



Alignment

West Virginia Board of Architects

August 2018

Renewal Continues



Registered West Virginia architects may still complete a late renewal of their licenses on the Board's website at www.wvbrdarch.org using a credit card for \$150.00. Architects may also submit paper renewal applications with checks as well. All licenses expire annually on June 30th.

WV Represented at NCARB Annual Business Meeting



West Virginia Board of Architects' President Richard Forren and Secretary Edward Tucker represented West Virginia at NCARB's Annual Meeting in Detroit, MI in June.

Please remember

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- Update your contact information on the board's website by logging on using your certificate number and the last four digits of your Social Security Number.
- Continue earning HSW hours. West Virginia requires 12 hours annually, and they are based upon the calendar year rather than the fiscal year. The Audit in January 2019 will review architects' HSW hours for calendar year 2018.
- Upcoming Board Meeting:

September 6, 2018
12:00 pm
405 Capitol Street
Charleston, WV



2018–2019 Board Members

- Richard Forren, President, Fairmont
- Edward Tucker, Secretary, Huntington
- Todd Boggess, Member, Princeton
- Adam Krason, Member, Charleston
- Wendy Scatterday, Member, Wheeling
- Jan Fox, Esq., Public Member, Charleston
- Edsel Smith, Public Member, Jane Lew
- Mark Weiler, Assistant Attorney General, Counsel

Emily Papadopoulos
Executive Director

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ARE 5.0 Update

Upcoming Fee Increase

The cost of each ARE 5.0 division will increase from \$210 to \$235 on **October 1, 2018**. The total cost of the six-division exam (\$1,410) is less than ARE 4.0's total fees. Candidates can purchase seat credits for an ARE 5.0 division at the \$210 price until Sept. 30th. Seat credits can be purchased in advance at the lower rate (\$25 per division) if candidates plan to test within the next twelve months.

New AIA Contract Documents & Building Codes

Also starting on **October 1**, ARE 5.0 will reference the newest version of the AIA Contract Documents and the 2015 International Building Code - which may be downloaded for free online.

Transitioning from ARE 4.0 to 5.0

ARE 4.0 candidates will need to log into their NCARB Record and click on their Exams tab to receive their eligibilities in ARE 5.0. This process will automatically calculate their appropriate credits in ARE 5.0 based on the divisions they have passed in ARE 4.0

Rule Review: Comments Welcomed

The public and architects registered in West Virginia are invited to send comments to the Board as it completes a Rule Review resulting from Governor Justice's Executive Order No. 3-18 intended to eliminate unnecessary rules and "promote citizens' freedom to lawfully engage in individual, family and business pursuits." The Board of Architects is currently reviewing its rules to determine if any are out of date, ineffective or unnecessary. Submissions of comments should include identification of the rule and a determination if it should continue without modification, be modified or repealed and a rationale for such action. West Virginia Rules may be reviewed on the Board's website and comments should either be mailed to the Board Office or emailed to Emily.B.Papadopoulos@wv.gov by **October 15, 2018**.

www.wbrdarch.org

Board Member Edward Tucker Named AIA Fellow

The 2018 Jury of Fellows from the American Institute of Architects (AIA) named Edward Tucker, secretary of the West Virginia Board of



Architects, to its prestigious College of Fellows, an honor awarded to members who have made significant contributions to the profession. Founder of Edward Tucker Architects in Huntington, Mr. Tucker was elevated from the AIA West Virginia Chapter to the 2018 Fellows and honored at an investiture ceremony at the AIA Conference in June in New York City. Mr. Tucker was recognized for his volunteer leadership, advocacy, and community activism. He has served on the AIA National and AIA-WV

Boards, as a Regional Director for the Virginias, and is currently a member of the NCARB ARE 5.0 Item Writing Committee. He is a talented mentor and meticulously knowledgeable on West Virginia's rules, therefore making an enormous contribution to the work of the West Virginia Board of Architects. Mr. Tucker is the ninth architect from West Virginia to receive the honor of being named a Fellow by AIA.

Making it Simple: Effective Use of Digital Information in Construction Disputes

Contributed by Greg Neil

Albert Einstein is credited with the shrewd observation that “everything should be made as simple as possible, but not simpler.” Architects would do well to make this their mantra, because in court simple stories win. With the proliferation of digital technology in construction and design, it has become ever more challenging and costly to spin mountains of data into a simple narrative a judge or jury can digest. Because simple and effective use of digital information is so crucial to winning construction disputes, you can no longer afford to poorly manage your electronic information any more than you can afford to poorly manage the construction process itself.

In recent years, digital technology has revolutionized the construction industry, bringing with it a host of new opportunities and challenges. Emerging design and construction techniques, collaborative approaches, and delivery systems that were unthought of a decade ago are now the wave of the

Even simple construction projects can generate massive amounts of electronic documents and data very quickly. Design documents, product specifications, change orders, BIM data, notes, minutes, reports, schedules, safety documentation, bid documentation, mobile app data, and many other categories of information combine to create a veritable mountain of information that can quickly become difficult if not impossible to manage without the right tools. Add to this the volume of emails that routinely accompany even the most straightforward communications on a construction project and the mountain grows larger still.

Sifting through electronic information relevant to a construction dispute can be exceedingly time consuming and expensive. A 2012 Rand Institute study evaluated the cost of electronic document review and production in various types of litigation. In the 45 diverse cases analyzed, the study found that the cost of

laws. *See* e.g., 48 C.F.R. 4.700, *et seq.* (specifying various record retention periods applicable to federal contracts). When a contractor’s records are audited by a governmental agency or requested in litigation, a proper data retention policy will limit the volume of information that has to be examined while also justifying the absence of information that may have been discarded pursuant to the policy.

Duty to Preserve Electronically Stored Information

A party can be quickly “overtaken” by losing or failing to preserve documents and information as required by law, and the consequences can be severe. It is a universal rule that “a party who reasonably anticipates litigation has an affirmative duty to preserve relevant evidence.” *Hannah v. Heeter*, 213 W. Va. 704, 710–11, 584 S.E.2d 560, 566–67 (2003). Importantly, the duty to preserve evidence does not arise only after a law suit is filed, but **even before litigation**

future. As digital technology has increasingly driven the design and implementation process, construction documents have moved from filing cabinets and drawing boards to tablets, hard drives, and cloud servers. Information that was once measured in banker's boxes is now measured in gigabytes and terabytes. When disputes arise, the electronic documents and data generated during the construction project take center stage.

In a 2014 decision, a federal circuit court judge in Kentucky observed that "[l]ike the proverbial horseshoe nail, a single document could cost a party victory in a lawsuit." *In re Black Diamond Min. Co., LLC*, 514 B.R. 230, 235 (E.D. Ky. 2014), District Judge Thapar's analogy refers to a 1758 proverb found in Benjamin Franklin's *Poor Richard's Almanac* illustrating the dire consequences of minor oversights:

For want of a nail the shoe was lost,
for want of a shoe the horse was lost;
and for want of a horse the rider was lost;
being overtaken and slain by the enemy,
all for want of care about a horse-shoe nail.

Poor Richard's
Almanac (1758).

Like Franklin's horseshoe nail, success in construction litigation often turns on finding a small number of documents needed to secure your position. Failure to do so properly can quickly result in being "overtaken."

electronic document production ranged widely from \$17,000 to \$27 million, with an average cost of \$1.8 million. In one case, it cost \$900,000 to produce enough data to fill less than one quarter of a single DVD. *See* The Rand Institute for Civil Justice, "Where the Money Goes: Understanding Litigant Expenditures for Producing Electronic Discovery," at 19-20 (2012).

Without careful management, electronic discovery can be so expensive that its costs often eclipse the value of the underlying dispute. This phenomenon will become even more intense as the industry's dependence on electronic design, management, and communication tools increases. Now more than ever, cost effective dispute resolution requires foresight and careful data management.

Electronic Data Retention

One of the best ways to simplify use of electronic information is to institute a systematic data retention policy before disputes arise. A data retention policy allows the possible field of electronic data to be narrowed on an ongoing basis so that relevant documents can be identified more efficiently when needed. Properly crafted and implemented, a data retention policy can result in enormous cost savings and efficiency.

There is no one-size-fits-all data retention policy in the construction industry. A document retention policy must be carefully crafted to reflect record retention requirements imposed by various state and federal

when a party is on notice that a lawsuit *might* be filed. Since the duty to preserve evidence depends on individual notice, the duty may arise at different times for different individuals even within the same organization. Where documents or data are destroyed after the anticipation of litigation arises, the responsible party is guilty of "spoliation of evidence." The consequences of spoliation depend largely on the party's state of mind when the spoliation occurs.

In order to be punished for destroying relevant evidence, the responsible party must have done so with a "culpable state of mind." This does not require that the party intentionally destroy evidence it knows will harm it, but also includes mere careless or negligent failure to preserve evidence.

The possible penalties for spoliation of evidence depend largely on the responsible party's degree of fault. Sanctions can range from allowing the jury to assume the missing evidence would have been unfavorable to the spoliating party, to more severe sanctions like precluding defenses, or dismissing claims in their entirety. The more draconian sanctions are generally reserved for parties who willfully destroy important evidence, but any spoliation sanction can prove very costly.

Document Review and Production without Breaking the Bank

Regardless of which side of a construction dispute you are on, quickly identifying

[Click to READ MORE](#)

Greg Neil is an attorney at Steptoe & Johnson PLLC where he leads the firm's Construction Law Team. Mr. Neil focuses his legal practice in the areas of construction litigation, energy litigation and insurance defense. Through his involvement with his family's construction business, he has gained experience and understanding of the complex challenges faced by the construction industry. Currently, Mr. Neil serves on the Construction Law Committee for the Defense Trial Counsel of West Virginia and is a member of Associated General Contractors of America.

DISCLAIMER: The West Virginia Board of Architects is not endorsing Greg Neil nor the services of Steptoe & Johnson PLLC.



Judy Belcher named NCARB Region 2 Executive Director

West Virginian Judy Belcher has spent much of her career as a small business owner working independently to grow two successful businesses. As the current Executive Director of AIA West Virginia, she has many of the same duties and responsibilities that are required by Region 2. Judy is a graduate of Marshall University with a BS in Finance. She will continue as the Executive Director for AIA West Virginia, with the full support of AIA WV's Executive Committee. NCARB Region 2 includes West Virginia, Virginia, Pennsylvania, Delaware, New Jersey, New York, Maryland, and the District of Columbia.

From the Archives: *April 23, 1945*

While reviewing minutes to provide NCARB with a historical report, the staff of the West Virginia Board of Architects found a report to the Board from members' attendance as delegates to NCARB's 23rd Annual Convention in Atlantic City, New Jersey. The following was reported by L.D. Schmidt, delegate to the conference and WV Board Secretary:

The Annual Banquet took place at a cost of \$4.50 per plate. For that fancy sum, we had a slice of minced ham with a small piece of cold duck, one vegetable, a salad and dessert. And a good fill of story telling.

The New Jersey Chapter treated the members to a cocktail which cost them \$30.00.

If one could forget the highway robbery of the hotel, where we had prices beyond all reason, such as a \$1.30 for a spam sandwich, etc., the meeting was a fine one

Upcoming Events:

August 13 2018 - [AIA West Virginia Annual Golf Tournament](#), Little Creek Park Golf Course

September 3, 2018 - Board Office closed for Labor Day

September 6, 2018 - [West Virginia Board of Architects Quarterly Meeting](#), 405 Capitol Street, 4th Floor Conference Room, Charleston

October 3-5, 2018 - [WV Purchasing Conference](#), Camp Dawson, Kingwood

October 8, 2018 - Board Office closed for Columbus Day

November 6, 2018 - Board Office closed for Election Day

November 12, 2018 - Board Office closed for Veterans' Day

November 22-23, 2018 - Board Office closed for Thanksgiving

and all who attended should have gotten a lot of good out of it.

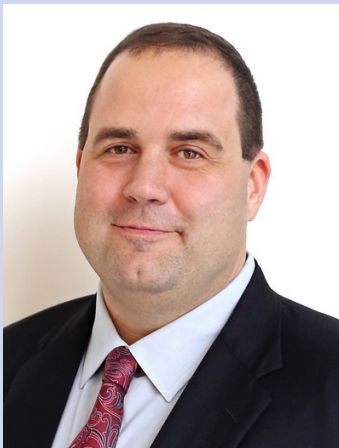
November 27, 2018 - WV Auditor's Training for Chapter 30 Boards, Marriott, Charleston

The men are as fine a group as you find anywhere.

NCARB's Model Rules of Conduct Address Professionalism

Culminating a three-year effort to review and strengthen the role of ethics in the regulation of architecture, the National Council of Architectural Registration Boards (NCARB) refreshed its Model Rules of Conduct to emphasize the organization's commitment to professional conduct. Approved by delegates at the organization's 99th Annual Business Meeting, the updated Rules serve as a national model that each board can adapt to ensure ethical practice among architects. Review the rules by clicking on the button below.

[Model Rules](#)



Meet Adam Krason

Adam R. Krason
AIA, NCARB, LEED AP, ALEP
Architect, Principal
Business Development, Project Management
ZMM Architects & Engineers

Adam Krason Appointed to Board by Governor Justice

Adam Krason is the newest member appointed to the West Virginia Board of Architects. He was appointed by Governor Jim Justice for an unexpired term on February 9, 2017 and then reappointed on July 1, 2017 for a term expiring June 30, 2022.

Since 2003, Mr. Krason has served as an Architect, Accredited Learning Environment Planner, and Principal at ZMM Architects & Engineers in Charleston. He has been involved in the design of a variety of project types, including educational facilities (PK-12 and Higher Education), recreational and civic buildings, military facilities, office buildings, justice centers, and multi-unit residential developments.

Several of the projects that he has collaborated on have been recognized with awards from the West Virginia Chapter of the American Institute of Architects (AIA-WV), including the Charleston EDGE, Logan-Mingo Readiness Center, Edgewood Elementary School, the Christ Church United Methodist Education Wing Renovation, the Girl Scouts of Black Diamond Council Volunteer Resource Center, and the Joint Interagency Training and Education Center (JITEC) at Camp Dawson. Mr. Krason is an advocate of sustainability, authoring several articles about the topic and participating in a variety of sustainable design seminars throughout the state.

In addition to the West Virginia Board of Architects, Mr. Krason serves on the City of Charleston Municipal Planning Commission and Historic Landmarks Commission. He also serves on several non-profit boards including the Clay Center, the West Virginia Symphony Orchestra, Charleston Main Streets (past-president), the Charleston Area

Alliance, AIA-WV (board president), Mary C. Snow Elementary School LSIC, the Education Alliance, and Goodwill Industries of the Kanawha Valley. He is a graduate of Leadership WV, and The Catholic University of America in Washington, DC, where he earned both a bachelor of architecture and a bachelor of civil engineering. Mr. Krason resides in Charleston with his wife Sara and their four children.

**West Virginia
Board of
Architects:**

NUMBERS

- Total Number of Registered Architects: 1,189
- Total Number Residing in WV: 115
- Total Number Out of State: 1,074
- Annual Budget: \$169,304
- Number of Employees 1
- Number of Board Members 7
- Number of WV Counties Represented by Board 6

Data from August 8, 2018.

To see how West Virginia compares to other jurisdictions, look at <https://www.ncarb.org/nbtn2018/jurisdictions-the-numbers>.
