

The CALIFORNIA LICENSED CONTRACTOR



OCTOBER 1952

DISCIPLINARY PROCEEDINGS

By JOHN G. CLARKSON

John G. Clarkson is Chief of the Division of Administrative Procedure. This division was created in 1945 when the Administrative Procedure Act was adopted by the California Legislature. The division maintains a staff of hearing officers independent of the agencies, to conduct the formal disciplinary proceedings described in this article.

"Since time whereof the memory of man runneth not to the contrary" is the way the old lawyers would describe a well-established and continuous practice or custom. Well, since the creation of administrative agencies certain practices have developed. These practices have been modified by legislation which in part affects the Contractors' State License Board.

This board is an administrative agency.¹ Its problem is to administer the California Contractors' License law. A major portion of the administrative functions of the Contractors' State License Board is delegated to the Registrar who also acts as the board's executive secretary.² In other words the board, in a sense, is an advisory board to resolve matters of overall policy and to review the acts of its Registrar in administering, carrying out and enforcing the law under general policy directives of the board.

This the Registrar is able to do through the organization staff of persons to assist in the various functions devolving upon him. A portion of the staff maintains the license records. This requires considerable clerical work in connection with the issuance and renewal of licenses. Another phase of the work is the important task of preparing and conducting examinations to determine qualifications of those who seek to be licensed in this particular field. A third and important job is rule making. The Legislature has delegated such powers to facilitate implementation of the law.³ This has been done.⁴ Specifically relating to

Worthington Elected Chairman of the Board; Roberts Elected Vice Chairman

Jess B. Worthington, San Diego painting contractor, has been elected by members of the Contractors' State License Board to serve as chairman for the Fiscal Year 1952-1953. He succeeds Chris D. McKeon, San Francisco general contractor, who remains a member of the board.

Worthington is the senior member of the board having served since 1940. He previously served as chairman in 1946. The new chairman has been active as a painting contractor since 1916 and does work throughout the western states. He has been an outstanding leader in painting circles and is past national president of the Painting and Decorating Contractors of America. The board members also elected H. Cedric Roberts, Burbank building contractor, to the post of vice chairman. Roberts is a past chairman of the board, having served in 1948. He is also a past president of the Building Contractors Association of Southern California.

Chairman Worthington announced the following appointments to the various standing committees of the board for the Fiscal Year 1952-1953.

Public Relations and Grievances

S. Glen Hickman, Chairman
Joseph A. McNeil
Edgar L. Buttner

Personnel and Departmental Relations

H. Cedric Roberts, Chairman
Chris D. McKeon
S. Glen Hickman

Reference Letters

Should I Recommend Him?

Many of California's licensed contractors, architects, or engineers, will, on request of applicants for a state contractor's license, have to answer the question: "Should I recommend him?" Some may not fully understand the intent and purpose of these letters, also what information is desirable, therefore, for those and others interested, we offer the following suggestions.

In order to be of any value and assistance in the efforts and purposes of the Contractors' License Board, to license only those applicants who possess good character and ability and who will be worthy of the privileges of the state license, which in the opinion of the public is an endorsement of the contractors' character and ability, it is imperative that the answer or information given, be accurate, truthful and in the light of the best public interest.

Question Number 1—"How long have you known this person?"

To answer questions 2 and 3, the reference is called upon to make his recommendation truthfully and accurately and must be fully aware of the character, background and capabilities of the applicant. He must also have known the person for more than a year. The relationship should be of a close nature and not that of a casual acquaintance.

Question Number 2—"What do you know of this person's honesty, integrity and the manner in which he has met and discharged financial obligations?"

Any answer to this question should be considered carefully and based on knowledge personally obtained and weighed with the thought of whether you would, with your present knowledge, be willing to extend credit or entrust funds to the applicant in a manner the public will be expected to

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Disciplinary Proceedings

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the requirements of application for license,⁵ to examination⁶ and in the area of specialty classifications and limitation of license privileges to the licensed classification.⁷

Finally a most important responsibility is that of investigation for determination of compliance and/or violations of the law and enforcement, including the discipline of those found to have engaged in any violations. The board investigators have discovered that most of the violations are under Sections 7107, abandonment of construction projects without legal excuse; 7109, departure from or disregard of plans and specifications; 7119, wilful failure or refusal without legal excuse to prosecute a construction project with reasonable diligence causing damage. No disciplinary action may be taken except upon proof of a violation of law or of properly adopted and valid regulations.

For many years disciplinary proceedings for any violation had been conducted by a member of the staff of the board.⁸ In the books containing the decisions of the appellate courts there are not many instances in which the courts reversed the decision of the Registrar or of the board in these disciplinary matters. This was true of many such agencies. It is also true that because of actual and fancied abuses, attempts were made for years to find a means of control over agency action.

Although some administrative agencies had conducted disciplinary proceedings in a reasonable manner and with a concept of fair hearing, or "due process" as the lawyers would call it, the insistent demands for reform led the California Judicial Council and the Legislature to enact the Administrative Procedure Act in 1945.⁹

With the adoption by the Legislature in 1945 of the Administrative Procedure Act, requirements for minimum procedural steps to be undertaken by many state agencies including the Contractors' State License Board were required. For some time thereafter the board continued to hold its hearings, since 1945 under this act, and caused them to be conducted by members of the regular staff of the board who had acted in that capacity prior to the enactment of the Administrative Procedure Act. In some areas beginning in Sacramento and later in San Francisco, the board began using the services of the corps of hearing officers maintained by the Division of

Administrative Procedure. This transition at first resulted in the assignment of the more difficult or controversial cases to the officers of the division. The practice of reference of disciplinary hearings has progressed to the point where most of the hearings of the board in the Sacramento and San Francisco areas are now being held by officers of the Division of Administrative Procedure. A few of the hearings in the categories above indicated are now being assigned to the division in the Los Angeles area.

The volume of disciplinary hearings being conducted by this board are substantial. According to the statistics published in the Third Biennial Report of the Division of Administrative Procedure the number of such hearings under the Administrative Procedure Act conducted by or for this board are exceeded only by the Board of Equalization.¹⁰ This does not include the offenses prosecuted in the criminal courts for violations of the contractors' state license law or supplementary ordinances.

While the volume of disciplinary orders is not the only significant factor it is of interest to note that with a large volume of licensees¹¹ the administrative duty of licensing, supplemented by the correlative duty to properly discipline and enforce compliance with the provisions of the law relating to the particular licensed occupation is a very important function of government, and of this board.

Here is a typical instance of disciplinary proceeding. The investigator has learned of an apparent violation. He will interview all parties and others who may know any relevant facts. He will also examine documents that may have any bearing on the determination of whether the alleged (claimed) violation in fact occurred. When the investigation has been concluded the appropriate staff member decides what must be done.

This may be any one of several administrative acts. It may be a reference to a prosecutor for bringing criminal action. It might be that instructions are given to commence a disciplinary proceeding.

The licensee is entitled under the Administrative Procedure Act to be notified in a formal manner any charges that he has violated any law which could be the subject of disciplinary action by the Registrar. This notice comes in the form of written papers known as an accusation (or a statement of issues if the hearing involves an applicant for a license), a notice to respondent advising of his

legal rights, and a form which he may sign to request a formal hearing on the charges. If the charges are true, and the licensee does not want to be heard, he need not file the notice of defense. If he does not file it, the Registrar may enter any proper order of suspension or revoke the license provided the facts known or proven to the Registrar establish a violation of law which warrants such an order.

If a notice of defense is filed, the case is set up for a formal hearing at a time and place to be indicated in a notice of hearing which will be served on the licensee. At that time and place, with or without representation of legal counsel, evidence is presented to a hearing officer. Based on this evidence which is presented in such manner as seems most appropriate either by agreeing to the facts or by proof through examination of witnesses and presentation of documents and papers the case charged in the accusation will be developed. A licensee may object to and cross-examine each witness. When the case for the agency is well along, the respondent will have a full opportunity to then present his evidence. He may present witnesses and any relevant documents. His case may include his own testimony as to the facts and circumstances surrounding the matter alleged to be in violation. If at the conclusion of his presentation the licensee has not himself testified the agency may then examine the licensee as though on cross-examination to develop any evidence necessary to fully disclose the facts on which the decision must be made.¹²

The law requires that the hearing officer then prepare a decision in writing in such form that it may be considered by the Registrar of Contractors.¹³ This decision must include findings of fact, a determination of the issues presented—that is, whether or not the facts establish a violation of any particular disciplinary sections of the law; and finally a proposed order for the discipline of the licensee or a proposal that the proceedings be dismissed in the event insufficient proof has been presented to convince the hearing officer that a violation has occurred.¹⁴

This proposed decision with any exhibits or documents that have been presented to the hearing officer will be forwarded to the Registrar, who, with the advice of his assistant, will examine the material carefully to see if the record thus presented for his consideration indicates that there has been a violation and that the proposed order of discipline is an appropriate

one in the particular case. The Registrar must then decide whether to adopt, modify, or reject this decision.¹⁵ If it is adopted he signs an order of option and sends a copy of it together with a copy of the proposed decision which he has adopted to the licensee showing the date upon which the disciplinary order is to be effective.¹⁶

If the Registrar is not satisfied with the proposed decision or for any good reason feels that the decision should not be adopted in the form presented he has several alternatives that he may take.¹⁷ He may decide to consider the entire record himself. In this event he will have before him a transcript of all of the testimony taken at the formal hearing which he can consider in connection with the documents and other exhibits as well as the proposed decision of the hearing officer. After he has made such an examination he may decide the case on that record. It is also permissive for him to take additional testimony or he may refer the matter back to the same or another hearing officer to take the additional testimony. In the latter event the hearing officer will again, based upon the complete record, make another proposed decision in the same form and submit it for the consideration of the Registrar. A licensee is entitled to have a copy of the proposed decision of the hearing officer as first submitted and again as submitted after the reference for further testimony. It is also true that if the Registrar does not adopt the first decision proposed then he may not adopt either the decision which he makes on rejection of the first decision, or the decision proposed after a re-reference without giving the licensee an opportunity to present either oral or written argument to the Registrar.

After the licensee has received a decision and order from the Registrar he will note an effective date sometime later than the date upon which the licensee receives the decision. Until that date of effectiveness the licensee may request the Registrar to reconsider the matter.¹⁸ If such request is made the full reasons for the request should be submitted to the Registrar so that he can fairly determine whether the request is reasonable and should be granted or not. This request should be filed promptly, and must be made early enough so that the Registrar will act upon it for his power to do so terminates on the effective date of the decision.

After the effective date it is possible

too that a licensee who feels himself to be unfairly disciplined may seek judicial review of the decision of the Registrar by filing a petition for a writ of mandate under the provisions of the Administrative Procedure Act.¹⁹ Upon the filing of this petition it is the duty of the court with whom it is filed to consider the decision of the Registrar to the extent and in the manner indicated by the Legislature in Code of Civil Procedure Section 1094.5. The practice has developed that the petition for writ of mandate will be filed with the superior court in the county in which the licensee resides or has his principal place of business or where the transaction out of which the investigation arose occurred. If a request is made for it at the time of filing the petition for writ, the superior court ordinarily will grant an order staying the effectiveness of the order of the Registrar until the matter can be fully determined by the reviewing court. In connection with any such stay of the effectiveness of the order, the law requires that the court direct that the petitioner shall file a bond in an amount fixed by the court not less than one thousand dollars to guaranty the compliance by the petitioner with any conditions imposed by the Registrar's decision before the court may grant a stay of the effectiveness of the Registrar's decision pending the review thereof.²⁰

These disciplinary proceedings are very serious matters. It was suggested earlier in this paper that a licensee might appear at the time and place noticed for the hearing with or without representation of legal counsel. In a majority of cases the presentation of the facts on behalf of the Registrar are made by one of the members of his staff none of whom are trained lawyers. The law does, however, prescribe the steps to be taken and certain legal matters or principles arise which govern the conduct of these proceedings. The reader should not be misled by any statement herein to believe that he can or should safely trust himself in a proceeding of this importance or to any other than one who is trained to properly protect the licensee from the consequences of an adverse disciplinary order. While it is true that the hearing is designed to develop the truth of what happened the average licensee is not himself competent to objectively consider the effect of the facts as they are known to him nor the significance of testimony of other persons and of papers and documents that might establish his version of the

REGISTRATION BY CLASSIFICATION

(As of June 30, 1952)

A	General Engineering Contractors..	2,089
B 1	General Building Contractors.....	25,909
C 4	Boilers, Hot Water Heating, Steam Fitting	138
C 6	Cabinet and Mill Work.....	317
C 8	Cement and Concrete	1,547
C 45	Electric Signs	192
C 10	Electrical (general)	4,232
C 11	Elevator Installation	41
C 12	Excavating, Grading, Trenching, Paving, Surfacing	926
C 15	Flooring (wood)	862
C 16	Fire Protection Engineering.....	30
C 17	Glazing	286
C 21	House and Building Moving.....	200
C 2	Insulation	244
C 27	Landscaping	497
C 26	Lathing	377
C 29	Masonry	1,158
C 23	Ornamental Metals	166
C 33	Painting, Decorating	8,750
C 35	Plastering	2,330
C 36	Plumbing	4,684
C 38	Refrigeration	407
C 39	Roofing	1,352
C 42	Sewer, Sewage Disposal, Drain, Cement Pipe Laying.....	554
C 43	Sheet Metal	938
C 50	Steel, Reinforcing	75
C 51	Steel, Structural	148
C 22	Structural Pest Control.....	242
C 54	Tile (Ceramic and Mosaic).....	1,088
C 20	Warm-Air Heating, Ventilating, Air Conditioning	587
C 60	Welding	135
C 57	Well Drilling	585
C 61	Classified Specialists	2,134
		63,220

transaction. Because of the possible serious consequences it would probably be advisable for any licensee, when served with formal papers announcing a disciplinary hearing, to consult with some person competent to properly advise him.

Such advice is desirable for several other reasons. Seldom if ever will these proceedings be started unless a thorough investigation has been made which discloses the reasonable belief of the Registrar's staff that a violation has occurred. This is not to say that there is any prejudgment of the guilt of the accused person. It is but an admonition that there has been a careful investigation and there is reasonable indication that violations have occurred. Another important reason to consult someone with experience is that it is often possible to discuss the matter with a representative of the Registrar in advance of the hearing date. If nothing more this would at least give an opportunity to consider the possibility of simplification of the issues and perhaps agree upon certain facts about which there is no dispute. This could be made the basis of a stipulation or agreed statement of

facts that would shorten the hearing time to the advantage of all parties.

In the event a disciplinary order has been entered, it is highly desirable that the licensee fully comply with all of the terms and conditions of the disciplinary order and that he do nothing inconsistent with the order. For example, if the licensee is suspended for a period of time he should be careful not to engage in any business that is prohibited during the period of suspension as this will have a very serious effect upon his standing as a licensed contractor. It could lead to criminal prosecution, for engaging in business without a license and it would defeat any attempt to recover in a civil action, moneys thought to be due the contractor under any contracts entered into during the period of suspension.

This attempt to describe a typical disciplinary hearing may sound rather complicated and formidable. It need not necessarily be so, as these hearings are required to be conducted simply and with considerable freedom from legal technicalities. This explanation however should not deceive or mislead one nor cause one to be lulled into a sense of security for reasons above indicated. Any disciplinary hearing which is undertaken after a deliberate consideration by the Registrar of the seriousness of the offense, and a decision that some action must be taken, is serious.

Under the law there are certain procedural steps which are necessary and although they are designed in the interest of protecting the licensee from improper action on the part of the Registrar they must nevertheless be followed by the licensee and hence should be described so that he is aware of what is going on during the successive steps of disciplinary proceedings.

FOOTNOTES

- ¹ Business and Professions Code, Sections 7000-7017.
- ² Business and Professions Code, Sections 7011-7013.
- ³ Business and Professions Code, Section 7059.
- ⁴ See Title 16, Chapter 8, California Administrative Code, Sections 700-797.
- ⁵ Sections 706-726, 780-786.
- ⁶ Sections 764-776.

- ⁷ Sections 730-760.
- ⁸ Business and Professions Code, Section 7011 (3).
- ⁹ Tenth Biennial Report of the Judicial Council and the Administrative Procedure Act (Government Code, Sections 11370-11528).
- ¹⁰ First three quarters of year 1950 Contractors 339, Board of Equalization 1237.
- ¹¹ 1950-51, 61,214. Contractors License Law Reference Book.
- ¹² Administrative Procedure Act, Section 11513 (c).
- ¹³ Administrative Procedure Act, Section 11517 (b).
- ¹⁴ Administrative Procedure Act, Section 11518.
- ¹⁵ Administrative Procedure Act, Section 11517 (b) (c).
- ¹⁶ Administrative Procedure Act, Section 11519.
- ¹⁷ Administrative Procedure Act, Section 11517 (c).
- ¹⁸ Administrative Procedure Act, Section 11521.
- ¹⁹ Administrative Procedure Act, Section 11523.
- ²⁰ Business and Professions Code, Section 7100.

Worthington Elected

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Rules and Regulations

Edgar L. Buttner, Chairman
H. Earl Parker
H. Cedric Roberts

Finance and Budget

H. Earl Parker, Chairman
Chris D. McKeon
H. Cedric Roberts

Legislative

Joseph A. McNeil, Chairman
H. Earl Parker
Edgar L. Buttner

Prequalification and Examination

Chris D. McKeon, Chairman
S. Glen Hickman
Joseph A. McNeil

Reference Letters

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do, if he secures the license. Will he pay his bills?

Question Number 3—"What do you know of the person's experience in the construction industry?" (If you are uninformed, so state.)

The information and statement, in answer to the above question, should be based on your observation of the type, or kind of work done by the person, the length of time you have known him to engage in that particular field in the construction industry, also if known, his ability and the quality of work performed by him. If you have no such information, state "uninformed."

Question Number 4—"What is your business or profession; how long have you been in business and where?" (This question relates to the reference only.)

THE CALIFORNIA LICENSED CONTRACTOR

DEPARTMENT OF PROFESSIONAL AND VOCATIONAL STANDARDS

Earl Warren, Governor
James A. Arnerich, Director
Fred A. Taylor, Assistant Director

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CONTRACTORS' STATE LICENSE BOARD

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H. Cedric Roberts, Vice Chairman Burbank
Edgar L. Buttner Oakland
S. Glen Hickman Los Angeles
Chris D. McKeon San Francisco
Joseph A. McNeil Los Angeles
H. Earl Parker Marysville

N. J. Morrisey, Registrar
E. W. Ford, Assistant Registrar

Question Number 5—"Licensed by?"
(This question also relates to the reference only—Contractor, Engineer, or Architect's License Number and Classification.)

These two questions should be fully answered by persons making the recommendation, and affirming the answers to the above question true and correct, to the best of his knowledge.

N. J. Morrisey, Registrar of Contractors, points out, by the following message, which is printed on every Reference Form, the duty and responsibility of those giving letters of reference, to wit;

Quote: by N. J. Morrisey, Registrar of Contractors.

"Personally, I ask you to accept this responsibility seriously. By so doing, you will assist the Contractors' State License Board in licensing only capable and qualified men. Your fullest cooperation is most earnestly solicited."

Very truly yours,
N. J. MORRISEY
Registrar of Contractors

Board Meets

The next regular quarterly meeting of the Contractors' State License Board will be held at Marysville, in the Marysville Hotel, on Friday, October 24, 1952, at 10 o'clock a.m.



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