

Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design

DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number R-04449.

Proposed Amendments to Rules Governing Professional Conduct, *Minnesota Rules*, Chapter 1805.

**Introduction.** The Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design ("Board") intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on May 1, 2019, the Board will hold a public hearing in Suite 295, Golden Rule Building, 85 E. 7<sup>th</sup> Place, St. Paul, Minnesota 55101, starting at 9:30 AM on Tuesday, June 25, 2019. To find out whether the Board will adopt the rules without a hearing or if it will hold the hearing, you should contact the agency contact person after May 1, 2019 and before June 25, 2019.

**Agency Contact Person.** Submit any comments or questions on the rules or written requests for a public hearing to the agency contact person. The agency contact person is: Andrea Barker at the Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design, 85 E. 7<sup>th</sup> Place, Suite 160, St. Paul, MN 55101, 651-757-1511, Fax: 651-297-5310, and email: [andrea.barker@state.mn.us](mailto:andrea.barker@state.mn.us). TTY users may call the Board at (800) 627-3529. You may also review the proposed rule and submit written comments via the Office of Administrative Hearings Rulemaking e-comments website at <https://minnesotaoah.granicusideas.com/discussions>.

**Subject of Rules and Statutory Authority.** The proposed rules will update and clarify Chapter 1805, known as the Rules of Professional Conduct.

The statutory authority to adopt the rules is *Minnesota Statutes*, section 326.06. A copy of the proposed rules is published in the *State Register*, attached to this notice as mailed, and available on the Board's website at [mn.gov/aelslaqid/rulemaking.html](http://mn.gov/aelslaqid/rulemaking.html).

**Comments.** You have until 4:30 p.m. on Wednesday, May 1, 2019, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change that you desire. Any comments that you have about the legality of the proposed rules must also be made during this comment period.

**Request for a Hearing.** In addition to submitting comments, you may also request that the Board hold a hearing on the rules. You must make your request for a public hearing in writing, which the agency contact person must receive by 4:30 p.m. on Wednesday, May 1, 2019. You must include your name and address in your written request. In addition, you must identify the portion of the proposed

rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the agency cannot count it when determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

**Withdrawal of Requests.** If 25 or more persons submit a valid written request for a hearing, the Board will hold a public hearing unless a sufficient number of persons withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

**Alternative Format/Accommodation.** Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

**Modifications.** The Board might modify the proposed rules, either as a result of public comment or as a result of the rule hearing process. It must support modifications by data and views submitted to the agency or presented at the hearing. The adopted rules may not be substantially different than these proposed rules unless the Board follows the procedure under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the Board encourages you to participate in the rulemaking process.

**Cancellation of Hearing.** The Board will cancel the hearing scheduled for June 25, 2019, if the agency does not receive requests for a hearing from 25 or more persons. If you requested a public hearing, the agency will notify you before the scheduled hearing whether the hearing will be held. You may also call the agency contact person at 651-757-1511 or go online at [mn.gov/aelslaqid/rulemaking.html](http://mn.gov/aelslaqid/rulemaking.html) after May 1, 2019 to find out whether the hearing will be held.

**Notice of Hearing.** If 25 or more persons submit valid written requests for a public hearing on the rules, the Board will hold a hearing following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The Board will hold the hearing on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. Administrative Law Judge LauraSue Schlatter is assigned to conduct the hearing. Judge Schlatter's Legal Assistant Ian Lewenstein can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone 651-361-7857, fax 651-539-0310, or [ian.lewenstein@state.mn.us](mailto:ian.lewenstein@state.mn.us).

**Hearing Procedure.** If the Board holds a hearing, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules. You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. At the hearing the Administrative Law Judge may order that this five-day comment period is extended for a longer period but not more than 20 calendar days. Following the comment period, there is a five-working-day rebuttal period when the agency and any interested person may respond in writing to any new information submitted. No one may submit new evidence during the

five-day rebuttal period. The Office of Administrative Hearings must receive all comments and responses submitted to the Administrative Law Judge via the Office of Administrative Hearings Rulemaking eComments website at <https://minnesotaoah.granicusideas.com/discussions> no later than 4:30 p.m. on the due date. All comments or responses received will be available for review at the Board office or on the Board's website at [mn.gov/aelslagid/rulemaking.html](http://mn.gov/aelslagid/rulemaking.html). This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and the *Minnesota Statutes*, sections 14.131 to 14.20. You may direct questions about the procedure to the Administrative Law Judge.

The agency requests that any person submitting written views or data to the Administrative Law Judge before the hearing or during the comment or rebuttal period also submit a copy of the written views or data to the agency contact person at the address stated above.

**Statement of Need and Reasonableness.** The statement of need and reasonableness summarizes the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is now available from the agency contact person. You may review or obtain copies for the cost of reproduction by contacting the agency contact person. The SONAR is available on the Board's website at [mn.gov/aelslagid/rulemaking.html](http://mn.gov/aelslagid/rulemaking.html).

**Lobbyist Registration.** *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Ask any questions about this requirement of the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 1-800-657-3889.

**Adoption Procedure if No Hearing.** If no hearing is required, the agency may adopt the rules after the end of the comment period. The Board will submit the rules and supporting documents to the Office of Administrative Hearings for a legal review. You may ask to be notified of the date the rules are submitted to the office. If you want either to receive notice of this, to receive a copy of the adopted rules, or to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

**Adoption Procedure after a Hearing.** If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date that the Administrative Law Judge's report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date that the agency adopts the rules and the rules are filed with the Secretary of State by requesting this at the hearing or by writing to the agency contact person stated above.



Order that the rulemaking hearing be held at the date, time, and location listed above.

Dated: February 15, 2019

Signed by: Doreen Johnson, Executive Director

# Office of the Revisor of Statutes

## Administrative Rules



**TITLE:** Proposed Permanent Rules Relating to Professional Conduct

**AGENCY:** Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design

**REVISOR ID:** R-4449

**MINNESOTA RULES:** Chapter 1805

The attached rules are approved for  
publication in the State Register

A handwritten signature in cursive script that reads "Sheree Speer".

Sheree Speer  
Assistant Deputy Revisor

1.1 **Board of Architecture, Engineering, Land Surveying, Landscape Architecture,**  
1.2 **Geoscience, and Interior Design**

1.3 **Proposed Permanent Rules Relating to Professional Conduct**

1.4 **1805.0100 PROFESSIONAL CONDUCT.**

1.5 Subpart 1. **Purpose.** This ~~rule of~~ chapter on professional conduct is adopted for the  
1.6 purpose of implementing the laws and rules governing the practice of architecture,  
1.7 engineering, land surveying, landscape architecture, and geoscience ~~including Minnesota~~  
1.8 ~~Statutes, section 326.11,~~ and the title use of certified interior design.

1.9 Subp. 2. **Scope.** This ~~rule~~ chapter is applicable to and binding upon each person,  
1.10 corporation, or partnership subject to the regulatory jurisdiction of the board ~~and each person~~  
1.11 ~~subject to the control of the licensee.~~

1.12 Subp. 3. **~~Imputed knowledge of Professional responsibility.~~** ~~Each licensee who~~  
1.13 ~~holds a certificate of licensure issued by the board is charged with knowledge of this rule.~~  
1.14 ~~In the exercise of the privileges and rights granted by the certificate of licensure, the licensee~~  
1.15 ~~shall conform professional conduct to the public and to the board in accordance with the~~  
1.16 ~~provisions of this rule, and shall, as a condition of licensure, subscribe to and agree to~~  
1.17 ~~conduct the practice in accordance with the provisions of this rule.~~

1.18 A. The professional conduct of a licensee or certificate holder must accord with  
1.19 this chapter.

1.20 B. When providing professional services, the licensee's or certificate holder's  
1.21 primary responsibility is the protection of the public's health, safety, and welfare.

2.1 **1805.0200 PERSONAL CONDUCT OBLIGATION TO PROVIDE FULL**  
2.2 **DISCLOSURE.**

2.3 Subpart 1. **Public confidence and personal integrity statements.**

2.4 A. A licensee or certificate holder shall avoid any act ~~which that~~ may diminish  
2.5 public confidence in the profession and shall, at all times, conduct himself or herself, in all  
2.6 relations with clients and the public, so as to maintain its reputation for professional integrity.

2.7 B. A licensee or certificate holder shall be objective and truthful in all professional  
2.8 plans, reports, statements, testimony, or other documents. The licensee or certificate holder  
2.9 shall include all relevant and pertinent information in such documents or testimony and  
2.10 express professional opinions publicly only when they are founded upon an adequate  
2.11 knowledge of the facts and a competent evaluation of the subject matter.

2.12 Subp. 1a. Credit. A licensee or certificate holder shall accurately represent the  
2.13 qualifications, education, training, or experience and the scope of responsibility in connection  
2.14 with work for which the licensee or certificate holder is claiming credit, as well as that of  
2.15 an employer, employees, or associates.

2.16 Subp. 2. **False statements and nondisclosure.** A licensee or certificate holder shall  
2.17 not ~~submit~~ make a ~~materially~~ false statement or fail to disclose a material fact requested in  
2.18 connection with ~~the~~ an application for certification ~~or~~ licensure, or renewal in this state or  
2.19 any other state.

2.20 Subp. 3. **Knowledge of unqualified applicants.**

2.21 A. A licensee or certificate holder shall not ~~further the~~ endorse an application for  
2.22 certification or licensure of another person known by the licensee or certificate holder to  
2.23 be unqualified in respect to character, education, experience, or other relevant factor.

2.24 B. A licensee or certificate holder possessing knowledge of an applicant's  
2.25 qualifications for examination, licensure, or certification shall cooperate with the applicant

3.1 and the board by responding regarding those qualifications when requested to do so. A  
3.2 licensee or certificate holder shall provide verification of employment and experience earned  
3.3 by an applicant under supervision if there is reasonable assurance that the facts to be verified  
3.4 are accurate. A licensee or certificate holder shall not knowingly sign a verification document  
3.5 that contains false or misleading information.

3.6 Subp. 3a. Knowledge of improper conduct by others. A licensee or certificate holder  
3.7 possessing knowledge of any acts prohibited by this chapter, chapter 1800, or Minnesota  
3.8 Statutes, sections 326.02 to 326.15, by another licensee, certificate holder, or unlicensed  
3.9 individual shall report such knowledge to the board.

3.10 Upon questioning by the board or its representative during an official inquiry into an  
3.11 alleged act, a licensee or certificate holder shall disclose any knowledge the licensee or  
3.12 certificate holder may have in the matter.

3.13 **Subp. 4. General prohibitions.** A licensee or certificate holder shall not:

3.14 A. circumvent a rule of professional conduct through actions of another;

3.15 B. engage in illegal conduct involving moral turpitude;

3.16 C. engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

3.17 D. engage in conduct that adversely reflects on the licensee's fitness to practice  
3.18 the profession; or

3.19 E. permit the licensee's or certificate holder's name or seal to be affixed to plans,  
3.20 specifications, or other documents ~~which~~ that were not prepared by or under the direct  
3.21 supervision of the licensee or certificate holder.

3.22 **1805.0300 CONFLICT OF INTEREST.**

3.23 **Subpart 1. Employment.** A licensee or certificate holder shall ~~avoid accepting~~ not  
3.24 accept a ~~commission~~ project where duty to the client or the public would conflict with the

4.1 personal interest of the licensee or certificate holder or the interest of another client. Prior  
4.2 to accepting ~~such employment~~ a project, the licensee or certificate holder shall disclose to  
4.3 a prospective client such facts as may give rise to a conflict of interest.

4.4 **Subp. 2. Compensation.** A licensee or certificate holder shall not accept compensation  
4.5 for services relating or pertaining to the same project from more than one party unless there  
4.6 is a unity of interest between or among the parties to the project and unless the licensee or  
4.7 certificate holder makes full disclosure and obtains the express consent of all parties from  
4.8 whom compensation will be received.

4.9 **Subp. 3. Gifts.**

4.10 **A.** A licensee or certificate holder shall not, directly or indirectly, solicit or accept  
4.11 any compensation, gratuity, or item of value from contractors, their agents, material or  
4.12 equipment suppliers, or other persons dealing with the client or employer in connection  
4.13 with the work for which the licensee or certificate holder has been retained without the  
4.14 knowledge and approval of the client or the employer.

4.15 **B.** A licensee or certificate holder shall neither offer nor make any payment or  
4.16 gift to a government official, whether elected or appointed, with the intent of influencing  
4.17 the official's judgment in connection with a prospective or existing project in which the  
4.18 licensee or certificate holder is interested or involved.

4.19 **Subp. 4. Interpretations.** When acting as the interpreter of project contract documents  
4.20 or as the judge of contract performance, a licensee or certificate holder shall render decisions  
4.21 impartially, using the professional judgment of their licensed or certified discipline.

4.22 **1805.0400 IMPROPER SOLICITATION OF EMPLOYMENT.**

4.23 **A.** A licensee or certificate holder shall seek and engage in only the professional  
4.24 work or employment the professional is competent and qualified to perform by reason of  
4.25 education, training, or experience.



5.1 ~~A licensee shall not falsify or misrepresent the extent of the licensee's education, training,~~  
5.2 ~~experience, or qualifications to any person or to the public; nor misrepresent the extent of~~  
5.3 ~~the licensee's responsibility in connection with any prior employment.~~

5.4 ~~A licensee shall not transmit, distribute, or publish or allow to be transmitted, distributed,~~  
5.5 ~~or published, any false or misleading information regarding the licensee's own qualifications,~~  
5.6 ~~training, or experience or that of his or her employer, employees, associates, or joint~~  
5.7 ~~venturers.~~

5.8 B. A licensee or certificate holder shall not tender any gift, pay, or offer to pay,  
5.9 directly or indirectly, anything of substantial value, whether in the form of a commission  
5.10 or otherwise, as an inducement to secure employment. A licensee or certificate holder is  
5.11 not prohibited from paying a commission to a licensed employment agency for securing a  
5.12 salaried position.

5.13 **1805.0500 FALSE OR MALICIOUS STATEMENTS.**

5.14 A licensee or certificate holder shall not make ~~no~~ false or malicious statements ~~which~~  
5.15 that may have the effect, directly or indirectly, or by implication, of injuring the personal  
5.16 or professional reputation or business of another member of the profession.

5.17 **1805.0650 COMPETENCE.**

5.18 Subpart 1. Standards of competence. In practicing architecture, engineering, land  
5.19 surveying, landscape architecture, geoscience, or when using the title of certified interior  
5.20 designer, each licensee or certificate holder shall act with reasonable care and competence  
5.21 and shall apply the knowledge and skill that is ordinarily applied by such professionals.

5.22 Subp. 2. Conformance with state and local laws and regulations. In providing  
5.23 professional services, a licensee or certificate holder shall take into account applicable state  
5.24 and local laws and regulations. While a licensee or certificate holder may rely on the advice

6.1 of other professionals as to the intent and meaning of such regulations, once having obtained  
6.2 the advice, the licensee or certificate holder shall not violate such laws and regulations.

6.3 Subp. 3. **Qualifications for performing professional services.** A licensee or certificate  
6.4 holder shall perform professional services only when the licensee or certificate holder,  
6.5 together with those whom the licensee or certificate holder may engage as consultants, are  
6.6 qualified by education, training, and experience in the specific technical areas involved.

6.7 **1805.0700 ~~ACTION BY OTHER JURISDICTION~~ COMPLIANCE WITH LAWS.**

6.8 Subpart 1. **Violation of laws.** Convictions of a felony without restoration of civil  
6.9 rights, or ~~the revocation or suspension of the certificate of licensure of~~ disciplinary action  
6.10 taken against a licensee or certificate holder by another jurisdiction, if for cause which in  
6.11 the state of Minnesota would constitute a violation of law or of these rules, shall be deemed  
6.12 to be a violation of these rules of professional conduct.

6.13 Subp. 2. **Incompetence.** ~~Any~~ A licensee or certificate holder adjudged mentally  
6.14 incompetent by a court of competent jurisdiction shall, until restored to mental competency,  
6.15 be deemed to be incompetent to practice the profession within the meaning of Minnesota  
6.16 Statutes, section 326.11, subdivision 2.

6.17 **1805.0800 ~~EMPLOYMENT ON THE BASIS OF MERIT~~ PRACTICES.**

6.18 A licensee or certificate holder, as an employer, shall refrain from engaging in any  
6.19 discriminatory employment practice prohibited by law ~~and shall, in the conduct of the~~  
6.20 ~~business, employ professional personnel solely upon the basis of merit.~~

6.21 **1805.0900 PROFESSIONAL MISCONDUCT.**

6.22 Misconduct within the meaning of Minnesota Statutes, section 326.11, subdivision 1,  
6.23 shall include any act or practice in violation of the rules of professional conduct ~~as set forth~~  
6.24 ~~in parts 1805.0100 to 1805.0800~~ this chapter. A licensee or certificate holder shall not  
6.25 engage in conduct involving bribery, collusion, corruption, fraud, or malice.

7.1 **1805.1500 REGISTRATION.**

7.2 No corporation, partnership, or other firm engaged in the practice of architecture,  
7.3 engineering, land surveying, landscape architecture, ~~or~~ geoscience, or two or more of these  
7.4 professions, shall contract with or accept employment for professional services of an  
7.5 architectural, engineering, land surveying, landscape architectural, or geoscience character  
7.6 as defined in Minnesota Statutes, sections 326.02 to 326.15, unless a member or employee  
7.7 of the corporation, partnership, or other firm in responsible charge of the work is registered  
7.8 and licensed under ~~the provisions of~~ Minnesota Statutes, sections 326.02 to 326.15, to  
7.9 practice the profession called for by the employment.

7.10 **1805.1600 RESPONSIBLE CHARGE AND DIRECT SUPERVISION.**

7.11 Subpart 1. **Responsible charge; defined.** A person in responsible charge of  
7.12 architectural, engineering, land surveying, landscape architectural, geoscience, or certified  
7.13 interior design work as used in Minnesota Statutes, section 326.14, means the person who  
7.14 determines and reviews design ~~policy~~ criteria, including technical aspects, advises with the  
7.15 client, ~~superintends~~ has direct supervisions of subordinates during the course of the work  
7.16 and, in general, the person whose professional skill and judgment are embodied in the plans,  
7.17 designs, and advice involved in the work. ~~Plans and specifications for buildings, structures,~~  
7.18 ~~or projects of standard design which have been designed outside the state shall bear the~~  
7.19 ~~certification of the design professional licensed in another United States licensing jurisdiction.~~  
7.20 ~~In addition, a Minnesota licensed architect, professional engineer, land surveyor, landscape~~  
7.21 ~~architect, professional geologist, professional soil scientist, or certified interior designer~~  
7.22 ~~shall review the design and certify that it is appropriate to the site on which construction is~~  
7.23 ~~proposed and is in compliance with the State Building Code adopted by the Department of~~  
7.24 ~~Administration where the building code is in effect.~~

7.25 Subp. 2. **Direct supervision; defined.** A person in "direct supervision" of work as  
7.26 referred to in Minnesota Statutes, section 326.12, subdivision 3, means that person who is

8.1 the employer, an employee of the same firm, or who is under contract to or from another  
8.2 firm and who is in responsible charge of the technical aspects of the architectural,  
8.3 engineering, land surveying, landscape architectural, geoscience, or certified interior design  
8.4 work in progress, and whose professional skill and judgment are embodied in the plans,  
8.5 specifications, reports, plats, or other documents required to be certified pursuant to that  
8.6 subdivision. A person in direct supervision of work directs the work of other licensees,  
8.7 ~~interns, draftspersons~~ unlicensed professionals, technicians, and clerical persons assigned  
8.8 to that work and is in responsible charge of the project comprising the work being supervised.

8.9 **REPEALER.** Minnesota Rules, part 1805.0600, is repealed.