

A Case Study

THIS ARTICLE IS AN OUTLINE of a “sample” complaint received by the Actuarial Board for Counseling and Discipline (ABCD). As a hypothetical case study, it is intended to provide examples of the types of issues that come before the ABCD when a complaint is made, as well as the typical timeline of events.

Let’s assume the ABCD received a complaint in April 2013. The complainant (i.e., the individual filing the complaint) indicated the following:

- The complainant’s firm was performing the valuation of the retiree medical liability for a small school district. The prior valuation had been done by another actuary (the “subject actuary,” or SA, the term used by the ABCD for the actuary to whom the complaint is addressed), who was “retired” but was still doing some consulting. The liability had increased by a large enough percentage over the previous year that the complainant was concerned about the SA’s analysis, and as a result, the complainant’s firm reviewed the prior report in detail. The review showed that the SA had not valued spousal benefits, and the SA’s report did not disclose that these

benefits were not valued. The specific issues raised about the SA’s work (and Precepts of the Code of Professional Conduct (“Code”)) that apply included the following:

- The SA was not a member of the American Academy of Actuaries (Academy) or the Conference of Consulting Actuaries (CCA), as stated on his letterhead (Precept 12: Titles and Designations).
- The SA’s directory listing does not indicate compliance with continuing education requirements for signing a statement of actuarial opinion (Precept 2: Qualification Standards).
- The discount rate used was well above industry norms and not consistent with actuarial standard of practice (ASOP) No. 27 (Precept 3: Standards of Practice).

- The SA’s report did not include all the information required by ASOP No. 6. (Precept 3: Standards of Practice).
- Other precepts potentially violated include Precept 1 (Professional Integrity) and Precept 4 (Communications and Disclosures).

The complaint was sent by the ABCD to the SA for his response. In May 2013 the SA responded:

- He indicated he had reinstated his membership in the Academy and CCA, having thought the SOA dues waiver also applied to these memberships.
- The SA also stated that by being in retired status, he believed that he was exempt from the continuing education requirements of the Qualification Standards.
- He stated that the discount rate is a long-term value and that the present low-interest-rate environment would not persist.
- Finally, he noted that his report followed a standard format he had used many times, especially before he was retired.

In accordance with the ABCD’s Rules of Procedure, and after receiving the SA’s response, the ABCD chairperson and vice chairpersons discussed the complaint and the SA’s response. They concluded that an investigation was needed to gather further information, and an investigator was selected in June 2013.

It should be noted that the complaint could have been dismissed at this point if the ABCD believed it was unlikely to involve a material violation of the Code. The investigator, who had experience in the practice area of the complaint (in this case, retiree medical), interviewed the complainant and the SA, and gathered any other material that was available without breaching the confidentiality of the process, which could involve interviewing other individuals as well.



*“Some people might call it lazy ...
I prefer to say ‘an efficiency of effort.’”*

A fact-finding hearing includes the following:

- The SA is asked to appear. The SA may bring legal counsel, with the role of counsel limited to providing advice to the SA and articulating appropriate legal objections.
- The investigator is usually requested to attend in person.
- The SA is invited to make an opening statement, summarizing his position. The investigator usually does not make an opening statement.
- The investigator presents the results of the investigation. The ABCD members then may ask questions of the investigator. When the ABCD is finished with questioning, the SA may ask questions of the investigator.
- The SA may then present testimony, call witnesses, and otherwise provide evidence. After the SA is finished with this process, the ABCD members may ask questions of the SA.
- The SA may then make a closing statement.

After the hearing is concluded, the ABCD deliberates. The ABCD may:

- Dismiss the complaint, if it is determined that there is no material violation of the Code.
- Counsel the SA, which may be done in person, in writing or both.
- Recommend discipline to the Joint Disciplinary Council, including private reprimand, public reprimand, suspension, or expulsion.
- It should be noted that the Joint Disciplinary Council makes the actual decision on any discipline, the idea being to keep the discipline consistent among the organizations of which the SA is a member. The ABCD only recommends discipline.



The investigator's report was completed in November 2013 and sent to the SA for a response. The SA had no major comments on the investigation report. This information was then provided to the entire ABCD.

The ABCD conducted a "reading" in December 2013 (i.e., a review of all available written documentation: complaint, the SA's response to the complaint, the investigator's report, and the SA response to the investigator's report).

After the reading, the ABCD concluded that a fact-finding hearing should be held to hear from the investigator and the SA in person. Other conclusions that could have been reached: dismiss the complaint if it did not appear to be a material violation of the Code, counsel the SA if deemed appropriate, or request further information. The hearing was scheduled for March 2014.

In its deliberations, the ABCD members discussed whether they believed a material violation of the Code had occurred and if so, which precepts had been violated.

- It was agreed that Precepts 1, 2, and 12 had been violated.
- Including spouse coverage caused the liability to increase by 25 percent, so the omission had a significant impact on the liability. While it can be difficult to verify benefits, the SA could have provided a statement to the client describing the assumed benefits and asking for verification. Additional disclosures required by ASOP No. 6 and ASOP No. 41 were not included, resulting in a violation of Precept 3.

After concluding that there were material violations of the Code, the ABCD then discussed whether counseling or recommendation of discipline was appropriate. After deliberation, the ABCD recommended public reprimand to the Joint Disciplinary Council. □

DAVE ODGEN is a member of the Actuarial Board for Counseling and Discipline.