CFP BOARD

SANCTION GUIDELINES

PROPOSED CRIMINAL EXPUNGEMENT REVISIONS

A. GENERAL FACTORS

13. Other Relevant Assessments of this Misconduct

The Commission may consider as an aggravating or mitigating factor other relevant assessments of the same misconduct the Commission is evaluating, including by a criminal authority, regulator, or Respondent's Firm. As applicable, the Commission should consider (a) the relative significance of the crime, ~~and~~ the severity of the sentence, and whether the conviction was Expunged, (b) the severity of the Professional Discipline imposed upon Respondent, or (c) the severity of any action taken by Respondent's Firm, including any Termination from employment or association. The Commission should evaluate the assessment administered by the relevant entity to determine the appropriate CFP Board sanction, as criminal or regulatory language may not equate to CFP Board terminology. In deciding whether to mitigate, the Commission should weigh an expungement more heavily if the Criminal Conviction was Expunged because of positive findings about the Respondent's rehabilitation, moral character, or risk of recidivism, as the expungement may be non-discretionary or automatically occur after the passage of time. This factor concerns assessments by other organizations of the specific act of misconduct before the Board. It thus is distinct from the general factors of Prior Sanction, Prior Caution or Warning, Pattern of Similar Misconduct or Ongoing Misconduct, or Multiple Distinct Acts of Misconduct.

15. Pattern of Similar Misconduct or Ongoing Misconduct

The Commission may consider as an aggravating factor Respondent's pattern of similar or ongoing misconduct. The Commission should consider the nature, severity, duration, and frequency of the misconduct. A pattern may be established through evidence of a prior Criminal Conviction~~,~~ (including a conviction that was Expunged), Professional Discipline, or Civil Finding (as defined in the *Procedural Rules*) (referred to in the *Sanction Guidelines* as a "prior sanction"), or other evidence of misconduct. A prior sanction is not required to establish a pattern. A pattern may be established with misconduct involving one or multiple individuals. The more clients involved in a pattern, the more heavily the Commission should weigh this factor. The Commission shall not consider the absence of a pattern of similar or ongoing misconduct a mitigating factor, other than as set forth in the Isolated Incident Under Particular Circumstances general factor.

B. SANCTION GUIDELINES, SPECIFIC FACTORS, AND POLICY NOTES

Conduct / Underlying Rule Violation	Sanction Guideline	Specific Aggravating and Mitigating Factors	Policy Notes
Criminal Conviction for a Felony That Qualifies as an Absolute Bar Under the Fitness Standards (Standard E.2.a)	Revocation	**Specific Aggravating Factors** None **Specific Mitigating Factors** None	~~1. This conduct category applies if Respondent committed a felony that qualifies as an absolute bar under the *Fitness Standards*.~~ ~~2.~~1. The Commission shall not apply any aggravating or mitigating factors to this conduct category.
Criminal Conviction for (a) a Felony that Does Not Qualify as an Absolute Bar under the Fitness Standards or (b) a Relevant Misdemeanor (Standard E.2.a)	Suspension of at Least a Year and a Day, with potential aggravation to a higher sanction or mitigation to a lower sanction based upon application of the aggravating and mitigating factors	**Specific Aggravating Factors** 1. Respondent failed to complete all requirements of sentencing or probation. 2. The Criminal ~~c~~Conviction(s) involved Respondent's Professional Services. 3. Respondent has a criminal or disciplinary record or engaged in a Pattern of Similar Misconduct. **Specific Mitigating Factors** 1. Where applicable, Respondent voluntarily obtained professional help for addiction or any emotional or mental issues that contributed to the Criminal ~~c~~Conviction(s) that was not a condition of probation or otherwise required by a court or regulatory authority. 2. Where applicable, there were no more than two drug or alcohol-related offenses, with a significant gap in time between the most recent and the second most recent offenses. 3. The crime was the result of youthful indiscretion.	1. The DEC shall not consider whether the law that Respondent violated was different in another jurisdiction. 2. A Criminal Conviction includes a conviction that was Expunged.

C. GLOSSARY

~~**Conviction:** A final judgment resulting from a guilty verdict, guilty plea, or nolo contendere (no contest) plea, or admission into a program that defers or with holds the entry of a judgment of conviction.~~

Criminal Conviction: As defined in Article 7.1 of the *Procedural Rules*.

Expunged: As defined in Article 7.1 of the *Procedural Rules*.

CFP BOARD

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