



SOCIETY OF ACTUARIES

Article from:

The Stepping Stone

May 2012 – Issue 46

The Actuarial Ethicist: Deep-End of the Pool Correspondence

by Joseph Nunes



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The Actuarial Ethicist is one of my favorite columns in all the actuarial material that I receive from the CIA and the SOA. I have reminded my actuarial team about the valuable opportunity for professional development that this material represents. I am sorry that I missed the chance to respond to the “Deep-End of the Pool”. However, seeing the comments from others in the discussion of the case forthcoming in the February 2012 issue of *The Stepping Stone*, I thought it was worth writing nonetheless.

Before reading the responses, my initial reaction was that Walter’s well-intended “free help” may have created an undeserved level of confidence by Trevor in his own work. With this overconfidence now clearly uncovered, like many other readers, I originally saw two issues leading to a single course of action. The first issue I saw was potential litigation. The second was that Trevor genuinely needed some help.

My recommended course of action for Walter was to write a well-crafted letter to Trevor along the following lines:

“In our past informal discussions, I have provided you with information that could be helpful in your work. I have also offered in the past to accept a formal consulting assignment to assist you in your work and you have declined this opportunity. In our call this morning, you indicated to me that the regulator is not satisfied with your work. It is my recommendation that you reconsider engaging my services on a formal basis to review your work and assist you with a response to the regulator. Should you wish to consider this opportunity further, I would be pleased to submit a more formal proposal for my services.”

This correspondence offers the help that Trevor needs and—whether accepted or not—draws a line

in the sand with respect to future litigation regarding any misunderstanding that may arise with respect to Walter’s prior unpaid support. Although I do not think that this unpaid support can realistically be construed as advice, it will be up to the lawyers to decide whether litigation is appropriate.

Before reading the responses I would have sent this letter immediately, but I now see that caution likely dictates a review by Walter’s legal counsel before such correspondence is sent.

A number of readers also suggested that there may be a disciplinary issue looming. I didn’t really see any disciplinary concern for Walter and as a result I wouldn’t have commented on this line of thinking. In Canada, the disciplinary process is stressful and costly, and I would not wish that experience upon any actuary. I can only assume that the same is true for the United States.

I don’t think Walter has crossed a line. He wasn’t practicing in an area where he was not qualified, and even if his comments are taken to be an “oral report” his reporting in no way directs or approves the ultimate decisions made by Trevor and Stanley. There is no “engagement” here and I would think that a court would be reluctant to declare that one exists for the risk that it would in future prevent healthy discussion among professionals. On this basis, I believe it is premature to rush to involve Walter in a disciplinary process.

With respect to Trevor, at this point it is quite possible that with some help he will respond adequately to the regulator and demonstrate that there are no problems with his work. If Trevor (or his predecessor, Stanley) has failed to adequately perform his work, then that will be revealed in the future and disciplinary opportunities can be assessed once the facts are known. On this basis, I think it is premature to involve Trevor in a disciplinary process, and Walter just doesn’t have enough information to initiate one.

My first reading of the article was a helpful reminder about being cautious when providing “free help.” But having read the digest of responses, I am saddened that so many think that what I consider to be constructive dialogue among professionals can actually be a source of litigation and disciplinary action. I truly hope our profession is not headed in this direction.

I would like to take this opportunity to thank the hundreds of actuaries that I have spoken with on the phone and through email over the past 25 years. I wish to assure them all that should I be sued in the future I will not claim reliance on their comments to justify MY work. ●

Joe Nunes, FSA, FCIA
December 23, 2011, via email



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