

**What You Don't Know *Can* Hurt You—and Your License:
Protecting Your Livelihood, and Avoiding and Handling Cases
Before the Design Professionals' Disciplinary Boards¹**

by

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**Presented Through Lorman Education Services
June 26, 2004**

¹ **IMPORTANT NOTE:** The information and forms included in this paper and presentation are offered as guidance to design professionals who operate in the construction industry in Texas, and to the attorneys who represent any of them. One size can never fit all, when it comes to general guidance and especially forms. Legal practitioners should review each particular project in light of its own merits and circumstances, and claimants should be sure to enlist the services of a legal professional before tailoring any one form or strategy to the given project and/or claim.

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As most design professionals in Texas know, there are two governmental entities in the state that regulate their conduct and registration. For professional engineers, that entity is the Texas Board of Professional Engineers, and for architects, interior designers, and landscape architects, the entity is the Texas Board of Architectural Examiners.

The purpose of this paper is to

Powers and Duties of the TBAE and TBPE

Rules attached, but they change frequently.

Tell registrants to get on the listserv for each board (does TBPE have one?)

<http://www.tbae.state.tx.us/listserve/>

<http://www.tbpe.state.tx.us/list.htm>

Make sure your info at the board is completely updated on your contact information

Be sure you get and read the periodic newsletter

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Calendar your fee renewal deadline, in case mail gets lost or you move and forget to send COA information

Potential traps in the rules:

- Issuance of documents "not for construction" (e.g., APA 1.103)

- Document retention (e.g., APA 1.103(g))

- Release of electronic files (e.g., APA 1.103(f))

- Seal requirements, generally?

- Retaliation

- Five days for accessibility submission

Complaints are received by the boards, who sift through them and

Some are started sua sponte, however--at least one recent example was based on a newspaper article reporting a lawsuit that had been filed

Unfortunately, the complaint has become somewhat of a tool of oppression, revenge, and competition, leading some to attack others' registrations for improper reasons

The staff at each of the boards know this and try to factor these things into their view of the case

Dealing with the Board's enforcement staff:

- Response usually requested from the registrant in the form of a notice-of-investigation letter, with copy of relevant rules/standards

- By the time you've been contacted, there's a good chance that a serious background investigation has already taken place

 - Get your story straight, and contact others involved, if possible

- Speaking through counsel is not always necessary

- Low-impact involvement of counsel is possible, as well as direct communications between registrant's attorney and the Board

- Read through the rules cited by the staff

- Look to the "grid" of suggested punishments

- Power of the informal conference

- Allows presentation in person for those who think personal appeal (and snappy presentation) could help the case

- Heading over to SOAH

 - Right to administrative trial

 - Expensive option

When you're accused of a particular offense and are preparing a response look at the other rules and be sure you're not unwittingly expanding the scope of the possible claims against you.

Tell story of accessibility snafu that turned into a plan-stamping accusation

Sunset review report attached

Recent statements from the TBAE's executive director indicate that there's a harder line coming

TBPE: New executive director on the way--there's been a posting of the job vacancy at that website