

# Casualty Actuarial Society Rules of Procedure for Disciplinary Actions Involving Candidates

(AS INTRODUCED JANUARY 1, 2008)

The Board of Directors of the Casualty Actuarial Society (CAS) has promulgated these Rules of Procedure to govern the consideration and recommendations for disciplinary action with respect to candidates for membership in the CAS. The Code of Professional Ethics for Candidates defines “Actuarial Candidates” as persons who have registered for a CAS specific exam but have yet to fulfill all of the requirements for admission to the CAS. These Rules are intended to provide fairness and due process in the procedure for disciplinary action with respect to these candidates by requiring adequate notice, an opportunity to respond, and a fair and impartial decision maker in the discipline process. The Board reserves the right to amend or otherwise alter these Rules of Procedure as it deems necessary and delegates the interpretation of these rules to the CAS Discipline Committee.

## *Preliminary Evaluation*

The CAS Discipline Committee shall be the governing body handling both the investigation and adjudication of possible violations of the Code of Professional Ethics for Candidates (Candidate Code) with the exception of possible violations of Rule 4 of the Candidate Code. Possible violations of Rule 4 of the Candidate Code are handled under the CAS Policy on Examination Discipline. When a complaint or information alleging a violation of the Candidate Code has been received by the CAS, the CAS directs the complaint to the Chairperson of the Discipline Committee. The Chairperson, in consultation with members of the Discipline Committee, will perform a preliminary evaluation of the complaint or information. In performing the evaluation, the Chairperson may request a response from the Subject Candidate. The candidate whose activities are the subject of the alleged violation is referred to here as the Subject Candidate.

## *Investigation Panel*

If the Chairperson determines that the complaint or information presents an apparent material violation of the Candidate Code, the Chairperson will form an Investigation Panel consisting of 3 members of the Discipline Committee. Members should not serve on the Investigation Panel if they are deemed to have a conflict of interest with respect to the complaint or information. The Investigation Panel will proceed with their investigation, seeking any and all information available with respect to the complaint or information. This would include consultation with the complainant and the Subject Candidate, as well as others who may have information helpful in evaluating the case. In performing its investigation, members of the Investigation Panel should exercise reasonable care to avoid disclosing unnecessarily the identity of the Subject Candidate. Other persons who may be involved in the complaint or investigation shall be informed that the CAS desires confidentiality be maintained. The identity of the Subject Candidate shall not be revealed to other persons unless such disclosure is required for the person being consulted to answer the questions being asked.

The Chairperson will provide a list of the Fellows who will serve on the Investigation Panel to the Subject Candidate and advise the Subject Candidate of the right to object to any Panel member he or she believes might have an actual or potential conflict of interest, provided that he or she must state the basis for that conflict in writing within 30 days of receipt of the written notice from the Chairperson; in the event that the Subject Candidate objects to a Panel member, the Chairperson (or, in the event that the person alleged to have the conflict is the Chairperson, the President of the CAS) shall determine if an actual conflict exists and if determined so to exist, shall appoint a replacement Panel member without a conflict of interest to consider the matter.

The result of the Investigation Panel should be a written report providing the allegations, the result of the investigation, and recommendations for discipline, if any. If the facts of the case are deemed non-meritorious, the Investigation Panel may choose to dismiss the case in which their dismissal will be the final disposition of the complaint or information. The Investigation Panel may also find that the facts of the case should result only in counseling of the candidate which would be carried out by one or more members of the Investigation Panel.

#### *Discipline Committee Panel*

If the Investigation Panel produces a recommendation for discipline with respect to the complaint or information, the Committee's Chairperson shall form a Discipline Committee Panel consisting of 5 members of the Discipline Committee who did not serve on the Investigation Panel. If 5 members of the Committee without a conflict of interest cannot be found the President shall appoint (a) special member(s) to the Discipline Committee Panel to complete the formation of the Panel. The Discipline Committee Panel shall be responsible for considering recommendations for disciplinary actions against candidates presented by the Investigation Panel and for taking actions on those recommendations as it deems appropriate.

#### *A. Consideration of Disciplinary Action*

1. The Chairperson shall review the recommendation and record provided by the Investigation Panel and may seek further information from them or delegate further fact-finding or investigation to other members of the Committee.
2. The Chairperson shall schedule a hearing of the Discipline Committee Panel at which the Subject Candidate shall have the right to appear personally and with counsel and/or other advisor (at the Subject Candidate's expense) to explain why the recommendation of the Investigation Panel should not be followed.
3. The Chairperson, with the assistance of the CAS Executive Director, may engage legal counsel to advise the CAS and to explain relevant legal principles.
4. The Chairperson shall provide written notice of this hearing, including the time, date, and place where the Discipline Committee Panel will consider the matter to the Subject Candidate not less than 45 days in advance of the hearing. The 45-day time limit may be waived by mutual written consent of the parties.
5. The notice shall also be provided to the members of the CAS Discipline Committee, the CAS President, and the CAS Executive Director.

The notice shall:

- a. advise the Subject Candidate that disciplinary action has been recommended by the Investigation Panel, state the charge(s) made, and cite the specific violations of the Candidate Code that are alleged;
- b. advise the Subject Candidate of the right to submit any new evidence which was not previously made available to or considered by the Investigation Panel;
- c. advise the Subject Candidate of the right to appear at the Discipline Committee Panel hearing with or without counsel and/or other advisor at the expense of the Subject Candidate;
- d. list the Fellows who will serve on the Discipline Committee Panel and advise the Subject Candidate of the right to object to any Panel member he or she believes might have an actual or potential conflict of interest, provided that he or she must state the basis for that conflict in writing within 30 days of receipt of the written notice from the Chairperson; in the event that the Subject Candidate objects to a Panel member, the Chairperson (or, in the event that the person alleged to have the conflict is the Chairperson, the President of the CAS) shall determine if an actual conflict exists and if determined so to exist, shall appoint a replacement Panel member without a conflict of interest to consider the matter.
- e. The Chairperson of the Discipline Committee shall serve as the Chairperson of the Discipline Committee Panel. If the Chairperson has a conflict of interest the CAS President shall designate one of the Panel members as the Panel Chairperson.

This notification may be made by certified mail or in such other manner in which receipt may be verified as the Discipline Committee Chairperson may direct.

6. If the Subject Candidate does not request an appearance, the Chairperson shall so advise the Panel members and the Panel shall then meet in person or by teleconference to consider the matter under review and render a decision in accordance with these Procedures.
7. Any additional factual materials or new evidence which the Subject Candidate wishes to be considered by the Panel must be submitted in writing at least 15 days in advance of the hearing.
8. A hearing of the Discipline Committee Panel shall require a quorum to be present, which shall be 3 members of the Panel. A Discipline Committee Panel decision to render an order to reprimand, suspend exam-taking privileges, or bar admission to the CAS requires the affirmative vote of at least 3 members of the Discipline Committee Panel. Members of the Committee Panel who were not in attendance at the hearing may not vote on the outcome.
9. A transcript shall be made of the hearing of the Discipline Committee Panel by a court reporter selected by the CAS. No other recording of the hearing will be permitted. Since the hearing is intended to address the professional conduct of the Subject Candidate, professional dialogue between the Subject Candidate and Panel members should not be impeded by formal legal rules of evidence or procedure. Accordingly, there shall be no discovery, no depositions or interrogatories, and no new information or testimony presented by the Subject Candidate that was not provided in writing at least 15 days prior to the hearing.
10. The Subject Candidate may make an oral presentation of reasonable length and respond to any questions posed by the Discipline Committee Panel members. The Subject Candidate may be accompanied by legal counsel or other advisor, and may consult with such counsel. However, the role of such counsel shall be limited to providing advice to the client and explaining relevant legal principles. The oral presentation shall be limited to 30 minutes or other reasonable time as determined by the Chairperson.
11. The deliberations of the Discipline Committee Panel shall be limited to Panel members and counsel to the CAS. The Discipline Committee Panel has discretion to accept, reject, or modify the recommendation received from the Investigation Panel.
12. The Discipline Committee Panel decision shall be based on the investigative report, written record and any further information provided by the Investigation Panel as well as any additional fact-finding or investigation by the Discipline Committee Panel, and any new evidence submitted in writing by the Subject Candidate at least 15 days in advance of the hearing. In reaching its decision the Panel shall consider without limitation the intent of the Subject Candidate, whether the violation was willful, the economic loss or other harm caused by the conduct alleged, the seriousness of the violation, the experience of the Subject Candidate, any alleged prejudicial material errors in the process of the Investigation Panel, and any other factors the Panel deems appropriate. The Panel may also take into consideration whether the Subject Candidate has been disciplined before and the Chairperson is authorized to inquire with the CAS Executive Director or any other body in this regard.
13. The decision of the Discipline Committee Panel shall include a written report of its findings and the rationale for the conclusion. If the Discipline Committee Panel determines that a violation of the Candidate Code has not occurred the decision should explain why the Panel's conclusion differs from that of the Investigation Panel. If the Discipline Committee Panel determines that a violation has occurred the decision should cite the specific Code provisions violated and explain how the Subject Candidate's conduct constituted a Code violation. The Discipline Committee Panel decision should also contain the rationale for the disciplinary action chosen.
14. The decision of the Discipline Committee Panel, including the vote, shall be provided to the Subject Candidate within 30 days after the decision is reached. Copies of the decision shall be provided to the CAS President, the CAS Executive Director, the CAS Board of Directors, and the authorized representative of the Investigation Panel. The decision shall be considered final and binding unless written notice of appeal is submitted by the Subject Candidate within 45 days of receipt of the decision.

### *B. Appeals*

1. The Subject Candidate shall be entitled to appeal the decision of the Discipline Committee Panel by submitting a written request for an appeal to the CAS President within 45 days from receipt of the Discipline Committee Panel decision.
2. Upon receipt of the written request for appeal, the CAS President shall designate 5 members of the Board of Directors who do not have a conflict of interest as eligible to serve on an Appeals Panel and provide those names to the Subject Candidate.
3. Within 5 days of receipt of those names the Subject Candidate shall select three of those designated Board members to serve on the Appeals Panel and provide those choices to the CAS President. The President shall select one of those three to serve as the Chairperson of the Appeals Panel and shall so notify the three panel members, the Subject Candidate and the CAS Executive Director. The Appeals Panel shall act on behalf of the CAS Board of Directors.
4. In the event of a request for appeal by the Subject Candidate, the full written record, decision, findings and vote of the Discipline Committee Panel shall be made available to the Appeals Panel. The appeal shall be based entirely upon the written record and shall not include any appearance by the Subject Candidate or any other person but may include a written submission by the Subject Candidate, and any reply submission by the Chairperson of the Discipline Committee Panel.
5. The Appeals Panel shall conduct and complete the appeal within 90 days after receipt of the request for appeal. The Appeals Panel may affirm, modify or reverse the decision of the Discipline Committee Panel. A decision to do other than affirm shall require a determination by the Appeals Panel that: (1) the Discipline Committee Panel's determinations were clearly erroneous and, absent such errors, a different action is warranted; or (2) the Discipline Committee Panel failed to conform to the Rules of Procedure in a manner that was unduly prejudicial and which led to an unwarranted result; or (3) the disciplinary action imposed by the Discipline Committee Panel was clearly inconsistent with the seriousness of the Candidate Code violation(s). The decision of the Appeals Panel shall require the vote of at least 2 members of the Appeals Panel.

The Appeals Panel decision shall include a written statement of the Appeal Panel's findings and conclusions and shall be provided to the Subject Candidate, the Chairperson of the Discipline Committee Panel, the Appeals Panel members, the CAS President and Executive Director, the CAS Board of Directors and the authorized representative of the relevant Investigation Panel. The Appeals Panel decision shall be final.

### *C. Candidate Withdrawal*

1. Once the CAS Discipline Committee receives a complaint or information alleging a violation of the Candidate Code, it shall have the authority to complete the disciplinary process and impose sanctions upon the Subject Candidate, if applicable, as outlined herein, notwithstanding the withdrawal of the Subject Candidate from candidacy for CAS membership. Therefore, upon the withdrawal of a Subject Candidate before resolution of the disciplinary process, the Discipline Committee retains jurisdiction over the matter and the process may be completed in the Subject Candidate's absence, with sanctions imposed on the Subject Candidate, and with notice of the decisions of the Discipline Committee being sent to the Subject Candidate.

### *D. Confidentiality of Process*

1. All proceedings with respect to communications, investigations, and deliberations as provided in these Rules, shall be confidential. This requirement shall not preclude the Investigation Panel from advising, at its discretion, complainants about the outcome of their complaints. And, this requirement of confidentiality shall not preclude the Investigation Panel from reviewing previously closed files as they relate, in any manner, to the consideration of a new matter before it.
2. Notwithstanding the above, should there be any unauthorized disclosure of information with respect to these confidential proceedings, the CAS shall have the right to respond to such disclosure by providing factual information about the deliberations and proceedings.

#### *E. Disposition*

Upon the completion of an appeal, or in the case of no appeal upon the expiration of the period for appeal, the President shall initiate the action necessary to comply with the final order. In the event of a decision to reprimand, suspend exam-taking privileges, or bar membership to the CAS, the President shall notify all other actuarial organizations of which the Subject Candidate is a member or candidate and other interested parties, including government entities, of such action. Such disclosure shall not take place until two business days after the Subject Candidate has received notice of the decision of the Appeals Panel or otherwise reasonable efforts have been made to effect that notification. In the event that the Discipline Committee Panel hearing or the appeal results in disciplinary actions other than those described above, the President shall authorize the specified disciplinary action, if any. In all cases, the matter shall otherwise continue to be treated in a confidential manner, with all records of the hearing and any appeal sealed and retained by the CAS Office under the control of the Executive Director. The Discipline Committee Panel Chairperson, the President, or the Executive Director may, however, be required to divulge such records by court order or other legal process in some circumstances, or as necessary to fulfill their appointed functions.

#### *F. Report on Activities*

The Discipline Committee shall issue an annual report to the Board of Directors and to the membership that shall include a description of its activities, including commentary on the types of cases pending, resolved, and dismissed. This annual report shall be subject to the confidentiality requirements and provisions set forth above.