

IV. Appointment of a Mediator

If the Chairperson and Vice Chairperson(s) decide to refer a matter to a mediator who is not an ABCD member, the Chairperson will select a proposed mediator, in accordance with Section XII of these Rules of Procedure, to be recommended to the parties. When a proposed mediator has agreed to serve, the ABCD staff will prepare a notice to the parties of the decision to refer the matter to the proposed mediator for resolution. If the parties agree, the appointment will become effective, and the mediator will work with the parties to resolve the matter. The ABCD staff will be available to the mediator as a source of legal advice and counsel.

If the parties do not both agree, the appointment will not become effective. If the parties do agree, but the mediator is unable to resolve the matter within a reasonable period of time, the mediator will so notify the parties and the Chairperson. In either case, the Chairperson and Vice Chairperson(s) will then decide whether to propose another mediator, dismiss the matter, or forward the matter to an Investigator(s) for additional review.

V. Investigation

A. Appointment of Investigator(s)

If the Chairperson and Vice Chairperson(s) agree to investigate a matter that may involve a violation of the Code(s) of Professional Conduct, the Chairperson shall appoint a primary Investigator in accordance with Section XII of these Rules of Procedure, to inquire into facts concerning the matter, except as provided in Section V.E.2, below.

Where, in the judgment of the Chairperson and the Investigator, appointment of additional persons to assist in an investigation would be appropriate, the Chairperson shall, in consultation with the primary Investigator, appoint one or more additional Investigators.

If an Investigator fails to complete assigned duties in a timely manner, the Chairperson may, with the consent of a Vice Chairperson, replace the Investigator.

B. Objection to Investigator(s)

The subject actuary shall be notified in writing that the matter is to be referred to an Investigator(s) and of the identity of the Investigator(s). The subject actuary shall be given 20 days to object for good cause to the appointment of an Investigator. Good cause may include bias, direct professional competition, a professional or personal dispute or other conflict of interest between the Investigator and the subject actuary, or any other reason why the subject actuary believes the Investigator could not act in a competent and unbiased manner. The subject actuary's objection shall be submitted in writing, signed in original ink, to the ABCD at its Washington, DC office. The objection should set forth the specific reasons why the subject actuary believes that the Investigator should not participate in the investigation and should be accompanied by copies of any documentary evidence which the subject actuary believes will assist the Chairperson to determine whether, in fact, reason exists to replace the Investigator.

The subject actuary's objection shall be forwarded to the Chairperson for review. The Chairperson may discuss the objection with the Investigator or any other individual who, in the Chairperson's judgment, may possess relevant information to assist the Chairperson in determining whether the Investigator should be replaced. The Chairperson shall determine whether the Investigator should be replaced; the Chairperson's determination will be final, subject to a timely objection (see Section XIV, below), and the determination shall be reported in writing to the subject actuary. If the Chairperson decides to replace the Investigator, a new Investigator shall be appointed in accordance with Section V(A) of these Rules of Procedure.

C. Advisors

The Chairperson may appoint one or more Advisors to provide advice and assistance to the Investigator(s) in the investigation and in the preparation of the Investigative Report.

D. Information Gathering

The Investigator(s) shall attempt to determine the facts underlying a matter being investigated. In so doing, the Investigator(s) may make any appropriate inquiries. The Investigator(s) may contact the complainant, if any, and the subject actuary, as well as any other persons who may possess relevant information. Any person being interviewed by the Investigator(s) may, at his or her volition and expense, be assisted or represented by counsel.

In the course of an investigation, the Investigator(s) may require the production of books, records, documents or other relevant items.

If the Investigator(s) discover evidence of one or more possible violations of the Code(s) of Professional Conduct by the subject actuary other than those set forth in the matter under investigation, the Investigator(s) may expand the scope of the investigation to inquire into the additional possible violations as if they had been originally included.

The Investigator(s) may seek legal advice and counsel from the ABCD staff. The Investigator(s) may seek the advice of an appointed Advisor and may also consult confidentially with any person who may have information or experience relevant to the matter. No information from these consultations may be used unless it is included in the Investigative Report and the subject actuary is given an opportunity to respond.

E. Investigative Report

1. As soon as practicable following the completion of the Investigator's(s') inquiry, the Investigator(s) shall prepare and submit to the ABCD an Investigative Report which will contain:
 - a. Relevant facts and documents relating to the activities in question;
 - b. Summaries of statements of individuals interviewed regarding the activities in question;
 - c. Citations of the Code(s) of Professional Conduct applicable to the activities in question; and
 - d. Such other information, material, and opinions as the ABCD may request or the Investigator(s) deems appropriate to assist the ABCD in determining whether to dismiss the matter, counsel the subject actuary, or recommend disciplinary action against the subject actuary.

The Investigator(s) may seek legal advice and counsel from the ABCD staff and may seek professional actuarial advice from appointed Advisors regarding the preparation and content of the Investigative Report.

2. Where a court of competent jurisdiction or a government regulatory body has issued a decision that includes findings of fact concerning the subject matter of an ABCD inquiry into possible violations of the Code(s) of Professional Conduct, the ABCD may, within its discretion, elect to treat that decision as the functional equivalent of an Investigative Report under these Rules of Procedure.

F. Subject Actuary's Response to the Investigative Report

The ABCD staff will forward a copy of the Investigative Report to the subject actuary, who will be invited to respond within 30 days of the date of the ABCD's transmittal to the subject actuary. The response should be in writing to the ABCD at its Washington, DC office, and should contain, the following:

1. A statement of any facts which, in the subject actuary's opinion, rebut or explain any adverse findings of the Investigator(s);
2. An explanation of why, in the subject actuary's opinion, any activities cited in the Investigative Report did not violate applicable Code(s) of Professional Conduct, or why such activities were irrelevant or immaterial;
3. A statement of any circumstances which the subject actuary wishes the ABCD to consider when evaluating the Investigative Report; and
4. Copies of any relevant supporting documentary evidence which has not previously been submitted, subject to the provisions in Section XI of these Rules of Procedure.