

MEETING THE PROFESSIONALISM CHALLENGE

SOUTHEASTERN ACTUARIES CONFERENCE
D. JOEFF WILLIAMS AND DAVID L. DRISCOLL
JUNE 19, 2019



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Agenda

- Part 1
 - ▣ Background on ABCD
 - ▣ Code of Professional Conduct
 - ▣ Code of Conduct for Candidates
 - ▣ ABCD Processes
- Part 2
 - ▣ Case Studies



Actuarial Board for Counseling and Discipline

- The ABCD was established by the Academy's bylaws in 1991.
- It serves the following purposes for those participating actuarial organizations (including the Academy) that delegate these authorities to the ABCD:
 - ▣ Investigate alleged violations of the Code of Professional Conduct by members and, if appropriate, recommend discipline to the Academy or other actuarial organizations
 - ▣ Respond to requests for guidance from members
 - ▣ Mediate disputes between members (or members and others)



ABCD Membership in 2019

Appointed by Selection Committee (Presidents and Presidents-elect of AAA, CAS and SOA)

Member	Area of Practice
David F. Ogden, Chairperson	Health
Debbie Rosenberg, Vice Chairperson	Casualty
John T. Stokesbury, Vice Chairperson	Retirement
David L. Driscoll	Retirement
Kenneth A. Kent	Retirement
Mary D. Miller	Casualty
Godfrey Perrott	Life
Alice Rosenblatt	Health
Allan W. Ryan	Life



ABCD Processes

- Follow Article X of AAA bylaws and ABCD Rules of Procedure
- All ABCD inquiries, guidance and mediation confidential, unless
 - ▣ Actuary makes public or agrees to publication
 - ▣ Court requires disclosure
 - ▣ Redacted, generic situation used for educational purposes



An ABCD Inquiry

- Is a fact-finding effort, not an adversarial forum
- Examines whether or not an actuary materially violated the Code of Professional Conduct
 - ▣ not whether the actuary is liable for damages



U.S. Code of Professional Conduct

- The revised U.S. Code of Professional Conduct (“Code”) was adopted by the five U.S.-based actuarial organizations (Academy, ASPPA, CAS, CCA, SOA), and took effect Jan. 1, 2001.
- The Code sets forth professional/ethical standards for actuarial members of the five U.S.-based actuarial organizations.



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U.S. Code of Professional Conduct

- The Code contains 14 Precepts, along with annotations providing further guidance on adhering to the Precepts.
- The Precepts are standards that must be followed by credentialed actuaries who are members of one of the U.S.-based organizations or whose member organizations require their members to follow the U.S. Code.



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How Well Do You Know the Code?

According to the Code of Professional Conduct, an Actuary can perform Actuarial Services that involve an actual or potential conflict of interest if all but one of the following are satisfied. Which condition is not included in Precept 7?

- a. The Actuary's ability to act fairly is unimpaired.
- b. The conflict has been disclosed to all Principals (present and known prospective) whose interests would be affected by the conflict.
- c. At least one Principal agrees in writing that no conflict of interest exists.
- d. All Principals have expressly agreed to the performance of the Actuarial Services by the Actuary.



How Well Do You Know the Code?

According to the Code of Professional Conduct, which of the following are true:

- a. The Actuary is not responsible for misquotation, misinterpretation, or other misuse of an Actuarial Communication.
- b. The Actuary cannot refuse to cooperate with a new or additional actuary based upon unresolved compensation issues unless such refusal is in accordance with a pre-existing agreement with the Principal.
- c. An Actuary must respond to requests for information in connection with ABCD proceedings only if the requests relate to Actuarial Services provided by the Actuary to a Principal.
- d. All of the above.



How Well Do You Know the Code?

What should an actuary do if they have knowledge of an apparent, unresolved, material violation of the code by another actuary?

- a. Consider discussing the situation with the other Actuary and attempt to resolve the apparent violation
- b. If not resolved, disclose the violation to the ABCD as long as the disclosure is not contrary to Law or would divulge Confidential Information.
- c. Nothing, if the violation is not material.
- d. All of the above.



U.S. Code of Professional Conduct

- Precept 1: Professional Integrity
 - An actuary shall act honestly, with integrity and competence, and in a manner to fulfill the profession's responsibility to the public and to uphold the reputation of the actuarial profession



U.S. Code of Professional Conduct

- Precept 2: Qualification Standards
 - An Actuary shall perform Actuarial Services only when the Actuary is qualified to do so on the basis of basic and continuing education and experience and only when the Actuary satisfies applicable qualification standards



U.S. Code of Professional Conduct

- Precept 3: Standards of Practice
 - An Actuary shall ensure that Actuarial Services performed by or under the direction of the Actuary satisfy applicable standards of practice



U.S. Code of Professional Conduct

- Precept 4: Communications
 - An Actuary who issues an Actuarial Communication shall take steps to ensure that is clear and appropriate to the circumstances and audience and satisfies applicable Standards of Practice



U.S. Code of Professional Conduct

- Precept 5: Communications
 - Appropriately identify the principals and describe the capacity in which you serve



U.S. Code of Professional Conduct

- Precept 6: Disclosure
 - Make appropriate and timely disclosure to present or prospective principals of sources of all direct and indirect material compensation you or your firm receives that relates to any assignment for that principal



U.S. Code of Professional Conduct

- Precept 7: Conflict of Interest
 - Do not perform actuarial services unless:
 - your ability to act fairly is unimpaired;
 - you have disclosed any conflicts to all; AND
 - you secure agreement from all principals



U.S. Code of Professional Conduct

- Precept 8: Control of Work Product
 - Take reasonable steps to ensure your services are not used to mislead other parties



U.S. Code of Professional Conduct

- Precept 9: Confidentiality
 - Do not disclose confidential information to another unless authorized by principal OR required by law



U.S. Code of Professional Conduct

- Precept 10: Courtesy and Cooperation
 - Perform actuarial services with courtesy and professional respect and cooperate with others in the principal's interest



U.S. Code of Professional Conduct

- Precept 11: Advertising
 - Do not engage in advertising or business solicitation activities that are false or misleading



U.S. Code of Professional Conduct

- Precept 12: Titles and Designations
 - Use membership titles and designations only in conformity with authorized practices



U.S. Code of Professional Conduct

- Precept 13: Violations of the Code
 - If you know of an apparent, unresolved, material violation of the Code by another actuary and have attempted to resolve that violation through discussions that have been unsuccessful, you should disclose the violation to the ABCD



U.S. Code of Professional Conduct

- Precept 14: Cooperation with ABCD
 - Respond promptly, truthfully and fully to requests from the ABCD subject to restrictions on confidentiality and those imposed by law



Codes of Conduct for Candidates

- ❑ Introduced in 2008
- ❑ Now two separate Codes for CAS and SOA
- ❑ Enforced by SOA and CAS, not ABCD
- ❑ Apply to “Actuarial Candidates” – persons who have registered for or completed actuarial exams but are not (yet) members



ABCD Inquiry

- Based on complaint from individual, typically
 - ▣ Client
 - ▣ Regulator
 - ▣ Other actuary
- At ABCD's initiative
 - ▣ Based on public document that suggests possible violation



ABCD Inquiry

- Step 1: Initiation of Inquiry
 - Complaint received
 - Reviewed by staff for completeness
 - Information based
 - Chairs review public document and decide to proceed
 - Sent to subject actuary for response



ABCD Inquiry

- Step 2: Chairs' review
 - Chairs evaluate for possible material violation
 - Chairs decide whether to
 - Seek additional information
 - Dismiss complaint
 - Offer mediation
 - Commence investigation
 - Notify subject actuary, complainant and ABCD



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ABCD Inquiry

- Step 3: Investigation
 - Appoint investigator, subject to challenge
 - Investigator
 - obtains and reviews documents,
 - interviews individuals involved,
 - prepares report of results, i.e. facts as investigator understands them
 - Report sent to subject actuary for response



ABCD Inquiry

- Step 4: ABCD consideration
 - ABCD decides whether to
 - Seek additional information
 - Dismiss (with/without guidance)
 - Counsel the actuary
 - Conduct a hearing



ABCD Inquiry

- Step 5: Hearing
 - ▣ Conduct fact finding hearing attended by
 - Investigator
 - Subject actuary
 - ▣ Hearing is recorded by a court reporter
 - ▣ Investigator presents results
 - ABCD and actuary question investigator
 - ▣ Actuary presents case
 - ABCD questions actuary



ABCD Inquiry

- Step 6: Deliberations
 - ▣ ABCD discusses hearing and documents
 - ▣ Decides whether to
 - Dismiss
 - Counsel
 - Recommend discipline
 - Obtain more information, reopen hearing



ABCD Inquiry

- Step 7: Notification
 - If discipline is not recommended, notify subject actuary, complainant and investigator of decision
 - If discipline is recommended, notify the subject actuary and transmit to appropriate organization(s)
 - Statement of ABCD findings
 - All documents used by ABCD
 - Transcript of hearing



ABCD Inquiry

- Step 8: Member Organizations
 - ▣ May decide to
 - Impose recommended discipline
 - Impose greater level of discipline
 - Impose lower level of discipline or none



Request for Guidance

- Private guidance by ABCD member
 - Expresses member's own opinion
- Private guidance by ABCD
 - Expresses views of board
- Public guidance by ABCD
 - At request or agreement of actuary(ies)
 - Provides guidance to profession
 - Expresses views of board



Request for Guidance

□ Example RFG Topics

- How do I know if I am qualified?
- How can I become qualified?
- How can I do a job that involves more than one area of expertise?
- How much can I rely on my supervisor?
- How much can I rely on my staff?
- How much documentation of my work should I save?
What if I leave my company?
- When should I refuse an assignment?
- When should I make a complaint about another actuary?
- When is a violation of the Code material?
- When is a violation of the Code resolved?



Mediation

- If all parties agree
- Facilitate resolution of issue without inquiry



Disposition of Matters Brought Before the ABCD

Since its inception in 1992, the ABCD has completed cases as follows

Dismissed	339
Dismissed with Guidance	90
Counseled	73
Mediated	12
Recommended Private Reprimand	6
Recommended Public Discipline	43
Request for Guidance	1,284
Total	1,847



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ABCD Cases by Practice Area

		2014	2015	2016	2017	2018
New	Casualty	3	4	3	5	1
	Health	1	4	0	5	5
	Pension	30	8	12	10	3
	Life	1	3	4	2	4
	Total	35	19	19	22	13
Resolved	Casualty	5	3	6	0	1
	Health	1	2	2	2	7
	Pension	31	7	6	8	11
	Life	0	3	0	5	3
	Total	37	15	14	15	22



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Major Issues by Precept (2018)

Major Issue Alleged	Discipline	Counsel	Dismiss	Total
Precept 1: Failure to act with integrity	1	4	2	7
Failure to perform services with competence	1		1	2
Calculation or data errors	1		1	2
Other errors in work	1			1
Failure to uphold reputation of profession	1	4	1	6
Precept 2: Performing work when not qualified				
Precept 3: Work fails to satisfy an ASOP		4	5	9
Use of unreasonable assumptions		4	2	6
Precept 4: Inadequate actuarial communication	1	4	5	10
Precept 5: Failure to identify Principal				



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Major Issues by Precept (2018)

Major Issue Alleged	Discipline	Counsel	Dismiss	Total
Precept 6: Failure to disclose				
Precept 7: Conflict of interest				
Precept 8: Failure to take reasonable steps to prevent misuse of work product			2	2
Precept 9: Disclosure of confidential information				
Precept 10: Failure to cooperate with other actuary			1	1
Precept 11: Improper advertising		3		3
Precept 12: Improper use of designation				
Precept 13: Failure to report violation				
Precept 14: Failure to cooperate with the ABCD				



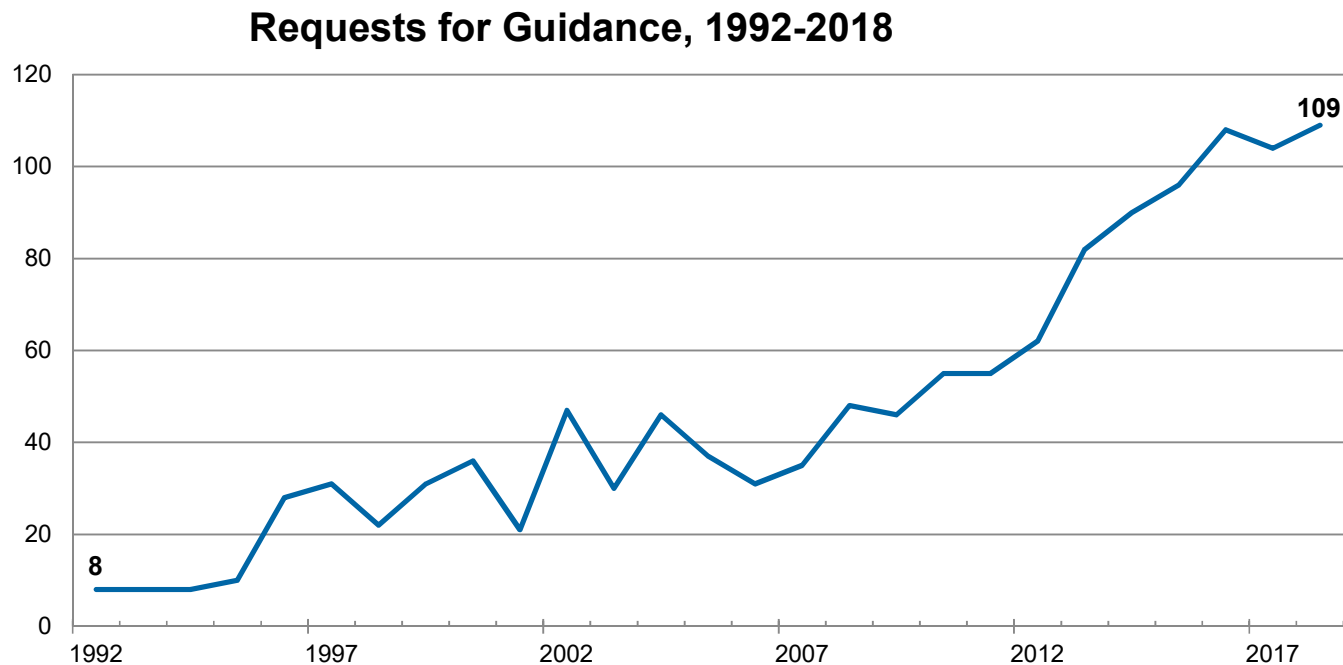
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ABCD Requests for Guidance

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



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ABCD Requests for Guidance

	2014	2015	2016	2017	2018
Pension	30	27	26	28	24
Health	19	22	25	35	32
Life	17	19	23	13	15
Casualty	20	23	28	24	27
Other	4	5	6	4	11
Total	90	96	108	104	109



Contacting the ABCD

- Letter: 1850 M St., N.W., Suite 300, Washington, D.C. 20036
- Telephone: (202) 223-8196; (202) 872-1948 (fax)
- Website: www.abcdboard.org
- Contacting any individual ABCD member or ABCD staff (contact information on website)



Case Studies



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Case Study No. 1

Wally Cleaver, FSA, MAAA, EA, is an actuary at Mondello Consultants, LLC, an actuarial firm specialized in pension matters. One day, Wally's immediate supervisor, Fred Rutherford, tells Wally that one of their clients, Mayfield Industries, is contemplating the acquisition of a competitor, Desilu Manufacturing, and that he will need to prepare estimates of the impact on Mondello's pension-related balance-sheet entries, total required cash contributions to pension plans and PBGC premiums of acquiring Desilu and merging its pension plan with that of Mondello. Both Mondello and Desilu are publicly-traded companies.



Case Study No. 1

Scenario 1: Wally casually mentions the contemplated acquisition to his friend Eddie Haskell, who promptly acquires \$300,000 worth of Desilu stock. When Desilu is acquired by Mondello a short time later, his investment triples in value. Has Wally violated the Code of Professional Conduct? If so, which precept(s) has he likely violated?



Case Study No. 1

Scenario 2: Suppose that Wally does not tell Eddie about the contemplated acquisition but leaves paperwork related to the project all over the desk of his home office, which Eddie sees when visiting Wally. The rest of the story is unchanged. Does this change your answer to the questions posed at the end of Scenario 1?



Case Study No. 2

Connie Brooks, ASA, MAAA, EA, is a pension actuary with five years of experience. She was enrolled by the Joint Board for the Enrollment of Actuaries less than a year ago. Her supervisor, Osgood Conklin, informs her that she will need to prepare the retiree medical valuation as well as the pension valuation required by a significant client of their firm. Ms. Brooks informs Mr. Conklin that she has never worked on a retiree medical valuation before and questions that she possesses the knowledge and experience needed to carry out the assignment.



Case Study No. 2

Mr. Conklin tells her that she has several years of experience performing valuations of benefits whose amount and likelihood of payment can only be estimated, and that this, along with her Associateship in the SOA and recent enrollment, positions her perfectly to perform the requested work.

Is Connie qualified to issue a retiree medical valuation?



Case Study No. 3

Giles French, MAAA, FSA, is the chief actuary of Terre Haute Life Insurance Co. One day, he is reviewing the appointed actuary's opinion of a major competitor, Favisham Life. He is astonished to see that the opinion is signed by Cissy Davis, MAAA, FCAS. Mr. French is firmly of the opinion that someone holding credentials from the Casualty Actuarial Society could not possibly be qualified to sign an opinion on the reserves of a life company.



Case Study No. 3

He contemplates filing a complaint against Ms. Davis with the ABCD.

1. What should Mr. French do before filing his complaint?
2. Is he correct that someone with credentials from the CAS cannot be qualified to serve as appointed actuary for a book of life insurance business?



Case Study No. 4

Emily Hartley, MAAA, FSA, is a consulting actuary to life insurance companies. She has worked for a number of different actuarial consulting firms over the course of her career. A client from her former firm, Thorndale Life, is now soliciting bids from actuarial consulting firms to serve as their valuation actuary. Emily knows that Thorndale has generally had to pay high fees to firms serving as its valuation actuary because Thorndale's data is generally quite messy and requires substantial scrubbing before the valuation actuary deems it appropriate for valuation work.



Case Study No. 4

So, she has come up with what she believes is a surefire way to win Thorndale's next contract: she will offer them actuarial services at "fire-sale" rates as long as they absolve the actuary of any responsibility for the quality of the data.

Is such an offer consistent with Emily's professional responsibilities? If not, why not?



Case Study No. 5

Joey Tribbiani, FSA, is a consulting actuary who specializes in the valuation of retiree medical plans. He has a difficult client, Chandler Bing, Inc., that routinely provides Joey with what he believes is outdated and otherwise defective information for the valuation of its retiree medical plan. Joey is concerned that he will end up issuing a valuation report for Bing that is significantly inaccurate due to problems with the information on which it is based.



Case Study No. 5

Accordingly, he plans to sign the name of the company he works for, Geller Actuaries, LLC, instead of his name to the next valuation report prepared for Bing. If it works for auditors, Joey thinks, why won't it work for actuaries?

Is this consistent with Joey's obligations under the Code of Professional Conduct?

If not, what alternative steps could Joey take that would satisfy the Code?



Case Study No. 6

Martin Crane is a retired actuary living in a retirement community in a small city in northern New England. Before retirement, Martin was the appointed actuary of a life insurance company. The town in which he now resides self-funds its workers' compensation insurance and is in need of an actuary to certify its reserves. Martin is keen to be of service to his new home town, so he offers to complete the certification on a volunteer basis.



Case Study No. 6

Which, if any, of the following would constitute a problem with Martin's provision of the certification?

- Martin signs the certification as “Martin Crane, MAAA, FSA” but Martin stopped paying dues to the SOA and the Academy three years ago, when he retired.
- Martin has worked with workers' compensation coverage, but that was a long time ago and involved work solely as a pricing actuary.
- Martin stopped engaging in continuing professional education three years ago, when he retired.

In answering these questions, does the fact that Martin is offering his services as a volunteer matter?



Case Study No. 7

Sam Malone, MAAA, FCAS, is an independent consulting actuary who has been engaged to provide product pricing for Melville Home and Auto Insurance. Several days after Sam has completed the latest annual revision to pricing for Melville's homeowner insurance products, he realizes that there is an error in his calculations and contacts Melville to inform them of the error. The error is present only in some premium rates, and among those affected it results in an overstatement of 1% of the premium rate from the correct level.



Case Study No. 7

Melville's vice-president of product development, Diane Chambers, dislikes Malone on a personal level and wonders whether she can submit a complaint about him to the ABCD in addition to declining to pay his fees for the pricing assignment. Does Sam's mistake in pricing constitute a likely material violation of the Code? What considerations apply?



Case Study No. 8

The following (mildly redacted) article appeared in *The New York Times* in May of 2008:

ALBANY — A bill offering thousands of additional city workers early retirement has been gaining support in the Legislature in recent weeks. New York City officials have protested, saying it would cost the city \$200 million annually.

Not so, lawmakers countered. It won't cost a cent, they said, pointing to the review of a highly credentialed actuary to prove it.

But what the legislators did not disclose, as they cited the expert analysis of the actuary, Mr. X, was that Mr. X had not been paid by the state to conduct his analysis. His work was bankrolled by unions, including District Council 37, the umbrella group of municipal unions that drafted the early retirement bill, which is now moving through the Legislature.

Lawmakers have cited Mr. X's analysis on hundreds of bills in recent years, with billions of dollars' worth of potential costs. His projections were used to fulfill a legal requirement that every piece of legislation be accompanied by a "fiscal note" that examines its impact on spending. Mr. X's consultant work for the unions was discovered during a review of Department of Labor documents by *The New York Times* this week.

Mr. X, a former city actuary, said that he routinely skewed his projections to favor the unions — he called his job "a step above voodoo" — and admitted that he had knowingly overreached on the pension bill by claiming that it cost nothing, either now or in future years. "I got a little bit carried away in my formulation," he explained.

The Senate sponsor of the bill, Martin Golden, a Brooklyn Republican, said on Thursday that he had no idea Mr. X was a consultant for the unions. Assemblyman Peter J. Abbate Jr., a Brooklyn Democrat and the Assembly sponsor, said the bill was drafted by the union pushing the measure, and that it provided Mr. X's analysis.

"It's their bill," Mr. Abbate said. "They drew up the bill; they went to Mr. X," he said, adding: "We assume he comes up with the real number. He was hired by them."



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Case Study No. 8

Mr. X's review, though, is presented in the legislation after an explanation of language changes, and appears as if it were a governmental analysis, rather than one financed by an interest group. It is the only analysis provided.

To critics of the Legislature, the reliance on Mr. X's analyses is a startling example of unchecked coziness between lawmakers and labor and the willingness of many legislators to blindly carry bills handed to them by special interest groups.

On almost every bill involving New York City pension benefits in recent years, Mr. X has provided the analysis.

"I'm shocked the Legislature would use someone who works for the union," said Blair Horner, the legislative director of the New York Public Interest Research Group. "This guy might be the best in the world at what he does, but at best there is a clear appearance of a conflict of interest."

Actuaries are experts in the field of forecasting risk, life expectancies and the future pension liabilities of municipalities and other pension funds.

Mr. X, 70, who was an actuary for New York City until 1986, said in a telephone interview on Thursday that his connection to labor groups was well known. Asked which unions he serves as a consultant, he responded, "How many unions are there?" He then ticked off a list of his clients, including the United Federation of Teachers and unions representing firefighters, detectives, correction officers and bridge and tunnel officers.



Case Study No. 8

He said: “The Legislature knows full well I’m being paid by the unions. If they choose not to disclose that, that’s on them, not me.”

He still called the city’s estimates that the early retirement bill would cost \$200 million annually “off the wall,” saying that “at the very least, that’s high by a factor of four.” But even that would leave the city with tens of millions of dollars of additional annual expenses at a time of growing economic uncertainty.

The bill would offer workers a second chance to buy into an early retirement plan that had been offered in the mid-1990’s.

“What people call actuarial science is at least as much as an art as a science,” Mr. X said.

“Back in my days as city actuary, I would go to that part of the range that would make things look as expensive as possible,” he added. “As consultant for the unions, I go to the part of the range that makes things as cheap as possible, but I never knowingly go out of the range.”

Mr. X resigned from his city job in 1986 after admitting he had given false testimony in a deposition in a lawsuit brought by female employees who claimed that their pension payments were lower than those made to their male counterparts.



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Case Study No. 8

Farrell Sklerov, a spokesman for Mr. Bloomberg, said, “It is an outrage that union-paid actuaries freely admit that they create artificially low fiscal impact statements in order to help push pension sweeteners through Albany, costing taxpayers millions upon millions of dollars.”

The executive director of District Council 37, Lillian Roberts, declined to be interviewed.

In a statement, she said, “As far as the cost is concerned, actuaries disagree.”

Last year, District Council 37 paid Mr. X more than \$10,000, according to records from the Department of Labor reviewed by The New York Times.

John McArdle, a spokesman for the Senate majority leader, Joseph L. Bruno, a Republican, said, “We use the city’s estimates before we make any decision.”

Dan Weiller, a spokesman for Assembly Speaker Sheldon Silver, a Democrat, said, “The fiscal notes don’t determine whether the bill gets done.”

Both men said that bills received further financial review before approval and that in this particular case they would seek a so-called home rule message, which would require the City Council to approve the measure.

What issues do Mr. X’s remarks raise in terms of compliance with the Code of Professional Conduct?



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Resources



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Professionalism Resources

- Professionalism Webinar Archive (free to Academy members) <http://www.actuary.org/professionalism-webinars>
- Discussion Papers on various professionalism issues <http://www.actuary.org/discussion-papers>



Professionalism Resources

- Academy Professionalism webpage
<http://www.actuary.org/content/professionalism>
 - * Code of Conduct
 - * Qualification Standards
 - * Standards of practice (ASB)
 - * Counseling and discipline (ABCD)
- Academy Professionalism First webpage
<https://www.professionalism.actuary.org/>
 - * “Professionalism Perspectives” blog
 - * Professionalism First Quiz



Professionalism Resources

- Qualifications Attestation Form:
<http://attest.actuary.org>
- [Applicability Guidelines for Actuarial Standards of Practice](#)
- [FAQs on U.S. Qualification Standards](#)



Save the Date: Nov. 5-6



Thank You



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