

January 29, 2018

BY ELECTRONIC MAIL

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Re: American Academy of Actuaries

Dear David:

I am responding to your January 25 letter to Paul Kollmer-Dorsey concerning Karen Smith's demands with respect to meetings of the American Academy of Actuaries (the "Academy") Board of Directors, the Actuarial Standards Board ("ASB"), and the Committee on Qualifications ("CoQ").

The Academy Board will meet on January 30-31 at the Washington Marriott Georgetown, 1221 22nd Street, N.W. The meeting will begin at 1:00 p.m. on January 30 in Salon 3. Ms. Smith is not entitled to an agenda or any of the materials shared with the Board, some of which contain privileged legal advice. None will be provided. For your information, there will be privileged discussions between counsel and the Board at the meeting, and Ms. Smith will not be permitted to observe those discussions. She is not a member of the Board and her presence would potentially vitiate the privilege. Moreover, she has now taken an adversarial position toward the Academy and threatened litigation (and other unspecified action) both concerning attendance at meetings and other, unrelated matters. Ms. Smith will not be permitted to observe discussions on matters before the Board on which she has taken an adversarial legal position.

As for the other issues Ms. Smith raises, let me address them order.

1. *The Academy Bylaws.* The Academy's bylaws permit members to attend "meetings of the Academy." Article I, § 1 (emphasis added). This provision applies to meetings of the Academy as a whole and does not grant members a blanket right to attend meetings of Academy committees or other constituent bodies. Indeed, the bylaw speaks in generalities, coupling the privilege of members to attend meetings of the Academy with the privilege to "vote, hold office, serve as elected Directors, make nominations, serve on committees, and generally exercise the rights of full membership." *Id.* No member has an absolute right to vote on all matters affecting the Academy or an absolute right to serve on a committee or in any other position. Likewise, no member has an absolute right to attend all meetings of Academy committees or other constituent bodies. Ms. Smith's suggestion otherwise misreads the bylaw. In fact, if the bylaw were as broad as Mr. Smith suggests, there would be no need for any of the meeting policies that she invokes.

2. *The ASB Planning Session on February 1-2.* As Ms. Smith has been informed, the ASB will not provide information concerning the time and place of its planning session. Ms. Smith is not entitled to it. ASB planning sessions have never been open to the public for a simple reason: they are not “meetings” of the ASB under the *Actuarial Standards Board Procedures Manual (Procedures Manual)*. No standard-setting activities occur at these planning sessions.

Ms. Smith’s position treats the word “meeting” as having some talismanic significance. It does not, and treating it that way would lead to absurd results. Not every gathering of the ASB members is a “meeting” under Section I.E.2 of the *Procedures Manual*. For example, any social activities among ASB members, such as dinners, could be thought to be a “meeting.” It does not appear that Ms. Smith suggests that she is entitled to be present at dinners or other such gatherings.

Any doubt is eliminated by the *Procedures Manual* itself. The *Procedures Manual* sets forth, and applies to, “the means by which the ASB generally fulfills its assigned charge.” *Procedures Manual* § I.A. That charge is three-fold:

- (a) to direct and manage the development of actuarial standards of practice;
- (b) to expose, promulgate or adopt, and publish standards of practice; and
- (c) to provide continuous review of existing standards of practice and determine whether they need amendment or elimination.

Id. None of those activities occurs at the planning session.

In any event, the ASB is entitled to construe its own *Procedures Manual* reasonably. Throughout its existence, the ASB has consistently treated as “meetings” those gatherings at which it engages in standard-setting activities. Because its planning sessions do not include consideration of any Actuarial Standard of Practice, it has never treated those gatherings as “meetings” open to the public under the *Procedures Manual*. That is why the planning session has not been listed as a “meeting” on the ASB website or in the *Boxscore*.

Finally, as with virtually all of Ms. Smith’s demands, it is hard to fathom what she expects to achieve. The *Procedures Manual* specifically provides for the ASB to meet in executive session at the request of the chair or four members. *Procedures Manual* § 1.E.3. Even accepting Ms. Smith’s overbroad construction of the term “meeting,” the ASB is always free to conduct its planning in an executive session that Ms. Smith may not observe. This issue is a waste of time.

3. *ASB Meetings.* Ms. Smith has requested the date, time, and place of ASB meetings and asserts that none of this information is provided. That is wrong. The November 2017 *Boxscore*, the most recent edition of that publication, lists the dates of scheduled ASB meetings throughout 2018. In addition, the *Boxscore* states that “Unless otherwise noted, meetings take place at the American Academy of Actuaries’ office in Washington, D.C.” The only thing not published is the exact times of those meetings because they have not been set. Ms. Smith is not entitled to copies of the agenda or other meeting materials. They will not be provided.

4. *Committee on Qualifications Calls.* CoQ calls are governed by the Academy’s Board and Committee Meeting’s Policy. That policy permits meetings to be closed “when necessary to

consider confidential information where such consideration is essential to accomplish tasks assigned to the committees or task forces by the Board of Directors, the Executive Committee, or the appropriate Vice President.” *Board and Committees Meeting Policy* ¶ A. The last call concerned confidential information and included the participation of counsel to advise the CoQ on potential legal issues. It was inappropriate for Ms. Smith to participate in that call, particularly given that there was no way for the CoQ reasonably to segregate the consideration of confidential information and the potential need for legal advice on those matters before it. Moreover, Ms. Smith’s presence would have interfered with the CoQ’s process. Asking her to leave the call, which cannot reasonably be assured, for the consideration of confidential information and legal consultation then waiting for her to rejoin only to ask her to leave again would have been highly inefficient.

Why Ms. Smith’s recollection of matters covered during her time on the CoQ has any bearing on the matters considered on the last call is a mystery. What occurred during Ms. Smith’s time on the CoQ has no determinative effect on future meetings and the items that may come before the Committee. The determination to close that call was based on the matters to be discussed at that particular meeting and the needs of the CoQ. Again, Ms. Smith’s position on this matter appears designed to achieve nothing.

6. *ASB Pension Committee Meetings.* I will have to check on future meetings of the ASB Pension Committee.

7. *Conflict of Interest Policy.* Ms. Smith’s statements concerning the Academy’s Conflict of Interest Policy are hard to fathom. Ms. Smith’s claims that she is attending meetings on her own behalf and without any other agenda are belied by her conduct.

First, she published a report on the ASSPA College of Pension Actuaries website opining on and prognosticating about actions that the ASB might take and editorializing on others. It is hard to see what purpose a posting of that type serves other than to influence the development of ASOPs in a way outside the ASB’s normal processes. While Ms. Smith has stated that the ASB should not assume that her desire to attend meetings is motivated by her own financial interests, a posting of this type makes it difficult to conclude otherwise.

Second, she wrote a letter to the Academy raising, frankly, frivolous antitrust assertions about *potential* revisions to ASOP No. 4. There is no draft revision to ASOP No. 4 for consideration. Her claims can only be viewed as an effort to stifle debate and to exercise influence outside the normal notice-and-comment procedure used to vet ASOPs. Moreover, her letter specifically complains that “Actuaries whose practice is primarily private, single-employer pension plans” have “no representation” on the ASB and its Pension Task Force. Not only do these statements misapprehend the function of the ASB and its Pension Task Force – members of the ASB and the Task Force are not “representatives” of any special interests – but it strongly suggests that Ms. Smith’s principal goal is to attempt to influence the ASOPs in a way that advances her own economic interests.

Third, your January 25 letter eliminates any doubt about the matter. Ms. Smith suggests that litigation is possible but also references some unspecified regulatory action. In addition, she demands that the Academy not only preserve information relating to meeting policies but also information concerning Ms. Smith herself “including, but not limited to, discussions in connection with

the 2017 Selection Committee meeting.” Matters concerning the Selection Committee have no bearing on the meeting policy. The only reason for such a request can be that Ms. Smith is pursuing some interest other her professed desire to understand how the ASB and other committees work.

With respect the preservation of information, be assured that the Academy will comply with its legal obligations. The demand that the Academy preserve broad categories of information concerning the Selection Committee, however, has no basis in fact or law. Ms. Smith has not asserted any legal right or other claim that would remotely justify intruding on the Academy in that fashion and imposing such burdens on it. If she has some basis for making that demand – other than a vague threat of litigation on a different and unrelated matter – Ms. Smith should state what it is. It is difficult, however, to think of any non-frivolous factual or legal theory she might assert.

Finally, I must add that this whole matter is baffling. Ms. Smith has no viable legal claim of any sort. She has no suffered no damages. She has no irreparable harm that would warrant injunctive relief. It is hard to see what she thinks that she will achieve other than harassing the Academy and interfering with the deliberative process and orderly functioning of its committees and other bodies. To suggest that she would spend her money jetting around the country attending meetings in which she can only observe and has no right to participate without some other purpose requires a willing suspension of rational thinking. That she would even think about litigating an issue that has no probability of success only reinforces the point. The Academy hopes that Ms. Smith will reconsider her position. If she does not, the Academy will defend itself vigorously.

Yours truly,



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