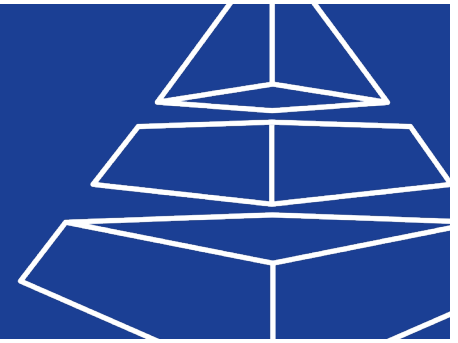




# DBIA Code of Professional Conduct Enforcement and Disciplinary Action



The **Introduction**, as well as **Ethical Rules and Comments**, are set out in Sections I and II of the DBIA Code of Professional Conduct.

## III. Enforcement and Disciplinary Actions.

### 1. Grounds for Disciplinary Action:

The grounds for disciplinary action, as provided under this Code, are as follows:

- A. Gross negligence or willful misconduct in the performance of services, or other unethical or unprofessional conduct, based upon demonstrable or serious violations of this Code.
- B. Conviction of a Professional for a felony or other crime of moral turpitude under federal or state law in a matter related to the conduct of business.
- C. Fraud or deliberate misrepresentation in the application or maintenance of DBIA membership, DBIA or other industry certification, or other professional recognition or credential.

### 2. Application of Procedures:

These Procedures shall apply to all complaints received about Professionals, whether initiated by another Professional, DBIA or its agents, or other third party. Actions taken under these Procedures do not constitute enforcement of the law, although referral to appropriate federal, state, or local government agencies may be made about a Professional's conduct in appropriate situations. Individuals bringing complaints are not entitled to any relief or damages by virtue of this process, although they will receive notice of the

actions taken. Complaints of a commercial nature, primarily involving claims of libel or slander, or primarily requesting judicial-type relief, may not be considered under these Procedures unless they also involve potential violations of this Code.

### 3. Development and Administration of Procedures:

The DBIA National Board of Directors (the "National Board") is responsible for the development and administration of these Procedures, however, the Design-Build Certification Board (the "Certification Board") is delegated authority to administer these Procedures on behalf of the National Board. The Certification Board is responsible for ensuring that these Procedures are implemented and followed. All National Board members, Certification Board members, DBIA staff, and other individuals engaged in investigations or decisions on behalf of DBIA with respect to any complaint under these Procedures are indemnified and shall be defended by DBIA against any liability arising from related activities to the extent permitted by law, provided such individuals act in good faith and with reasonable care, without gross negligence or willful misconduct, and do not breach any fiduciary duty owed to DBIA. No one who has any personal involvement in the alleged misconduct or any material conflict of interest shall be permitted to participate in the matter to be reviewed.

### 4. Complaints:

A. Complaints shall be made in writing and shall be signed by the person making the complaint (the "Complainant"). Forms for complaint shall be developed by the Certification Board and provided by DBIA on its website. The original complaint shall

be filed with DBIA at its national headquarters. In addition, the Chair of the Certification Board (the "Chair") may self-initiate an inquiry if circumstances warrant. Inquiries or submissions other than complaints may be handled by DBIA at its discretion. All such complaints, inquiries, or submissions relating to this Code are directed to the Chair. Upon receipt and preliminary review of any such submission, the Chair may conclude, in the Chair's sole discretion, that the submission: (1) contains facially unreliable or insufficient information, or (2) is patently frivolous or trivial. In such cases, the Chair may determine that the submission does not constitute a potentially actionable complaint that would justify bringing it before the Certification Board for determination of whether there has been a violation of this Code. If so, such submission shall be disposed of by the Chair, and notice to the Complainant shall be provided by the Chair. All such preliminary dispositions by the Chair shall be reported to the Certification Board.

B. If a submission is deemed by the Chair on a preliminary basis to be a potentially actionable complaint, the Chair shall see that written notice is provided to the Professional whose conduct has been called into question, advising the Professional that an investigation is being initiated. The Chair also shall provide notice to the Complainant that the complaint is being reviewed by the Certification Board.

### 5. Review of Complaint:

A. For each submission involving an alleged violation of this Code that the Chair believes is a potentially actionable

complaint, the Chair shall authorize an investigation into its specific facts or circumstances to whatever extent is necessary in order to clarify, expand, or corroborate the information provided by the Complainant. The Chair shall first appoint a Review Subcommittee (the "Subcommittee") of three or more persons (designating one as the Subcommittee Chair), from the Certification Board (who shall be members in good standing of DBIA), to conduct the investigation, make a determination as to whether charges against the Professional should be brought to the Certification Board, and formulate formal charges for the Certification Board, if warranted. The Subcommittee may be assisted in the conduct of its investigation by DBIA staff and/or legal counsel. The Subcommittee may review one or more such complaints as determined by the Chair of the Certification Board.

B. Both the individual submitting the complaint and the Professional who is the subject of the charge may be contacted by the Subcommittee for additional information with respect to the complaint. The time for providing such additional information shall be established by the Subcommittee, and the individuals shall be given not less than thirty (30) days to respond. The Subcommittee may, at its discretion, contact such other individuals who may have knowledge of the facts and circumstances surrounding the complaint. The Subcommittee shall initially determine whether it is appropriate to review the complaint under these Procedures, or whether the matter should be referred to another entity engaged in the administration of law. If the Subcommittee concludes that charges should be brought, it shall return to the Chair formal charges and the Subcommittee's written report explaining the alleged aggrieved conduct and why such conduct constitutes grounds for disciplinary action under this Code. If no charges are brought, the Subcommittee shall notify the Professional and send a report of its

determination to the Chair, who shall notify the National Board.

C. If the Subcommittee has recommended that formal charges be brought, the Subcommittee Chair shall notify the Professional to be charged and send the Professional a copy of the charges and the Subcommittee's report. The Subcommittee Chair shall advise the Professional that an investigation will be conducted and that a hearing will be held, providing the Professional with the proposed date and time for such hearing. The Professional shall be advised that the Professional may request the opportunity to submit information or arguments contesting the charge in person and/or by writing, by submitting such request within thirty (30) days from receipt of the notice. The Professional shall also be advised that the Professional may have the right to review evidence to be presented at the hearing and that the Professional may be represented by counsel. The Professional shall also be sent a copy of these Procedures. Any member of the Certification Board who participated on the Subcommittee may not otherwise be involved in the Certification Board deliberations with respect to the particular charges brought when that person served on the Subcommittee.

D. All investigations and deliberations of the Subcommittee and the Certification Board are to be conducted in confidence to the extent practical, except that the Subcommittee or the Certification Board shall be permitted to disclose any relevant information when compelled by a validly-issued subpoena, when otherwise required by law, or to parties essential to the review and investigation of the alleged aggrieved conduct. All written communications relating to the investigations and deliberations of the Subcommittee and the Certification Board should be sealed and marked "Personal and Confidential." All investigations and deliberations of the Subcommittee and the Certification Board shall be conducted objectively, without prejudgment of any kind. An

investigation may be directed toward any aspect of a complaint which is relevant or potentially relevant.

E. The Certification Board hearing may be held in person, or by telephone or video conference if the Professional does not request the opportunity to appear in person. The Chair shall preside and make evidentiary and other procedural rulings. If a hearing is held with the charged Professional present, the Chair shall, in his or her discretion, determine the rules of evidence and for oral presentations by the parties. Written statements may be accepted as evidence. If witnesses appear, they shall be subject to cross-examination. The Professional may be accompanied and represented by legal counsel. The Certification Board may obtain advice from DBIA legal counsel.

#### **6. Determination of Violation:**

A. Upon completion of its investigation and the hearing, the Certification Board shall determine by majority vote, upon a preponderance of the evidence, whether there has been a violation of this Code, and whether the Certification Board should impose sanctions. When the Certification Board finds a violation, it shall recommend imposition of an appropriate sanction. If the Certification Board so recommends, a written determination with a proposed sanction shall be prepared under the supervision of the Chair, and shall be presented by a representative of the Certification Board to the National Board, along with the record of the Certification Board's investigation and deliberation. Written notice of the Certification Board's determination, the proposed sanction(s), and the fact that the matter will be reviewed by the National Board, shall be provided to the charged Professional within fifteen (15) days of the Certification Board's determination. If the Certification Board determines that a violation has not occurred, the complaint shall be dismissed with notice to the Professional, as well as to the Complainant with a summary report sent to the National Board.

B. If a violation is found and sanctions are recommended by the Certification Board, the Professional charged may submit a written statement to the Certification Board prior to its decision, but may not otherwise appear before or participate in the Certification Board's deliberations. The Certification Board may accept, reject, or modify the Subcommittee's determinations of a violation or the recommended sanction to be imposed. If the Certification Board agrees, based on a majority vote, that a violation has occurred, then the determination and imposition of a sanction, as determined by the Certification Board based on a majority vote, shall be promulgated by written notice to the Professional.

C. In certain circumstances, the Certification Board may consider a recommendation from the Subcommittee that the Professional in violation of this Code should be offered the opportunity to submit a written assurance that the conduct in question has been terminated and will not recur. The decision of the Subcommittee to make such a recommendation and of the Certification Board to accept it is within their respective discretionary powers. If such an offer is extended, the Professional at issue must submit the required written assurance within thirty (30) calendar days of receipt of the offer, and the assurance must be submitted in terms that are acceptable to the Certification Board. If the Certification Board accepts the assurance, notice shall be given to the Professional.

#### **7. Other Legal Action:**

If the parties to a complaint are involved in related litigation or arbitration, or when the Professional is the subject of disciplinary proceedings before any licensing board or governmental agency (collectively, "Legal Action"), the Certification Board shall defer any action on the complaint until the conclusion of such Legal Action. However, if the complaint is not withdrawn during such Legal Action, the Certification Board may upon conclusion of the Legal Action consider the outcome of such Legal Action

as evidence for or against the Professional.

#### **8. Disciplinary Actions:**

One or more of the following sanctions may be imposed by the Certification Board upon a Professional whose conduct the Certification Board has determined constitutes one or more of the Grounds for Disciplinary Action, as defined by this Code and set forth in these Procedures. The sanction applied must reasonably relate to the nature and severity of the violation, focusing on reformation of the conduct of the Professional and deterrence of the same or similar conduct by others. The sanctions include:

A. Written admonition or censure of the Professional.

B. Suspension of DBIA Professional Designation or Associate DBIA Professional Designation (for a period not to exceed five years). The Professional cannot re-apply until expiration of the period of suspension.

C. Permanent revocation of DBIA Professional Designation or Associate DBIA Professional Designation. Professional will not be eligible for reinstatement.

The Certification Board shall give the Professional and the Complainant prompt notice of its decision. In cases where a Professional disciplined by termination/revocation of DBIA Professional Designation or Associate DBIA Professional Designation is also a member of the DBIA National Board, the DBIA National Board may request resignation of the National Board member voluntarily. If the National Board member does not agree to resign, the provisions of the DBIA Bylaws are to be followed, which will require a majority vote of the DBIA membership to cause removal from the National Board.

In cases where the Professional holds DBIA membership via his or her firm being a DBIA Industry Partner, the DBIA Certification Board will notify the Industry Partner of the disciplinary action, without affecting the Industry Partner status of

such firm.

A withdrawal of the complaint by the Complainant, at any time prior to issuance of the Certification Board's final decision, shall terminate all disciplinary proceedings against the Professional and the DBIA Certification Board shall close its file without issuing an opinion.

#### **9. Appeals:**

The Professional or the Complainant may appeal the decision of the Certification Board, including a dismissal of the complaint or any other disciplinary action, by submitting a written notice of appeal within 15 days of receipt of the Certification Board decision. Forms for appeal shall be developed by the Certification Board and provided by DBIA on its website. The notice of appeal shall be in writing, sent to the Chair of the National Board, with a copy to the Executive Director, and must state the reasons the decision should be overturned or modified. If a timely notice of appeal is not received within the time limits stated above, except for good cause shown, the appeal shall be rejected by the Executive Director and the case closed with no further action.

The Chair of the National Board ("National Chair") shall appoint from the members of the National Board a three-member committee ("Appeal Committee") within 14 days from receipt of a timely notice of appeal to review the appeal and make a recommendation. The Appeal Committee may request further written submissions from the Complainant and/or the Professional to explain their positions, limited to the facts and issues that were presented to the Certification Board. No new evidence may be submitted on appeal, which was not presented to the Certification Board in the underlying complaint hearing. In any event, the Appeal Committee shall submit its recommendation to the National Board, in writing, within 90 days from the National Board's receipt of the notice of appeal.

The National Board shall review the Appeal Committee's recommendation and decide the appeal at the next regularly

scheduled National Board meeting which comes at least 14 days after receipt of the Appeal Committee's recommendation. Any National Board member who has a conflict of interest with either party to the appeal shall not be a member of the Appeal Committee and shall withdraw from consideration of the appeal. The National Board will not consider facts or evidence not available to the Appeal Committee at the time the decision was made from which the appeal is taken.

After deliberations, the National Board shall, based on a majority vote, take one of the following actions on the appeal:

- A. Approve and implement the Certification Board's decision.
- B. Modify the Certification Board's decision.
- C. Remand the case to the Certification Board for further action with instructions.

The National Board Chair shall communicate the decision on the appeal, in writing, to the Complainant and to the Professional. The decisions of the Certification Board, as such may be modified by the appeal process stated herein, are final and binding.

#### **10. Notifications:**

Disciplinary action at any level, including dismissal of a complaint, shall not be published by DBIA in any magazine or website and shall be communicated only to the Professional, the Subcommittee, the Certification Board, the National Board, the Executive Director, and the Complainant.

#### **11. Confidentiality:**

In the interests of fairness and justice, the Complainant and the Professional, as well as all members of the Certification Board, Appeal Committee, DBIA staff and National Board shall avoid public disclosure and discussion of the complaint, the parties involved, and the issues under consideration. The Complainant and Professional may each contact persons with knowledge of the matter, who are potential

witnesses, or who might otherwise have information relevant to the allegations in the complaint or defenses to the same. The Certification Board, the National Board, and other persons representing DBIA shall keep the outcome of the complaint, including any disciplinary action confidential, except as required by law or these Procedures, unless the National Board decides that disclosure is in the best interests of DBIA.

#### **12. Surrender:**

If a Professional subject to a complaint voluntarily surrenders his/her DBIA Professional Designation at any time during the pendency of a complaint under these Procedures, the complaint shall be dismissed without any further action by the Subcommittee or the Certification Board or the National Board. The entire record shall be sealed and the Professional may not apply for certification by DBIA for five (5) years. However, the Certification Board shall authorize the Executive Director of DBIA to communicate the fact and date of resignation, and the fact and general nature of the complaint which was pending at the time of resignation, to or at the request of a government entity engaged in the administration of law. Similarly, in the event of such resignation, the Complainant shall be notified of the fact and date of the resignation and that the Certification Board has dismissed the complaint as a consequence.

#### **13. Reinstatement:**

During a period of suspension or revocation of DBIA Professional Designation or Associate DBIA Professional Designation, the former Professional shall not use the title "Designated Design-Build Professional," "DBIA," "Designated Associate Design-Build Professional," "Associate DBIA," or equivalent wording in connection with his or her name. When the suspension period is completed, such Professional shall re-apply to the DBIA Certification Board for permission to renew use of such title.

#### **14. Improper Use of DBIA Designation Titles By Persons Who Are Not Professionals:**

The DBIA Board will refer to the DBIA Certification Board all complaints regarding individuals who are not Professionals, but are using the DBIA Professional Designation, such as by using the title "Designated Design-Build Professional," "DBIA," "Designated Associate Design-Build Professional," "Associate DBIA," or equivalent wording in connection with his or her name, or upon other documents. After review and majority vote of the DBIA Certification Board, the disciplinary action will be one of these actions:

- A. Dismissal of the complaint (without any comment or opinion).
- B. Dismissal of the complaint (with commentary by the Certification Board, for guidance of the individual involved).
- C. Admonition or censure of the individual.

The Certification Board shall also determine whether the Complainant receives notification of the action taken. In cases where the DBIA member holds membership via his or her firm being an Industry Partner, the DBIA Certification Board will notify the Industry Partner of the disciplinary action, without affecting the Industry Partner status of such firm.

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