



Edmund G. Brown Jr.
GOVERNOR

CALIFORNIA ARCHITECTS BOARD

PUBLIC PROTECTION THROUGH EXAMINATION, LICENSURE, AND REGULATION

SUMMARY REPORT

REGULATORY & ENFORCEMENT COMMITTEE MEETING

October 11, 2012

Sacramento, California

Committee Members Present

Sheran Voigt, Chair
Robert De Pietro – joined meeting at 10:10 a.m.
Robert George – joined meeting at 10:27 a.m.
Michael Merino
Phyllis A. Newton, Esq.
Fermin Villegas

Committee Members Excused

Fred Cullum
Larry Segrue

Board Staff Present

Doug McCauley, Executive Officer
Vickie Mayer, Assistant Executive Officer
Hattie Johnson, Enforcement Officer
Bob Carter, Architect Consultant
Don Chang, Assistant Chief Counsel, Department of Consumer Affairs

Guests

Yeaphana LaMar, Department of Consumer Affairs' Legislative and Policy Review
Richard Conrad, past Regulatory and Enforcement Committee (REC) Member
Kurt Cooknick, Director of Regulation and Practice, The American Institute of Architects, California Council (AIACC)

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Call to Order

REC Chair Sheran Voigt called the meeting to order at 10:05 a.m. Since there was not quorum, the REC met as a subcommittee to review minutes.

Members, staff, and guests introduced themselves.

Robert De Pietro joined the meeting at 10:10 a.m., resulting in a quorum.

A. Review and Approve May 10, 2012 REC Summary Report

Ms. Voigt asked if there were any comments, corrections, or questions regarding the May 10, 2012 REC Summary Report. There were none.

A motion was made by Michael Merino and seconded by Fermin Villegas to approve the May 10, 2012 REC Summary Report. The motion passed 5-0.

B. Update, Discuss, and Possible Action on Strategic Plan Objective to Define “Instruments of Service” for a Potential Regulatory Proposal

Ms. Voigt asked Bob Carter to present this agenda item. Mr. Carter explained to the REC that this issue is a result of a question previously raised by the Certified Access Specialist Institute (CASI), which represents approximately 150 certified access specialists (CASp) in California. He noted that CASI asked whether CASp services performed by a California licensed architect are considered instruments of architectural services; and, therefore, subject to the requirements of the Architects Practice Act (Act).

Mr. Carter indicated that CASI had obtained an opinion from the Legislative Counsel, who opined that CASp reports by architects do not constitute instruments of service. He stated that the Board did not agree with this opinion and sent a response to CASI opining that services provided by CASp’s who are also licensed architects in California, are required to follow the requirements of the Act.

Mr. Carter indicated that REC member Phyllis Newton researched case law concerning “instruments of service” and was able to find two cases. Mr. Carter noted that one was dated in 1950 and the other 1955. He added that the latter of the two opinions was based on a statute that no longer exists. Mr. Carter indicated that the practice of architecture has changed immensely since that time. Doug McCauley asked if the National Council of Architectural Registration Boards might have a model law concerning instruments of service.

Mr. Villegas stated he was concerned that if the definition was too broad, it could be applied to other sections of law, i.e., requiring sketches to be stamped and signed by licensees pursuant to Business and Professions Code (BPC) section 5536.1.

Kurt Cooknick stated that he felt the Board, possibly working with AIACC, should first review the definition of the practice of architecture, contained in BPC section 5500.1. Mr. Cooknick indicated that the practice of architecture had evolved since this section was written and architects do much more than the definition contained in BPC section 5500.1. He stated that if the definition of practice were updated, possibly then the definition of instruments of service could be more easily determined.

Don Chang stated that he agreed with Mr. Cooknick. He noted that the definition of practice should be assessed and updated to today's contemporary practice of architecture. He indicated that Legislative Counsel based its opinion on the current definition of the practice of architecture, which may explain its view.

Mr. Chang noted that the assessment and updating of the definition of architectural practice should be completed before the Board considers a definition of instruments of service.

A motion was made by Michael Merino and seconded by Fermin Villegas to recommend to the Board that an analysis of the contemporary practice of architecture be made to determine whether BPC section 5500.1 definition should be amended, followed by a further review of the definition of "instruments of service." The motion passed 6-0.

C. Update, Discuss, and Possible Action on Strategic Plan Objective to Initiate a Conversation with The American Institute of Architects, California Council to Explore the Feasibility of a Qualifications-Based Selection Enforcement Process (Senate Bill 1424)

Ms. Voigt requested that Doug McCauley present this agenda item. Mr. McCauley stated that the Board's 2012 Strategic Plan directed the REC to meet with AIACC to explore the possibility of a qualifications-based selection (QBS) enforcement process. He indicated that Government Code (GC) section 4526, also known as the "Mini-Brooks Act," requires that contracts with state and local agencies for professional services of private architectural, engineering, environmental, land surveying, or construction project management firms, be awarded on demonstrated competence and professional qualifications rather than competitive bidding.

Mr. McCauley explained that Senate Bill (SB) 1424 was sponsored by AIACC. He noted that it would have required architects, engineers, and land surveyors to comply with GC section 4526 when competing for contracts with state or local agencies. He indicated that this bill failed to pass; however, AIACC had indicated it will re-introduce the bill next year. Mr. McCauley reported that staff had met with Mr. Cooknick to discuss its concerns with the bill; specifically, this appears to be an issue with local agencies who do not follow QBS when contracting for professional services. He added that GC section 4526 mandates that State agencies adopt by regulation procedures that assure these services are engaged on the basis of demonstrated competence and qualifications. He noted that the law provides local agencies discretionary authority of adopt procedures by ordinance. Mr. Cooknick added that he would take the Board's concerns to the AIACC Board meeting in November.

A motion was made by Michael Merino and seconded by Robert De Pietro to recommend to the Board that its position on this bill be that AIACC's legislation should be re-focused on the violators of the QBS process rather than licensees.

Mr. Cooknick explained the objective of AIACC's proposed legislation concerning QBS. He stated that it was intended to give licensees a tool, such as the written contract law provides. He noted that the written contract law protects both the consumer/client and the architect, by ensuring clarity on expectations for the project, and provides the architect the ability to inform a client that: "While they would like to proceed without a signed agreement, doing so would be a violation of the Architects Practice Act and, that they would be subject to enforcement action by the CAB."

Mr. Cooknick stated that in this regard the AIACC's proposed legislation is similar in that it provides architects with the ability to state that: "Providing a fee would be a violation of the Architects Practice Act and that they would be subject to enforcement action by the CAB."

Mr. Merino questioned if this would be the appropriate way to address the issue.

The motion passed 6-0.

D. Discuss and Possible Action on Regulatory Proposal Regarding Board Delegation to Executive Officer Regarding Stipulated Settlements to Revoke or Surrender License

Ms. Voigt asked Hattie Johnson to present this agenda item. Ms. Johnson advised Committee members that this agenda item was informational. She reminded the REC that the Board had voted last year to delegate authority to the Executive Officer (EO) to approve stipulated settlements to revoke or surrender a license. She noted that this would require an amendment to California Code of Regulations (CCR) section 103. She explained that this section currently describes the authorities the Board had delegated to the EO for various disciplinary functions.

Ms. Johnson noted that the Board approved proposed language to amend CCR section 103, which adds the Board's delegation to the EO to approve stipulated settlements to revoke or surrender a license, and directed staff to proceed with the rulemaking file. She directed the REC to the attachment to this agenda item, which contained the approved proposed regulatory language.

A motion was made by Michael Merino and seconded by Fermin Villegas that this agenda item is received and filed. The motion passed 6-0.

The meeting adjourned at 11:10 a.m.