

DISCIPLINARY GUIDELINES

I. INTRODUCTION

To establish consistency in disciplinary penalties for similar offenses on a statewide basis, the California Architects Board (CAB), Landscape Architects Technical Committee (LATC) has adopted these uniform disciplinary guidelines for particular violations. This document, designed for use by Administrative Law Judges, attorneys, landscape architects, others involved in the disciplinary process, and ultimately the Board, shall be revised from time to time and will be distributed to interested parties upon request.

These guidelines include general factors to be considered, probationary terms, and guidelines for specific offenses. The guidelines for specific offenses are referenced to the statutory and regulatory provisions.

For purposes of this document, terms and conditions of probation are divided into two general categories:

- (1) Standard Conditions are those conditions of probation which will generally appear in all cases involving probation as a standard term and condition; and
- (2) Optional Conditions are those conditions which address the specific circumstances of the case and require discretion to be exercised depending on the nature and circumstances of a particular case.

The Board (CAB) recognizes that these recommended penalties and conditions of probation are merely guidelines and that mitigating or aggravating circumstances and other factors, may necessitate deviations, as discussed herein. If there are deviations from the guidelines, the Board would request that the Administrative Law Judge hearing the matter include an explanation in the Proposed Decision so that the circumstances can be better understood and evaluated by the Board upon review of the Proposed Decision and before final action is taken.

Additional copies of this document may be obtained by contacting the CAB at its office in Sacramento, California.

II. GENERAL CONSIDERATIONS

The Board requests that Proposed Decisions following administrative hearings include the following:

- a. Specific code sections violated with their definitions.
- b. Clear description of the violation.
- c. Respondent's explanation of the violation if he/she is present at the hearing.

- d. Findings regarding aggravation, mitigation, and rehabilitation where appropriate.
- e. When suspension or probation is ordered, the Board requests that the disciplinary order include terms within the recommended guidelines for that offense unless the reason for departure from the recommended terms is clearly set forth in the findings and supported by the evidence.

Factors to be Considered - In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration.
2. Actual or potential harm to any consumer, client or the general public.
3. Prior disciplinary record.
4. Number and/or variety of current violations.
5. Mitigation evidence.
6. Rehabilitation evidence.
7. In the case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
8. Overall criminal record.
9. Time passed since the act(s) or offense(s) occurred.
10. Whether or not the respondent cooperated with the Board's investigation, other law enforcement or regulatory agencies, and/or the injured parties.
11. Recognition by respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.

III. DEFINITION OF PENALTIES

Revocation: Loss of a license as the result of any one or more violations of the Landscape Architects Practice Act. Revocation of a license is permanent, unless the respondent takes affirmative action to petition the Board for reinstatement of his/her license and demonstrates to the Board's satisfaction that he/she is rehabilitated.

Suspension: Invalidation of a license for a fixed period of time, not to exceed a period of one year.

Stayed Revocation: Revocation of a license, held in abeyance pending respondent's compliance with the terms of his/her probation.

Stayed Suspension: Suspension of a license, held in abeyance pending respondent's compliance with the terms of his/her probation.

Probation: A period during which a respondent's sentence is suspended in return for respondent's agreement to comply with specified conditions relating to improving his/her conduct or preventing the likelihood of a reoccurrence of the violation.

IV. DISCIPLINARY GUIDELINES

The offenses are listed by statute number in the Business and Professions Code. The standard terms of probation as stated herein shall be included for all probations. The optional conditions of probation as stated herein are to be considered and imposed along with any other optional conditions if facts and circumstances warrant. The number(s) in brackets listed after each condition of probation refers to the conditions listed on pages XX - XX.

BUSINESS AND PROFESSIONS CODE SECTIONS

Section 5640: Unlicensed Person Engaging in Practice - Sanctions

Applicant Maximum: Denial of application for a license
Applicant Minimum: Ninety (90) days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]

Section 5642: Partnership, Corporation – Unlicensed Person

Maximum: Revocation
Minimum: Stayed revocation, 90 days actual suspension and probation for 5 years on the following conditions:

- a. All standard conditions of probation [#1-#7]
- b. Cost reimbursement [#11]

Section 5667: Fraud, Misrepresentation - Obtaining License

Maximum/Minimum: Revocation

Section 5668: Impersonating Landscape Architect – Practice Under Assumed Name

Licensee Maximum: Revocation
Licensee Minimum: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-#7]
- b. Continuing education courses [#10]
- c. Cost reimbursement [#11]
- d. Restitution [#12]

Section 5669: Aiding, Abetting - Unlicensed Practice

Maximum: Revocation
Minimum: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-#7]
- b. Continuing education courses [#10]
- c. Cost reimbursement [#11]
- d. Restitution [#12]

Section 5670: Fraud, Deceit in Practice

Maximum: Revocation
 Minimum: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-#7]
- b. Continuing education courses [#10]
- c. Cost reimbursement [#11]
- d. Restitution [#12]

Section 5671: Negligence, Willful Misconduct in Practice

Maximum: Revocation
 Minimum: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-#7]
- b. Continuing education courses [#10]
- c. Cost reimbursement [#11]
- d. Restitution [#12]

Section 5672: Gross Incompetence in Practice

Maximum: Revocation
 Minimum: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-#7]
- b. Written examination [#9]
- c. Continuing education courses [#10]
- d. Cost reimbursement [#11]
- e. Restitution [#12]

Section 5673: False Use of Signature

Maximum: Revocation
 Minimum: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-#7]
- b. Continuing education courses [#10]
- c. Cost reimbursement [#11]
- d. Restitution [#12]

Section 5675: Felony Conviction - Sanctions

- Maximum: Revocation or denial of license application
Minimum: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:
- a. All standard conditions of probation [#1-#7]
 - b. Continuing education courses [#10]
 - c. Cost reimbursement [#11]
 - d. Restitution [#12]
 - e. Criminal Probation Reports [#13]

Section 5675.5 Public Agency – Disciplinary Action

- Maximum: Revocation
Minimum: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:
- a. All standard conditions of probation [#1-#7]
 - b. Continuing education courses [#10]
 - c. Cost reimbursement [#11]
 - d. Restitution [#12]

Section 5676: Plea of Nolo Contendere – Criminal Conviction - Sanctions

- Maximum: Revocation
Minimum: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:
- a. All standard conditions of probation [#1-7]
 - b. Continuing education courses [#10]
 - c. Cost reimbursement [#11]
 - d. Restitution. [#12]
 - e. Criminal Probation Reports [#13]

GENERAL PROVISIONS OF BUSINESS AND PROFESSIONS CODE

Section 125.6: Discrimination by Licensee

- Maximum: Revocation
Minimum: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:
- a. All standard conditions of probation [#1-#7]
 - b. Cost reimbursement [#11]

Section 480 (a): Denial of Licenses

An applicant's application may be denied for (1) conviction of a crime; (2) any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; (3) any act which if done by a licensee would be grounds for suspension or revocation of license; or (4) knowingly making a false statement of fact required to be revealed in the application for such license.

Maximum/Minimum: Denial of license

Section 496: Subversion of Licensing Examinations or Administration of Examinations.

Maximum/Minimum: Revocation or denial of license

CALIFORNIA CODE OF REGULATIONS

Division 2, Title 16, Chapter 26

Section 2670: Rules of Professional Conduct

(a) Competence

Maximum: Revocation
Minimum: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-#7]
- b. Continuing education courses [#10]
- c. Cost reimbursement [#11]
- d. Restitution [#12]

(b) Full Disclosure

Maximum: Revocation
Minimum: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-#7]
- b. Continuing education courses [#10]
- c. Cost reimbursement [#11]
- d. Restitution [#12]

(c) Informed Consent

- Maximum: Revocation
Minimum: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:
- a. All standard conditions of probation [#1-#7]
 - b. Continuing education courses [#10]
 - c. Cost reimbursement [#11]
 - d. Restitution [#12]

(d) Conflict of Interest

- Maximum: Revocation
Minimum: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:
- a. All standard conditions of probation [#1-#7]
 - b. Continuing education courses [#10]
 - c. Cost reimbursement [#11]
 - d. Restitution [#12]

(e) Copyright Infringement

- Maximum: Revocation
Minimum: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:
- a. All standard conditions of probation [#1-#7]
 - b. Continuing education courses [#10]
 - c. Cost reimbursement [#11]
 - d. Restitution [#12]

V. VIOLATION OF PROBATION

Maximum Penalty - Actual suspension; vacate stay order and reimpose penalty that was previously stayed; and/or revoke, separately and severally, for violation of probation and/or for any additional offenses.

Minimum Penalty - Actual suspension and/or extension of probation.

The maximum penalty is appropriate for repeated similar offenses, or for probation violations indicating a cavalier or recalcitrant attitude. If the probation violation is due in part to the commission of additional offense(s), additional penalties shall be imposed according to the nature of the offense; and the probation violation shall be considered as an aggravating factor in imposing a penalty for those offense(s).

**VI. STANDARD CONDITIONS OF PROBATION
(to be included in all cases of probation)**

1. Obey All Laws

Respondent shall obey all federal, state and local laws and regulations governing the practice of landscape architecture in California.

2. Submit Quarterly Reports

Respondent, within 10 days of completion of the quarter, shall submit quarterly written reports to the Board on a Quarterly Report of Compliance form (10/98) obtained from the Board (Attachment A).

3. Personal Appearances

Upon reasonable notice by the Board, the respondent shall report to and make personal appearances at times and locations as the Board may direct.

4. Cooperate During Probation

Respondent shall cooperate fully with the Board, and with any of its agents or employees in their supervision and investigation of his/her compliance with the terms and conditions of this probation. Upon reasonable notice, the respondent shall provide the Board, its agents or employees, with the opportunity to review all plans, specifications, and instruments of service prepared during the period of probation.

5. Tolling for Out-of-State Practice, Residence or In-State Non-Practice

In the event respondent should leave California to reside or to practice outside the State or for any reason stop practicing landscape architecture in California, respondent shall notify the Board or its designee in writing within ten days of the dates of departure and return, or the dates of non-practice or the resumption of practice within California. Non-practice is defined as any period of time exceeding thirty days in which respondent is not engaging in any activities defined in Section 5615 of the Business and Professions Code. All provisions of probation other than the quarterly report requirements, examination requirements, and education requirements, shall be held in abeyance until respondent resumes practice in California. All provisions of probation shall recommence on the effective date of resumption of practice in California. Periods of temporary or permanent residency or practice outside California or of non-practice within California will not apply to the reduction of this probationary period.

6. Violation of Probation

If respondent violates probation in any respect, the Board, after giving respondent notice and opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If an accusation or a petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

7. Completion of Probation

Upon successful completion of probation, respondent's license will be fully restored.

VII. OPTIONAL CONDITIONS OF PROBATION

8. Suspension

Respondent is suspended from the practice of landscape architecture for _____ days beginning on the effective date of the Decision.

9. Written Examination

Respondent shall take and pass (specified) sections of the Landscape Architects Registration Examination (L.A.R.E.).

If respondent fails to pass said examination within two attempts, respondent shall so notify the Board and shall cease practice until respondent takes and successfully passes said examination, has submitted proof of same to the Board, and has been notified by the Board that he/she may resume practice. Failure to pass the required examination no later than 100 days prior to the termination of probation shall constitute a violation of probation. Respondent is responsible for all costs of such examination.

10. Continuing Education Courses

Respondent shall complete professional education courses directly relevant to the violation as specified by the Board. The professional education courses shall be completed within a period of time designated by the Board, which timeframe shall be incorporated as a condition of this probation.

Failure to satisfactorily complete the required courses as scheduled or failure to complete same no later than 100 days prior to the termination of probation shall constitute a violation of probation. Respondent is responsible for all costs of such courses.

11. Cost Reimbursement

Respondent shall reimburse the Board \$ _____ for its investigative and prosecution costs. The payment shall be made within _____ days/months of the date the Board's decision is final.

Option: The payment shall be made as follows: _____ (specify either prior to the resumption of practice or in monthly or quarterly payments, the final payment being due one year before probation is scheduled to terminate).

12. Restitution

Within _____ days of the effective date of this Decision, respondent shall make restitution to _____ in the amount of \$ _____ and shall provide the Board with proof from _____ attesting that the full restitution has been paid. In all cases, restitution shall be completed before the termination of probation.

13. Criminal Probation Reports

Respondent shall provide the Board with a copy of the standard conditions of the criminal probation, copies of all criminal probation reports and the name of his/her probation officer.

14. Relinquish License and Wall Certificate

Respondent shall relinquish and shall forward or deliver the license to practice and the wall certificate to the Board within 10 days of the effective date of this decision and order.

15. Notification to Clients/Cessation of Practice

In orders which provide for a cessation or suspension of practice, respondent shall comply with procedures provided by the Board regarding notification to, and management of, clients.

VIII. REHABILITATION CRITERIA

California Code of Regulations, Title 16, Division 26, Section 2656, Criteria for Rehabilitation states:

- (a) When considering the denial of a landscape architect's license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for a license will consider the following criteria:
 - (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
 - (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.
 - (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
 - (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
 - (5) Evidence, if any, of rehabilitation submitted by the applicant.
- (b) When considering the suspension or revocation of the license of a landscape architect on the grounds that the person licensed has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license, will consider the following criteria:
 - (1) Nature and severity of the act(s) or offense(s).
 - (2) Total criminal record.
 - (3) The time that has elapsed since commission of the act(s) or offense(s).
 - (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
 - (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
 - (6) Evidence, if any, of rehabilitation submitted by the licensee.
- (c) When considering a petition for reinstatement of the license of a landscape architect, the board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria specified in subsection (b).