

We Have a Professional Conduct Committee?

Yes, we do have a Professional Conduct Committee. Here's how it handles complaints about members.

BY SUSAN H. PERRY



When I was asked to chair the ASPPA (now American Retirement Association) Professional Conduct Committee, I have to admit my first thought was, “We have a professional conduct committee?”

Never having had a code-of-conduct breach claim filed against me, I was a bit like a fish out of water. What exactly is the professional conduct committee and what does it do?

Luckily, I was able to find the ASPPA Professional Code of Conduct and the Disciplinary Procedures on the ASPPA Net website. And, sure enough, I discovered that we really do have a professional conduct committee. As a matter of fact, we recently updated the rules governing the committee to reflect the creation of the American Retirement Association.

The way our association deals with complaints against our members is quite interesting, so I thought I'd share with you a bit of what I have

learned about this committee over the last year and a half.

CODE OF CONDUCT

We have a Professional Code of Conduct for the American Retirement Association. For those of you who took an exam on the way to earning a credential, you may remember having read a version of that Code of Conduct once or twice in the past, probably to answer an exam question or two.

The Code of Conduct states what the acceptable standards of practice are for American Retirement Association members. From time to time, someone accuses one of our members of not living up to those standards by filing a complaint with the American Retirement Association against the member.

If the complaint is against an actuary, it goes through the actuarial discipline process, which we won't be discussing here. For those of us who aren't actuaries, the complaint

gets referred to the chair of the Professional Conduct Committee.

STEP 1: DETERMINE MEMBERSHIP DIVISION

Let's assume that the American Retirement Association receives a complaint against Abby Member, QKA, QPA, TGPC. Abby's former employer is accusing her of embezzlement and has filed charges with the police. If Abby is guilty, this is clearly a violation of our Code of Conduct.

The complaint is forwarded to the chair of the Professional Conduct Committee. Currently, that would be me.

Now that there is an official complaint, we must determine which division of membership is primary for Abby. Why, you might ask? Because the composition of the panel that will hear the case against Abby is determined by her primary division of membership.

The first step in determining

a member's primary division of membership is to look at where the member has credentials. Abby has credentials from both ASPPA and NTSA.

Since she has credentials from two divisions of membership, the next step is to look at the complaint. Does the complaint relate to a plan administration or recordkeeping issue, in which case ASPPA would be primary? Or does it relate to administration of non-profit or governmental plans, in which case NTSA would be primary?

In Abby's case, the alleged offense is more general — theft or embezzlement from her employer. So the final step in the process is to look at which designation Abby earned first. The American Retirement Association office tells me that the first designation Abby ever earned was her QKA. So Abby's primary division of membership is deemed to be ASPPA.

STEP 2: CHOOSE DISCIPLINE PANEL

From the available members of the Professional Conduct Committee, the president of Abby's primary division of membership and I then create a discipline panel to hear the case against her. The discipline panel must consist of five people. In this case, it must include four committee members who are ASPPA credentialed members because Abby's primary division of membership is ASPPA.

The fifth member of the panel is a member of NAPA or NTSA. This ensures that there is an outside perspective in the deliberations on Abby's situation. We also select an investigator who will investigate the facts in this case.

At this point, Abby is notified that a complaint has been received. She is also told who will be on the discipline panel, who the investigator will be and when the investigation into the allegations made against her will begin. If Abby feels that one of the panel members or the investigator has a conflict of interest in her case, she

can object to the panel member or the investigator.

STEP 3: FACT-FINDING

Let's assume Abby doesn't object during the notification period. The investigator now gets to work by asking the person who filed the complaint for any documentation or other items that substantiate the alleged violation. The investigator also asks Abby for her side of the story and any documentation that supports her position.

Here's a critical point that you should know if you ever get involved in one of these procedures: There's a precept in our Code of Conduct that says you'll cooperate with any investigation by the Professional Conduct Committee. Please don't ignore the investigator! It's like ignoring an IRS auditor while they are auditing one of your plans. It's a recipe for disaster.

STEP 4: REPORT AND HEARING

Once the investigator believes all the facts have been uncovered, he or she puts together a report that is provided to Abby and the members of the discipline panel. When the report is provided to Abby, she is also notified of the date of her hearing.

The discipline panel and the investigator will conduct a hearing at which Abby has the chance to make a verbal presentation to state her point of view. Once Abby expresses her position on the allegations, she is excused and the panel deliberations begin. To make this case simple, let's assume that during the time the investigation was going on Abby pleaded guilty to embezzlement and is currently on court-appointed supervision at the time of the hearing.

The panel can conclude that Abby did nothing wrong and dismiss the complaint, or it can conclude that she violated a part of the Code of Conduct. Since Abby pleaded guilty to embezzlement, we can probably safely assume that the panel would

find that she violated the Code of Conduct. Thus, the hearing enters the penalty deliberation phase. Abby can receive a warning that she did something wrong or counseling to ensure that she understand the rules. Due to the severity of Abby's crime, in this case the panel would be more likely to consider suspending or expelling her.

STEP 5: DISCIPLINARY ACTION

Once the panel reaches a conclusion, a report of the findings is produced and sent to Abby. If the panel found she did something wrong and imposed a disciplinary action, she can appeal the decision. I won't go into the whole appeals process here — it's described in the American Retirement Association disciplinary procedures posted under the "Membership" tab on the ASPPA Net website.

In Abby's theoretical case, let's say the panel decided to suspend her for the period of time she is under supervision for the embezzlement. You should also know that suspension or expulsion requires disclosure to other members. This is done via a notice in *Plan Consultant*. In fact, if you have a copy of the spring issue at hand, on page 49 you'll find two notifications of disciplinary actions taken by the committee.

So, yes, we do have a Professional Conduct Committee. It actually receives complaints against members. It actually investigates those claims. And yes, it does occasionally impose penalties on ASPPA members. **PC**



Susan H. Perry, CPC, QPA, QKA, ERPA, APA, APR, AIF, AFA, is the president of Edberg & Perry, Inc., a retirement plan consulting firm in Phoenix, Ariz. She is the current chair of the American Retirement Association Professional Conduct Committee.