

THE DISCIPLINARY AND ETHICS COMMISSION

IN THE MATTER OF



MICHAEL M. HOFFMAN, CFP[®],

Respondent.

CFP Board Case No. 2024-65535

December 20, 2024

ORDER

Certified Financial Planner Board of Standards, Inc. (“CFP Board”) granted Respondent the CFP Board financial planning certification and right to use the CFP Board certification marks, including the CFP[®], CERTIFIED FINANCIAL PLANNER[®],  and  certification marks (“CFP[®] marks”), on June 9, 2010. He has been certified since that date. (DEC Book at 12.)¹

I. PROCEDURAL HISTORY

On June 10, 2024, following an investigation, Enforcement Counsel filed a Complaint with CFP Board’s Disciplinary and Ethics Commission (“Commission” or “DEC”) alleging that there are grounds to sanction Respondent for violating Standard E.2.a. of CFP Board’s *Code of Ethics and Standards of Conduct* (“*Code and Standards*”), which states that a CFP[®] professional may not engage in conduct that reflects adversely on his or her integrity or fitness as a CFP[®] professional, upon the CFP[®] marks, or upon the profession. The Complaint cites a March 1, 2024 Pretrial Diversion Agreement Respondent entered in Indiana state court concerning charges of misdemeanor Battery under Indiana Code Section 35-42-2-1(c)(1). (*Id.* at 5-104.)

Respondent filed an Answer in which he admitted certain allegations in the Complaint—including having entered the Pretrial Diversion Agreement—and offered “clarifications” in response others. (*Id.* at 105-06.)

On October 16, 2024, a Hearing Panel formed under Article 10 of the *Procedural Rules* convened at CFP Board’s headquarters in Washington, DC to hear testimony and consider documents and information relevant to the Complaint. (Transcript of Hearing of Michael M. Hoffman, CFP[®], October 16, 2024 (“Tr.”) at 1.) Enforcement Counsel appeared by video for CFP Board, DEC Counsel appeared for the Commission and for the Hearing Panel, and Respondent appeared by video on his own behalf.

The Commission has considered the Hearing Panel’s recommendation and issues this final Order.

¹ The DEC Book and any exhibits to this Order will not be published under Article 17.7 of the *Procedural Rules*.

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II. FINDINGS OF FACT

A. Background

Respondent has passed the (a) Series 7 – General Securities Representative Examination (1992); (b) Series 63 – Uniform Securities Agent State Law Examination (1992); (c) Series 65 – Uniform Investment Adviser Law Examination (2004); and (d) SIE – Securities Industry Essentials Examination (2018). (*Id.* at 20.)

Respondent has been a financial advisor since 2009. (*Id.* at 30.) He has been registered with a large brokerage firm since 2013, and with the firm’s affiliate as an investment advisor representative since 2015. (*Id.* at 16.)

B. Respondent’s Pretrial Diversion Agreement

On November 21, 2023, Respondent was charged in Indiana Superior Court (County of Hamilton) with one count of Battery on a Person Less than 14 Years Old, a Level 6 Felony. The initial charging papers allege that Respondent “knowingly or intentionally touch[ed]” a person under the age of fourteen “in a rude, insolent, or angry manner by grabbing him by his right ear.” (*Id.* at 49.)

According to a narrative attached to the police incident report, a woman called 911 on November 12, 2023 to report that Respondent had grabbed her eleven year old son by the ear at the library and “said he would stab him with a pen.” (*Id.* at 47-48.) A surveillance camera caught the incident on a video recording that was reviewed by the prosecution and by Respondent’s counsel in the criminal matter. (*Id.* at 50, Tr. at 70, 74.)

On February 26, 2024, the court granted the prosecuting attorney’s motion to downgrade the charge against Respondent to a Class B Misdemeanor, thus allowing him to enter a pretrial diversion program. (*Id.* at 51-54.)

Under the Pretrial Diversion Agreement Respondent entered on March 1, 2024, the State of Indiana agreed to withhold prosecution of the existing charges against Respondent, and to dismiss them after one year upon his successful completion of obligations set out in the terms of the agreement. (*Id.* at 56-62.) Those terms include Respondent’s obligation to:

- perform 30 hours of community service;
- undergo anger control evaluation and complete the recommended treatment within 180 days;
- work faithfully at a suitable employment or faithfully pursue a course of study or career and technical education that will equip the person for suitable employment;
- refrain from harassing, intimidating, threatening, or having any direct or indirect contact with the victim;

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- report to the Hamilton County Prosecuting Attorney's Office at reasonable times as directed by the Diversion Coordinator;
- not use or possess any illicit drugs; and
- report within 72 hours, when so directed, to an approved drug screening lab or other approved facility for a certified breath test, chemical test, or urine screen.

(*Id.*) At the time of the hearing, Respondent had met each of these obligations. (Tr. at 67.)

C. Evidence Presented at the Hearing

Respondent acknowledged in his Answer and at the hearing that his conduct on November 12, 2023 was wrong. (DEC Book at 106; Tr. at 18, 40.) He testified that after attending church with his family that Sunday, he went to the library to play on-line chess while his sons rehearsed for a Christmas musical and his sick wife rested at home. (Tr. at 17). He described two boys loudly entering the quiet section of library and his informing them that they were in a “quiet zone.” (*Id.* at 35; DEC Book at 105.) Respondent said the boys “continued to get louder and louder,” and that the younger one asked if Respondent knew there was a police officer assigned to the library. Respondent described replying “let’s go out and talk to him,” at which point the boy “shot back with laughing and looking at his brother that, you know, I don’t need to listen to you.” (Tr. at 36.) Respondent then testified:

For whatever crazy reason, and this is agreeing with [Enforcement Counsel], my left hand went to the top of the chair, my right hand, thumb out and the, I guess, what, trigger finger on the youngest child’s right ear. There was no grabbing, there was no fingernails. There was no tugging. There was no purpose for it other than maybe that chair was swinging over there as he kept looking back over his right shoulder to give me some funny comments. (*Id.*)

Respondent does not know what the boys told their mother about the incident, or what she told the 911 operator, but he recalled the two boys afterwards getting “thrown out of the library still laughing and having a good time.” (Tr. at 47.) He recalled that he and the boy’s mother spoke with the police later that day, and that she told the police she did not want to press charges. (Tr. at 36, 71-72; DEC Book at 105). He later learned that the boy’s father, who was not present at time, wanted charges brought. (DEC Book at 105.)

Respondent emphasized repeatedly that, while he did indeed touch the boy’s earlobe, he did so non-violently. (*See, e.g.*, Tr. at 37 (“[T]here was never a grabbing, anger, attacking, pulling, ripping. There was a very light unnecessary touching of somebody else’s child.... [T]here was never a[n] attack. There was never an aggressive behavior.”); 38 (“[I]t was approximately three to five seconds with no fingernails or anything else being embedded or and kind of ripping”); DEC Book at 105.) Nevertheless, he had described to the police “a physical touch of a minor by an adult,” and charges were brought. (Tr. at 37.) Respondent admitted that it was “not my finest hour.” (*Id.* at 39.)

The Commission found that the evidence of what occurred on November 12, 2023 reflects an isolated event, unlikely to happen again, that began with two boys entering the library loudly,

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unsupervised and rambunctious, and who became argumentative when asked to quiet down. Respondent wrongly touched the younger boy's earlobe in the exchange, but there is no evidence the boy was physically harmed in any way. Still, Respondent conceded that this touch was not "by accident" or by mistakenly brushing by the boy's earlobe, and that it was inappropriate. (Tr. at 76.)

Respondent is embarrassed by his behavior. He described the many other paths he could—and should—have taken in his role as "the adult" in these circumstances. (Tr. at 58-63.) The Commission credits his testimony that, overwhelmed by the criminal situation in which he found himself, he resolved the criminal matter as he did on the advice of his attorney.

The Commission saw no evidence of past legal issues involving Respondent.

III. DISCUSSION

To impose a sanction on Respondent, the Commission must find grounds for sanction.

Grounds for Sanction

Standard E.2.a. of the *Code and Standards* states that a CFP® professional may not engage in conduct that reflects adversely on his or her integrity or fitness as a CFP® professional, upon the CFP® marks, or upon the profession. This conduct includes, but is not limited to, conduct that results in a Felony or Relevant Misdemeanor conviction, or admission into a program that defers or withholds the entry of a judgment of conviction for a Felony or Relevant Misdemeanor.

Standard E.1.b. defines Relevant Misdemeanor as a criminal offense, that is not a Felony, for conduct involving fraud, theft, misrepresentation, other dishonest conduct, crimes of moral turpitude, violence, or a second (or more) alcohol and/or drug-related offense.

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.

The Superior Court of the State of Indiana in Hamilton County is a court of criminal jurisdiction. Respondent's March 1, 2024 Pretrial Diversion Agreement is a record from the court indicating that Respondent has entered into a program that defers or withholds the entry of a judgment of conviction for a Relevant Misdemeanor. This record conclusively establishes the commission of the underlying crime and that Respondent engaged in the criminal conduct for purposes of this disciplinary proceeding.

Respondent was a CFP® professional at all times relevant to this violation.

For the above reasons, there are grounds to sanction Respondent for a violation of Standard E.2.a. of the *Code and Standards*.

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IV. THE COMMISSION'S DECISION

Under Article 12.3 of CFP Board's *Procedural Rules*, the Commission's final order must impose a sanction if the Commission finds a violation that warrants a sanction. The Commission has discretion to order a sanction among the applicable sanctions set forth in Article 11.1.

CFP Board issued its non-binding *Sanction Guidelines* to serve as guidance for determining appropriate sanctions. The Commission cites the following conduct (and recommended sanction) from the *Sanction Guidelines*.

Conduct 10: Conviction with the Last 10 Years of a Felony or Any Relevant Misdemeanor Involving Probation Only (Public Censure)

The Commission has considered whether there are any material aggravating or mitigating factors relevant to the facts and circumstances of this case, and what weight those factors should have in its decision.

The Commission finds the alleged victim's age (11 years old) to be an aggravating factor.

The Commission finds the following mitigating factors:

1. There was no client harm.
2. Respondent has no prior professional or legal disciplinary history.

The Commission has also consulted several Case Histories,² including ones involving criminal battery or assault. In ACH28730, the Commission suspended a CFP® professional who pleaded to two counts of aggravated battery for pushing one minor and grabbing another's sweatshirt in a public restroom. While there are similarities with Respondent's case, the conduct in ACH28730 was far more egregious, involving *two* minors and additional (serious) charges later dismissed.

In other cases involving physical confrontations, CFP® professionals have received both public and private censures. *See, e.g.,* ACH 44145 (public censure where CFP® professional entered program deferring an entry of judgment for misdemeanor battery involving family member); ACH42745 (private censure where CFP® professional pleaded "no contest" to charge of misdemeanor corporal injury to a spouse; ACH22131(private censure where CFP® professional pleaded "no contest" to charge of misdemeanor simple assault).

² Case Histories (referred to as "CHs" or "ACHs") are available on CFP Board's website at <https://www.cfp.net/ethics/enforcement/case-history>. Case Histories reviewed include: ACH28730, ACH31665, ACH42436, ACH42745, ACH44145, and ACH22131

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After considering the violation found, the aggravating and mitigating factors, and relevant Case Histories, the Commission finds no compelling reason to depart from the baseline sanction proposed as guidance in the *Sanction Guidelines* and issues this **Order of Public Censure**.

Ordered by:

The Disciplinary and Ethics Commission, CFP Board
December 20, 2024.