

Rules of Procedure for the Actuarial Board for Counseling and Discipline

**As Adopted by the
Actuarial Board for Counseling and Discipline
September 22, 2004**

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**RULES OF PROCEDURE FOR
THE ACTUARIAL BOARD FOR COUNSELING AND DISCIPLINE**

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RULES OF PROCEDURE FOR THE ACTUARIAL BOARD FOR COUNSELING AND DISCIPLINE

In accordance with Article X of the Bylaws of the American Academy of Actuaries, the Actuarial Board for Counseling and Discipline (“ABCD”) has promulgated these Rules of Procedure for the performance of its functions on behalf of the participating organizations representing actuaries in North America. The participating organizations are the American Academy of Actuaries, the American Society of Pension Professionals and Actuaries, the Casualty Actuarial Society, the Conference of Consulting Actuaries, and the Society of Actuaries. The ABCD reserves the authority to amend these Rules of Procedure as it deems necessary provided that no substantive change in such rules shall be effective until exposed for at least 60 days to the profession or to participating organizations for publication to their members.

Introduction

The ABCD was established to facilitate compliance with the Code(s) of Professional Conduct by members of participating organizations that have delegated to the ABCD the power to investigate and evaluate possible violations of their Code. Its jurisdiction extends to actuarial practice by members of the participating organizations in all countries except Canada; and to actuarial practice in the United States by members of the Canadian Institute of Actuaries.¹

The ABCD within its jurisdiction has authority to:

1. Consider all complaints concerning alleged violations or information suggesting possible violations of the applicable Code(s) of Professional Conduct. The Codes, in turn, incorporate by reference applicable qualification standards and applicable standards of practice. The ABCD may also consider questions that arise as to the conduct of a member of a participating organization in the member’s relationship to that organization or its members, in the member’s professional practice, or otherwise affecting the interests of the actuarial

¹The Canadian Institute of Actuaries exercises similar jurisdiction over all actuarial practice in Canada and actuarial practice by its members and students outside the United States and U.S. territories and possessions.

profession. Although investigations of possible violations of the Code(s) will usually be initiated based on complaints, the ABCD may also initiate such investigations based on information available to it suggesting possible violations of the Code(s) of Professional Conduct;

2. Counsel actuaries concerning their activities relative to the Code(s) of Professional Conduct in situations where the ABCD deems counseling appropriate.
3. Recommend disciplinary action against an actuary to any participating organization of which the actuary is a member, recognizing that authority to discipline members rests exclusively in the participating organizations;
4. Respond to requests for guidance regarding professionalism from members of participating organizations and actuarial students affiliated with the participating organizations; and
5. Mediate or appoint a mediator to resolve issues concerning professional conduct between members of participating organizations, or between such members and the public.

I. Requests for Guidance

Requests for guidance are questions raised by an actuary (or, for all purposes of this section, an actuarial student) about the proper interpretation of the Code of Professional Conduct or the standards, but which are not complaints alleging or suggesting a violation by another actuary.

The ABCD may accept and respond to requests for guidance. If an ABCD member or staff person receives a communication that is considered to be, or to have the potential for being, a request for guidance, the recipient may respond or may refer the request to the Chairperson or a staff member designated by the Chairperson, who will assign the request to a member for response or may ask that the entire ABCD consider the request.

The ABCD will respond to a request for guidance in a reasonable and timely fashion.

No communication by a staff member or an ABCD member in connection with a request for guidance should be construed as an expression of opinion by the ABCD, except when the communication has been approved by vote of the ABCD. The staff member or ABCD member responding to a request for guidance shall decide upon the form and nature of the response, except that the actuary requesting guidance may ask for an expression of opinion by the entire ABCD.

Members and staff of the ABCD will make a reasonable effort to keep confidential the facts and circumstances involved in any request for guidance, subject to the confidentiality provisions in Section X of these Rules of Procedure. However, efforts to protect the anonymity of an actuary may hamper the ABCD's ability to respond to a request for guidance.

The ABCD reserves the right to forego responding to any request for guidance submitted by an actuary who refuses to be identified, or to identify another actuary, to the Chairperson, Vice Chairpersons, and ABCD staff. The ABCD reserves the right to handle a request for guidance as if it were a report of information leading to an inquiry where there is evidence that a material violation of the Code(s) of Professional Conduct may have occurred. The ABCD also may, subject to the permission of the inquiring actuary, use mediation procedures in response to a request for guidance.

II. Initiation of a Matter for Inquiry

A. General

Matters for inquiry are complaints concerning alleged violations or information suggesting possible violations of the applicable Code(s) of Professional Conduct. The ABCD's scrutiny of the matter is hereinafter referred to as the ABCD's "inquiry." The portion of the inquiry following the Chairperson and Vice Chairperson's decision to appoint an investigator or to consider court or administrative tribunal findings the functional equivalent of an Investigative Report is hereinafter referred to as the ABCD's "investigation." The actuary who is the subject of an ABCD inquiry is hereinafter referred to as the "subject actuary." The complaining party, if any, is hereinafter referred to as the "complainant."

B. Form of Complaint

A “complaint” is a written assertion that a member of one or more participating organizations has committed an act or omission that appears to have violated the applicable Code(s) of Professional Conduct, whether or not the complainant references the Code, provided that the individual making the assertion identifies himself or herself and does not request anonymity. Complaints should be submitted to the ABCD at its Washington, DC office. When a member of the ABCD or its staff receives an oral “complaint,” whether in person or by telephone, the member or staff person should request that the complaint be submitted in writing. The ABCD will provide a copy of the complaint to the subject actuary, including the complainant’s identity, unless the complainant requests anonymity, in which case the information will be treated as information received under section IID below and not considered a “complaint.”

C. Contents of Complaint

A complainant making a complaint is requested to furnish all of the following, but failure to comply fully with this subsection will not invalidate the complaint.

1. A statement of the circumstances underlying the complaint as the complainant understands them.
2. A brief description of each act or omission that the complainant believes constituted a violation of the Code(s) of Professional Conduct
3. Copies of any supporting documentation which the complainant believes will assist the ABCD in determining whether, in fact, the subject actuary has failed to comply with the Code(s) of Professional Conduct. If available and applicable, copies of the subject actuary’s work should be included, subject to Section XI of these Rules of Procedure.

D. Receipt of Information Leading to an Inquiry

1. An ABCD inquiry may also be commenced if the ABCD receives information for which the “complainant” is not identified, or requests anonymity, and the information comes from a known source (such as a signed document or a published journal) and indicates that the conduct of an actuary who is a member of one or more of the participating organizations may have violated the applicable Code(s) of Professional Conduct.
2. An ABCD inquiry may also be commenced based on public information available to it suggesting possible violations of the Code(s) of Professional Conduct.

The ABCD will provide a copy of the information to the subject actuary.

III. Preliminary Evaluation

A. Initial Processing

When a complaint or information is received by the ABCD, its staff will undertake initial processing to determine the nature of the possible violation(s) of the Code(s) of Professional Conduct involved so that the subject actuary will have a statement of the alleged misconduct sufficiently clear to address and so that the ABCD will have appropriate information for conducting a preliminary evaluation. This initial processing may involve a follow-up with the complainant to clarify anything in the complaint that requires additional explanation, or with any other individual, subject to the confidentiality provisions in Section X of these Rules of Procedure. The initial processing shall include notice to, and inquiry of, the subject actuary, except in situations where allegations in complaints or other information appear to have little or no merit. The staff will forward the complaint or information received, the results of its initial processing, and any additional information obtained thereby, to the Chairperson and Vice Chairpersons of the ABCD.

B. Chairperson and Vice Chairpersons' Preliminary Evaluation

A majority of the Chairperson and the Vice Chairpersons will review the complaint or information received and additional information obtained during the initial processing, if any. They will meet in person or by conference call to discuss the matter and determine by majority vote of the Chairperson and Vice Chairpersons to do one of the following:

1. If the matter under consideration appears not to involve a material violation of the Code(s) of Professional Conduct, the matter shall be dismissed. If not previously notified, the subject actuary will be informed of the matter and will be notified of the dismissal. In addition, the complainant, if any, will be notified of the dismissal. The matter will be closed.
2. If the matter under consideration appears to present a dispute other than a material violation of the Code(s) of Professional Conduct, the Chairperson shall so advise the complainant, if any, and the subject actuary and may offer to mediate the matter (or provide a mediator to do so), as provided in Section IV of these Rules of Procedure.
3. If the matter under consideration appears to involve a possible material violation of the Code(s) of Professional Conduct, the Chairperson and the Vice Chairpersons will refer the matter to an Investigator(s), provided that no such decision will be made unless and until the information on which a decision is made has previously been furnished to the subject actuary and the subject actuary has been provided a reasonable opportunity to respond.

The Chairperson and Vice Chairperson(s) may consult confidentially with any member of the actuarial profession or other persons who may have information or experience relevant to the matter under consideration; however, no adverse information from these consultations may be used in any report or finding unless the information is disclosed to the subject actuary and the subject actuary is given an opportunity to respond.

At its next regularly scheduled meeting, the ABCD will be informed of all such evaluations since its prior meeting.

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.

VI. Review of Investigative Report

A. Record for Review

The ABCD staff will forward copies of the following documents to the members of the ABCD:

1. The complaint or other information which served to initiate the investigation;
2. Any additional relevant information or documentation received by the ABCD;
3. The Investigative Report; and
4. The subject actuary's response, if any, to the Investigative Report.

B. Consideration of the Matter

The members of the ABCD shall review the materials submitted to them by the ABCD staff and shall meet in person or telephonically to discuss the materials and reach a determination as to whether to dismiss the matter, counsel the actuary, obtain additional information, or schedule a formal hearing to inquire further into the matter.

With a quorum present, a majority of the ABCD members participating, may decide on one of the following actions:

1. Seek additional information before making a decision on the matter (in which case the ABCD may make such inquiry or request the Investigator(s) or ABCD staff to do so) and thereafter provide appropriate notice to the subject actuary, reconvene to review the record, and decide upon the action to be taken.

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

both and may be undertaken by the Chairperson, any member of the ABCD, or any other person appointed by the Chairperson. The complainant, if any, will be advised that the ABCD reviewed the complaint and elected to counsel the subject actuary. However, the substance of the counseling will be kept confidential among the ABCD, the subject actuary, and any person(s) appointed by the Chairperson to counsel the actuary.

4. Recommend discipline in the form of private reprimand (if permitted by the bylaws or rules of the participating organization), public reprimand, suspension, or expulsion. If the ABCD recommends discipline, the ABCD shall prepare a written report addressed to each participating organization of which the subject actuary is a member. The report shall identify the precepts of the applicable Code(s) of Professional Conduct which the ABCD believes to have been violated, state the nature of the violations, and make a recommendation as to the form of discipline (i.e., private reprimand, public reprimand, suspension, or expulsion). The report shall be accompanied by a transcript of the hearing and copies of all documents considered at the hearing. A copy of the report and accompanying material that the ABCD has not previously provided to the subject actuary shall be provided to the subject actuary. The ABCD may also counsel a subject actuary as an adjunct to its recommendation for discipline.

C. Other Requirements

In the event an ABCD member is absent from a portion of a hearing, such member shall not be eligible to attend the balance of the hearing, engage in deliberations, or vote concerning the disposition of the matter.

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.

XII. Selection of Mediators and Investigators

An individual selected to serve as a mediator or Investigator shall have substantial familiarity with the subject matter at issue and with applicable Code(s) of Professional Conduct. The ABCD shall ask each prospective Investigator and mediator if he or she is aware of any circumstances that might raise questions regarding his/her impartiality, such as past or present relationships with the complainant or subject actuary. An individual shall not be selected if the appointment would create a conflict of interest or an appearance of impropriety. In seeking to appoint an individual to serve as a mediator or Investigator, the Chairperson may ask the advice of any member of the actuarial profession or other person, subject to the confidentiality provisions in Section X of these Rules of Procedure.

XIII. Requests for Waiver

A request by the subject actuary for waiver of any of the procedural requirements set forth in these Rules of Procedure may be decided by the Chairperson of the ABCD. Such requests shall be submitted in writing to the Chairperson at the ABCD's Washington, DC office. A request for waiver should contain, at a minimum, the following:

1. An identification of the specific requirement(s) that the subject actuary wishes to be waived;
2. A concise explanation of why the subject actuary seeks the waiver; and
3. Any supporting documentation that will assist the Chairperson in determining whether the waiver request should be granted.

ABCD counsel will be available to assist the Chairperson in the determination of whether to grant the waiver request and to ensure that due process and other legal requirements are satisfied. The Chairperson's decision to grant or refuse a waiver will be deemed final, subject to a timely objection (see Section XIV, below), and will be reported in writing to the subject actuary.

XIV. Objections

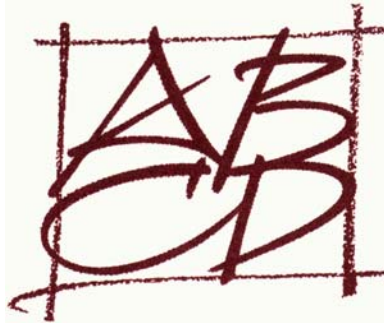
When the Chairperson, or the Chairperson and the Vice Chairpersons, renders a decision under these Rules of Procedure, the subject actuary may object to it in a timely manner. Except as provided below, an objection shall be submitted in writing and should include grounds in support of the objection. It must arrive in the ABCD's Washington, DC office within twenty-one (21) days after the date of the ABCD's notification of the decision to the subject actuary. An objection to a decision at a hearing must be made immediately following the decision. An objection will be put to the ABCD, which shall determine whether it is meritorious. For good cause shown, the ABCD may allow reasonable variance from these requirements.

XV. Quorum

Except where otherwise provided, a quorum consists of at least six ABCD members. Decisions shall be by majority vote of ABCD members participating, except as otherwise required by provisions establishing the ABCD and these Rules of Procedure.

XVI. Reports on Activities

The ABCD shall issue an annual report that will include a description of its activities, including commentary on the types of cases pending, resolved and dismissed. The ABCD shall also report quarterly to the President of each participating organization concerning its activities related to members of that organization. These reports shall be subject to the confidentiality provisions in Section X of these Rules of Procedure.



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