

JDC Rules of Procedure for Disciplinary Actions

Proposed

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JDC RULES OF PROCEDURE FOR DISCIPLINARY ACTIONS

Revised

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The Joint Discipline Council (JDC) has established these Rules of Procedure (“Rules”) pursuant to the Agreement on Joint Discipline, dated as of _____ (the “Agreement”) among the actuarial associations that are signatories thereto (Participating Organizations), to govern the process for consideration of disciplinary action(s) involving members of any of the Participating Organizations. Pursuant to the Agreement, such matters are referred by the Participating Organizations to the JDC based upon the recommendations of the Actuarial Board for Counseling and Discipline (“ABCD”) or other appropriate body with authority under a cross-border agreement to investigate and make findings with respect to the conduct of such members (“Referring Body”). These Rules are intended to provide a fair procedure for disciplinary action, by requiring adequate notice, an opportunity to respond, and a fair and impartial decision maker in the discipline process.

The JDC reserves the right to amend, modify or supplement these Rules as it deems necessary and appropriate, and delegates the application of these Rules to the JDC Disciplinary and Appeals Panels.

1. INTRODUCTION

Pursuant to the Agreement, the JDC is responsible for establishing and overseeing a pool (“Pool”) of potential disciplinary and appeal panel members designated by the Participating Organizations and the procedures related to the same. In addition, the JDC is responsible for selecting members of the Pool to serve on Disciplinary or Appeals Panels as described in Sections 3 and 4 of these Rules. A disciplinary proceeding will commence upon receipt by the JDC of notice from a Participating Organization that the organization has received a recommendation from a Referring Body to discipline one of its members (the “Subject Actuary”).

Upon receipt of such a disciplinary notice from a Referring Body, the JDC will appoint a Disciplinary Panel, including a chairperson (“Chair”) from the Pool, to consider and act upon the recommendation. Similarly, the JDC will appoint an Appeals Panel and Chair when a Subject Actuary makes an appeal pursuant to Section 4, below.

2. COMPOSITION OF THE DISCIPLINARY AND APPEALS PANELS

The JDC will form a Disciplinary Panel, consisting of at least five members selected from the Pool described below, each time a recommendation for disciplinary action against a Subject Actuary is received from a Participating Organization. The Disciplinary

Panel will be responsible for considering recommendations for disciplinary actions against a Subject Actuary and for taking actions on those recommendations as it deems appropriate.

- A. In order for the JDC to appoint Disciplinary and Appeals Panels satisfying the requirements set forth below, each of the Participating Organizations will designate a number of its members to form the Pool of volunteers for disciplinary proceedings.
 - i. Each participating organization should designate at least eight of its members for the Pool.
 - ii. The members designated by each Participating Organization for the Pool must hold concurrent memberships in at least two of the Participating Organizations.
 - iii. Members designated for the Pool should be available and willing to accept assignments to Disciplinary or Appeals Panels for a period of at least two years.
- B. The composition of the Disciplinary or Appeals Panel (“Panel”) selected to consider and act upon a disciplinary matter will meet the following requirements:
 - i. At least one Panel member will be appointed by the JDC representatives for each of the Participating Organizations of which the Subject Actuary is a member and drawn from the members of the Pool designated by that Participating Organization.
 - ii. The Panel will have a majority of members from each of the Participating Organizations of which the Subject Actuary is a member, unless the JDC, in its sole discretion, determines that compliance with this requirement is not feasible. In the event the JDC determines compliance with this requirement is not feasible, and such noncompliance is inconsistent with the bylaws of a participating organization of which the Subject Actuary is a member, the case will be referred back to such organization to consider and act upon the disciplinary recommendation pursuant to its own disciplinary procedures, and the case will proceed pursuant to the Agreement and these Rules with respect to the other Participating Organizations of which the Subject Actuary is a member.
 - iii. Each Panel member will be a member of at least one of the Participating Organizations of which the Subject Actuary is a member.
- C. If sufficient members of the Disciplinary Panel without a conflict of interest cannot be found, the JDC will appoint (a) special member(s) to the Disciplinary Panel to complete the formation of the Panel.

3. CONSIDERATION OF DISCIPLINARY ACTION

- A. The Disciplinary Panel will hold a hearing to consider the matter unless both the Subject Actuary and the Chair of the Disciplinary Panel agree that it need not be held.
- i. The Chair will provide the Subject Actuary written notice of this hearing, including the time, date, and place where the Disciplinary Panel will consider the matter, not less than 45 days in advance of the hearing date. This notice will be given by certified mail or by other means in which receipt may be verified, as the Chair may direct. The 45-day time limit may be waived by the Chair and the Subject Actuary. The time, date or place of the hearing may be changed, in the discretion of the Chair, for good cause shown. The notice will:
 - a. Advise the Subject Actuary that disciplinary action has been recommended by the Referring Body, state the violation(s) made, and cite the specific Code of Professional Conduct precept violations that are alleged;
 - b. Advise the Subject Actuary of the right to submit any new evidence which was not previously made available to or considered by the Referring Body, subject to paragraph 3(A)(vi) below;
 - c. Advise the Subject Actuary of the right to appear at the Disciplinary Panel hearing with or without counsel, at the expense of the Subject Actuary;
 - d. List the individuals who will serve on the Disciplinary Panel and advise the Subject Actuary of the right to object to any Panel member he or she believes might have an actual or potential conflict of interest, provided that the Subject Actuary must state the basis for that objection in writing within 15 days of receipt of the written notice from the Chair;
 - ii. The Subject Actuary will have the right to appear personally and with counsel (at the Subject Actuary's expense) at such hearing to explain the Subject Actuary's position concerning the findings and recommendations of the Referring Body. If the Subject Actuary wishes to appear personally before the Disciplinary Panel, he/she must so notify the Chair of the Disciplinary Panel not less than 15 days before the hearing date. The role of the Subject Actuary's counsel will be limited to advising the Subject Actuary and articulating appropriate legal objections. Counsel for the Disciplinary Panel may also attend the hearing, but is not an advocate of the Referring Body's findings and recommendations or an advocate for or against discipline; rather, the role of the Disciplinary Panel's counsel is to

advise the Disciplinary Panel with respect to its application of these Rules and the conduct of a fair hearing.

- iii. The Subject Actuary will have the right to object to the participation of any member of the Disciplinary Panel, provided that such objection is filed in writing with the JDC within 15 days of the date of the written notice of hearing. The JDC may meet by telephone or in person to consider any such objection, and in its sole discretion may replace one or more members of the Panel (including the Chair) in response to such an objection.
- iv. If an investigator was appointed by the Referring Body to assist in reviewing the matter at issue, such investigator may be requested by the Chair to appear and present a report at the Disciplinary Panel hearing. However, it should be noted that such investigator may decline to appear.
- v. A hearing need not be held if the Subject Actuary waives his/her right to appear before the Disciplinary Panel. The Subject Actuary may elect to submit a written statement to the Disciplinary Panel. If the Subject Actuary waives his/her right to appear at a hearing, the Chair will so advise the Panel members and the Panel will then meet in person to consider the matter under review and render a decision in accordance with these Rules.
- vi. If the Subject Actuary wishes the Disciplinary Panel to consider any additional factual materials or new evidence that was not considered by the Referring Body, such materials or evidence must be submitted in writing to the Chair at least 15 days in advance of the hearing. In order for such new materials to be considered by the Disciplinary Panel, the Subject Actuary must satisfactorily explain or establish why those materials were not submitted to the Referring Body during its proceedings. The Chair will determine whether such new materials will be considered by the Disciplinary Panel.
- vii. The Subject Actuary's hearing before the Disciplinary Panel will be scheduled with the expectation that all members of the Panel will attend in person. If, due to unforeseen circumstances, a member of the Panel is unable to attend the hearing in person, the Chair may, in his/her discretion, arrange for the Panel member to participate through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can communicate with each other, and such participation shall constitute attendance and presence in person at the meeting. Only one such person may be allowed to conference into the hearing. A hearing of the Disciplinary Panel may not proceed unless all members of the Disciplinary Panel are present (as described herein.).
- viii. A transcript will be made of the hearing of the Disciplinary Panel by a court reporter selected by the entity administering the JDC process. No other

recording of the hearing will be permitted. However, since the hearing is intended to address the professional conduct of the Subject Actuary, professional dialogue between the Subject Actuary and Panel members should not be impeded by formal legal rules of evidence or procedure. Accordingly, there will be no discovery, no depositions or interrogatories, and no new information or testimony presented by the Subject Actuary that was not provided in writing at least 15 days prior to the hearing.

- ix. The Subject Actuary may make an oral presentation of reasonable length (as determined by the Chair) and respond to any questions posed by the Disciplinary Panel members.
 - x. The Disciplinary Panel decision will be based on the investigative report, written record and any further information provided by the Referring Body and any new evidence submitted in writing by the Subject Actuary at least 15 days in advance of the hearing. In reaching its decision the Disciplinary Panel may consider without limitation the intent of the Subject Actuary, 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 Actuary, any alleged prejudicial material errors in the process of the investigatory body, and any other factors the Disciplinary Panel deems appropriate. The Panel may also take into consideration whether the Subject Actuary has been disciplined before, and the Chair is authorized to inquire with the Referring Body or any other body in this regard, although the Referring Body is not required to provide any comment or information solely as determined by the Referring Body.
 - xi. The decision of the Disciplinary Panel will include a written report of its findings and the rationale for the conclusion. If the Disciplinary Panel determines that a material violation of the Code of Professional Conduct has not occurred, the decision should explain why the Disciplinary Panel's conclusion differs from that of the Referring Body. If the Disciplinary Panel determines that a material violation has occurred, the decision should cite the specific Code precept(s) violated and explain how the Subject Actuary's conduct constituted a material violation of each Code precept cited. The Disciplinary Panel decision should also contain the rationale for the disciplinary action chosen.
- B. The Disciplinary Panel may dismiss the matter or take disciplinary action. Disciplinary action may include a private reprimand, public reprimand, suspension of membership, or expulsion. The Disciplinary Panel may also refer the matter to the Actuarial Board for Counseling and Discipline or other appropriate Referring Body to counsel the Subject Actuary, whether or not the Disciplinary Panel decides to impose discipline. Counseling alone does not constitute discipline.

- C. Disciplinary action requires an affirmative vote of a supermajority of the entire membership of the Disciplinary Panel. For purposes of these Rules, a “supermajority” will be defined as all or all but one of the entire membership of the Disciplinary Panel. A decision to refer the Subject Actuary for counseling alone (without attendant discipline) requires only a simple majority vote of the entire membership of the Disciplinary Panel.
- D. A decision by the Disciplinary Panel to privately reprimand, publicly reprimand, or suspend a Subject Actuary for a period up to and including 2 years will be effective 45 days after the date of the action, if the Subject Actuary does not appeal the decision. If the Subject Actuary appeals the decision, the action will be effective as set forth in Section 4 below. A dismissal will be effective when the decision is issued.
- E. A decision by the Disciplinary Panel to suspend a Subject Actuary for more than two years or expel the Subject Actuary will be referred to the Participating Organizations of which the Subject Actuary is a member for a final disciplinary decision, if the Subject Actuary does not appeal the Disciplinary Panel’s action. The Participating Organizations may affirm the decision of the Disciplinary Panel, or reduce the discipline to no less than a suspension of two years, with such action being effective on the date of the Participating Organization’s decision. If the Subject Actuary appeals the action of the Disciplinary Panel, the action will be effective as set forth in Section 4 below.
- F. The Chair of the Disciplinary Panel will notify the Subject Actuary of the Panel’s decision in writing on behalf of the member’s organization(s), and will provide a copy to each such organization. Notice will be given by certified mail or by other means in which receipt may be verified, as the Chair may direct. The notice will:
 - i. Include a copy of the Disciplinary Panel’s decision and report;
 - ii. Advise the Subject Actuary of his/her right to appeal the decision to an Appeals Panel, and the grounds upon which an appeal may be based;
 - iii. Advise the Subject Actuary that a written request to appeal the decision must be submitted to the JDC within 45 days from the Subject Actuary’s receipt of the Disciplinary Panel decision.
 - iv. In the case of a dismissal, advise the member’s organization(s), that a dismissal has occurred so that the member’s organization(s) can remove any limitations they have placed on the individual.

4. APPEALS

A Subject Actuary against whom a decision of private reprimand, public reprimand, suspension, or expulsion has been rendered will be entitled to appeal such a decision solely on the grounds of:

- a material procedural error in the Disciplinary Panel proceedings
- a material factual error by the Disciplinary Panel evident from the record of the proceedings
- the existence of new evidence that was not reasonably available during the Disciplinary Panel proceedings.

Any appeal that is not based upon one of these grounds will be rejected. Appeals will be subject to the following:

- A. The Subject Actuary must submit a written request for an appeal which states the specific grounds for the appeal to the JDC Chair within 45 days from receipt of the Disciplinary Panel decision. The Appeals Panel will be appointed pursuant to the procedures in 4.B.

Upon receipt of an appeal, the JDC will within 14 days select an Appeals Panel from the Pool meeting the same selection criteria, and subject to the Subject Actuary's same right of objection, as set forth in Sections 2.B. and 3.A. above. No member of the Disciplinary Panel may serve on the Appeals Panel considering the same matter.

In the event of an appeal by the Subject Actuary, the full written record, decision, findings and vote of the Disciplinary Panel will be made available to the Appeals Panel.

- B. The Appeals Panel will hold a hearing to consider the Subject Actuary's grounds for appeal. The Chair of the Appeals Panel will provide the Subject Actuary written notice of this hearing, including the time date, and place where the Appeals Panel will consider the matter, not less than 45 days in advance of the hearing date. This notice will be given by certified mail or by other means in which receipt may be verified, as the Chair may direct. The 45-day time limit may be waived by the Chair and the Subject Actuary. The time, date or place of the hearing may be changed, in the discretion of the Chair, for good cause shown. The notice will:
 - i. Advise the Subject Actuary of the right to appear at the Appeals Panel hearing, with or without counsel, at the expense of the Subject Actuary;
 - ii. List the individuals who will serve on the Appeals Panel and advise the Subject Actuary of the right to object to any Panel member he or she believes might have an actual or potential conflict of interest, provided that the Subject Actuary must state the basis for that objection in writing within 15 days of receipt of the written notice from the Chair.

- C. The Subject Actuary will have the right to object to the participation of any member of the Appeals Panel, provided that such objection is filed in writing with the JDC within 15 days of the date of the written notice of hearing. The JDC may meet by telephone or in person to consider any such objection, and in its sole discretion may replace one or more members of the Panel (including the Chair) in response to such an objection.
- D. The Subject Actuary may appear personally and with counsel (at the Subject Actuary's expense) before a hearing of the Appeals Panel to explain the Subject Actuary's position concerning the Disciplinary Panel's determination and the basis for appeal. If the Subject Actuary wishes to appear personally before the Appeals Panel, he/she must so notify the Chair of the Appeals Panel not less than 15 days before the hearing date. The Subject Actuary may make an oral presentation of reasonable length (as determined by the Chair) and respond to any questions posed by the Appeals Panel members. The role of the Subject Actuary's counsel will be limited to advising the Subject Actuary and articulating appropriate legal objections. Counsel for the Appeals Panel may also attend the hearing, but is not an advocate of the Disciplinary Panel's decision or an advocate for or against discipline; rather, the role of the Appeals Panel's counsel is to advise the Appeals Panel with respect to its application of these Rules and the conduct of a fair hearing. A transcript will be made of the Appeals Panel hearing by a court reporter selected by the entity administering the JDC process. No other recording of the hearing will be permitted.
- E. A hearing need not be held if the Subject Actuary waives his/her right to appear before the Appeals Panel. The Subject Actuary may elect to submit a written statement to the Appeals Panel and elect to argue the appeal solely on the basis of the written submission. If the Subject Actuary waives his/her right to appear at a hearing, the Chair will so advise the Panel members and the Panel will then meet in person or by teleconference to consider the matter under review and render a decision in accordance with these Rules.
- F. The Appeals Panel will (if reasonable) conduct and complete the appeal within 90 days after the Appeals Panel has been appointed (after resolution of any objection by the Subject Actuary to the composition of the Appeals Panel, if necessary.) The scope of the Appeals Panel's review will be limited to determining whether there was a material procedural error in the Disciplinary Panel proceedings, a material factual error by the Disciplinary Panel evident from the record of the proceedings, or whether new evidence exists that was not reasonably available during the Disciplinary Panel proceedings. The decision of the Disciplinary Panel may be affirmed, or remanded to the Disciplinary Panel with instructions for further proceedings. In the case of a remand, the matter will be remanded to the Disciplinary Panel that previously considered the matter, unless the matter is remanded due to a procedural defect in the composition of the original Disciplinary Panel, in which case the

matter will be remanded to a new Disciplinary Panel convened by the JDC. An action of the Appeals Panel requires a simple majority vote of the entire membership of the Appeals Panel.

- G. The Subject Actuary's hearing before the Appeals Panel will be scheduled with the expectation that all members of the Panel will attend in person. If, due to unforeseen circumstances, a member of the Panel is unable to attend the hearing in person, the Chair may, in his/her discretion, arrange for the Panel member to participate through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can communicate with each other, and such participation shall constitute attendance and presence in person at the meeting. A hearing of the Appeals Panel may not proceed unless all members of the Appeals Panel are present.
- H. The Appeals Panel decision will include a written statement of the Panel's findings and conclusions and will be provided to the Subject Actuary, the Chair of the Disciplinary Panel, the Appeals Panel members, the Chair of the JDC, and the Participating Organizations to which the Subject Actuary is a member. An Appeals Panel decision to affirm the Disciplinary Panel is final and effective on the date the appeal is issued except as next described. However, in the event the Appeals Panel decision affirms a suspension of greater than two years or an expulsion, such decision will be referred to the Participating Organizations of which the Subject Actuary is a member for a final disciplinary decision. The Participating Organizations may affirm the decision, or reduce the discipline to no less than a suspension of two years. Such action will be effective on the date of the Participating Organization's decision.

5. CONFIDENTIALITY OF PROCESS

- A. Except as provided herein, in the Agreement or by waiver of the Subject Actuary, all proceedings with respect to communications, investigations, and deliberations as provided in these Rules, will be confidential. This requirement will not preclude the Disciplinary Panel or Appeals Panel from advising, at its discretion, complainants that the matter has been concluded. And, this requirement of confidentiality will not preclude the Disciplinary Panel or Appeals Panel from reviewing previously closed files as they relate, in any manner, to the consideration of a new matter before it, consistent with the requirements of Section 6 of the Agreement. Finally, this requirement will not preclude the Disciplinary Panel or Appeals Panel from providing the JDC and the parties to the Joint Discipline Agreement with a report limited solely to the status of discipline cases that have been or are being conducted, provided that the names of Subject Actuaries involved are not disclosed, and that reasonable care is taken not to disclose information by which their identities can be readily determined.
- B. The outcomes of the Disciplinary Panel deliberations and Appeals Panel deliberations are confidential. In the case of a decision to implement Public

Discipline (Expulsion, Suspension or Public Reprimand), such outcomes shall remain confidential until such time as the Participating Organizations of which the Subject Actuary is a member publish a Notice of Public Discipline. All other outcomes (Dismissal, Counseling, and Private Reprimand) shall remain confidential at all times.

Notwithstanding the above, should there be any unauthorized disclosure of information with respect to these confidential proceedings, the JDC will have the right to respond to such disclosure by providing factual information about the deliberations and proceedings. In all cases, except with respect to the specific notification(s) authorized pursuant to Section 7 of the Joint Discipline Agreement, the matter will continue to be treated in a confidential manner, with all records of the hearing and any appeal kept in a secure location. However, the JDC may be required to divulge such records by court order or other legal process in some circumstances, or as necessary to fulfill their appointed functions.

6. DISPOSITION

- A. Upon the final resolution of a disciplinary proceeding (including any appeal or the expiration of any appeal period), the JDC Legal Counsel will:
 - i. Notify each Participating Organization of which the Subject Actuary is a member, and provide to it a complete copy of the record of the disciplinary proceedings. Such notification will be given to the President and Executive Director of the organization, unless the organization has designated another person to receive such notices from the JDC.
 - ii. Notify the Referring Body of the outcome of the disciplinary proceedings. Where the outcome involves a form of discipline that will be subject to further consideration by the Participating Organizations of which the Subject Actuary is a member – i.e., suspension for more than two years or expulsion – the JDC will advise the Referring Body that the discipline is not final and is still subject to confidentiality.

Such notification will only be given after the Subject Actuary has been notified of the decision of the Disciplinary Panel or Appeals Panel, as applicable, or at least reasonable efforts have been made to effect that notification.

- B. Each Participating Organization of which the Subject Actuary is a member will initiate and direct any action necessary to effectuate the final decision by the Disciplinary Panel (or Appeals Panel, where applicable):
 - i. Where the decision involves a form of discipline that will not be subject to further consideration by the Participating Organizations of which the Subject Actuary is a member, those organizations will advise, within 10

days, the JDC when the public or private disciplinary action has been effectuated.

- ii. Where the decision involves a form of discipline that will be subject to further consideration by the Participating Organizations of which the Subject Actuary is a member – i.e., suspension for more than two years or expulsion – those organizations will consider the matter in accordance with their own procedures, and will notify the JDC when a final decision has been reached and the discipline has been effectuated.
- C. In cases of public discipline that are not subject to further consideration by the Participating Organizations of which the Subject Actuary is a member, the JDC will notify other persons or organizations such as governmental entities or news organizations that, in the opinion of the Disciplinary Panel as set forth in its findings, should also receive notice of the action as being in the best interest of the public.
- D. If a Subject Actuary who has been suspended or expelled is subsequently reinstated by a Participating Organization, that organization will give notice of such action to its membership and to entities previously advised of the suspension or expulsion.

7. NOTICE

The requirement that notice be given pursuant to these Rules of Procedure shall be satisfied when a letter has been deposited in a U.S. Postal Service mailbox addressed to the last known address of such person.

8. REPORT ON ACTIVITIES

The JDC will periodically (at least twice per year) report to the Participating Organizations on its activities and developments, including the number and disposition of cases that have been resolved and the number and status of cases that are active.