

2. Dismiss the matter if it appears not to involve a material violation of the Code(s) of Professional Conduct. The complainant, if any, and the subject actuary will be notified of the decision. The case will be closed.
3. Counsel the subject actuary if counseling is determined to be appropriate. At the discretion of the Chairperson, such counseling may be conveyed to the subject actuary orally or in writing or both and may be by the Chairperson, any member of the ABCD, or other person(s) appointed by the Chairperson to counsel the actuary. The complainant, if any, shall be advised that the ABCD reviewed the complaint and elected to counsel the subject actuary. The substance of the counseling shall be kept confidential among the ABCD, the subject actuary, and any person(s) appointed by the Chairperson to counsel the actuary.
4. Call for a fact finding hearing before the ABCD, if the conduct of the subject actuary appears to present a possible material violation of the Code(s) of Professional Conduct that may warrant discipline.

In reaching the decision to either dismiss the matter, counsel the actuary or schedule a fact finding hearing, the Chairperson and the ABCD may consult confidentially with any member of the actuarial profession or other person who may have information or experience relevant to the matter under consideration; however, no information from these consultations may be used by the ABCD unless the information is made part of the record and the subject actuary is given an opportunity to respond.

## **VII. Fact Finding Hearing**

### **A. Notice of Hearing**

If the ABCD calls for a fact finding hearing, the ABCD shall provide the subject actuary written notice. The notice shall set forth the conduct which has raised questions regarding possible violation(s) of the applicable Code(s) of Professional Conduct; the date, time, and place of the hearing; and a copy of all the case-specific information reviewed by the ABCD. If the ABCD intends to have an Investigator participate in the hearing telephonically, the notice shall so inform the subject actuary. If the notice states that the ABCD intends to have an Investigator

participate telephonically, it shall inform the subject actuary that he or she has the right to request that the Investigator appear in person at the hearing, provided the request is received by the ABCD in writing at least 21 days before the date on which the hearing has been scheduled. The notice shall contain pertinent information regarding the hearing and the subject actuary's responsibilities. Such pertinent information shall contain the names of any witnesses whose testimony the ABCD expects to consider and copies of case-specific documents the ABCD expects to consider. The notice shall be transmitted to the subject actuary by certified mail or in such other manner as the ABCD may authorize, at least 45 days before the scheduled date of the hearing. This 45-day notice period may be waived in writing by the subject actuary. The subject actuary shall be asked to acknowledge receipt of the notice and informed of the right to submit a written response to the hearing notice.

## **B. Subject Actuary's Response**

The subject actuary's acknowledgment and response should be sent to the ABCD at its Washington, DC office to be received within 21 days of the date on which the hearing notice was dispatched. Additionally, the acknowledgment or a subsequent response may include relevant documentary evidence that the subject actuary would like to have considered at the hearing and a list of witnesses the subject actuary intends to call. For good cause, the Chairperson may allow a later acknowledgment.

## **C. Hearing**

### **1. General**

The ABCD shall fix the time and place of each hearing. The Chairperson of the ABCD will preside over each hearing. The Chairperson will maintain the privacy of the hearing and shall have the power to require the exclusion of any witness, other than the subject actuary, during the statement of any other witness. The Chairperson will have discretion to determine whether any other person may attend all or part of the hearing. ABCD counsel may be present at the hearing to provide legal and logistical support to the ABCD. Such legal support shall be limited to providing advice to the ABCD and articulating appropriate legal objections. A record shall be made of the hearing by a court reporter selected by the ABCD. A transcript of the hearing shall be provided to the subject actuary. No other recording of the hearing will be permitted.

## **2. Appearance of Subject Actuary**

The subject actuary shall be asked to appear at the hearing and to answer questions. The subject actuary may be accompanied by counsel at no expense to the ABCD, provided that the role of such counsel shall be limited to providing advice to the client and articulating appropriate legal objections. If the subject actuary fails to appear at the hearing after due notice, or refuses to answer questions, the ABCD shall not render a decision based solely on such default. In such a case, the ABCD shall accept such evidence and draw such inferences (including any appropriate adverse inferences from the subject actuary's default) as it deems warranted. A subject actuary who on account of disability or illness is unable to attend a hearing, notwithstanding the ABCD's effort to accommodate the actuary, may submit a written request with justification to be represented at the hearing. Such requests are subject to approval or disapproval by the Chairperson.

## **3. Appearance of Investigator**

At the timely request of the ABCD or the subject actuary an Investigator designated by the ABCD shall appear personally to discuss the Investigative Report and submit to questions by ABCD members and the subject actuary, provided that in the absence of such a specific request, the Investigator may participate telephonically.

## **4. Conduct of Hearing**

At the beginning of the hearing, the Chairperson may ask for statements from an Investigator and the subject actuary outlining and clarifying the issues involved. Such statements shall be no longer than thirty (30) minutes each. The Investigator shall then present the results of the investigation. The Investigator and any witnesses called by the ABCD shall submit to questions by ABCD members and the subject actuary. The subject actuary shall then present his or her evidence and witnesses, who shall submit to questions by the subject actuary and ABCD members. The Investigator shall remain available, at the discretion of the ABCD, to provide additional testimony.

## **5. Evidence**

The Chairperson will rule on the admissibility of evidence. In general, evidence is admissible if, alone or together with other evidence, it would tend to prove or disprove that the actuary violated the Code(s) of Professional Conduct at issue. Evidence is excludable if it is irrelevant or unnecessarily repetitive or if there are other valid reasons for excluding it. In its sole discretion, the ABCD shall determine the weight to accord admitted evidence. Conformity to rules of evidence for judicial proceedings is not required. All evidence shall be taken in the presence of the subject actuary, except where the subject actuary is absent after due notice of the proceedings has been provided to the subject actuary. Exhibits, when offered by the Investigator, subject actuary, or ABCD, may be received in evidence by the Chairperson of the ABCD. Statements by individuals not present at the inquiry, when offered by the Investigator or subject actuary, may be received in evidence by the Chairperson of the ABCD and shall be given such weight as the ABCD deems appropriate. A list of exhibits shall be made a part of the record.

## **6. Closing of Hearing**

The Chairperson shall determine when to conclude the hearing. Before concluding the hearing, the Chairperson shall permit the subject actuary to summarize the evidence and address its application to the applicable Code(s) of Professional Conduct. Such statement shall not be more than 30 minutes in length.

## **7. Additional Matters**

If, at any time during the hearing, evidence is received that indicates additional possible violations of the Code(s) of Professional Conduct, the ABCD may consider such additional matters as part of the current hearing, provided that reasonable notice and opportunity to respond is given to the subject actuary. If requested by the subject actuary, the ABCD shall recess and reconvene the hearing to give the subject actuary the opportunity to respond.

## **8. Variance of Rules; Continuances**

The Chairperson has discretion to vary the procedures governing hearings but shall afford full and equal opportunity to the Investigator and subject actuary for the presentation of relevant evidence and witnesses. The Chairperson may recess and reconvene the hearing when appropriate, in which case the Chairperson will fix the date, place and time for the hearing to be continued and may reopen the hearing upon application of the Investigator or the subject actuary or upon the ABCD's own initiative, at any time before final action is taken.

## **VIII. Final Determination**

### **A. Deliberations**

As soon as practicable following the hearing, the ABCD will meet in person or by telephone to consider the evidence presented at the hearing and decide upon the action to be taken. Only evidence admitted at the hearing will be considered, except that the ABCD may obtain additional evidence from the subject actuary.

### **B. Decision**

By an affirmative vote of five or more members, the ABCD may:

1. Reopen the hearing and seek additional information before reaching a decision, in which case the ABCD may undertake to discover such additional information or request the Investigator(s) or ABCD staff to do so, and thereafter reconvene to review the record and determine the action to be taken.
2. Dismiss the matter if the complaint/information appears not to involve a material violation of the Code(s) of Professional Conduct. The complainant, if any, and the subject actuary shall be notified of the decision, and the case will be closed.
3. Counsel the subject actuary. At the discretion of the ABCD, such counseling may be conveyed to the subject actuary orally or in writing or