

ARCHITECTURAL EXAMINING BOARD[193B]

Notice of Intended Action

**Proposing rulemaking related to disciplinary action against licensees
and providing an opportunity for public comment**

The Architectural Examining Board hereby proposes to rescind Chapter 6, “Disciplinary Action Against Licensees,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 272C.3 to 272C.5, 544A.5 and 544A.29.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 272C and 544A.

Purpose and Summary

This proposed chapter provides Iowans and licensees and their employers with information about the disciplinary process and possible actions against licensed architects. The public knows that the Board can take disciplinary action for violations of the Board’s rules. The public has the ability to submit a complaint about a licensee to the Board, which can then investigate the complaint. The Board has the ability to seek discipline against the licensee, ensuring that the public is protected. The proposed chapter was approved by the Board on November 30, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department of Inspections, Appeals, and Licensing for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 31, 2024. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 30, 2024 11:50 a.m.	6200 Park Avenue, Suite 100 Des Moines, Iowa Video call link: meet.google.com/yxd-hmkw-ppo
January 31, 2024 11:50 a.m.	6200 Park Avenue, Suite 100 Des Moines, Iowa Video call link: meet.google.com/yxd-hmkw-ppo

The Department may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director's report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 193B—Chapter 6 and adopt the following **new** chapter in lieu thereof:

CHAPTER 6
DISCIPLINARY ACTION AGAINST LICENSEES

193B—6.1(544A,272C) Disciplinary action. The architectural examining board has authority in Iowa Code chapters 544A, 17A and 272C to impose discipline for violations of these chapters and the rules promulgated thereunder.

193B—6.2(544A,272C) Investigation of complaints. The board will, upon receipt of a complaint in writing, or may, upon its own motion, pursuant to other evidence received by the board, review and investigate alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rules. In order to determine if probable cause exists for a hearing on a complaint, the investigators designated by the chairperson will investigate the allegations of the complaint. If the board determines that the complaint does not present facts which constitute a basis for disciplinary action, the board may take no further action.

193B—6.3(544A,272C) Peer investigative committee. A peer investigative committee may be appointed by the chairperson to investigate a complaint. The committee members will consist of one or more architects who have been licensed to practice in Iowa for at least five years, serving at the discretion of the chairperson. The committee will review and determine the facts of the complaint and make a report to the board in a timely manner.

193B—6.4(544A,272C) Investigation report. Upon completion of the investigation, the investigator(s) will prepare for the board’s consideration a report containing the position or defense of the licensee to determine what further action is necessary. The board may:

1. Order the matter be further investigated.
2. Allow the licensee who is the subject of the complaint an opportunity to appear before a committee of the board for an informal discussion regarding the circumstances of the alleged violation.
3. Determine there is no probable cause to believe a disciplinary violation has occurred and close the case.
4. Determine there is probable cause to believe that a disciplinary violation has occurred.

193B—6.5(544A,272C) Informal discussion. If the board considers it advisable, or if requested by the affected licensee, the board may grant the licensee an opportunity to appear before the board or a committee of the board for a voluntary informal discussion of the facts and circumstances of an alleged violation. The licensee may be represented by legal counsel at the informal discussion. The licensee is not required to attend the informal discussion.

Unless disqualification is waived by the licensee, board members who personally investigated a disciplinary complaint are disqualified from making decisions at a later formal hearing. Because board members generally rely upon staff, investigators, auditors, peer review committees, or expert consultants to conduct investigations, the issue rarely arises. An informal discussion, however, is a form of investigation because it is conducted in a question-and-answer format. In order to preserve the ability of all board members to participate in board decision making, licensees who desire to attend an informal discussion will therefore waive their right to seek disqualification of a board member or staff based solely on the board member’s or staff’s participation in an informal discussion. Licensees would not be waiving their right to seek disqualification on any other ground. By electing to attend an informal discussion, a licensee accordingly agrees that participating board members or staff are not disqualified from acting as a presiding officer in a later contested case proceeding or from advising the decision maker.

Because an informal discussion constitutes a part of the board’s investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence. The board may seek a consent order at the time of the informal discussion. If the parties agree to a consent order, a statement of charges will be filed simultaneously with the consent order.

193B—6.6(544A,272C) Decisions. The board will make findings of fact and conclusions of law and may take one or more of the following actions:

- 6.6(1)** Dismiss the charges.
- 6.6(2)** Revoke the architect’s license.
- 6.6(3)** Suspend the licensee’s license as authorized by law.
- 6.6(4)** Impose civil penalties, not to exceed \$1,000. Civil penalties may be imposed for any of the disciplinary violations specified in Iowa Code sections 544A.13 and 544A.15 and these rules. Factors the board may consider when determining whether to assess civil penalties and the amount to assess include:
 - a. Whether other forms of discipline are being imposed for the same violation.
 - b. Whether the amount imposed will be a substantial deterrent to the violation.
 - c. The circumstances leading to the violation.
 - d. The severity of the violation and the risk of harm to the public.
 - e. The economic benefits gained by the licensee as a result of the violation.
 - f. The interest of the public.
 - g. Evidence of reform or remedial action.
 - h. Time lapsed since the violation occurred.
 - i. Whether the violation is a repeat offense following a prior cautionary letter, disciplinary order, or other notice of the nature of the infraction.

- j.* The clarity of the issues involved.
 - k.* Whether the violation was willful and intentional.
 - l.* Whether the licensee acted in bad faith.
 - m.* The extent to which the licensee cooperated with the board.
 - n.* Whether the licensee practiced architecture with a lapsed, inactive, suspended or revoked certificate of licensure.
- 6.6(5)** Impose a period of probation, either with or without conditions.
 - 6.6(6)** Require reexamination, using one or more parts of the examination given to architectural licensee candidates.
 - 6.6(7)** Require additional professional education, reeducation, or continuing education.
 - 6.6(8)** Issue a citation and a warning.
 - 6.6(9)** Issue a consent order.

193B—6.7(544A,272C) Voluntary surrender. Voluntary surrender of licensure is considered as disciplinary action. The board may accept the voluntary surrender of a license to resolve a pending disciplinary contested case or pending disciplinary investigation. The board will not accept a voluntary surrender of a license to resolve a pending disciplinary investigation unless a statement of charges is filed along with the order accepting the voluntary surrender. Such voluntary surrender is considered disciplinary action and will be published in the same manner as is applicable to any other form of disciplinary order.

These rules are intended to implement Iowa Code section 544A.13 and chapter 272C.