

BUFFALO-WESTERN NEW YORK CHAPTER of the CONSTRUCTION SPECIFICATIONS INSTITUTE

Construction Specifications Institute, Inc.: www.csiresources.org

Northeast Region CSI: www.nercsi.com

Buffalo/WNY Chapter: www.csibwny.com

June 2025

Upcoming Events

Tour of Hadley Exhibits Design and Production Facility

Event Type: Tour

Date and Time: Thursday, September 11, 2025,
5:00 pm (rescheduled from original June date)

Location: Hadley Exhibits, 1700 Elmwood Ave,
Buffalo, NY 14207

Presenter: Dave Johnson, CEO Hadley Exhibits

Accreditation: AIA accreditation unlikely

Description: Did you ever wonder who it is that creates innovative exhibits for companies exhibit-

Exhibits, of Buffalo NY, has over 100 years of experience in this niche industry. Hadley performs project management, design, fabrication, and construction of various types of exhibits for its clients. This event includes a tour of Hadley's 180,000 square foot facility in North Buffalo. The Buffalo Chapter board is considering including plans for a post-tour dinner as part of this event, although details were unavailable at the time this month's newsletter was finalized.

Cost: Indicated on registration page, linked below.

Reservations Due By: September 3, 2025.

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Hadley Exhibits Inc.

ing at trade shows for various industries? What type of firm provides permanent exhibits in museums, visitor centers, or zoos and gardens? Hadley

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CSI Buffalo-Western New York Chapter: www.csiwbny.com

CSI Northeast Region: www.nercsi.com

CSI-National: www.csiresources.org



The Scope

Newsletter of CSI's Buffalo-Western New York Chapter

The Scope is published approximately eight times per year, typically in September, October, December, January, February, April, May, and June, on or around the first day of the month. Submittals of articles and information of general interest to CSI's members and the design and construction community of Western New York, is always welcome. Submittals for this newsletter are due by the 15th of the previous month (approximately two weeks before publication). Please submit articles, information, and requests to the (Interim) Editor:

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Advertise in The Scope

Each issue of *The Scope* reaches approximately 650 people in the Buffalo-Western New York design and construction community, across a variety of disciplinary areas. An ad costs \$100 per year. Contact the Editor for additional information.

Keeping Up Our Strength

By David Rood

During the last years of her life, my mother exhibited behavior that was fairly predictable for older people. Mom used to be regularly active, walking five miles a day. As she aged, she stopped walking and spent more time in her recliner chair. Mom eventually lost strength in her legs, which atrophied somewhat because of all the time spent sitting in the recliner. As she weakened, her legs were no longer the sturdy supports they had been. She eventually fell due to a lack of strength and balance. The fall reinforced her belief that home and the recliner represented safety, leading to a bad, downward cycle where she became ever weaker. This can be a natural consequence of the aging process. The only way to fight this is to remain active and stay strong.

Physical health is important, along with mental and social health. It is necessary to remain socially active and involved so we have the strength to stand on our own and navigate societies ebb and flow. Exposure to different viewpoints challenges our preconceptions and opinions, and builds our minds, supporting sound decisions and behavior.

CSI provides opportunities that strengthen my social health and provide increased confidence, to actively participate with a group that is part of, and supports, the building professions and our community. As just one example, attending the Northeast Region conference on May 15-17 provided many opportunities to interact and exchange opinions and approaches with many knowledgeable individuals, whom I would not normally meet. Having friends like Kevin O'Beirne, Bob Ruml, Deb Seiner, and the rest of the CSI Buffalo-WNY Chapter board has strengthened my social and organizational abilities and allows me to be a part of a team that truly exudes both confidence and influ-

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Kids These Days

By Kevin O'Beirne

The next generation of design professionals is always in development and, for those of us who have been in the industry for 30 years or longer, always seems to be creeping up on us, like a monster in the dark. This editorial presents some alternative thoughts on "the next generation" of design professionals. Most of it should be reassuring, and some parts of it will certainly be educational.

In the interest of full disclosure, my sources for this are limited, based mostly on many conversations with my 20-year-old son, Brendan, who recently completed his sophomore year studying civil engineering at the State University of New York at Buffalo. For the second summer in a row, Brendan is working full time, as an intern, at Nussbaumer & Clarke consulting engineers, in the Buffalo area. He has provided me with many insights into "his generation" of emerging design professionals, based on his friends from high school and college.

Perhaps the most common allegation flung at Gen Z is that they supposedly don't want to work. While many people with 30 years or more of experience can share a story about a Gen Z employee who possessed an outrageous sense of entitlement and seemed lazy, the norm for this age cohort is that they are willing to work just as hard as any generation that came before them, with the exception that they often do not want to live to work. Rather, they prefer to work to live. As one example, my son works very long hours to earn his good grades at college, while simultaneously working 12 hours per week on weekends, and working 40 hours per week during summer and winter breaks. That is not someone looking for a pass. However, he has also mentioned that he is not exactly wild about some day having to work 80-hour weeks, like his father occasionally did in the past. That is certainly understandable and, frankly,

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To Make Reservations: csibwny.com/meetinginfo.php?id=48

For Additional Information Contact: Rob Fohl, 716-864-9593, robfohl@fohlsales.com

CSI National Conference

Event Type: Educational seminars, exhibit hall, and CSI-National annual meeting.

Date and Time: October 15-17, 2025.

Location: Hilton Cleveland Downtown, 100 Lakeside Avenue East, Cleveland, Ohio, 44114.

Accreditation: Multiple presentations accredited for AIA LU HSW.

Description: CSI's annual national conference is being held only 190 miles from Buffalo along Interstate I-90 west. It is not often the annual conference is held this close to Western New York. The conference includes multiple days of educational sessions, exhibit hall, banquet, awards ceremony, and networking opportunities. If you have never previously attended a CSI National Conference, 2025 is the year to strongly consider attending. For additional information, see CSINationalConference.org.

Cost: Cost information is available on the conference website.

Reservations Due By: Refer to conference website.

To Make Reservations: Registration is open.

CSI Northeast Region 2026 Annual Conference

Event Type: Educational seminars, exhibit hall, tours, and Northeast Region meeting.

Date: May 14-16, 2026. Description of daily activi-

ties is presented below.

Location: Downtown Buffalo, NY. Precise location TBA.

Accreditation: Multiple presentations will be accredited for AIA LU.

Description: **Hosted by CSI Buffalo-WNY Chapter.** CSI Northeast Region's annual conference will include: Thursday - registration open, welcome reception, hospitality suite. Friday - exhibit hall, multiple presentations for AIA-accredited sessions, tour, happy hour/scholarship fundraising auction, and banquet. Saturday - annual meeting, CSI-National update, awards lunch, and CSI leadership workshops. Conference is all day Friday and Saturday.

The featured tour on Friday afternoon will include bus transportation and guided tour of the new Buffalo Bills stadium in Orchard Park, NY. Details of the tour have not yet been established and the tour still needs to be confirmed. The tour will likely have capped attendance, and a second, alternative tour of a downtown Buffalo site of architectural interest will likely also be available.

Planning for the Friday education sessions is underway. The event will feature a total of seven, 1-hour sessions, in two, parallel tracks, with one keynote session at lunch for all attendees. Themes, presentation topics, and speakers are being organized. Prospective presenters should contact the Chapter's conference chair indicated below.

Cost: TBA. Full-conference registration for the 2025 Northeast Region conference was \$200 per person, including all meals from Friday morning (including banquet) through Saturday lunch, educational sessions, tours, and hospitality suite on Thursday and Friday evenings. Such cost excludes lodging and transportation.

Reservations Due By: May 13, 2025.

To Make Reservations: TBA

For Additional Information Contact: Jim Bourgeois, (732) 253-2678, jbourgeois@marinoware.com

NEWS AND EVENTS

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Report on May 8, 2025 CSI Buffalo Chapter Board Meeting

CSI's Buffalo-WNY Chapter met on May 8, 2025 at Weatherpanel in Buffalo. This brief article is not an official record of the meeting, but presents highlights of decisions made.

The tour of Hadley Exhibits, originally scheduled for June 5, was postponed to September, because of a scheduling conflict at the site of the tour and personnel involved in leading the tour. Information on the rescheduled tour is presented on the first page of this issue of *The Scope*. Hadley Exhibits designs and constructs exhibits in museums, zoos, and many other types of facilities around the world. A guided tour of the extensive Hadley Exhibits facility, followed by dinner out, will be an extremely interesting evening that should not be missed by members and supporters of CSI's Buffalo-WNY Chapter.

Planning for the winter 2026 Architects Ski Day event, which will again be held at Holiday Valley in Ellicottville NY, will commence in August. As in prior years, sponsorships are sought in August and September, with registration for individual attendee's ski tickets opening in November.

The board passed a resolution accepting responsibility for planning and hosting the 2026 Northeast Region annual conference, tentatively scheduled for mid-May, 2026 in downtown Buffalo.

Jim Bourgeois volunteered to chair the committee and has already investigated potential locations and venue costs. Others who volunteered for the event committee include Deb Seiner (helping to organize tours), and Kevin O'Beirne (helping organize the educational programs and promotional materials for the conference). Other volunteers are eagerly sought and the assistance of many Buffalo-WNY Chapter members and supporters will be necessary to plan and host a well-run, memorable conference that positively highlights Buffalo and the Western New York region, together with the Chapter itself.

Report on 2025 Northeast Region Conference

CSI's Northeast Region annual conference was held on May 15-17, 2025 at the Hotel 1620 in Plymouth, Massachusetts, with more than 110 attendees. CSI's Buffalo-

WNY Chapter was represented by Dave Rood, Jim Bourgeois, and Kevin O'Beirne. The conference was ably planned and run by CSI's Boston MA chapter, with support from the Northeast Region.

The Hotel 1620 is a nice property and an appropriate venue for the conference. Conference registration was located just off the hotel lobby, where attendees received name badges and a little tote bag of goodies, commonly known as, "SWAG" ("stuff we all get"). Each participant received a ticket for a complimentary drink at the icebreaker reception/happy hour, which also included hors d'oeuvres. Following the reception, the Buffalo Chapter contingent had dinner at a very good, local seafood restaurant with the Northeast Region president and his wife, plus Steve Van Dyke and others. After dinner, the complimentary hospitality suite, which included stocks of first-rate libations, was attended by



many participants for an evening of good conversation and conviviality.

Friday's educational seminars were based on the theme of "Longevity, Durability, Resiliency". Six 1-hour long sessions were presented in two, parallel tracks, plus

a lunchtime keynote speaker. The latter was clearly an expert, but used rather astonishing language during parts of his presentation. The afternoon's educational sessions concluded with a presentation by the captain of the *Mayflower II*, on the ship's recent preservation and restoration.

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Mayflower II is a modern replica of the original *Mayflower*, constructed in 1956 in England and on display at Plymouth MA since 1957. Like the original, the modern replica is 106 feet long with two, square-rigged masts. After more than 60 years, the ship was renovated starting in 2020 at Mystic Seaport in Connecticut. While a tour of the restored *Mayflower II* was not part of the conference program, several conference attendees, including the Buffalo Chapter's Dave Rood and Kevin O'Beirne, walked the half-mile or so to the ship's location on the Plymouth waterfront for self-guided tours and discussions with the ship's on board docents.

Friday afternoon at the conference concluded with a happy hour, during which donated items were auctioned to raise more than \$4,000 for the Northeast Region's college scholarship program. Scholarships were awarded as a result of the successful fundraising effort.

Friday evening featured the conference's banquet, loosely based on a Pilgrim's Thanksgiving dinner. The banquet concluded with a brief ceremony during which the Buffalo Chapter's representatives were called up, wearing Buffalo Bills jerseys, to receive the "horn and skunk" icons, as the next chapter that will host the Northeast Region Conference. The stuffed skunk apparently harkens back to 1972, when the former New York/New Jersey Region held its annual conference at Bear Mountain State Park, during which a real skunk apparently made its presence known to conference attendees in the most horrible manner. Following this presentation, a brief video favorably highlighting Buffalo and Western New York was played to promote the



2026 Conference. Friday evening concluded with more conviviality in the complementary hospitality suite.

Following Saturday breakfast, Conference attendees received updates from CSI-National and the Northeast Region, followed by a 90-minute workshop in which attendees discussed how to improve the region and the benefits it provides to its 13 member chapters.

Saturday lunch featured presentation of Region awards, during which the Buffalo-WNY Chapter received awards for membership recruitment and this periodical. A Region board meeting followed lunch, after which attendees departed for home.

[End]

President's Message

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ence.

The Buffalo-WNY Chapter is seeking people willing to join our board. Accordingly, I invite calls to me at 716-583-3612 or emails to dave.rood@srsbuildingproducts.com. We need to fill several positions on the board. Furthermore, as indicated on page 2 of this newsletter, several of our members hold more than one position on the board, providing many opportunities to those willing to get involved but not sure how. Certainly, several of our current committee chairs and board members would be happy to mentor new members of the board as newcomers take up their responsibilities. I strongly encourage anyone interested to contact any of our board members or me. Other than contributing a modest amount of time to the chapter, you have nothing to lose and much strength to gain by being an active, contributing member of your CSI Chapter.

[End]



Editorial

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reasonable. When I was 20 years old, the idea of working an 80-hour week had barely ever occurred to me.

Last summer, one of my son's college friends worked as an intern for a civil construction contractor for 60 to 65 hours per week. He was both willing and eager to do so, although perhaps a bit tired. Some of Brendan's other friends spent last summer and will spend this summer taking multiple college courses. One friend will be taking his summer courses at a polytechnic institute in Germany. These are not future design professionals who lack the desire to work hard. Maybe not every member of Gen Z exhibits these traits, and one should never judge by the group, but future design professionals known to this writer certainly appear to have the desire to work hard and learn their profession.

In some ways, though, Gen Z *is* different. Whether because of the evolution of digital technology, such as smartphones, social media (or, perhaps, a near-addiction to it), or too many video games, or other factors, such as formative years of education being interrupted by the covid-19 pandemic, Gen Z's communication approaches are considerably different from what many design professionals have previously encountered.

For example, many people of Brendan's age seem terrified of initiating a telephone call with someone they do not know well. That has some real potential to get in the way of accomplishing business. They are much more comfortable with less-direct methods of communication, such as text messag-

es, instant messages, and email. Gen Z has received little exposure to either the form or style of written business letters. In fact, more than one person I have encountered from Gen Z appeared entirely unfamiliar with the mere concept of business letterhead. There is an increasingly widespread notion that email is about as formal as written communication needs to be. Of course, many business situations require more-formal methods of communication.

Brendan has educated me on a rather odd aspect of text messaging. Apparently, completing a text message (or, perhaps, an instant message on a computer) with a standard punctuation mark, such as a period, is widely interpreted by Gen Z as communicating excessive formality and irritation. This is a fairly widespread belief among younger

people, but is unheard of by people older than 40. Finishing a text message with a dash is okay, but don't ask me why.

Like any generation, Gen Z has their own lingo jingo. Much of it is mysterious and incomprehensible to anyone over age 40. For example, it appears that my son and all of his friends, regardless of their gender, virtually always refer to each other in oral conversations as, "bro", or even, "bruh". Please don't ask me why. I have advised my son not to use this when he is at the office, but it may be too baked into his DNA

for him to avoid it.

In many ways, Gen Z is not sufficiently schooled on certain, professional niceties. Some of my colleagues in the "60-or-so" age bracket, with supervisory responsibilities for younger employees, have encountered a lack of understanding that, when the employee is too ill to come to the office that day, that they should advise their supervisor, either via phone (gasp!) or email. In some cases,



***Brendan O'Beirne at a construction site
in August 2024***

Editorial

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they simply fail to show up and seem bewildered when told afterwards, “you should have called to let me know you were not coming into work that day”.

Old ideas of professional attire are, I’m sorry to say, almost dead. While many professional offices have long allowed “business casual” attire when not attending client meetings, Gen Z appears to believe that “business casual” meaning a golf shirt and Dockers, is too uncomfortably formal. Their preferred attire is a hoodie and black jeans or sweats. Professionals hiring interns or entry-levels may want to make the dress code plainly clear, using small words and short sentences.

Young design professionals seem to be no better or worse than their elders at written communication. Regrettably, the ability of most design professionals, of whatever age, to string together more than five words in a coherent sentence is somewhat limited. Fortunately, institutions of higher learning are incorporating into architecture and engineering curricula mandatory courses on communication. Gen Z still has no idea what a business letter is, nor have they ever been required to write a true term paper for any high school or college English class.

Young design professionals are typically more competent than their elders at locating information online. If you need online research performed, give it to the intern or entry-level, because they will undoubtedly do it better and faster. However, the rise of artificial intelligence (AI) presents advantages and challenges to which Gen Z is especially susceptible. After all, they have grown up with the Internet and come of age with AI, so they tend to rely on it. More experienced professionals use

these important and appealing tools with a good deal of caution, rightfully so. The extent to which a Gen Z-er will accept AI-generated content without question may depend on their personal ethics. My son, Brendan, understands this and appears to use AI wisely. Some of his classmates in last semester’s STEM Communications course at UB did not have such a highly developed sense of morality about spending as much as 30 seconds to have AI perform some of their work assignments. Unfortunately for such people, “AI checkers” exist, where users paste in text they believe was strongly influenced by AI-generated content to obtain a very swift, computer-generated opinion of the percentage of content that was likely AI-generated. In other words, while AI makes it very easy to cheat, it is also very easy to get caught doing it. In the

end, the same standard of care applies, regardless of whether one presents only original thought or concepts influenced by AI. Therefore, employers and employees alike need to be wary of excessive reliance on AI.

As is the case with every generation, “kids” these days have quite a number of similarities to their more-mature colleagues, and several traits and habits that

may seem perplexing or downright outrageous to members of an older generation. The wheel of time is always turning. The best I can say, is that someday, Gen Z will be approaching 60 and will inevitably have a heck of a time trying to figure out the new, incoming set of design professionals born in 2045. I relish the thought.

[End]



Brendan O'Beirne in the office in August 2024

Feature Article

Tariffs and Construction Contracts

By Kevin O'Beirne

In the first half of 2025, news in the United States and around the world was filled with stories regarding new and retaliatory tariffs imposed by various national governments. A number of such tariffs, such as those regarding imported steel and aluminum, are likely to have a substantial effect on construction, whether projects currently in progress or those expected to enter construction in the coming years. This article addresses how standard construction contracts in widespread use in the United States address the changing landscape of tariffs.

What are Tariffs?

Black's Law Dictionary, Tenth Edition (2014) defines the following:



“tariff, n. (16C) 1. A schedule or system of duties imposed by a government on imported or exported goods. In the United States tariffs are imposed on imported goods only. — *Also termed tariff schedule; tariff system.* 2. A duty imposed on imported or exported goods under such a schedule or system. See DUTY (4)... **ad valorem tariff.** (1856) A tariff set as a percentage of the imported goods' value. This is the primary method used to calculate customs duties... **retaliatory tariff.** (1833) A tariff imposed to pressure another country into removing its own tariffs or making trade concessions... **revenue tariff.** (1827) A tariff enacted solely or primarily to raise revenue.

“duty. (13C) 1. A legal obligation that is owed or due to another and that needs to be satis-

fied; that which one is bound to do, and for which somebody else has a corresponding right... **ad valorem duty.** (18C) A tax calculated as a percentage of an imported product's value... **customs duty.** (18C) A tax levied on an imported or exported commodity; esp., the federal tax levied on goods shipped into the United States... **import duty.** (17C) A tax on the importation of a product... (18C) A tax calculated on an import's weight, volume, or item count.

“tax, n. (14C) A charge, usu. monetary, imposed by the government on persons, entities, transactions, or property to yield public revenue. Most broadly, the term embraces all governmental impositions on the person, property,



privileges, occupations, and enjoyment of the people, and includes duties, imposts, and excises... **sales tax.** (1921) A tax imposed on the sale of goods and services, usu. measured as a percentage of their price.—*Also termed retail sales tax...* **use tax** (1910) A tax imposed on the use of certain goods that are bought outside the taxing authority's jurisdiction. Use taxes are designed to discourage the purchase of products that are not subject to the sales tax.”

Thus, tariffs are duties imposed on imported goods, and an import duty is a type of tax.

Contractual Requirements Relative to Tariffs

MasterFormat—2020, by the Construction Specifications Institute, does not assign a specific document number and title for provisions on taxes, tariffs, and similar matters, although *MasterFormat*'s guidance language suggests that "01 29 00 Payment Procedures", may include a required sales tax form. By extension, some developers of Division 01 specifications may potentially address tax-related issues under "01 29 00".

Obligations to pay taxes associated with the work are established in widely used standard general conditions, such as those published by the American Institute of Architects (AIA), Engineer's Joint Contract Documents Committee (EJCDC), Design-Build Institute of America (DBIA), and others.

AIA A201—2017, *Standard General Conditions of the Contract for Construction*, does not directly address tariffs, but includes the following:

Affects
**IMPORTED &
EXPORTED GOODS**

Purpose
**PROTECTS
LOCAL GOODS**

Amount
**CHANGES VERY
FREQUENTLY**



"§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect."

AIA A503—2017/2019, *Guide for Supplementary Conditions*, includes guidance, concerning A201 Section 3.6, regarding an owner's potential exemption from sales and use taxes applicable to the work., but does not present any suggested, example language. Tax exemptions for public owners, such as municipalities, school districts, utility authorities, and other non-profit organizations vary considerably by jurisdiction, thus making it difficult to develop "one-size-fits-all" language regarding tax exemptions applicable to the construction.

EJCDC C-700—2018, *Standard General Conditions of the Construction Contract*, addresses taxes as follows:

"7.10 Taxes.

"A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work."

Also relevant is the following definition in C-700—2018 Paragraph 1.01.A:

"25. Laws and Regulations; Laws or Regulations—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction."

Therefore, the term, "Laws and Regulations" includes applicable tariffs enacted by a Presidential executive order.

C-700 Paragraph 7.11 ("Laws and Regulations") is also relevant to the changing landscape of taxes and tariffs, as follows:

"C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption,



and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim."

EJCDC C-800—2018, *Supplementary Conditions of the Construction Contract*, includes guidance and suggested example language, at Paragraph SC-7.10, regarding potential exemptions from taxes due on the work, although EJCDC's suggested example language addresses only exemptions from sales and use taxes, with guidance language clearly indicating that the suggested language was modeled on New York State law relative to municipalities, and needs to be edited for applicable statutory requirements in the jurisdiction of the project.

Therefore, both AIA and EJCDC documents for design-bid-build project delivery expressly obligate the contractor to pay taxes applicable to the work, which, by implication, includes tariffs. Both AIA and EJCDC documents further provide for an increase in the contractor's compensation in the event taxes change after the date the parties agreed upon pricing for the work. Both AIA A201 and EJCDC C-700 establish procedures and associated time limits for the parties to submit demands for a change in compensation, contract times, or other relief under the contract, although such procedures are not addressed in this article.

Contractual entitlement does not necessarily, alone, entitle the contractor to the desired relief. In support of its change proposal or claim, the contractor must submit their request in a timely manner, as required by the contract documents, presenting appropriate justification and documentation, as recommended in, "[Claims Preparation: Claims Should be Clear, Complete, and Documented](#)", previously published on this writer's blog. The request should clearly document the applicability of the tariff, the date the tariff went into effect, the date that bids were submitted or the contract price otherwise established, the date of the associated purchase order or subcontract (as applicable), and other pertinent information. In evaluating such requests, the entity determining entitlement should be reasonable and act without partiality to either party, as more fully described in, "[Partisan Professionals: Contractors Deserve Ethical Treatment](#)", also previously published on this writer's blog.

Conclusions

Tariffs are an important and powerful means for national governments to raise revenue, protect their domestic sources of production, and bolster trade negotiating

positions. Tariffs are essentially a form of taxation on imported goods. In the first half of 2025, the United States started relying heavily on tariffs as an instrument of geopolitical trade policy. It is quite possible that many of the new tariffs will have an effect on current and future construction projects. Many new tariffs are substantial and are likely to prompt contractors affected thereby to pursue additional compensation from the project owner. Widely used standard construction contracts, such as those that include AIA A201 or EJCDC C-700 as their general conditions, not only expressly obligate the contractor to pay taxes on the work, which includes tariffs, but also allow the contractor additional compensation when such taxes increase after the parties agreed upon the contract price.

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The author of this article is not an attorney and nothing in this article constitutes legal advice. Readers in need of legal advice should consult with a qualified attorney.



Kevin O'Beirne, PE, FCSI, CCS, CCA is a professional engineer licensed in NY and PA with over 35 years of experience designing and constructing water and wastewater infrastructure for public and private clients. He is the engineering specifications manager for a global engineering and architecture design firm. He has been a member of various CSI national committees and is the certification chair of CSI's Buffalo-Western New York Chapter. He is an ACEC voting delegate in the Engineers Joint Contract Documents Committee (EJCDC) and lives and works in the Buffalo NY area. [Kevin O'Beirne's LinkedIn page.](#)

[End]

Licensing Boards: Entities That Govern the Design Professions

Part 4 – Enforcement

By Kevin O’Beirne

This is the last in a four-part series addressing licensing boards governing the design professions, comprised of: (a) Part 1 – Introduction to Licensing Boards and Revisions of Laws and Regulations; (b) Part 2 – Qualifications of Perspective Licensees and Licensing Exams; (c) Part 3 – Issuance of Licenses and Registrations; and (d) Part 4 - Enforcement.

This article describes the enforcement functions of licensing boards governing the design professions and how their operations affect personnel engaged in architecture, engineering, and other design professions in the United States. In this article, laws, rules, and regulations are referenced as either “laws and regulations” or “statutory requirements”.

An important responsibility of licensing boards is investigating alleged misconduct by design professionals and enforcing applicable laws and regulations. Licensing boards are typically **not** empowered to investigate complaints of alleged excessive fees or charges, but can investigate claims of fraudulent billing. To this end, licensing boards function similar to a court, although their authority is limited to specific laws and regulations. Therefore, a licensing board is neither a criminal nor civil court. The board has the right to issue subpoenas to persons, compel submittal of evidence, and receive depositions and testimony.

What Constitutes Misconduct?

Professional misconduct is the failure of a licensed professional to comply with standards of practice. The National Council of Architectural Registration Boards (NCARB) publishes model statutory language for the regulation of the practice of architecture in the United States. Section 501 of [NCARB Model Laws and Regulations](#) indicates that misconduct includes the following:

- “a. A conviction for or other official determination of a violation of any law, rule, or regulation of (Jurisdiction), any other Jurisdiction, or the federal government, pertaining to any aspect of the Practice of Architecture;*
- b. Unprofessional conduct relating to the Prac-*

tice of Architecture;

- c. Failure to conform to the accepted minimum standard of care;*
- d. Financial misconduct such as improper or fraudulent billing practices;*
- e. Incapacity or impairment, for whatever reason, that prevents an Architect from engaging in the Practice of Architecture consistent with the accepted minimum standard of care;*
- f. Conviction of a felony;*
- g. Engaging, or aiding and abetting any Person with engaging, in the Practice of Architecture without being licensed or registered pursuant to this Act;*
- h. Falsely using the title of “Architect” or any derivative thereof;*
- i. A conviction or other official determination of engaging in the Practice of Architecture in another Jurisdiction without being duly licensed in that Jurisdiction;*
- j. Attempting to use or using the License or seal of another Architect as their own;*
- k. Having had any license to engage in the Practice of Architecture subjected to disciplinary action by a licensing authority recognized by the Board, if the basis of such disciplinary action would have resulted in a violation in (Jurisdiction);*
- l. Failure to comply with policies and procedures related to the examination and Approved Experience Program required by the Board for an initial License;*
- m. Having been sanctioned by the NCARB Board of Directors;*
- n. Failure to report to the Board any information as required under Article VI[,] – Complaints [,] of this Act;*
- o. Failure to disclose a fact or misrepresentation of a fact to the Board;*
- p. Failure to cooperate with the Board in an investigation pending against any Person;*

- q. Failure to comply with any stipulation or agreement of any Board disciplinary action; or*
- r. Any other grounds as provided by the Board in regulation."*

Additional grounds for disciplinary action, such as violating the security of the Architecture Registration Examination, are set forth in Section R501 of NCARB's Model Laws and Regulations.

Similarly, the National Council of Examiners for Engineering and Surveying (NCEES) publishes suggested language for state and territorial laws and regulations governing the practice of professional engineering and land surveying in the United States. Section 150.10.A of NCEES's [Model Law \(revised September 2021\)](#) establishes the following as misconduct for licensees and interns, where interns are persons who have successfully passed the Fundamentals of Engineering Exam, also known as Engineer-in-Training exam (bracketed text, below, is not present in the original but is included here for clarity):

- "1. Any fraud or deceit in obtaining or attempting to obtain or renew a certificate of licensure*
- 2. Any negligence, incompetence, or misconduct in the practice of engineering or surveying*
- 3. Conviction of or entry of a plea of guilty or nolo contendere [i.e., pleading no contest to the charges without admitting guilt] to any crime that is a felony, whether or not related to the practice of engineering or surveying; and conviction of or entry of a plea of guilty or nolo contendere to any crime, whether a felony, misdemeanor, or otherwise, an essential element of which is dishonesty or which is directly related to the practice of engineering or surveying*
- 4. Failure to comply with any of the provisions of this Act or any of the rules or regulations of the board*
- 5. Discipline (including voluntary surrender of a professional engineer's or professional surveyor's license in order to avoid disciplinary action) by another jurisdiction, foreign country, or the United States government, if at least one of the grounds for discipline is the same or substantially equivalent to those contained in this Act*
- 6. Failure to provide information requested by the board as a result of a formal or informal complaint to the board that alleges a violation of this Act*
- 7. Knowingly making false statements or sign-*

ing false statements, certifications, or affidavits in connection with the practice of engineering or surveying

- 8. Aiding or assisting another person in violating any provision of this Act or the rules or regulations of the board*
- 9. Violating any terms of any Order imposed or agreed to by the board or using a seal or practicing engineering or surveying while the licensee's license is inactive or restricted*
- 10. Signing, affixing, or permitting the licensee's seal or signature to be affixed to any specifications, reports, drawings, plans, plats, design information, construction documents or calculations, surveys, or revisions thereof which have not been prepared by the licensee or under the licensee's responsible charge*
- 11. Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public*
- 12. Providing false testimony or information to the board*
- 13. Habitual intoxication or addiction to the use of drugs or alcohol*
- 14. Providing engineering or surveying services outside any of the licensee's areas of competence"*

In addition, Section 150.30.A of NCEES's Model Law indicates the following as grounds for disciplinary action against **unlicensed** individuals:

- "1. Engaging in the practice or offer to practice of engineering or surveying in this jurisdiction without being licensed in accordance with the provisions of this Act*
- 2. Using or employing the words "engineer," "engineering," "surveyor," "surveying," or any modification or derivative thereof in his or her name or form of business activity except as licensed in this Act*
- 3. Presenting or attempting to use the certificate of licensure or seal of a licensee*
- 4. Engaging in any fraud or deceit in obtaining or attempting to obtain a certificate of licensure or intern certification*
- 5. Impersonating any licensee*
- 6. Using or attempting to use an expired, suspended, revoked, inactive, retired, or non-existent certificate of licensure"*

Examples of Misconduct Cases

Examples of malpractice convictions are available in licensing boards' newsletters or online listings of disciplinary cases. A summary of a majority of reported disciplinary cases for architects and engineers in New York and Pennsylvania for the period January 2022 through April 2024 is presented below:

New York State – Architecture

- “...failing to comply with the mandatory continuing education requirements ...”
- “...failing two audits of the New York City Department of Buildings [NYCDB], ... which resulted in the revocation of a permit.”
- “...filing 14 professionally certified applications with the ... [NYCDB] during the period of probation imposed as a sanction ... in grossly negligent violation of the New York Administrative Code.”
- “...filing five professionally-certified applications with the ... [NYCDB] that contained false statements.”
- “...certifying and affixing his signature to documentation submitted to the building department, authenticating that a property complied with codes, without visually inspecting said property.”
- “...submitting four professionally-certified applications for construction document approval, ... to the ... [NYCDB], which contained errors that resulted in permit revocations.”



- “...filing four professionally certified applications with the ... [NYCDB] that contained violations of the Rules of the City of New York.”
- “...filing ... forms with the ... [NYCDB], which contained materially erroneous statements.”
- “...willful failure to comply with mandatory continuing education requirements.”
- “...filing four limited supervisory check applications with the ... [NYCDB] that contained violations of the Rules of the City of New York.”
- “...professional misconduct for ... Theft of Funds

from Employee Benefit Plan, a felony.”

- “... using the exact drawing of another architect, without his permission, to file a plan/work application with the ... [NYCDB].”
- “...filing six professionally certified applications with the ... [NYCDB] that contained violations of the Rules of the City of New York.”
- “... submitting three professionally-certified applications for construction document approval, ... to the ... [NYCDB], which contained errors constituting a violation of the New York City Administrative Code.”
- “... submitting two professionally-certified applications for construction document approval ... to the ... [NYCDB], even though both applications contained errors, which resulted in permit revocations.”
- “... practicing as an architect while not registered or otherwise authorized to practice architecture.”

New York State – Professional Engineering

- “...convicted of Driving While Intoxicated.”
- “... failing to furnish the department with written reports indicating whether or not he was mentally fit to practice his profession, and failing to answer and submit quarterly questionnaires ... as required by the terms of probation imposed ...”
- “... filing five professionally certified applications with the ... [NYCDB] that contained violations of the Rules of the City of New York.”
- “... filing eight applications with the ... [NYCDB], which contained materially false statements.”
- “... failing to notify the ... [NYCDB] that the approved Department of Building plans were not being executed and that the excavation support system was inadequate.”
- “... Criminally Negligent Homicide, a felony; and Reckless Endangerment in the 2nd Degree, a misdemeanor.”
- “... willful failure to comply with mandatory continuing education requirements.”
- “... submitting plans and documents for two jobs to the ... [NYCDB] that were not of sufficient clarity to show compliance with applicable laws.”
- “...filing six professionally certified applications with the ... [NYCDB] that contained violations of the Rules of the City of New York.”
- “... negligently making material false statements in a ... [NYCDB] professional certification which resulted in revocation of a permit.”
- “... receiving fees from a third party in connection

with the performance of engineering services.”

“... receiving fees for performing engineering services as an individual, independent practitioner, who is also a minority shareholder in a general business corporation that is not authorized to perform engineering services; and sharing said fees with the majority shareholder, who is not a licensed professional.”

“... submitting four professionally-certified applications for construction document approval, ... to the ... [NYCDB], even though the applications contained errors, which resulted in permit revocations.”

Pennsylvania – Architecture

“[Design firm name] unlawfully used a sign, card, or device implying that it was competent to engage in the practice of architecture without prior approval by the Board; [Person 1] unlawfully used the title architect in a manner that would imply he was engaged in the practice of architecture without licensure by the Board; and [Person 2] aided and abetted the unlicensed practice of the profession.”

Pennsylvania – Professional Engineering

“... practiced the profession of an engineer on a lapsed and expired license.”

“... practiced the profession of an engineer without being properly licensed to do so.”

“... had a license to practice engineering, ... suspended or revoked ... for conduct relating to the practice of engineering, ... by the proper licensing authority of another state...”

“...practiced the profession of an engineer without being properly licensed to do so under this act.”

“...engaged in conduct that is unprofessional and inconsistent with honorable and dignified bearing for any professional engineer, by acting for [Person’s] client or employer in professional matters otherwise than as a faithful agent or trustee, or by accepting any remuneration other than [Person’s] stated recompense for services rendered, as evidenced by [Person’s] failure to disclose a conflict of interest to [Person’s] client.”

“...has a felony of the third degree, and due to the nature of the criminal convictions, licensure of the respondent would pose a substantial risk to the health and safety of the respondents’ clients or the public, or a substantial risk of further convictions.”

“...engaging in gross negligence in the practice of engineering.”

Key Concepts Regarding Enforcement

Each licensing board’s jurisdiction includes all aspects of the subject design profession in the state, regardless of whether or not an alleged violator was a licensed design professional. Therefore, a state licensing board’s authority extends to: (1) unlicensed individuals accused of violating the state’s associated laws and regulations; (2) individuals licensed in other jurisdictions, but not in the board’s jurisdiction, accused of violating the state’s associated laws and regulations; (3) other senior personnel from a design consulting firm’s leadership, especially when such individuals placed in responsible charge a person accused of misconduct; as well as (4) persons properly licensed and registered to practice the subject design profession in the state.

Anyone can file a complaint with the licensing board. Complaints may be filed by a coworker or colleague of the alleged violator, a client of a design professional consulting firm, a person with an interest in the project (s) where alleged violations occurred, members of the licensing board, employees or representatives of any other authority having jurisdiction over a specific project, or a member of the general public. Complaints must be in writing, present the circumstances of the alleged misconduct, and typically cannot be anonymous. Section 602 of NCARB’s Model Laws and Regulations and Section 240.15.A.8 of NCEES’s [Model Rules \(revised August 2022\)](#) require licensees, applicants for licensure, and firms to report known or suspected misconduct, and NCARB Section 602 further obligates licensees to self-report their own misconduct. In some states, such as [Colorado](#) and California, licensed individuals are required to report to the appropriate licensing board, within a stipulated period, malpractice claim settlements or judgments greater than a statutorily indicated amount, regardless of whether the claim was covered under professional liability insurance. At its discretion, the board may elect to make such information available to the public.

Enforcement Procedures

When a complaint is received, the authority having jurisdiction will perform an initial evaluation to determine whether the licensing board has jurisdiction and, when the complaint is within the board’s jurisdiction, an investigator will be assigned, who will then contact the complainant to obtain additional information. When the board does not have jurisdiction, it may refer the matter to another entity of competent jurisdiction.

Receiving notice of alleged misconduct from a licensing board is a serious matter. A person or firm accused of misconduct may choose to be represented by legal

counsel rather than attempting to represent themselves. When the person is employed by a business or other organization where the alleged misconduct occurred during the course of the person's performance, in good faith, of their responsibilities, the organization will typically furnish legal counsel to represent the accused.

For hearings, the board may either appoint an "examiner" to preside or, in the absence of an examiner, the board chairman may preside at disciplinary hearings, typically with the advice of the board's legal counsel.

Procedures for the board's investigation and subsequent action are fairly straightforward. For example, Section 150.20 of NCEES's Model Law states in part (bracketed text, below is not present in the original and is included here for brevity and clarity):

"C. All complaints shall be reviewed by the board or an investigative committee designated by the board. After review, the board or the investigative committee shall determine or recommend, as appropriate, if charges are warranted.

D. All charges, unless dismissed by the board as unfounded, trivial, or unless settled informally, shall be heard by the board. The time and place for the hearing shall be fixed by the board, and a copy of the charges, together with a notice of the time and place of hearing, shall be personally served on or mailed to the last known address of such accused individual at least 30 days before the date fixed for the hearing. The summons and notice of charges shall be prepared in accordance with [NCEES's] Model Rules 250.30. At any hearing, the accused individual shall have the right to appear in person or by counsel, or both, to cross-examine witnesses in their defense and to produce evidence and witnesses in their defense. If the accused individual fails or refuses to appear at the hearing, the board may proceed to hear and determine the validity of the charges in the accused individual's absence. The hearing shall be conducted in accordance with

[NCEES's] Model Rules 250.30.

E. If after such hearing a majority of the board votes in favor of sustaining the charges, ... [the required disciplinary action shall be imposed].

F. Order of the Board

The board shall issue an order within [insert number] days of the date of the hearing. It shall include and shall state separately:

1. Findings of fact that are based exclusively on the evidence and on matters officially noticed, stated by a concise and explicit statement of the underlying facts supporting the findings.

2. Conclusions of law

The prosecutor and/or respondent shall be delivered a copy of the findings of fact and conclusions of law by person or by mail with return receipt requested. The attorney of record for the respondent shall also be mailed a copy.



G. Discipline[.] Upon an order by the board in which the respondent is found guilty of the charges preferred, the board may take appropriate disciplinary action against the respondent."

Additional requirements for procedures for hearings and related matters are presented in Section 250.30 of

Boards may conduct hearings, allowing the accused to defend themselves, give testimony, present witnesses, and submit evidence. Rules for presenting evidence may differ from those for criminal cases, and may be the same or similar to those in civil cases. Hearings will typically proceed in a manner similar to those of other administrative bodies with opening statements, testimony, cross-examination, and closing statements. In addition to legal counsel and the presiding person, board members may ask questions during hearings, unless they have a conflict of interest or bias in the case at hand. A written record of each hearing, including motions and rulings of the opposing parties, record of evidence, and, possibly, transcripts, is prepared and remains in the board's files.

Consequences of Misconduct

The licensing board's decisions in misconduct cases are rendered in writing. Consequences of misconduct may include one or more of the following: (1) censure or reprimand, (2) imposing probationary terms on a licensee, (3) suspension of licensure for a specified period, (4) permanent revocation of license, (5) denial of licensure or renewal to an applicant, (6) fine or civil penalty, (7) the board may obtain injunction(s) from a court or authority of competent jurisdiction to compel compliance, and (8) adverse publicity. In some jurisdictions certain severe offenses, such as practicing the profession without a license, or repeat offenses, may be a felony. Each state's licensing board's website includes a feature whereby anyone may verify licensure status or lookup licensees. In the event of disciplinary action, the licensee's record displayed as a result of such online searches will indicate the outcome of the disciplinary action. Also, results of disciplinary cases may be published online on the board's website. Board decisions may be appealed through civil courts of competent jurisdiction.

A determination of misconduct has potential to adversely affect the licensee's ability to renew or obtain licensure in other jurisdictions, retain membership in professional organizations, remain employed, and/or obtain new business from clients.

Enforcement and Design Firms

Design firms are subject to disciplinary action similar to individuals. Statutory requirements for submitting complaints against a firm, the need for representation by legal counsel, procedures, and potential consequences for firms are all very similar to those presented above for disciplinary cases against individuals. The outcome of disciplinary action against a firm may fall on the firm

itself or upon individuals within the firm's senior staff and management.

Conclusions

Licensing boards have authority to establish requirements for what constitutes misconduct relative to the design professions and are empowered to enforce the associated laws and regulations. Anyone can submit a written complaint to a licensing board alleging a violation of the applicable statutory requirements. In evaluating complaints, boards will perform investigations and conduct hearings in a manner similar to other administrative bodies. Consequences of misconduct can be serious and may include reprimand, temporary or permanent loss of licensure, and others. Additionally, disciplinary action is likely to have other serious outcomes, including adverse effects on licensure in other jurisdictions, employment, business opportunities, and reputation, both for individuals and design firms.

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