

## ARTICLE 5: PETITIONS FOR FITNESS

CFP Board has adopted *Fitness Standards* that provide the standards against which CFP Board will evaluate the ethical fitness of Respondents who are candidates for CFP® certification and former CFP® professionals seeking reinstatement whose certification CFP Board has not suspended or temporarily barred.

### 5.1 Eligibility to File Petition for Fitness

- a. If a Respondent has engaged in conduct that presents an Absolute Bar as set forth in the *Fitness Standards*, then Respondent may not file a Petition for Fitness and may not obtain CFP® certification.
- b. If a Respondent has engaged in conduct that renders a Respondent Currently Ineligible for CFP® certification as set forth in the *Fitness Standards*, then Respondent may not file a Petition for Fitness.
- c. If a Respondent has engaged in conduct that requires Respondent to file a Petition for Fitness as set forth in the *Fitness Standards*, then Respondent must (i) sign the *Pathway to CFP® Certification Agreement*, and (b) file a Petition for Fitness in which Respondent requests an order finding ethical fitness for CFP® certification.
- d. Enforcement Counsel must deliver to a Respondent who is required to file a Petition for Fitness, and contemporaneously file with the DEC, a Fitness Notice. The Fitness Notice must include numbered paragraphs setting forth with factual detail the reasons the *Fitness Standards* require Respondent to file a Petition for Fitness. Enforcement Counsel will use reasonable efforts to redact any exhibits to the Fitness Notice pursuant to Article 6.1. Enforcement Counsel may amend the Fitness Notice at any time.
- e. A former CFP® professional seeking reinstatement whose certification has been suspended or temporarily barred must file a Petition for Reinstatement Eligibility and is not eligible to file a Petition for Fitness.

### 5.2 Petition for Fitness

- a. Respondent must deliver to Enforcement Counsel and contemporaneously file with the DEC a written Petition within 30 calendar days of the delivery of the Fitness Notice, unless Enforcement Counsel delivers an Amended Fitness Notice. Respondent will use reasonable efforts to redact any exhibits to the Petition pursuant to Article 6.1. Respondent must deliver and contemporaneously file with the DEC a written Amended Petition for Fitness no later than 14 calendar days from the delivery of the Amended Fitness Notice or the date a Petition for Fitness was originally due. A Petition for Fitness must include:
  1. A detailed response to each numbered paragraph of the Fitness Notice that admits or denies each statement, or states that Respondent is unable to admit or deny due to lack of knowledge;
  2. Evidence of Respondent's fitness for CFP® certification in accordance with the *Fitness Standards*; and
  3. A statement indicating whether Respondent requests a hearing and the amount of hearing time Respondent requests for the hearing. If Respondent fails to provide the hearing time statement, Respondent waives the right to contest the amount of time allotted for the hearing.
- b. After Respondent files a Petition, DEC Counsel must deliver to the parties an initial scheduling order with case deadlines and events, including a range of projected hearing or review dates. The final hearing date will be set forth in a Notice of Hearing issued pursuant to these *Procedural Rules*.
- c. No later than 14 calendar days after Respondent files a Petition for Fitness, Enforcement Counsel must file with DEC Counsel a statement indicating the amount of hearing time Enforcement Counsel requests

to respond to the Petition. If Enforcement Counsel fails to provide the hearing time statement, then Enforcement Counsel waives the right to contest the amount of time allotted for the hearing.

### **5.3 Request for Extension of Time**

Respondent may request an extension of time to file the Petition for Fitness. Enforcement Counsel may grant the request for good cause shown and deliver to Respondent and file with DEC Counsel a notice of the extended deadline to file the Petition. If Enforcement Counsel denies the request, then Respondent may file with DEC Counsel a Motion for Extension of Time to File a Petition for Fitness. DEC Counsel must issue an order resolving the Motion for Extension of Time to File a Petition for Fitness.

### **5.4 Failure to File Petition for Fitness**

If Respondent fails to file Petition for Fitness in accordance with Article 5.2, then Enforcement Counsel must dismiss the investigation as not warranting further action and file with the DEC a Withdrawal of the Fitness Notice. CFP Board will deem Respondent's application for CFP® certification to be withdrawn, with the result that Respondent will need to file a new application if Respondent intends to pursue CFP® certification.

### **5.5 Petitions Involving Single Bankruptcy**

If (a) Respondent or an entity over which Respondent was a Control Person (as defined in the *Code and Standards*) engaged in conduct that resulted in a single personal bankruptcy or business bankruptcy filing or adjudication (each a "Bankruptcy Matter"), (b) Respondent has no other Bankruptcy Matter or other conduct that requires Respondent to file a Petition for Fitness, and (c) Respondent provides information sufficient for Enforcement Counsel to find (and Enforcement Counsel finds) no probable cause to believe that Respondent's current financial circumstances demonstrate an inability to manage responsibly Respondent's or Respondent's business's financial affairs, then, with Respondent's consent, Enforcement Counsel may deliver to Respondent, and contemporaneously file with DEC Counsel:

- i. A Joint Motion for Order Granting Petition with Caution if (1) Respondent's Bankruptcy Matter was filed 10 or more years prior to Respondent's application and Respondent was not providing Professional Services (as defined in the *Code and Standards*) at the time of the Bankruptcy Matter, or (2) Respondent's Bankruptcy Matter was filed 15 or more years prior to Respondent's application.
- ii. A Joint Motion for Order Granting Petition with Public Notice if (1) Respondent's Bankruptcy Matter was filed less than 10 years prior to Respondent's application, or (2) Respondent's Bankruptcy Matter was filed more than 10 and less than 15 years prior to Respondent's application and Respondent was providing Professional Services (as defined in the *Code and Standards*) at the time of the Bankruptcy Matter.

In the case of (i) or (ii) above, DEC Counsel must grant the Motion and issue the Order, the DEC must not hold a hearing, and CFP Board must not charge Respondent the adjudication fee. CFP Board will publish an Order Granting Petition with a Public Notice in accordance with Article 17.7. The Order Granting Petition with Caution and the Order Granting Petition with a Public Notice are not subject to appeal under Article 15. Enforcement Counsel's finding of no probable cause under Rule 5.5(c) is not admissible in any subsequent proceeding.

### **5.6 Petitions Involving Certain Relevant Misdemeanor Convictions**

If Respondent has a Relevant Misdemeanor Conviction involving a second (or more) alcohol and/or drug-related offense and no other conduct that requires Respondent to file a Petition for Fitness, then with Respondent's consent, Enforcement Counsel may deliver to Respondent, and contemporaneously file with DEC Counsel, a Joint Motion for Order Granting Petition with Caution if the most recent alcohol and/or drug-related offense was 7 or more years prior to Respondent's application. DEC Counsel must grant the Motion and issue the Order, the

DEC must not hold a hearing, and CFP Board must not charge Respondent the adjudication fee. The Order Granting Petition with Caution is not subject to appeal under Article 15.