probable cause of a violation of the registration law, after which the board shall:

(a) On its own motion direct the board counsel to prepare a formal complaint, set a date for hearing, and cause a notice of hearing to be prepared and served as provided in section A-E 3.09 (2); or

(b) Direct the board staff to investigate the matter further; or

(c) On its own motion determine that the matter is trivial or unfounded.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.11 Notice of hearing. (1) Notices of hearing shall be addressed to the respondent at his last known post office address and shall be substantially in the following form:

TO _____ Name
 _____ Street
 _____, Wis.
 Respondent

Please take notice that a hearing will be held on the _____ day of _____, 19____, at _____ o'clock —.m., or as soon thereafter as the matter may be reached, on the question of whether the license heretofore issued to the above named respondent pursuant to sec. _____, Stats., should be suspended or revoked, or the above named respondent should be reprimanded. The issues involved and the charges there to be considered are as set forth in the attached complaint to which you are required to make answer in writing within 20 days from the date of service of the complaint.

Dated at Madison, Wisconsin this _____ day of _____, 19____.

EXAMINING BOARD OF ARCHITECTS,
PROFESSIONAL ENGINEERS, DESIGNERS
AND LAND SURVEYORS,

BY _____

Secretary

(2) The notice of hearing shall be served with a copy of the complaint annexed thereto except that when more than one notice of hearing is served on the respondent only the first notice need be accompanied by a copy of the complaint.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.12 Service and filing of papers. Orders, notices, complaints and other papers of the board may be served by certified mail addressed to any party at his last known address, or to his attorney of record, or to an address furnished by the person or concern to either the board or the secretary of state. Service may also be made in the manner prescribed by section 885.03, Wis. Stats. for service of subpoena. Service may be proved by affidavit or, if service is by mail, by the post office return receipt, in which case the time of service is the date borne by the receipt. Papers required to be filed with the board may be mailed to the office of the board.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.13 Answer. A verified answer in writing shall be filed with the board secretary within 20 days after the service of a copy of the complaint in all matters involving the revocation or suspension of a license or the reprimand of a licensee. The answer must contain:

(1) A specific denial of each material allegation of the complaint controverted by the respondent or of any knowledge or information thereof sufficient to form a belief;

(2) A statement of any new matter constituting a defense or mitigating the offense charged; and

(3) The address of the respondent.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.14 Admission by not denying. Every material allegation of the complaint not controverted as prescribed in section A-E 3.13 shall be taken as true, but new matter in the answer shall be deemed controverted without any reply being served or filed.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.15 Amendments to pleadings. The board secretary may, for good cause, allow amendments to a complaint or to an answer provided a request to amend and the amended pleading is received by

the board secretary no later than 10 days before the scheduled hearing.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.16 Notification to board. Individual members of the board shall be furnished a copy of the formal complaint by the secretary as soon as is reasonably possible after the date for hearing is set and shall be furnished a copy of the answer by the secretary as soon as is reasonably possible after the filing of the answer.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.17 Filing. The original of all pleadings must be filed with the board secretary.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.18 Informal conferences. (1) **CALL AND PURPOSE.** The board secretary or board counsel may call an informal conference at any time prior to a hearing. The purposes of such conferences shall, insofar as applicable, be to consider:

- (a) Simplification of issues;
- (b) Amendments to the pleadings;
- (c) Admissibility of evidence; and
- (d) Such other matters as may aid in the disposition of the matter.

(2) **RECORD.** The board secretary or board counsel shall keep a record of any stipulations made at such informal conference which shall bind the parties thereto in the proceedings.

(3) **CONCILIATION AGREEMENT.** If as a result of an informal conference, the board counsel or board secretary and the respondent are able to reach an agreement which is warranted by the facts, a written conciliation agreement shall be prepared setting forth the nature of the agreement and all measures to be taken by any party. The conciliation agreement shall:

- (a) Be transmitted to the board by the board secretary;
- (b) Not be binding upon any party until accepted by the board;
- (c) Not be considered a waiver of any defense nor an admission of any fact until accepted by the board.

(4) The board may order the matter dismissed on the condition that the terms of the conciliation agreement are met or the board may reject the conciliation agreement.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.19 Subpoenas; witness fees. Subpoenas may be signed and issued by the chairman or secretary of the board or the clerk of any court of record. Witness fees and mileage of witnesses subpoenaed on behalf of the board shall be paid at the rate prescribed for witnesses in circuit court, upon filing with the board their affidavits of attendance and travel, and shall be charged to the appropriation for the administration of section 443.01 or 443.02, Wis. Stats., as applicable.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.20 Discovery. (1) No depositions of any person shall be required in any matter before the board except the board counsel and the respondent may stipulate that depositions be taken.

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(2) The complainant and respondent may use demands to admit as provided in section 889.22, Wis. Stats., except that no demand to admit shall be directed to any board member or to the board secretary.

(3) Any communication between the board counsel and the board regarding any matter before the board by formal complaint made subsequent to filing of the formal complaint, shall be in writing and a copy thereof furnished the respondent.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.21 Conduct of hearings. Hearings under this chapter shall:

(1) Be conducted by 2 or more members of the board or of the section holding the hearing.

(2) Be presided over by the chairman of the joint board or his designee or the chairman of the section holding the hearing or his designee.

(3) Be recorded stenographically or by magnetic tape.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

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A-E 3.22 Record. If a majority of the members of the board or section holding the hearing are not present during all of the hearing, the presiding officer shall transmit a record of the proceedings to the board or section for evaluation prior to final action on the matter.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.23 Order. Following a hearing or other final action, the board shall issue an order dismissing the matter or providing the disciplinary action warranted. The order shall:

(1) Be in writing accompanied by findings of fact and conclusions of law.

(2) Be served upon the respondent or his attorney.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.24 Default. In case the respondent fails to answer as required by section A-E 3.13 or fails to appear at the hearing at the time fixed therefor, the board may make findings and enter an order on the basis of the formal complaint and other evidence. The board shall not take disciplinary action without satisfying itself that the respondent committed the violation charged. The board may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the board enters to order or within 30 days thereafter.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.25 Briefs. Any party may with the permission of the presiding officer and prior to the board's order submit written briefs to the board. Briefs must be submitted within 25 days after a hearing. Briefs are submitted by sending or delivering 5 copies of the brief to the board secretary who shall forward copies to board members and opposing party.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.26 Appeal for reduction of sanction. A petition for the vacation or reduction in severity of a sanction ordered by the board shall

be in writing and submitted within 30 days from the date of the order. The board may rule on the petition without providing a hearing to the petitioner.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.27 Appeal of board's dismissal of a complaint. A complainant who disagrees with a board determination that a complaint is unfounded or trivial may petition within 30 days of the date of the order by filing written arguments with the secretary showing why the complaint is not unfounded or trivial. The board may rule on the petition without providing a hearing to the complainant. A decision by the board under this section that the complaint is unfounded or trivial shall be in the form prescribed for an order in section A-E 3.24.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

PETITION FOR RULES

A-E 3.50 Petition for rules. Petitions to adopt, repeal or amend any rule within the scope of the board's rule-making power shall be filed in the following manner:

(1) The petition shall be in writing and be captioned "BEFORE THE EXAMINING BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS" and entitled "In the matter of the adoption of a rule relating to _____ (here insert subject matter dealt with in proposed rule)" or "In the matter of the amendment (or repeal) of rule number _____ of the rules and regulations relating to _____ (here insert proper title of the rules and regulations in which the rule to be repealed or amended appears)."

(2) If the petition is for the adoption of a new rule, the form of such proposed rule shall be set out in the petition, except that 2 or more forms may be set out in the alternative if the petitioner so desires.

(3) If the petition is for the repeal of an existing rule, such existing rule shall be set out verbatim in the petition. If the petition is for the amendment of an existing rule, the existing rule shall be set out at length with a horizontal line (or a line of hyphens) drawn through any words, figures and punctuation marks which the petitioner desires to have stricken and with new matter underscored or (if the petition is printed) in italics.

(4) A petition may be for the adoption, amendment or repeal of more than one rule, or for the repeal and re-creation of any rule, provided that each such proposal shall be separately stated.

(5) The petition shall be signed by one or more natural persons. The postoffice address of each signer shall be set out opposite his name and if he signs on behalf of a corporation or association that fact shall also be indicated opposite his name.

(6) The original and 5 copies of the petition shall be filed with the secretary of the examining board.

History: Cr. Register, December, 1973, No. 216, eff. 1-1-74.

A-E 3.51 Supporting data. Whenever the adoption, repeal or amendment of any rule is sought by reason of the existence of a factual