

WATCHING WORLDS COLLIDE

An Outsider's View of a Deputy Receiver's Ethical Quandaries

Select Ethics Issues for IAIR members

A few hypothetical situations

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I. IAIR Ethical Principles

1. A Member's conduct shall at all times be consistent with the maintenance of the good reputation of the profession.
2. A Member shall perform his or her professional services with integrity and care appropriate in the circumstances.
3. A Member shall keep informed of developments in professional standards and practices and in applicable legislation.
4. A Member, when engaged in an assignment, shall be free of any conflicting influence, interest or relationship which impairs professional judgment or objectivity or which, in the view of a reasonable and informed observer, would be perceived to have that effect.
5. A Member shall not disclose non-public or confidential information obtained in the course of an engagement unless with proper cause or required by law, and a Member shall preserve such information against direct or indirect exploitation.
6. A Member shall accord to any other Member the courtesy and consideration due between professional colleagues.

II. IAIR Ethical Tenets

1. Conduct himself or herself at all times in a manner consistent with the maintenance of the good reputation of IAIR
2. Perform his or her professional engagements with integrity and care appropriate in the circumstances
3. Keep himself or herself informed of, and in compliance with, developments in professional standards, adopted by IAIR
4. Hold himself / herself free of any conflicting influence, interest or relationship which impairs his or her professional judgment or objectivity
5. Not author nor associate himself or herself with any communication, report, statement, representation or financial statement which he or she knows, or should know, is false, deceptive or misleading
6. Not take any action (such as acquiring any interest, property or benefit) by which he or she makes improper use of confidential knowledge

II. IAIR Ethical Tenets

7. Not directly or indirectly pay to (or receive from) any party a commission or other compensation to obtain a professional engagement
8. Not advertise, directly or indirectly, in any manner that:
 - a) he or she knows, or should know, is false, deceptive or misleading
 - b) contravenes professional good taste or professional courtesy
 - c) reflects unfavorably on the competence or the integrity of IAIR / Members
9. Not participate in any method of obtaining or attracting professional engagements which tends to bring disrepute
10. Be responsible to the Association for any failures of any associated non-members to abide by the IAIR Code
11. Not disclose any confidential information concerning any professional engagement unless with proper cause or required to do so by law.
12. Observe at all times the bylaws, rulings, standards, interpretations, and other pronouncements of IAIR

III. The Policyholder/Claimant

- Phone calls not returned
- Claim denied without explanation
- Meritless claim objection
- Burdensome requests for information
- Opaque rules for appeal
- Misses the bar date with or without cause/excuse
- Multiple claims but one blanket denial
- Claim information shared with other claimants
- Denied meaningful opportunity to be heard
 - How much process is due?

IV. The Reinsurer

- Notice sent to stale address
- Failure to provide information
- Presented with stale claims
- Underlying claims allowed without notice
- Circumvent interposition rights
- Not given notice of reinsurance sales
- Regulator-approved assumption reinsurance not honored
- Asked for information that is not available
- Set-offs rejected

V. The Cedent

- No resolution of general creditor claims
- No bordereaux (or faulty bordereaux)
- Setoffs ignored
- Poor notice

VI. The Court

- Ex parte communications
- Demands for deference / rubber stamp
- Take advantage of lack of insurance knowledge
- Failure to timely report
- Opaque expenses
- Request for all encompassing injunctions
- Misrepresentations to Court
- Failure to cite controlling (or persuasive) authority

VII. The Big Conflicts

- SDR makes a payment to obtain an SDR appointment
- Makes a political contribution in order to obtain SDR appointments
- Accepts appointments from relatives
- SDR receives payment to appoint professionals
- Comingling assets

VIII. Other

a) Expenses

- Rental office space
- Travel expenses
 - Big meals or entertainment
 - Alcohol
 - Noncommercial travel
- Spousal travel
- Opaque reports

VIII. Other

b) Liquidation of Estate assets

- Destruction of Estate property
- Failure to sell assets for value
- Trading at less or more than value
- Failure to meet deadlines to preserve claims
- Trading with insiders/partners/relatives

VIII. Other

c) Time

- Short Bar dates
- Lingering claims
- Closing early
- Closing late

VIII. Other d) Releases

- Retention of expertise
- Protection of the guilty
- Precluding D&O actions
- Overly broad release

VIII. Other

e) Cyber

- Safe data storage and transmission (encryption)
- Access to systems (multifactor authentication)
- Vendor cyber policies
- Firewalls
- The Cloud

VIII. Other

f) Employees

- Negligence in hiring
- Failure to supervise
- Failure to pay

VIII. Other

g) Compensation

- Incentives set as a percent of assets recovered
- Incentives for speedy closing
- Incentives for “success” in limiting claims
- Flat monthly fees

VIII. Other

h) Opposing Counsel

- Misrepresentations to induce non-objection
- Failure to engage
- Generating legal expense
- Successive counsel with conflicting views
- Failure to share data

IX. What are we missing?

- What other situations, conflicts, problems have you encountered as an SDR or estate representative?

This communication is being circulated to IAIR members and friends. It is not intended to provide legal advice.

Prior results do not guarantee similar outcomes.