CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
ACH 31875

This is a summary of a decision issued following the March 2021 hearings of the Disciplinary and Ethics Commission ("Commission") of Certified Financial Planner Board of Standards, Inc. ("CFP Board").

I. Issue Presented

Whether a CFP® professional ("Respondent") violated CFP Board's *Standards of Professional Conduct* when Respondent had two misdemeanor Driving Under the Influence ("DUI") convictions over the course of one year and intentionally failed to report the second DUI to CFP Board.

II. Findings of Fact

A. Background

Respondent has passed the Series 65 – Uniformed Investment Adviser Law Examination in July 2011.

Respondent has been the Principal of AAA Wealth Advisors, Inc. since October 20, 2011. He is also a Principal of BBB Tax & Accounting Services, through which he addresses tax and estate planning issues for his clients.

B. 2017 Misdemeanor DUI Conviction in AAA County, State A

Respondent stated that in April 2017, he attended a barbecue at a friend's home to watch a "March Madness" basketball tournament; while there he had an unspecified number of drinks. He said: "I felt like I was okay when I got in the car."

According to the police report, on April 2, 2017, Respondent was stopped after being observed driving 45 mph while the speed limit was 30 mph. During the stop, the officer detected the odor of alcohol from the Respondent. Respondent consented to the voluntary field sobriety tests and was arrested for DUI after he tested .12 on the Preliminary Breath Test.

On July 28, 2017, Respondent entered a guilty plea to misdemeanor DUI, in violation of Revised Code of State A and was convicted. Respondent was sentenced to serve one day in jail, $940.50 in fines and court fees, and two years of supervised probation that required:

a. No similar law violations;
b. 90 days suspension of driver's license;
c. No driving without a valid license and proof of insurance;
d. No alcohol/drug related infractions;
e. No driving with alcohol level of .08 or above or THC level of 5.0 or above;
f. No refusal of breath / blood test;
g. No driving without ignition interlock device;
h. Follow the treatment recommendations of the Alcohol/Drug assessment; and
i. Comply with the rules and requirements of the ignition interlock device. (*Id*. at 52.)

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C. 2018 Misdemeanor DUI Conviction in BBB County, State B

Respondent stated that in late July 2017, he was on an RV trip in State B hiking and surfing along the coast. Respondent stated during the hearing: "that week when I was camping, I started drinking again." Respondent stated that he stopped at a brewery for "food and a beer." Respondent stated that he "ended up having too much to drink without eating all day." Like he did regarding the first DUI incident, Respondent testified: "I felt okay when I got in the car, which I wasn't."

According to the police report, on July 27, 2017, Respondent was stopped after the police received a call of a driver who was "all over the road." During the hearing, Respondent testified: "the reason I was all over the road was one I was drunk, and two…I could not find the RV site which was about 10 to 15 camper sites and I'd never been there before. And so I was trying to find it in the dark, in the rain, and I could not, I couldn't find it…a contributing factor was I was trying to find the RV…." According to the police report, the officer approached Respondent and noticed the odor of alcohol and Respondent consented to field sobriety tests, which the officer then administered. Following the field sobriety tests, the officer placed Respondent under arrest for DUI. On August 8, 2017, Respondent was charged with one count of DUI, a Class A Misdemeanor, in violation of State B Statute. On March 8, 2018, Respondent entered a guilty plea to one count of DUI in violation of State B Statute, and he was convicted that same day. Respondent was sentenced to: (1) one-year suspension of driver's license; (2) a fine of $2,355.00; and (3) 18 months of Bench probation which included:

a. No controlled substance use or possession without a valid prescription from a licensed physician;
b. No marijuana use, even with a prescription;
c. No possession of any weapons, firearms, or dangerous animals;
d. No driving unless legally licensed and insured;
e. No alcohol possession or use;
f. Victim's Impact Panel; and
g. 80 hours of community service by September 18, 2018.

Respondent stated during the hearing that he completed all of the sentencing requirements: "I went through the nine months of outpatient care, a year of ignition interlock, drug testing weekly, and two years of probation. I met all the requirements…."

D. Respondent's Conduct Since the DUI Convictions

Respondent has undertaken significant behavioral changes since the DUI incidents. He stated during the hearing that "…the second DUI…was really an eye-opener to me…. And when I got pulled over that was pretty shocking to me where I was at in life….I know that I needed to make a change." He also stated: "I have a close family [friend] and their daughter who passed away from a drunk driver and so that's something that's been a factor in my life to motivate me to change my habits and my influence from alcohol."

In response to both of these DUI incidents, Respondent stated that he does not excuse his conduct and claims that he has abstained from alcohol since completing a mandatory outpatient treatment program in early 2018. Respondent stated that the required outpatient treatment program offered different "steps" and he voluntarily chose a higher step with more comprehensive treatment: "[the] nine-month program that I

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electively went into…was with drug testing and nightly meetings [and] was very strict…and I was accountable every day." Respondent stated: "I don't think you really realize you have a problem before you enter [treatment], and you think you can control it…." As part of his program, Respondent stated that he attended Alcoholics Anonymous meetings "six days a week for nine months, including the drug testing for the nine-month period [and he] had to meet with counselors more often." Although Respondent did not remain a member of Alcoholics Anonymous, he stated that he intends to abstain from alcohol.

During the hearing, when asked how long he has been sober, Respondent answered since "December 9th, 2017," which is nearly three- and one-half years as of the date of this order.

E. Respondent Failed to Disclose Misdemeanor Convictions and Made Inaccurate Statements to CFP Board

Respondent did not notify CFP Board of his 2017 nor his 2018 misdemeanor DUI convictions within 30 days, as was then required by Article 13.2 of the *Disciplinary Rules and Procedures*.[1] During the hearing, Respondent stated: "I did not have any idea that this was, you know, from a misdemeanor traffic violation standpoint that I was required prior to July of 2019, that this was something I would have to report within 30 days to the Board for compliance reasons."

Further, on July 30, 2017, just two days after his July 28, 2017 conviction, Respondent finalized a Renewal Application for CFP® certification by completing an Ethics Declaration and answering "No" to Question 2, which asked whether Respondent was "currently charged with or [had ever] been convicted of a misdemeanor (other than minor traffic violations) within the last five years." Respondent also did not answer "Yes" to similar questions in 2019, despite being convicted of another DUI on March 8, 2018. When CFP Board asked Respondent about these statements, both during the investigation and at the hearing, Respondent admitted to failing to disclose these convictions to CFP Board: "I was incorrect in my response and in my 2019 renewal. And I wouldn't do it again, and I know it's incorrect." Respondent added: "I was not in a clear frame of mind when I answered….under the state I was in, I spent half a day in jail, I drove back, you know, 600 miles. I went to a court and I pleaded guilty on conviction, and then I don't know what I read the next day."

Respondent maintained that while his answer on his 2017 Ethics Declaration was a mistake, he did purposefully answer untruthfully in 2019 because, he stated: "being afraid, being sober for a while, I felt like I didn't want to jeopardize that." Respondent also stated: "I did make a mistake and I was dishonest in 2019, but that doesn't make me a dishonest person."

[1] CFP Board's *Disciplinary Rules and Procedures* were replaced by the *Procedural Rules* on June 30, 2020.

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III. Determination About the Alleged Ground for Sanction

To impose a sanction on Respondent, the Commission must find grounds for sanction. The Commission found grounds for sanction under the *Procedural Rules* because it determined that Respondent violated certain provisions of the *Rules of Conduct* as discussed below. The Commission made its decision based on the authority granted to it in Article 12 of the *Procedural Rules*.

First Ground for Sanction

CFP Board's Complaint alleged that there are grounds to sanction Respondent for acts or omissions that violate Rule 6.5 of the *Rules of Conduct,* which provides that a "certificant shall not engage in conduct which reflects adversely on his or her integrity or fitness as a certificant, upon the CFP® marks, or upon the profession."

Conduct that reflects adversely on Respondent's integrity or fitness as a CFP® professional, upon the CFP® marks, or upon the profession includes the commission of acts that violate the criminal codes of State A and State B.

Article 7.1 of the *Procedural Rules* states that a record from any court of criminal jurisdiction indicating that Respondent has been convicted of a crime in that court, or admitted into a program that defers or withholds entry of a judgment of conviction ("Criminal Conviction"), is conclusive proof of the commission of the crime and that Respondent engaged in the criminal conduct that led to the Criminal Conviction. As set forth in Article 7.5 of the *Procedural Rules*, if a Respondent's Criminal Conviction has been conclusively proven, Respondent may not challenge the fact of the Criminal Conviction and may introduce evidence only concerning an appropriate sanction resulting from the Criminal Conviction.

The AAA District Court is a State A court of criminal jurisdiction. The 2017 Judgment and Sentence document is a record indicating that Respondent has been convicted of a crime. Therefore, this record conclusively establishes the commission of the underlying crime and that Respondent engaged in the criminal conduct for purposes of this disciplinary proceeding.

The BBB Circuit Court is a State B court of criminal jurisdiction. The 2018 Judgment document is a record indicating that Respondent has been convicted of a crime. Therefore, this record conclusively establishes the commission of the underlying crime and that that Respondent engaged in the criminal conduct for purposes of this disciplinary proceeding.

Respondent has two misdemeanor convictions for DUI. Therefore, there are grounds to sanction Respondent for violation of Rules 6.5 of the *Rules of Conduct.*

Second Ground for Sanction

CFP Board's Complaint alleged that there are grounds to sanction Respondent for acts or omissions that violate Rule 6.2 of the *Rules of Conduct,* which provides that a CFP® professional shall meet all CFP Board requirements to retain the right to use the CFP® marks.

One of the requirements to retain the right to use the CFP® marks is the duty to report to CFP Board when certain events occur. Specifically, pursuant to Article 13.2 of the *Disciplinary Rules and Procedures* in place at the time of Respondent's 2017 and 2018 DUI convictions, Respondent had a duty to notify CFP

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Board in writing within 30 calendar days of any criminal conviction, other than minor traffic violations. On July 28, 2017, Respondent entered a guilty plea to and was convicted of DUI, in violation of State A Statute. Respondent did not make a disclosure to CFP Board of this criminal conviction within 30 calendar days.

On March 8, 2018, Respondent entered a guilty plea to DUI, in violation of State B Statute. The court issued its conviction of Respondent on the same day. Therefore, on March 8, 2018, Respondent was notified that he was the subject of a criminal conviction. Respondent did not make a disclosure to CFP Board of this criminal conviction within 30 calendar days.

Respondent's "No" answer in his 2017 Ethics Declaration was inaccurate as Respondent pleaded guilty to and had been convicted of misdemeanor DUI on July 28, 2017, two days before he completed his 2017 Ethics Declaration. Respondent's statement facilitated the renewal of his CFP® certification.

Respondent's "No" answer in his 2019 Ethics Declaration was also inaccurate as Respondent pleaded guilty to and had been convicted of misdemeanor DUI on March 8, 2018. Respondent's statement facilitated the renewal of his CFP® certification.

Respondent failed to meet all CFP Board requirements to retain the right to use the CFP® marks when he failed to timely disclose both his 2017 misdemeanor DUI conviction and 2018 misdemeanor DUI conviction within 30 days of the convictions. Respondent further failed to meet his requirements when he made inaccurate statements on his 2017 and 2019 Ethics Declarations claiming to have never been convicted of a misdemeanor. Therefore, there are grounds to sanction Respondent for a violation of Rule 6.2 of the *Rules of Conduct*.

IV. Discussion of the Commission's Decision

Pursuant to Article 12.3 of the *Procedural Rules*, the Commission must impose a sanction if it finds a violation that warrants a sanction. The Commission has discretion to impose any sanction under Article 11.1 of the *Procedural Rules.*

After careful consideration of the evidence in Respondent's matter and the violations found, the Commission determined to issue Respondent a **Private Censure**.

CFP Board has issued non-binding *Sanction Guidelines* that are intended to serve as guidance for determining the appropriate sanction. In arriving at its decision, the Commission considered applicability of the following *Sanction Guidelines*:

1. Conduct 14(a): Failure to Disclose to CFP Board (Private Censure); and
2. Conduct 24: Misdemeanor Criminal Convictions (Private Censure).

The Commission noted that the Policy Notes to Conduct 14 state: The sanction imposed may be higher than Private Censure if it is determined that the Respondent's failure to disclose was intentional.

The Commission also noted that the Policy Notes to Conduct 24 state: The following should be considered additional aggravating or mitigating factors in determining the appropriate sanction: (1) Were there multiple charges relating to the same incident? (2) What was the degree of the misdemeanor offense? (3) Did the offense involve criminal sexual activity? (4) Has the certificant or registrant been convicted of

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other misdemeanor crimes not identified as serious crimes in the Disciplinary Rules (see Article 12.5) (5) Did the number of misdemeanor crimes reveal that there was a pattern of misconduct? Over what period of time? How long ago?

The Commission then consulted Anonymous Case Histories ("ACHs") to determine if any ACHs contained precedent that warranted a deviation from the *Sanction Guidelines*, including ACH 29915, ACH 30086 and ACH 29571.

The Commission found ACH 29915 and ACH 30086 to be most similar to the instant matter. Both of these ACHs involved multiple misdemeanor DWI/DUI convictions, although in neither of those cases did the Commission find that the respondents failed to disclose their conviction(s) within 30 calendar days or that the CFP® professionals in those cases made misstatements to CFP Board. The CFP® professionals in those cases were issued Private Censures.

In ACH 29915, a CFP® professional violated Rule 6.5 of the *Rules of Conduct* when he was convicted of misdemeanor DWI on two separate occasions. The first conviction was prior to becoming certified as a CFP® professional in 2005, when he was convicted of misdemeanor DWI and sentenced to three years of probation. Then, in 2015, while holding the CFP® certification, the CFP® professional drank a few beers at a charity benefit concert before driving home. When he reached his house, an officer tapped on his window, indicated the police had received a report of an erratically driven car, and conducted both field sobriety and Breathalyzer tests. The CFP® professional pleaded guilty to misdemeanor DWI. The CFP® professional was sentenced to one year of incarceration with work release. The CFP® professional also completed a 28-day DWI treatment program. In this matter, the Commission issued a Private Censure.

In ACH 30086, a CFP® professional violated Rule 6.5 of the *Rules of Conduct* when he was arrested for and convicted of DWI on two occasions. In 2012, the CFP® professional was convicted by a jury and sentenced to 180 days in jail followed by a one-year probation and $972 in fines and court costs. In 2015, the CFP® professional was arrested again and pleaded guilty to DWI. The CFP® professional was sentenced to a suspended sentence of 180 days in jail, 18 months of probation, and a $1000 fine. The Commission issued a Private Censure and four additional remedial education hours in the area of Professional Conduct and Regulation.

In ACH 29571, the CFP® professional violated Rule 6.5 of the *Rules of Conduct* when she was convicted of misdemeanor DWI on two separate occasions. In 2013, the CFP® professional was pulled over after leaving a bar and charged with a DWI with a BAC of .15 or higher. The CFP® professional was sentenced to 22 months of probation and she entered rehab, through which she was able to stay sober for approximately two years after the accident. Then, in 2015, the CFP® professional had been drinking and left her house after a fight with her husband. She proceeded to an AA meeting but along the way stopped to purchase a bottle of wine. As she was driving, the CFP® professional struck a parked vehicle and continued to drive away without stopping. At a cul-de-sac, the CFP® professional lost control of her vehicle and came to a stop on the sidewalk. Upon arrest, the CFP® professional was charged with Felony Hit and Run, Misdemeanor Hit and Run, and Misdemeanor DWI. The CFP® professional ultimately pleaded 'no contest' to misdemeanor DWI and misdemeanor Failure to Stop at the Scene of an Accident. The Commission made no findings indicating that the CFP® professional failed to disclose the conviction within 30 calendar days or that the CFP® professional made a misstatement to CFP Board, but the Commission issued a Public Censure in that case, presumably at least in part due to the aggravated nature of the criminal violation which included property damage and a misdemeanor failure to stop charge.

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The Commission then reviewed the aggravating and mitigating factors in this case to determine whether there were any material factors relevant to this matter, and, if so, what weight those factors may have in its decision.

The Commission cited in mitigation that:

1. Respondent has no previous disciplinary history with CFP Board;
2. Respondent's misdemeanor convictions did not cause harm to his clients; and
3. Respondent had two misdemeanor DUI convictions over the course of one year but has remained sober for approximately three and a half years demonstrating the likelihood that these incidents were isolated, and Respondent has taken steps to prevent future recidivism.

In aggravation, the Commission considered that:

1. Respondent's misstatement on his 2019 Ethics Declaration was intentional.

In this case, the Commission weighed heavily the facts that the two DUIs convictions occurred in a very short period of time and that Respondent has remained sober for approximately three and a half years since the last incident. The Commission also recognized that Respondent provided inaccurate answers on his Ethics Declaration but determined not to deviate upward to a Public Censure because the mitigating factors outweighed the need to for a public sanction in this circumstance. For these reasons, the Commission determined to issue a **Private Censure**.

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