

**IX. Consideration of Past Activity**

In reaching a decision to dismiss a matter, refer such matter to a mediator, counsel a subject actuary, or recommend disciplinary action, the ABCD may consider records involving prior guidance, counseling, and recommendations for disciplinary action previously undertaken by the ABCD or its predecessors with regard to the subject actuary. To facilitate this consideration, the ABCD will retain records of prior guidance, counseling, and recommendations for disciplinary actions for a period of twenty (20) years.

**X. Confidentiality of Process**

The ABCD will make a reasonable effort to keep confidential the facts and circumstances involved in any matter considered by the ABCD for possible counseling or recommendations for discipline or the services of a mediator. ABCD members, ABCD staff, Investigator(s), Advisors, and mediators shall be specifically made aware of this section of the Rules of Procedure and the requirement for confidentiality.

Other persons who may be involved in an inquiry shall be informed that the ABCD desires that its inquiry be kept confidential. The names of persons involved in a matter which is the subject of an ABCD inquiry shall not be disclosed to such other persons unless such disclosure is required for the person being consulted to answer the questions being asked.

The ABCD will not have violated its responsibilities if the circumstances surrounding a matter are such that the identity of the parties or incident involved can be deduced by any persons.

The requirement as to confidentiality shall not preclude the ABCD from:

1. Advising complainants and subject actuaries about the progress and outcome of matters under consideration; and
2. Accepting a bona fide waiver of confidentiality from a subject actuary and disclosing information pursuant to that waiver that would otherwise be kept confidential under this section, subject to such terms and conditions

as the ABCD deems necessary to protect the confidentiality rights of other parties and the integrity of the ABCD process.

The ABCD will be free to publish information concerning requests for guidance so long as the names of any individuals who, or organizations which, may be involved in the request are not disclosed without their permission and reasonable care is taken not to include identifying information.

The ABCD may be required to divulge details regarding an inquiry, including the names of complainants and subject actuaries, by court order or other legal process in some circumstances and as necessary to inform participating organizations of its recommendations.

#### **XI. Confidential Information**

The ABCD recognizes that a subject actuary or other individual may be prohibited by law, preexisting contractual obligation, or other circumstances beyond the control of the subject actuary or other individual from producing evidence sought by or on behalf of the ABCD. Where a subject actuary or other member of one or more of the participating organizations is so prohibited, the subject actuary or member must advise the ABCD of the nature of the prohibition and provide the ABCD with any appropriate documentation to demonstrate that the prohibition does, in fact, apply to the evidence sought. The subject actuary or member must also make a good-faith effort to produce non-confidential portions of documents and other evidence sought by or on behalf of the ABCD.

A complainant, or other individual, who is not a member of one or more of the participating organizations may be unable, or may refuse, to produce evidence. This may hamper the ABCD's ability to investigate a given matter.

The ABCD will not be held responsible if the circumstances surrounding a matter may be such that otherwise confidential information is inadvertently revealed. Further, the ABCD may be required to disclose otherwise confidential information by court order, other legal process, or inquiry by duly authorized officials of participating organizations.