

# Tales From the Darkside: Ethical Cases at the ABCD



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# Presenters

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ABCD Member
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ABCD Member
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Academy General Counsel and Director of Professionalism



# Disclaimer

**Please note:** The presenters' statements and opinions are their own and do not necessarily represent the official statements or opinions of the ABCD, ASB, any boards or committees of the American Academy of Actuaries, or any other actuarial organization, nor do they express the opinions of their employers.



# Agenda

- Overview of the ABCD
- Overview of the RFG process
- Case Studies: Exploration of the Darkside
- Conclusion



# Overview of the ABCD



# Actuarial Board for Counseling and Discipline

ABCD, by agreement of the five U.S. actuarial organizations, was established by the Academy's bylaws in 1991 to:

- **Investigate** alleged violations of the Code of Professional Conduct by members and, if appropriate, recommend discipline to their organizations
- Respond to requests for **guidance** from members
- **Mediate** disputes between members (or members and others)



# ABCD Membership in 2017

## Member

Richard A. Block, Chairperson  
David F. Ogden, Vice Chairperson  
Debbie Rosenberg, Vice Chairperson  
Janet M. Carstens  
David L. Driscoll  
Godfrey Perrott  
Allan W. Ryan  
John T. Stokesbury  
John P. Tierney

Brian Jackson

## Area of Practice

Pension  
Health  
Casualty  
Health  
Pension  
Life  
Life  
Pension  
Casualty

ABCD Counsel



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# Overview of the RFG Process



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# Requests for Guidance

- An Actuary may seek guidance on a professional issue where he or she feels uncomfortable about what to do.
- Guidance is confidential and may be requested anonymously.
- An individual member of the ABCD will try to provide confidential advice on good professional practice.
- RFGs are not a substitute for peer review.



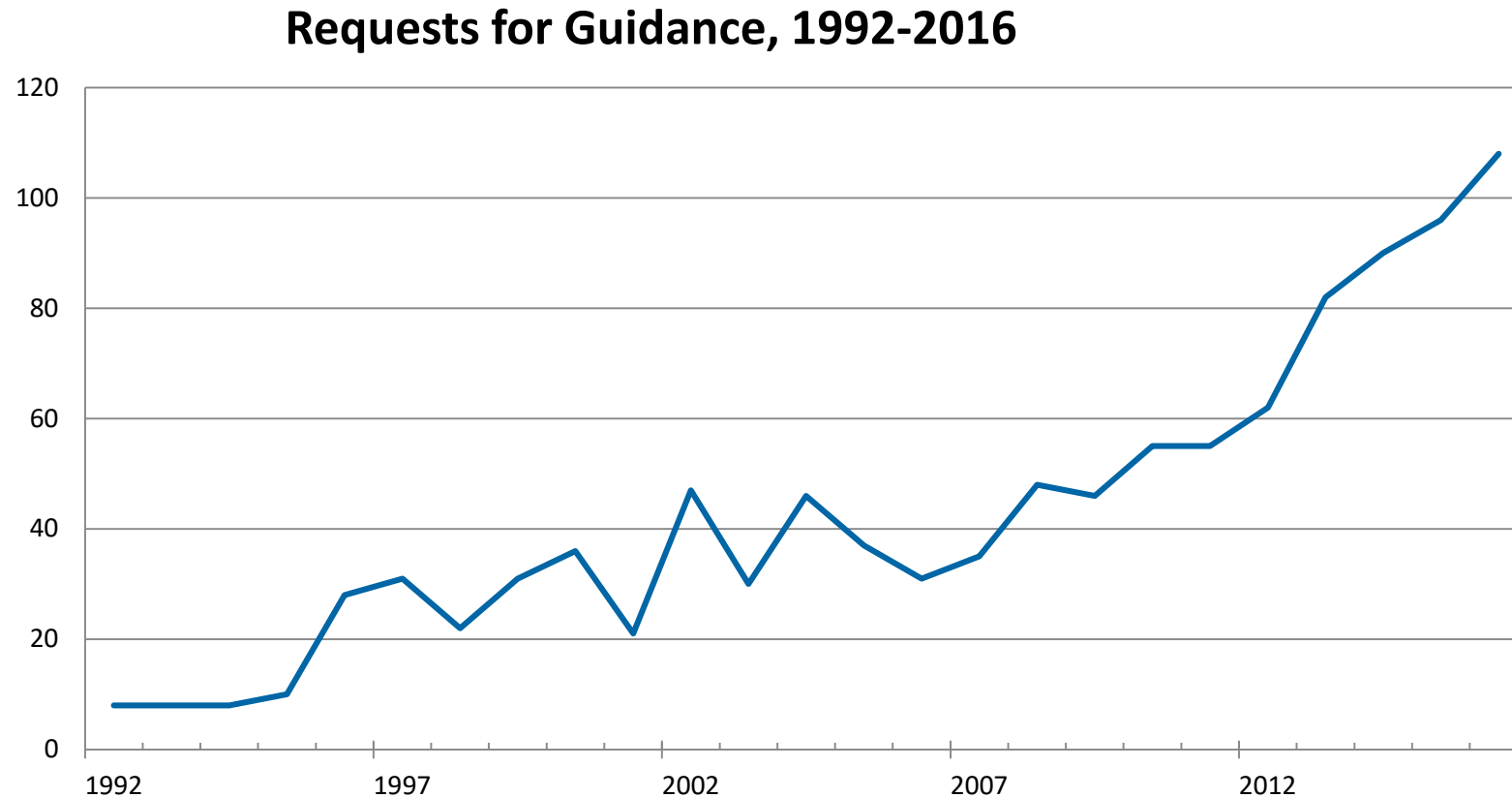
# Types of RFG Responses

- Private guidance by ABCD member (confidential)
  - ▣ Expresses ABCD member's own opinion
  - ▣ This is the normal process
- Public guidance by ABCD (public)
  - ▣ Provided only at the ABCD's discretion
  - ▣ Requires agreement of actuary involved
  - ▣ Provides guidance to profession
  - ▣ Expresses views of Board



# ABCD Requests for Guidance

- There has been a significant increase in RFGs over the years.



# How to Contact the ABCD

- Email: [jackson@actuary.org](mailto:jackson@actuary.org) (Brian Jackson – ABCD Counsel)
- Telephone: (202) 223-8196; (202) 872-1948 (fax)
- Website: [www.abcdboard.org](http://www.abcdboard.org)
- Letter: 1850 M Street, NW, Suite 300, Washington, DC 20036
- Contact any individual ABCD member or ABCD staff
  - ▣ Contact information on website



# Case Study #1

Breaking up is hard to do



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# Case Study 1: Breaking up is hard to do

- Island Resorts, Inc., has informed its long-time actuarial consultant, Gilligan, that it has decided to move the actuarial work for the company pension plan to a new actuary, Mary Ann.



# Case Study 1 (continued)

- In a letter to Gilligan, Island states
  - ▣ Actuarial work will move to Mary Ann effective immediately.
  - ▣ Copies of all work products created for Island and all data used in creating them must be sent to Mary Ann within seven business days.
  - ▣ Gilligan will be needed to work with Mary Ann to allow her to match Gilligan's results within 2%.
  - ▣ Island does not believe that it should have to pay Gilligan for this service.
    - It involves previously created and invoiced work.
    - Gilligan has a “professional obligation” to effect the transfer.



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# Case Study 1 (continued)

- Gilligan plans to respond to Island as follows:
  - ▣ Island already has received copies of all the work products and was the source of the data, so it is Island that should provide these things to Mary Ann.
  - ▣ He is not obliged to work with Mary Ann to achieve any particular level of matching.
  - ▣ Any time spent by Gilligan on the transfer will be billed.
  - ▣ No time will be spent until all past invoices to Island have been paid in full.



# Case Study 1 (continued)

- Precept 10 is most directly on point here.
  - A Principal has an indisputable right to choose a professional advisor.
  - An actuary must furnish relevant information to a new or additional actuary named by the Principal.
    - Seven-day turnaround is not required.
    - Transferring actuary is not required to work indefinitely with new actuary to achieve an arbitrary level of matching.
  - An actuary may charge reasonable fees for work involved in a transfer.



# Case Study 1 (continued)

## □ Precept 10 (continued)

- An actuary may not refuse to consult or cooperate with a client's prospective new or additional actuary based upon unresolved compensation issues **unless such refusal is in accordance with a pre-existing agreement with the Principal.**
- Proprietary work products of the current actuary (e.g., computer programs, internal documents) need not be provided to the new actuary.



# Case Study 1 (continued)

- Gilligan plans to respond to Island as follows:
  - ▣ Island already has received copies of all the work products and was the source of the data, so it is Island that should provide these things to Mary Ann.
  - ▣ He is not obliged to work with Mary Ann to achieve any particular level of matching.
  - ▣ Any time spent by Gilligan on the transfer will be billed.
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# Discussion



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## Case Study #2

We need a little guidance, right this very minute . . .



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# Case Study 2: We need a little guidance, right this very minute . . .

- ❑ Meathead is the chief actuary of the Wonderful Health Plan, which provides health insurance throughout the U.S.
- ❑ He is having difficulty with WHP's major medical rate filing for 2018 in the State of Fredonia.



# Case Study 2 (continued)

- He has reviewed all of WHP's relevant data, selected a set of assumptions that are appropriate and that he can support, and submitted a draft rate filing to the Fredonia Insurance Department.
- Fredonia has hired Bunker, an actuary with Archie's Opinionated Actuaries, to review WHP's rate filing.



# Case Study 2 (continued)

- Bunker tells Meathead that WHP's rates are too high, and dictates a set of assumption changes that will reduce the rates. Bunker offers no support for the revised assumptions.
- Meathead cannot, in good conscience, support the revised assumptions.
- Meathead contacts the ABCD for guidance.



# Case Study 2 (continued)

- Waye Togo, an upstanding ABCD member, is assigned the case and thinks about it carefully.
- Waye suggests to Meathead that if he uses Bunker's assumptions and cannot support them, he needs to follow ASOP No. 41 paragraphs 3.4.4.b.2 and 4.3.
- Meathead checks ASOP No. 41 and describes Waye as a genius.



# Case Study 2 (continued)

- Meathead calls Bunker, points out that he is bound by ASOP No. 41. He proposes to:
  - ▣ Use Bunker's assumptions,
  - ▣ State reliance on Bunker for these assumptions, and
  - ▣ State that he cannot support these assumptions.
- Bunker is, to put it mildly, displeased. He batters Meathead with salty language.
- Meathead files his original rates. Nothing further is heard from Fredonia.



# Discussion



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# Case Study #3

It's the same old song



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# Case Study 3: It's the same old song

- Opie the actuary has left his long-time employer, Taylor Consulting, for a new position at Barney Fyffe Actuaries, LLC.
- While at Taylor, Opie worked for several years on the Mayberry Employees' Retirement System.
- As it happens, Barney Fyffe Actuaries has been engaged to perform a full-replication audit of the most recent valuation performed by Taylor for the Mayberry Employees' Retirement System.



# Case Study 3 (continued)

- Opie's new boss tells him that his first assignment in his new job will be to lead the team performing the Mayberry audit.
  - ▣ His familiarity with the system provisions will allow the project to be carried out very efficiently.
  - ▣ He knows where Taylor "cut corners" and is more apt to identify subtle problems that other actuaries would have trouble finding.
- Can he do this and fulfill the Code?



# Case Study 3 (continued)

- Precept 7: An actuary shall not knowingly perform actuarial services involving an actual or potential conflict of interest unless:
  - ▣ the actuary's ability to act fairly is unimpaired;
  - ▣ the conflict is disclosed to all present and known prospective Principals whose interests would be affected; and
  - ▣ all such Principals have expressly agreed to the performance of the actuarial services by the actuary.



# Discussion



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# Case Study #4

That's what friends are for.



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# Case Study 4: That's what friends are for

- Continuing with the prior example . . .
- Barney Fyffe Actuaries perform the Mayberry audit using Opie as the lead consultant without addressing the conflict of interest.
- Opie's former colleagues at Taylor Consulting become aware of this but say nothing about it because they consider him a "friend."



# Case Study 4 (continued)

- The Board Chair of the Mayberry Employees' Retirement System learns of Opie's work on the audit, immediately senses the conflict of interest, and files a complaint against Opie with the ABCD.



# Case Study 4 (continued)

## □ Who is at fault here?

- ▣ Opie has violated Precept 7 (as discussed).
- ▣ Opie's former colleagues at Taylor may have violated Precept 13:

“An Actuary with knowledge of an apparent, unresolved, material violation of the Code by another Actuary should consider discussing the situation with the other Actuary and attempt to resolve the apparent violation. If such discussion is not attempted or is not successful, the Actuary shall disclose such violation to the appropriate counseling and discipline body of the profession, except where the disclosure would be contrary to Law or would divulge Confidential Information.”



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# Case Study 4: Continuing the Saga

- Suppose Opie refuses to respond to ABCD inquiries regarding the complaint, telling the ABCD that he considers them “a bunch of busybodies” who have no authority over his right to practice as he sees fit.



# Case Study 4 (continued)

- Now Opie has violated Precept 14 (as well as Precept 7):

“An Actuary shall respond promptly, truthfully, and fully to any request for information by, and cooperate fully with, an appropriate counseling and disciplinary body of the profession in connection with any disciplinary, counseling, or other proceeding of such body relating to the Code.”



# Discussion



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# Case Study #5

Although it's been said many times,  
many ways . . .



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# Case Study 5: Although it's been said many times, many ways . . .

- Bob Cratchit, ASA, works for a small insurance company, Scrooge Life & Health.
- Scrooge Life & Health makes no effort to ensure that actuaries in its employ meet continuing education (CE) requirements for actuaries issuing statements of actuarial opinion (SAOs) in the U.S.
- Early in the fourth quarter of 2017, Cratchit informed his boss, Ebenezer Scrooge, FSA, that he is in danger of failing to accumulate enough CE hours to meet continuing education requirements for the year.



# Case Study 5 (continued)

- Because Cratchit is responsible for SAOs, he asks Scrooge to provide him with time and funds to attend sufficient organized education events to meet the CE requirements of the U.S. Qualification Standards for 2017.
- Scrooge's response:



# Case Study 5 (continued)

“BAH! HUMBUG!”



# Case Study 5 (continued)

- Scrooge continued, “CE requirements are a poor excuse for picking a man’s pocket in the final quarter of every year!”
- “But Mr. Scrooge,” Cratchit protested, “if I don’t fulfill the CE requirements for 2017 and issue an SAO, I could be reported to the ABCD and disciplined by the Academy and the SOA.”



# Case Study 5 (continued)

- Scrooge scowled as he replied. “Cratchit, you don’t see me spending time and money on continuing education activities, do you?”
- “No,” replied Cratchit timidly. “But you still issue SAOs, sir, so surely you must be fulfilling your CE requirements through activities we do not observe.”



# Case Study 5 (continued)

- “Humbug, I tell you! Humbug!” said Scrooge. “You should simply do as I do.”
- “What is that?” Cratchit asked nervously.
- “Report your CE status as ‘Retired,’ of course,” declared Scrooge.



# Case Study 5 (continued)

- “But Mr. Scrooge,” Cratchit exclaimed, “retirement has nothing to do with being qualified to issue an SAO. The Retirement designation does not mean that you are qualified or not qualified. We have to comply with the U.S. Qualification Standards.”
- “Cratchit, do you really think anyone ever pays attention to such technicalities?” replied Scrooge. “Now stop wasting my time and money and get back to work!”



# Case Study 5 (continued)

- ❑ Later that day, a fearful Cratchit called the Academy office in Washington to submit a request for guidance.
- ❑ If you were the ABCD member assigned to respond to Cratchit's RFG, what would you include in your discussion?



# Case Study 5 (commentary)

- What Scrooge is proposing is the use of “retired” status to camouflage failure to meet the continuing education requirements of the U.S. Qualification Standards.
- To render actuarial services when not qualified to do so is a violation of Precept 2 of the Code.



# Case Study 5 (continued)

- This case, as you may expect, had a happy ending:
  - ▣ That night, Scrooge was haunted by the ghosts of past presidents of the Academy.
  - ▣ The following morning, he booked reservations for himself and the entire Cratchit family (even Tiny Tim!) to attend continuing education events that would provide enough credit to make both Cratchit and Scrooge compliant for the year.



# Discussion



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# Conclusion: What we have learned

- Consult your key professionalism documents often
  - ▣ Code of Professional Conduct (Code)
  - ▣ Actuarial Standards of Practice (ASOPs)
  - ▣ U.S. Qualification Standards (USQS)
- Use the ABCD RFG process if you are up against a professionalism problem – it is quick, easy, and useful.



# Takeaway

- Warren Buffett famously said:
  - “It takes 20 years to build a reputation and five minutes to ruin it. If you think about that, you'll do things differently.”
  - Remember that as an actuary you are obliged to conduct yourself so as to “uphold the reputation of the actuarial profession.”
    - This applies both on and off the job.
    - Actuaries have been subject to public discipline for Precept 1 violations that were unrelated to their work.



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# Other Audience Questions

**Thank you.**



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