

LCB File No. R217-03

**PROPOSED REGULATION OF THE
STATE BOARD OF LANDSCAPE ARCHITECTURE**

RULES OF PRACTICE

(ADOPTED AS PART OF THE TEMPORARY NAC 623A
MAY 2, 2003)

In accordance with NRS 233B.050, the Nevada State Board of Landscape Architecture (the “Board”) adopts the following rules of practice.

PROCEDURES FOR HANDLING COMPLAINTS IN VIOLATION OF 623A

1. Initial Complaint:

A. Upon the receipt of a complaint against a licensee, applicant or third party, a determination shall be made by the designated board member following consultation with the executive director, if necessary, as to whether the complaint sets forth adequate grounds for the imposition of discipline by the Board. (See NRS 623A.305)

B. In conjunction with the review of the complaint, the designated board member may forward the Board’s complaint form to the complainant and request the complainant to more fully set forth the nature of the complaint, the identity of the complainant and the identity of the person against whom the complaint is made (the “respondent”). A copy of the complaint form currently used by the Board is attached as Exhibit “1” to these Rules of Practice and Procedure.

C. When the Board receives the completed complaint form, the designated board member shall forward a copy of the complaint to the respondent and request a detailed written response to the complaint. The respondent is required to respond to the designated board member’s request within twenty (20) days.

D. Upon receipt of the respondent’s response to the complaint, the designated board member, with the assistance of the executive director or the Board’s legal counsel, if necessary, shall make an initial determination as to whether it is probable that a violation of the statutes, regulations or rules governing the practice of landscape architecture in the State of Nevada has occurred.

E. The designated board member shall make a recommendation to the executive director concerning the manner in which the complaint should be handled (dismissal, stipulated agreement with the respondent, or a formal disciplinary hearing). (See NRS 623A.305)

F. The executive director of the Board shall consider the recommendation made by the designated board member and, if necessary, discuss the matter with the Board's legal counsel. Thereafter, the executive director shall place the matter on the agenda for the next meeting of the Board. (See NRS 623A.305)

G. At a public meeting held in compliance with the open meeting law, the Board will decide whether to dismiss the action, suggest that it be resolved by stipulation with the executive director, go forward with a formal disciplinary complaint, or request that additional information be provided. (See NRS 233B and NRS 623A.305)

1) If the matter is dismissed, the complainant and the respondent shall be advised in writing that the complaint has been dismissed.

2) If the Board believes that the matter may be best resolved by a stipulated agreement, a designated board member shall contact the respondent in writing and propose a stipulated agreement. If the respondent accepts the proposed stipulation, the stipulation shall be signed by the respondent and the signed stipulation shall be submitted to the Board at its next meeting. A form stipulated agreement is attached as Exhibit "2".

3) If the Board decides to go forward with a formal disciplinary complaint, the Board shall set a hearing date and direct the Board's legal counsel to prepare a formal disciplinary complaint.

H. The Board, acting through the Board President or its executive director, may issue subpoenas requiring the attendance of an individual or the production of requested documents. (See NRS 623A.140)

II. Formal Disciplinary Complaint:

A. The Board's legal counsel shall prepare a formal disciplinary complaint setting forth the specifics of the complaint and the rules, statutes, or regulations which the respondent has allegedly violated. A formal disciplinary complaint is attached as Exhibit "3". The Board's legal counsel shall prepare the notice of the hearing on the formal disciplinary complaint. A formal notice of hearing is attached as Exhibit "4".

Board counsel shall forward by certified mail, return receipt requested, the formal complaint and notice of the hearing to the respondent together with a letter advising the respondent of his rights and obligations. A form letter to the respondent is attached as Exhibit "5".

B. The respondent may request a continuance of the scheduled hearing. Generally, the Board will grant one continuance of a scheduled disciplinary hearing. All other requests for continuances will be denied unless the respondent can demonstrate clear and convincing grounds for the granting of a second continuance.

C. Prior to the hearing, the executive director and designated Board member shall discuss with the Board's legal counsel the parameters within which the disciplinary complaint

may be settled. The Board's legal counsel shall discuss possible settlement of the disciplinary action with the respondent. If it appears that the complaint can be resolved by stipulated agreement, the Board's legal counsel shall draft a proposed stipulation to resolve the formal disciplinary complaint. A form Stipulation and Decision of the Board is attached as Exhibit "6".

D. The proposed Stipulation shall be submitted to the Board at its next meeting. The Stipulation is not effective unless and until the Stipulation is approved by the Board at a public meeting.

III. Procedures Governing a Formal Disciplinary Hearing:

A. The respondent is entitled to be represented by an attorney licensed in the State of Nevada.

B. The President of the Board may appoint additional hearing panel members to take testimony and to make findings of fact in a contested case. The appointed hearing panel members may include landscape architect(s) or other design industry professionals. The hearing panel shall contain a minimum of three or a maximum of five members to be made up of board members and/or appointed hearing panel members.

C. The President of the Board shall request all hearing panel members to advise whether they have a conflict of interest which requires them to recuse themselves from participating in the hearing.

D. The Board's legal counsel shall mark and place into evidence all exhibits which support the allegations contained in the complaint. The respondent may state his objections, if any, to the exhibits and may submit additional exhibits which are relevant to the charges set forth in the complaint or to the defenses raised in the respondent's answer to the complaint.

E. The Board's legal counsel and the respondent may make a short opening statement. Thereafter, the Board's legal counsel shall call witnesses to testify concerning the allegations contained in the complaint. The respondent may cross-examine the witnesses and may call witnesses to testify on his behalf.

F. The President of the Board, or a Board member designated by the President shall chair the disciplinary hearing. The Chairman of the disciplinary hearing shall make all rulings concerning the admission of evidence. The Chairman of the disciplinary hearing may accept into evidence those exhibits that have been marked and offered by either the Board's legal counsel or the respondent.

G. Formal rules of evidence do not apply. (See NRS 233B.123)

H. After the evidence, exhibits and testimony have been submitted, the respondent may make a closing argument. The Board's legal counsel may make a closing argument and

may make any recommendation to the Board concerning the manner in which the disciplinary complaint should be resolved.

I. After the evidence has been submitted and the respondent has finished his closing statement, the Chairman of the disciplinary hearing summarizes the issues to be decided by the Board. The alleged violations must be proved by substantial evidence.

J. Any hearing panel member may make a motion concerning recommended findings of fact and conclusion of law. The motion must be seconded and adopted by a majority vote of the hearing panel members participating in the hearing to be effective. Final disciplinary determinations will be made by a majority vote of the Board.

K. After the Board has orally advised the respondent of its decision, the Board's legal counsel shall draft a formal Decision and Order and submit the draft to the executive director. A form Decision and Order is attached as Exhibit "7". The executive director may make appropriate revisions and forward the revised Decision and Order to the Chairman of the disciplinary hearing for signature.

L. The signed Decision and Order shall be served by certified mail on the respondent, return receipt requested.

M. The respondent has 30 days following the receipt of the written decision to seek judicial review. (See NRS 233B.130)