

# Part V

## Are There Any Answers?

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Discussions of ethics raise many questions. But are there any answers?

Fortunately, yes. In addition to "Are You in Compliance?" and the codes of ethics contained in the Appendix there are some other practical devices to help the ethical agent make the appropriate decisions.

Each of the various professional associations an agent may join have periodic reports on compliance and ethical issues, on their Web sites and in their publications.

For example in response to its own survey on the state of ethics among CLUs The American College published "A Professional Practice Guideline: A Disclosure Checklist for Life Insurance Sales Materials and Presentations". (Remember that false and misleading presentations and illustrations was cited as the leading ethical issue facing the industry in the survey.)

The checklist contains a series of questions the ethical agent can ask in examining a proposal--questions about mortality, interest rate, dividend, surrender and basis assumptions--and compare these to the requirements of the National Association of Insurance Commissioners (NAIC). Of course, the conscientious agent will examine his own proposals and not just those of the competition.

While the checklist doesn't create a matrix in which an agent can "rate" any illustration, it does provide an important tool to help identify spurious projections.

Another tool, less specific, is a series of "ethical guidepost" questions posed by Robbin Derry, a former professor at The American College. Derry intended agents to ask these questions of themselves before deciding how to respond to an ethical issue. The five questions are:

1. Can the action I am about to take stand the light of publicity?
2. To whom do I owe an obligation in this case?
3. What is the obligation that I owe?
4. Who has rights that must be protected?
5. Is this action a breach of my ethical duty? To my company? To the policyowner?

Note that the five questions are all consistent with the Law of Contracts and the various codes of ethics, and also to the spirit of the "Letter from a Birmingham Jail." It is not law that Professor Derry is suggesting we examine; it is truly ethics. Try asking these questions when you read the six ethical problems in the next section.

Finally, there are two legal guidelines the ethical agent can also employ: due diligence and due care.

Due diligence is the securities industry term for a thorough and proper examination of each product and each sales transaction. It is the method by which the conscientious registered representative meets the legal requirements of suitability.

Is it possible that every registered rep can examine every product this way? No, most product investigations must be based upon confidence in your broker-dealer, but your broker-dealer is also bound by the due diligence standard. And, if you have reservations about your broker-dealer, apply Professor Derry's five questions and decide for yourself. You have an ethical and legal responsibility to do so.

Due care is a concept developed by the National Association of Insurance and Financial Advisors to distinguish the legal obligations of an agent from those of a registered rep.

Due care is based upon the premise that financial solvency of insurance companies is the duty of the state insurance commissioner and therefore an agent's only legal obligation is to sell only those policies approved by the commissioner from admitted companies. It is a less stringent standard. Nevertheless, under due care, the conscientious agent should seek out full financial data on all companies he represents if the client makes that request. Again, when in doubt, apply the five questions.

And remember we agents have powerful tool not available to securities representatives: we can refuse to make the sale when we are not comfortable.

A disturbing ethical standard was suggested recently by George Nicholls III, former insurance commissioner of Kentucky and president of the NAIC. A strong advocate for ethical behavior in the industry, Nicholls told a group of agents recently, "I'm afraid the new legal standard for compliance will be the plaintiff's bar. The legal profession is looking upon us and our industry as the new deep pockets."

Few of us want to be sued. Mistakes do happen and E&O and bonds will protect the ethical agent when they do occur. But ethical issues will arise, also. When faced with those, apply the guidelines we've discussed.

For many agents the favorite professional ethical guideline is the CLU Pledge, a restatement of the Golden Rule: "In all my professional relationships, I pledge myself to the following rule of ethical conduct: I shall, in light of all conditions surrounding those I serve, which I shall make every conscientious effort to ascertain and understand, render that service which, in the same circumstances, I would apply to myself."