

Disciplinary Proceedings 2008 Report

Disciplinary Process Overview

As a condition of membership in Advocis, every member agrees to abide by the Advocis/CLU Institute Code of Professional Conduct (CPC) and Disciplinary Procedures (DP).

Initiation:

The Advocis/CLU Institute Disciplinary Procedures are initiated by a written Request for Investigation (RFI) or a written complaint in the form of a letter submitted to Advocis National, which contains allegations that an Advocis member has displayed conduct not in keeping with the Advocis/CLU Institute Code of Professional Conduct.

Dispute Resolution:

Upon staff review, Advocis staff may refer the matter to the local chapter for Dispute Resolution in an attempt to help resolve the dispute or conflict between the two parties. Not all disciplinary matters can be resolved through dispute resolution attempts. Where staff determine that the member's alleged conduct is not under jurisdiction of the Code of Professional Conduct, staff may recommend Dispute Resolution attempts. A local volunteer will be appointed to act as a facilitator between the two parties. Facilitators have no bearing on the outcome of a dispute resolution attempt and have no decision-making authority except for stopping the process where the facilitator feels that further attempts would be unsuccessful. The dispute resolution process can be stopped at any time by either party or by the facilitator. Dispute Resolution attempts will not result in the sanctioning of a member. Sanctions are only applied at the recommendation of a Hearing Panel.

Hearing:

An investigation into allegations is conducted in two stages. Advocis National staff conducts the first review. The purpose of this review is to document the case and provide guidance to the investigation process. For those matters either unresolved by Dispute Resolution attempts or those cases referred by staff directly to a hearing, a Hearing Panel will investigate the matter by collecting the facts.

Hearing Panel Findings and Determination:

Upon the conclusion of a hearing, the Hearing Panel evaluates the facts of the matter and then applies the facts to the Advocis/CLU Institute Code of Professional Conduct. A Hearing Panel may recommend disciplinary sanctions.

Application of Sanctions:

The CLU Institute Board of Trustees and the Advocis Board of Directors receive the recommendation of a Hearing Panel for ratification of the application of recommended sanctioning.

Appeal:

An Appeal Process is available at the Hearing Panel stage of the disciplinary process. There is no appeal into the results of dispute resolution attempts or into the determination and recommendations of a Board of Appeal.

Current Disciplinary Investigations: For the period January 1 – December 31, 2008

- 1) A Request For Investigation (RFI) into the conduct of a member was submitted to Advocis National office dated August 28, 2007. The initiators alleged that the Advocis member had failed to act in his client's best interest when the advisor recommended products which were not suited for a short term period of 3 – 5 years, based upon the clients situation. The clients further allege that the Advocis member failed to act with Integrity and Professionalism when the advisor failed to disclose Deferred Sales Charges associated with the implemented product and other relevant information.

In accordance with Rule 2 of the Advocis/CLU Institute Disciplinary Procedures, staff reviewed the evidence and documentation provided to Advocis. Advocis staff determined that the allegations were not frivolous or vexatious in nature and recommended that a Hearing should be held to further investigate the matter.

A hearing was held on December 19, 2007. Upon investigating the matter further throughout the course of the hearing, the hearing panel determined that the member's behavior was outside the Code of Professional Conduct.

The hearing panel found the member's conduct in breach of the following Code of Professional Conduct principles:

- An Advocis member shall act with **integrity**;
- An Advocis member shall act with **competence**;
- An Advocis member shall act **diligently**;
- An Advocis member shall act **in a client's best interests**;
- An Advocis member shall act **in accordance with the spirit and letter of the law**;
- An Advocis member shall act **in a manner which reflects positively upon all other Advocis members**; and
- An Advocis member shall **disclose any conflict of interest in providing products and services**;

The hearing panel further recommended that the following sanctions be implemented:

- Public Censure by means of:

1. Press release in the following publications: FORUM MAGAZINE, Vancouver Sun, the Province, Business in Vancouver and BC Business Magazine.
 2. written notice to the member's MGA
- Education requirement:
 1. Module 9 of the LLQP program;
 2. Canadian Securities Course (CSC)
 - Suspension of Advocis membership for three years;
 - Report of this Hearing Panel's findings and recommendations to the Insurance Council of British Columbia; *and*
 - Hearing costs in the amount of \$2, 000.00 associated with costs incurred by the CLU Institute to conduct a disciplinary investigation.

No Appeal was filed within the 15 day appeal period into the determination and recommendations of the Hearing Panel. The sanctions recommended have been ratified by the Advocis Board of Directors and the CLU Trustees. This matter is now considered closed.

- 2) A Request For Investigation (RFI) into the conduct of a member was submitted to Advocis National office dated April 10, 2008. In their Request for Investigation (RFI) the clients alleged that the Advocis member failed to act in a client's best interest by failing to disclose pertinent information regarding the product which was being recommended. The clients further alleged that the Advocis member provided misleading information at the time of recommendation of the product. Lastly, the clients have stated that the product which was recommended and implemented was outside their objectives and goals.

In accordance with Rule 2 of the Advocis/CLU Institute Disciplinary Procedures, staff reviewed the evidence and documentation provided to Advocis. Advocis staff determined that the allegations were not frivolous or vexatious in nature and recommended that a Hearing should be held to further investigate the matter.

A hearing was held on November 28, 2008. Upon interviewing both parties to this matter and investigating the matter further throughout the course of the hearing, the hearing panel determined that the member's behavior was outside the Code of Professional Conduct.

The hearing panel found the member's conduct in breach of the following Code of Professional Conduct principles:

- An Advocis member shall act with **competence**;
- An Advocis member shall act **in a client's best interests**; and

The hearing panel further recommended that the following sanctions be implemented:

- Private written censure;

- Education requirement:
 1. Re-education of the Income Plan product under the supervision of the advisor's Branch Manager. Written confirmation of the process and steps taken should be provided under the signature of the advisor's Branch Manager.
 2. the following Best Practices element;
 - Advice Delivery
- Report of this Hearing Panel's findings and recommendations to the member's Branch Manager.

No Appeal was filed within the 15 day appeal period into the determination and recommendations of the Hearing Panel.

Disciplinary Statistics

Status of Current Disciplinary Files (January 1, 2008 – December 31, 2008)	
Number of investigations initiated:	1
Number of these deferred to the FPSC:	1
Number of current active investigations in 2008:	2
Number of cases resolved or withdrawn:	0
Number of cases dismissed as unfounded:	0
Number of Dispute Resolution attempts:	0
Number of hearings:	1
Number of Appeals:	0
Sanctions recommended:	Remedial Education: Best Practices Module

Investigations Initiated (January 1, 2008 – December 31, 2008)	
Nature of Allegations	
<p>Suitability of recommendations (2 cases)</p> <p>Diligence in ongoing services (0 cases)</p> <p>Due Diligence in providing services (0 cases)</p> <p>Acting with Integrity in the Advisor – Client relationship (1 case)</p> <p>Providing services competently (2 cases)</p> <p>Providing services in a client’s best interest (2 cases)</p>	
Geographic Location of Active Proceedings for 2008	
Atlantic:	0 cases
Ontario:	1 case
Prairies:	0 cases
Pacific:	1 cases

Possible Breaches of CPC	
Integrity (1 case)	
Diligence (1 case)	
Professionalism (1 case)	
Client's best interest (2 cases)	
Integrity (1 case)	
Competence (2 cases)	
Spirit and letter of the law (1 cases)	
Disclosure of Conflict of Interest (1 case)	
Complaint filed by	
Member of the Public:	2 case
Financial Advisor - Advocis member:	0 cases
Financial Advisor - Non-member:	0 cases

Contact Information:

To obtain information about the Advocis/CLU Institute Code of Professional Conduct and Disciplinary Procedures, contact Sharon Portelli, Registrar and Institute Secretariat, at sportelli@advocis.ca, or ext. 9839.