

A Question of Ethics

When, How, and Why Should We Investigate Disputed Matters?

"There is nothing concealed that will not be disclosed, or hidden that will not be made known."

—Matt. 10:26 (NIV)

We live in times furnishing a great variety of matters that are the subject of internal and external investigations. Congressional inquiries are but one form of investigation garnering media attention. While we might regard many investigations as unwelcome, we recognize that they are a part of the fabric of our business world and necessary to sustain the integrity of our business dealings.

But investigations sometimes go awry. Criticism of faulty investigations ranges from characterizations that they are mere cover-ups, or at the other extreme, that they are witch hunts. In this column, we want to explore whether there are ethical constraints that govern investigative activity and the ethical values that should guide these efforts. We will also examine what our codes of ethics have to tell us about investigative conduct.

Duty to Cooperate

Initially, there is the perspective of the individual who is being asked to cooperate in some ongoing investigation. This person must decide whether to assist the investigators with what he or she may know about some matter now under investigation. The Code of Professional Ethics of the American Institute for CPCU (AICPCU) speaks to this ethical duty in the following terms:

A CPCU shall not withhold information or assistance officially requested by appropriate regulatory authorities who are investigating or prosecuting any alleged violation of the laws or regulations governing the qualifications or conduct of the insurance business. (Rule R5.4)



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Certainly the aspiration to set a good example for others would influence an individual to cooperate dutifully in a properly grounded investigation (Cf. Guideline G5.1). Finally, there is the mandate in Rule R9.2 of the Code that anticipates a CPCU's cooperation. This rule reads as follows:

A CPCU possessing unprivileged information concerning an alleged violation of this Code shall, upon request, reveal such information to the tribunal or other authority empowered by the American Institute to investigate or act upon the alleged violation.

The request to cooperate in an investigation, though, may arise in settings other than those directly related to the insurance business and those being conducted by duly constituted regulatory or AICPCU authorities. For example, an employer may undertake an internal investigation in response to allegations of misconduct within the organization. Employees are generally not asked to swear to tell the truth, the whole truth, and nothing but the truth. Nor are they typically forced to undergo polygraph examinations or submit to other intrusive tests without their consent. But employees are expected to tell the truth, and any indications that they may have lied may subject them to dire consequences, including the possible termination of their employment.

Through our employers' codes of conduct and other compliance directives, we are expected to

cooperate in these matters by furnishing truthful information and keeping the matters under investigation confidential. But let's take a moment now to consider when, how, and why we ourselves may need to initiate some inquiry which, for want of a better term, amounts to an investigation.

Implied Duty to Investigate

As professionals in the insurance industry, CPCUs need to exercise good judgment in determining the competency of the information that may be furnished by others to do their jobs. In addition, there is the probability that others may seek to impugn the veracity of the information at their disposal. Is there an ethical standard or suggested protocol to guide us in determining if an investigative inquiry needs to be launched?

A dispute concerning facts material to some transaction may warrant further inquiry. Rule R4.1 impliedly directs the need for some investigations from time to time. This rule reads as follows:

A CPCU shall competently and consistently discharge his or her occupational duties.

A part of a professional's duties includes the need for determining if some fact is open to dispute or otherwise in question such that some further investigation is warranted. Consider the following examples: An underwriter may question the loss history of a particular risk

submission. A regulator may question the adequacy of an insurer's loss reserves. A claim representative may be suspicious as to the merits of an insurance claim. An actuary may question a loss trend. An HR representative may be required to conduct a background check on an employment applicant. And an insurance producer may be concerned with an insured's risk exposures.

The assessment of these and other comparable circumstances brings up the need for launching investigative inquiries. Once the need for the inquiry is identified, then we have to determine how the investigation is to proceed. Often there are not very clear indications as to what sources to pursue or how best to assess their reliability.

Recommended Ethical Guidance

Some forms of investigation may be unsuited to the issues under review. We cannot now, in this brief column, set out what rules govern each and every form of investigation undertaken. But we can set out some general guidelines to help shape the results of our investigative efforts in an ethical manner. Consider the following:

1. Identify the issue or issues under review and the sources of information that may bear on those issues.
2. Within reason when dealing with witnesses, proceed with open-ended inquiries rather than leading questions.
3. Avoid deceptive conduct; for example, pretext interviews or misstatements of known facts.
4. Do not influence the substantive responses of witnesses.
5. Keep the scope of the investigation within the bounds

of what is material to the issues under review.

6. Keep the investigation from becoming an end in itself. Instead, think of the investigation as a means to resolving some outstanding issue or issues.
7. Maintain confidentiality to the extent possible.
8. Do not ignore complaints, and take time to evaluate the information witnesses and available documents provide.
9. Allow the subjects of complaints an opportunity to respond to any allegations made against them.
10. Be as willing to pursue investigative leads that may exonerate as well as those that may prove incriminating.
11. Maintain an open mind about matters, and be mindful of the advisability of separating investigative functions from any required decision-making.
12. Resolve expeditiously and fairly the matters under investigation.

Whether the matter under investigation is a claim of sexual harassment in the workplace or the particulars of a pending insurance claim, the above guidance, we submit, may provide, in summary form, a worthwhile ethical structure for the resolution of investigations we may be called upon to carry out as CPCUs. Adhering to high standards in the conduct of investigations will help fulfill the following ethical obligations:

A CPCU shall support the development, improvement, and enforcement of such laws, regulations, and codes as will foster competence and ethical conduct on the part of all insurance practitioners and inure to the benefit of the public.

(Rule R5.3)

We also have the following from the CPCU Society's Code of Ethics:

A member shall not fail to use his or her full knowledge and ability to perform his or her duties to his or her client or principal. [Section 4(b)(3) of the Society's Policy Statement on Ethics]

Editor's note: *The opinions expressed in this column are those of the author and do not necessarily reflect the views of the CPCU Society membership, the Society's Ethics Committee, or the author's employer. In upcoming issues of CPCU News, the authorship of the "Question of Ethics" column will rotate among members of the Ethics Committee. If you have suggestions for upcoming articles or comments about the "Question of Ethics" column, please contact **Steve G. Brown, CPCU**, Ethics Committee chairman, at steve.brown.bid2@statefarm.com.*

AICPCU Announces Suspension of CPCU Designation

The American Institute for CPCU has notified the CPCU Society that the CPCU designation of **David A. Gross**, a judge in Nassau County, N.Y., has been suspended.

In October 2007, Gross was convicted of a Class C felony, conspiracy to commit money laundering, in the U.S. District Court, Eastern District of New York. Gross was notified on December 13, 2007, that his right to use the CPCU designation had been suspended pursuant to R. 3.3 of the AICPCU Code of Professional Ethics. Prior to his election to the bench, Gross had been a lawyer in the insurance industry.