

ETHICS AND PROFESSIONAL CONDUCT UPDATE

Self-Disclosure

By Robert E. Frankel, Esq., and IMCA's Professional Review Board

Each month, many IMCA certificants renew their certifications, and as part of these renewals, they are asked to make a compliance disclosure by answering the following question:

Have you been involved in a criminal matter, customer dispute or complaint, legal or court action, involuntary employment separation, disciplinary action, or financial compromise or bankruptcy within the past two years?

It is paramount that certificants answer this question accurately. The Professional Review Board (PRB) increasingly is seeing a large number of renewing certificants who have failed to answer the question correctly, which has led to disciplinary action for nondisclosure, irrespective of the merits of the matter that was not disclosed.

Before responding to the question, an important step is to consult any publicly filed records that may contain any history of reportable events. As incomprehensible as it may seem, it is not uncommon for certificants to be surprised to find reportable events entered into their records for which they were not previously aware. In the PRB's experience, these "stealth" entries often occur during transition periods, such as when a client's account is transferred to you

from another advisor, such as when an advisor leaves a firm. Most items found in public records are self-explanatory, but a "customer dispute," a "complaint," and a "disciplinary action" are reportable events even if they are dismissed, denied, withdrawn, or closed with no action. If at any point in the two years prior to submitting your renewal disclosure any reportable event is or was still open, a designee is considered involved in the matter even if it had been first initiated beyond the two-year window.

Self-disclosure is an important component of IMCA's disciplinary process. Many of the self-disclosed matters are closed without further disciplinary action, but ignoring or delaying disclosure is a violation of IMCA's *Code of Professional Responsibility (Code)* and could subject you to disciplinary action. The lesson here is that it is better to err on the side of disclosing a matter and to allow the matter to run its course through the *IMCA Disciplinary Rules and Procedures*.

Professional conduct investigations are handled confidentially. Nevertheless, you should consult your employee handbook to determine whether and under what conditions your employer may require disclosure. After all, the *Code* also imposes on you an obligation to abide by your

employer's rules and compliance procedures. Investigations can be conducted quickly, but they require your cooperation in responding to IMCA staff inquiries fully and in a timely fashion. Certificants who neglect or fail to provide appropriate documentation and materials may delay an investigation unnecessarily. Keep your contact on the IMCA staff informed and discuss with the investigator whether certain documentation or information is relevant. Be sure your contact information is current and accurate with IMCA.

You are encouraged to self-disclose professional conduct matters as they arise, rather than waiting for the recertification questionnaire. By disclosing as matters arise, memories are fresh and documentation is readily accessible. In addition, although disclosure of a reportable event need be done only once, the better practice is to read the disclosure question and answer it accurately even if you previously disclosed the matter.

Many of IMCA's disciplinary actions are matters that have been disclosed to the Financial Industry Regulatory Authority or are pending arbitrations, regulatory actions, or civil litigations. Some of these settle. In such an event, you should inform IMCA of any significant developments.

Table 1: Disciplinary Statistics (Past Five Years through September 30, 2015)

Year Opened	Total Cases Opened	Closed No Action	Still Pending	Finding-No Violation or Violation but no Sanction	Private Censure	Public Censure	Suspension	Termination
2011	70	46	4	2	16	1	1	0
2012	70	56	2	2	9	0	1	0
2013	67	58	2	0	4	1	1	1
2014	139	130	6	0	2	0	1	0
2015	285	230	25	1	29	0	0	0
Totals	631	520	39	5	60	2	4	1

IMCA does not want to impede the ability of members to defend themselves in these proceedings. If you or your legal counsel are contemplating a settlement, you should try to ensure that any such agreement grants IMCA access to all documents and information necessary to complete any investigation. This can be accomplished through slightly altering a standard confidentiality provision that allows for sharing information by including certification bodies such as IMCA. Absent this access, the IMCA certificant may risk summary sus-

pension for failing to provide documents requested by IMCA.

Promoting a high standard of ethics and professional excellence is a core part of IMCA's mission. IMCA certifiants recognize and value the efforts made by IMCA and the Professional Review Board in investigating—and when appropriate sanctioning—certifiants for violations of the *Code*. Unethical or unprofessional conduct by individuals threatens the reputation of the CIMA and CPWA certifications.

Matters as seemingly routine as recertification deserve your full attention. Table 1 summarizes PRB disciplinary actions from 2011 through September 30, 2015.

IMCA's *Code of Professional Responsibility and Disciplinary Rules and Procedures* are available on IMCA's website at <http://www.imca.org/pages/ethics-and-standards>.

If you have questions or concerns, please contact Rob Frankel, IMCA's Standards and Legal Manager, at rfrankel@imca.org. ●