

**CFP BOARD**

**PROPOSED  
PROCEDURAL  
RULES**

PUBLIC RELEASE DATE: NOVEMBER 27, 2018

# PROCEDURAL RULES

Effective October 1, 2019

## PREAMBLE

CFP Board is a non-profit organization that has established high standards of competency and ethics for personal financial planners. CFP Board enforces its standards through a transparent, peer-review process, set forth in these *Procedural Rules*, that is credible to the public and fair to those whose conduct CFP Board is evaluating. The process includes written notice of the allegations and potential grounds for discipline, an opportunity to present documents, witnesses, and argument at an evidentiary hearing, and a written order that sets forth the basis for the decision that may be appealed to a committee of the Board of Directors. The parties to a proceeding also have the right to be represented by counsel of their choice.

CFP Board applies these *Procedural Rules* to any person who has agreed to CFP Board's *Terms and Conditions of Certification and Trademark License* or *CFP® Certification Candidate Agreement*. CFP Board refers to such an individual as "Respondent" or, in the event of an appeal, as either "Appellant" or "Appellee," depending on who initiates the appeal.

CFP Board Counsel has the authority to investigate and issue a Complaint against a Respondent for alleged violations of (a) the *Code of Ethics and Standards of Conduct* or, where applicable, its predecessors ("*Code and Standards*"), or (b) the *CFP® Certification Candidate Agreement*. CFP Board's Disciplinary and Ethics Commission (the "DEC"), which is composed primarily of CFP® professionals, has the authority to enter a final order that finds facts, determines whether a violation has occurred and, where appropriate, imposes discipline. Such discipline may include, but is not limited to, a private censure, a public censure, a suspension or revocation of a CFP® professional's Certification and License to use the CFP® marks, or a temporary or permanent bar on Respondent's ability to obtain CFP® certification. In the event there is public discipline, CFP Board will publish the decision in a press release and on CFP Board's website.

In certain circumstances, a Respondent who is subject to an order of suspension may file a Petition for Reinstatement, and a Respondent who is required to demonstrate fitness for CFP® Certification may file a Petition for Fitness Determination. In those circumstances, the DEC has the authority to enter a final order that resolves the Petition.

Except where these *Procedural Rules* otherwise specify, CFP Board Counsel or Respondent may appeal a final order to CFP Board's Appeals Committee of the Board of Directors ("Appeals Committee"). The Appeals Committee is composed primarily of CFP® professionals and has the authority to issue CFP Board's final decision.

## ARTICLE 1: INVESTIGATION

### 1.1 COMMENCEMENT OF INVESTIGATION

CFP Board has the authority to investigate a Respondent. CFP Board Counsel may deliver to Respondent a written Notice of Investigation stating that Respondent is under investigation, identifying the general nature of the allegations, and providing Respondent the email address and mailing address to use for delivery and filing in accordance with Article 16. Respondent must deliver to CFP Board a document acknowledging receipt of the Notice of Investigation within 30 calendar days from delivery of the Notice of Investigation. If Respondent fails to deliver timely an acknowledgement of receipt, CFP Board Counsel must re-deliver the Notice of Investigation via certified mail or overnight mail using the mailing address Respondent provided to CFP Board, or such other address that CFP Board reasonably believes to be Respondent's current mailing address. If Respondent fails to deliver the acknowledgement of receipt within 20 calendar days, Respondent is in default and CFP Board may take disciplinary action in accordance with Article 4.1.

### 1.2 PROCEDURES FOR INVESTIGATION

- a. **Requests for Documents and Information.** CFP Board Counsel may deliver to Respondent requests relating to or arising out of the allegations raised in the Notice of Investigation or investigation that ask Respondent to produce documents ("Requests for Production"), provide answers to questions ("Requests for Information"), and/or either admit or deny the truth of matters asserted by CFP Board ("Requests for Admission"). CFP Board Counsel may include Requests for Production, Requests for Information, and Requests for Admission in the Notice of Investigation or send them later.

- b. **Response to Requests for Production and Requests for Information.** Unless the request specifies a different timeframe, Respondent must deliver responsive documents or information within 30 calendar days from delivery of an initial Request for Production or initial Request for Information, and within 14 calendar days from delivery of a subsequent Request for Production or subsequent Request for Information. If CFP Board receives no response or an incomplete response, CFP Board Counsel may deliver a Notice of Failure to Cooperate in accordance with Article 1.3.
- c. **Response to Requests for Admission.** Unless the request specifies a longer timeframe, Respondent must deliver a response to an initial Request for Admission within 30 calendar days, and within 14 calendar days from delivery of a subsequent Request for Admission. Respondent must admit, deny, or deny based on lack of knowledge each Request for Admission, provide the factual basis for any denial, and state for any denial based on lack of knowledge that Respondent has made a reasonable inquiry and the information Respondent knows or can readily obtain is insufficient to enable Respondent to admit or deny. If Respondent fails to provide the required information, CFP Board may deliver a Notice of Failure to Cooperate in accordance with Article 1.3.
- d. **Questions by Oral Examination.** CFP Board Counsel may question by oral examination Respondent or third parties with respect to any matter relating to or arising out of the Notice of Investigation or investigation. The examination will be under oath or affirmation.
  - 1. **Notice, Location, and Method.** CFP Board Counsel must deliver to Respondent and the examinee a notice identifying the date, time, and location of the examination. CFP Board Counsel may conduct the examination in person, telephonically, or by video.
  - 2. **Attendance.** Unless CFP Board Counsel otherwise authorizes, attendance at the examination is limited to CFP Board staff and representatives, the examinee, the examinee’s counsel, Respondent, Respondent’s counsel, and the stenographer. CFP Board Counsel may conduct the examination if Respondent or Respondent’s counsel fails to appear.
  - 3. **Order of Questioning.** After CFP Board Counsel completes the examination, Respondent or Respondent’s counsel may question the examinee. CFP Board Counsel then may ask the examinee additional questions. Counsel for an examinee other than Respondent then may question the examinee solely to clarify any of the examinee’s answers. CFP Board Counsel then may ask the examinee additional questions.
  - 4. **Limitation of Examinee Counsel Involvement.** Counsel representing an examinee may advise the examinee so long as the provision of such advice does not impede the questioning or the examinee’s testimony.
  - 5. **Federal or State Procedural Rules.** The examination is not a deposition and does not follow federal or state evidentiary or procedural rules.
  - 6. **Availability of Transcript.** CFP Board must obtain a written transcript of the examination. An examinee or Respondent may receive a copy of the transcript or video upon payment of the appropriate fees to the stenographer or videographer.
  - 7. **Use of Transcript or Video.** If CFP Board Counsel or Respondent seeks to introduce the transcript or video of the examination at a hearing, the Hearing Panel must admit the transcript or video and determine what weight to give the testimony.

### 1.3 DUTY OF COOPERATION

- a. A Respondent and a CFP® professional who is not a Respondent (collectively, a “Request Recipient”) has a Duty of Cooperation under the *Terms and Conditions of Certification and License*, the *Code and Standards*, and/or the *CFP® Certification Candidate Agreement*. The Duty of Cooperation includes, but is not limited to:
  - 1. Timely providing all non-privileged documents requested in a Request for Production that are in Request Recipient’s possession, custody, or control;
  - 2. Timely providing truthful and complete information requested in a Request for Information that is in Request Recipient’s knowledge, that Request Recipient can learn after making a reasonable inquiry, or that is within the knowledge of persons or entities that Request Recipient controls;

3. Timely admitting, denying, or denying based on lack of knowledge all Requests for Admission, providing the factual basis for any denial, and stating for any denial based on lack of knowledge that Request Recipient has made a reasonable inquiry and that the information Request Recipient knows or can readily obtain is insufficient to enable Request Recipient to admit or deny;
4. Appearing for Questions by Oral Examination upon the request of CFP Board Counsel, and providing truthful and complete responses to questions raised during the examination;
5. Using reasonable efforts to procure documents, information, and witness appearances from third parties as requested, including
  - a) Executing documents that authorize and request third parties to provide information or documents to CFP Board;
  - b) Using reasonable efforts to require others to execute documents that authorize and request third parties to provide information or documents to CFP Board; and
  - c) Executing documents and requiring third parties to execute documents that release third parties from any potential liability for providing to CFP Board the information and/or documents that CFP Board Counsel has requested.
- b. Notwithstanding any expiration, relinquishment, revocation, or termination of Request Recipient's Certification and License, Request Recipient will continue to be subject to discipline in accordance with the *Terms and Conditions of Certification and License*, and will continue to be bound to the Duty of Cooperation.
- c. If a Request Recipient fails to satisfy the Duty of Cooperation, CFP Board Counsel may deliver a Notice of Failure to Cooperate that identifies the failure to cooperate and provides Request Recipient seven calendar days to cure the failure. Request Recipient's failure to comply with the Duty of Cooperation constitutes a ground for discipline under the *Code and Standards*. Request Recipient's failure to comply with the Duty of Cooperation also may give rise to an adverse inference that presumes Request Recipient would have provided the requested documents or information if they supported Request Recipient's position and that may result in a finding that Request Recipient has admitted the information requested in the Request for Admission.

## 1.4 RESULTS OF INVESTIGATION

After delivering a Notice of Investigation and conducting an investigation, CFP Board Counsel must determine whether there is probable cause to believe grounds for discipline exist. If CFP Board Counsel finds no probable cause, CFP Board Counsel must dismiss the investigation as not warranting further action at this time, while reserving the right to reopen the investigation in the future. If CFP Board Counsel finds probable cause, CFP Board Counsel must take one of the following actions:

- a. **Letter of Dismissal:** Dismiss the investigation with a Letter of Dismissal indicating that CFP Board Counsel has determined, based upon the available evidence, that Respondent's conduct does not warrant referral to the DEC, including in circumstances when Respondent may have violated the *Code and Standards* or the *CFP® Certification Candidate Agreement*. Respondent may submit a letter responding to the Letter of Dismissal that will become part of Respondent's disciplinary record with CFP Board, and will be available for the DEC's consideration in the future.
- b. **Settlement Offer:** Present a Settlement Offer to the DEC in accordance with Article 8.
- c. **Complaint:** Deliver a Complaint against Respondent in accordance with Article 3.

## ARTICLE 2: INTERIM SUSPENSIONS

An interim suspension is a suspension of a CFP® Professional's Certification and Trademark License during the pendency of the proceedings. An Order of Interim Suspension is a temporary sanction and does not preclude CFP Board from imposing a final sanction.

### 2.1 GROUNDS FOR INTERIM SUSPENSIONS

- a. **Discretionary Interim Suspension**
  1. CFP Board Counsel may deliver a Motion for an Interim Suspension Order on Respondent, together with a proposed Order Granting Motion for Interim Suspension Order. The Motion for

Interim Suspension Order must identify the current members of the DEC, request a hearing date, and request expedited pre-hearing deadlines. Respondent must file a response to the Motion for Interim Suspension within 10 calendar days of delivery of the Motion for Interim Suspension, or at such other time as the Chair of the DEC directs. CFP Board Counsel must file a reply to Respondent's response with 5 calendar days of delivery of the response, or at such other time as the Chair of the DEC directs.

2. The Chair of the Hearing Panel must determine whether to hold a hearing on the motion. The Hearing Panel may hold a hearing in person, by telephone, or by video conference. The Chair of the Hearing Panel must deliver to Respondent a Notice of Hearing that provides the date, place, and time of the hearing, and sets deadlines for filing with the Hearing Panel and contemporaneously delivering to the other parties the documents that the parties intend to introduce at the hearing, notices identifying witnesses, and agreed-upon written stipulations of fact that will be binding on the parties to the stipulation. The Hearing Panel may proceed with the hearing if either Respondent or CFP Board Counsel fails to appear at the hearing.
  3. The Hearing Panel must grant the Motion, issue an Interim Suspension Order, and deliver the Interim Suspension Order to Respondent if the Hearing Panel determines that CFP Board Counsel has demonstrated by a preponderance of the evidence that Respondent's conduct poses a significant threat to the public or significantly impinges upon the reputation of the profession or the CFP® certification marks. A preponderance of the evidence is a standard of review that means "more probable than not," i.e., evidence which shows that, as a whole, the fact sought to be proved is more probable than not to have occurred.
- b. **Automatic Interim Suspension:** CFP Board Counsel may issue an Interim Suspension Order if Respondent:
1. Is the subject of a felony Criminal Conviction or a misdemeanor Criminal Conviction for fraud, theft, misrepresentation, a crime of moral turpitude, or violence;
  2. Is the subject of a Civil Finding, as defined in Article 7.3, that Respondent engaged in fraud, theft, misrepresentation, an act of moral turpitude, or violence;
  3. Is the subject of a Professional Discipline, as defined in Article 7.2, that resulted in a revocation, bar, or equivalent discipline; or
  4. Voluntarily terminates or surrenders a financial professional license or registration in response to a Regulatory Investigation.
- c. CFP Board Counsel must deliver the Interim Suspension Order to Respondent.
- d. **Term of Interim Suspension Order:** An Interim Suspension Order will remain in place until the DEC or, if an appeal is filed, the Appeals Committee issues a final order.
- e. **No Appeals of Interim Suspensions:** An Interim Suspension Order and Order deciding a Motion to Vacate an automatic Interim Suspension Order are not subject to appeal under Article 14.

## 2.2 PUBLICATION OF AN INTERIM SUSPENSION ORDER

CFP Board publishes an Interim Suspension in accordance with Article 16.7.

## 2.3 RESPONSIBILITIES OF RESPONDENT FOLLOWING INTERIM SUSPENSION ORDERS

A Respondent subject to an Interim Suspension Order must not use the CFP® certification marks or state or suggest that Respondent is a CFP® professional while the Interim Suspension Order is in effect. Within 10 calendar days of delivery of an Interim Suspension Order, Respondent must deliver to CFP Board Counsel evidence of compliance with the Interim Suspension Order. Such evidence must include Respondent's sworn statement of assurance that Respondent will comply with the Interim Suspension Order, and proof that Respondent has removed the CFP® certification marks from all internet sites and all tangible materials that Respondent exposes to the public. Respondent must submit screenshots of websites, including Respondent's businesses, social media, third party financial advisor listing website profiles that Respondent controls, signage, and, when applicable, copies of Respondent's new interim business cards, letterhead, marketing and promotional materials, as well as anywhere else the CFP® certification marks previously appeared publicly in reference to Respondent or Respondent's services. If Respondent fails to comply with or deliver proof of compliance with the Interim Suspension Order, CFP Board may declare Respondent in default under Article 4.1.

## **2.5 PETITION TO VACATE AN INTERIM SUSPENSION ORDER**

- a. CFP Board Counsel may issue an order vacating an Interim Suspension Order if the criminal conviction, Civil Liability, or Professional Discipline has been vacated or reversed, the financial professional license or registration that was voluntarily terminated or suspended in response to a Regulatory Investigation has been reinstated, or Respondent has provided sufficient evidence indicating that Respondent was not the subject of the Criminal Conviction, Civil Liability, or Professional Discipline.
- b. The DEC may issue an order vacating an Interim Suspension Order if:
  1. Respondent files a Petition to Vacate and proves by a preponderance of the evidence that Respondent was not the subject of the Criminal Conviction, Civil Liability, or Professional Discipline, the Criminal Conviction, Civil Liability, or Professional Discipline has been reversed, or the financial professional license or registration that was voluntarily terminated or suspended in response to a Regulatory Investigation has been reinstated; and
  2. CFP Board does not establish by a preponderance of the evidence that Respondent has engaged in conduct that poses a significant threat to the public or significantly impinges upon the reputation of the profession or the CFP® certification marks.
- c. If CFP Board Counsel or the DEC issues an order vacating an Interim Suspension Order, CFP Board will not reflect the Interim Suspension Order in CFP Board's verification of Respondent's CFP® certification and background. In addition, upon the written request of Respondent:
  1. CFP Board will remove the publication of the Interim Suspension Order from CFP Board's website, and/or
  2. CFP Board will publish in a press release and on CFP Board's website the fact that the Interim Suspension Order was vacated.
- d. If CFP Board Counsel or the DEC vacates an Interim Suspension Order, CFP Board Counsel will deliver the order to Respondent and notify Respondent of the opportunity to file the written request. CFP Board Counsel retains the authority to deliver to Respondent a Complaint based upon the same or other factual allegations.

## **ARTICLE 3: COMPLAINT AND ANSWER**

### **3.1 COMPLAINTS AND AMENDED COMPLAINTS**

- a. If CFP Board Counsel determines there is probable cause to believe grounds for discipline exist, CFP Board Counsel may deliver a Complaint to Respondent. CFP Board Counsel may amend the Complaint at any time; provided, however, that the DEC may continue or keep open a hearing to allow Respondent additional time to prepare a defense. A Complaint must include:
  1. Numbered paragraphs setting forth the grounds for discipline, including a detailed factual description of the conduct and a specific statement of the alleged violations.
  2. A range of likely hearing dates. The Notice of Hearing, provided in accordance with Article 10.1, will set a final hearing date.
- b. CFP Board Counsel may deliver a consolidated Complaint, or consolidate separate Complaints, against two or more Respondents that involve related facts. The Chair of the Hearing Panel may issue an Order severing the consolidated action at any time, for good cause shown, and must deliver the Order to Respondent.

### **3.2 ANSWERS AND AMENDED ANSWERS**

Respondent must deliver a written Answer within 20 calendar days of service of the Complaint, unless CFP Board delivers an Amended Complaint before the Answer is due. Respondent must deliver a written Answer to an Amended Complaint no later than the latest of 10 calendar days of delivery of the Amended Complaint or the date an Answer to the original Complaint was due. An Answer must include:

- a. A detailed response to each numbered paragraph of the Complaint that either admits or denies each statement or allegation, or states that Respondent is unable to admit or deny due to lack of knowledge. If Respondent fails to respond to a specific statement or allegation contained in any numbered paragraph, the DEC may deem the statement or allegation admitted.

- b. A statement containing any defenses, factual explanations, or mitigating circumstances that respond to the allegations.
- c. A statement indicating whether Respondent requests a hearing or for the matter to be resolved on the written record. If Respondent requests a hearing, Respondent must state whether Respondent intends to appear in person, by telephone, or by video conference if CFP Board makes video conference available.

### **3.3 COMPLAINT FOR SINGLE BANKRUPTCY**

CFP Board Counsel must deliver a Complaint for Single Bankruptcy, without issuing a Notice of Investigation, if:

- a. CFP Board receives credible evidence that there was a personal bankruptcy or business bankruptcy filing or adjudication where Respondent was a Control Person (as defined in the *Code and Standards*) of the business (collectively referred to as “Bankruptcy Matter”);
- b. Respondent has no other Bankruptcy Matter; and
- c. There is no probable cause to believe that other grounds for discipline exist.

### **3.4 ANSWER TO COMPLAINT FOR SINGLE BANKRUPTCY**

- a. Within 20 calendar days of delivery of the Complaint for Single Bankruptcy, Respondent must deliver, using a form that CFP Board provides, an Answer that admits or denies the existence of the Bankruptcy Matter and states whether Respondent has any other Bankruptcy Matter.
- b. If Respondent has another Bankruptcy Matter, Respondent must provide the name of the debtor, the date of the first filing in the Bankruptcy Matter, and the court in which of the Bankruptcy Matter is pending. In this circumstance, CFP Board Counsel must deliver an Amended Complaint, which will proceed to a hearing as set forth in Article 10.
- c. If Respondent has no other Bankruptcy Matter, Respondent may accept an Order of Public Censure, in which case CFP Board Counsel will issue an Order of Public Censure, the DEC will not hold a hearing, and CFP Board will not charge Respondent a fee. If Respondent has no other Bankruptcy Matter and does not accept an Order of Public Censure, Respondent must state in the Answer whether the Bankruptcy Matter demonstrates an inability to manage responsibly the Respondent’s or the business’s financial affairs and provide the factual basis for Respondent’s statement. In this circumstance, the Complaint will proceed to a hearing as set forth in Article 10 and CFP Board will charge Respondent a hearing fee.

### **3.5 REQUEST FOR EXTENSION OF TIME**

Prior to the deadline for delivering an Answer, Respondent may request an extension of time to file the Answer. CFP Board Counsel may grant the request, for good cause shown. If CFP Board Counsel denies the request, Respondent may file a Motion for Extension of Time to File an Answer. The Chair of the DEC must rule on a Motion for Extension of Time to File an Answer, and must deliver the Order to Respondent.

### **3.6 WITHDRAWAL OF A COMPLAINT**

CFP Board Counsel may withdraw a Complaint at any time, and must deliver to Respondent a notice of withdrawal. CFP Board Counsel may refile a Complaint after a withdrawal, but may not refile a Complaint based on or including the same allegations raised in a Complaint that CFP Board Counsel withdrew on two prior occasions.

## **ARTICLE 4: DEFAULT; SUSPENSION OR REVOCATION**

### **4.1 DEFAULT**

Respondent is in default if Respondent fails to:

- a. Acknowledge receipt of a Notice of Investigation pursuant to Article 1.1;
- b. File an Answer in accordance with Article 3.2 or 3.4;
- c. Provide proof of compliance with either an Interim Suspension Order in accordance with Article 2.3 or an Order of Suspension in accordance with Article 11.6; or

- d. Pay the fees that CFP Board assesses pursuant to Article 16.4, except in cases where CFP Board Counsel has granted a waiver due to financial hardship.

## **4.2 ADMINISTRATIVE ORDER OF SUSPENSION OR REVOCATION**

If Respondent is in default, CFP Board Counsel must deliver to Respondent either an Administrative Order of Suspension that suspends Respondent's Certification and License for one year and one day, or an Administrative Order of Revocation that revokes Respondent's Certification and License, based upon CFP Board Counsel's determination of the seriousness, scope, and harmfulness of the allegations. An Administrative Order of Suspension and an Administrative Order of Revocation must state with reasonable particularity the grounds for default.

## **4.3 REQUEST FOR REINSTATEMENT AFTER ADMINISTRATIVE ORDER OF SUSPENSION**

A Respondent may request reinstatement following an Administrative Order of Suspension. Respondent must provide CFP Board Counsel the proof required by Article 13.1, cure the default, and fully cooperate with any proceedings under these *Procedural Rules*. CFP Board Counsel must determine whether to reinstate Respondent. If CFP Board Counsel does not reinstate Respondent, the Respondent may file a Motion for Reinstatement, which the Chair of the DEC must decide in a written order that is subject to appeal under Article 14. A Respondent seeking reinstatement through a Motion for Reinstatement following an Administrative Order of Suspension must prove by clear and convincing evidence that Respondent has met the requirements of Article 13.1, cured the default, and has fully cooperated with any proceedings under these *Procedural Rules*. Clear and convincing evidence is a standard of review that is higher than a preponderance of the evidence, and means "a high probability," i.e., evidence which shows that, as a whole, the fact sought to be proved is highly probably to have occurred. A Respondent who is reinstated remains subject to the completion of the investigation or disciplinary action in which the default occurred and may be subject to the imposition of a sanction in accordance with Article 11.4.

## **ARTICLE 5: PETITIONS FOR FITNESS DETERMINATION**

### **5.1 PETITION FOR FITNESS DETERMINATION**

A Respondent whose conduct, as set forth in the *Fitness Standards for Candidates and Professionals Eligible for Reinstatement*, is presumed to be unacceptable or whose conduct may reflect adversely upon the profession or the CFP® certification marks ("Relevant Conduct") may file a Petition for Fitness Determination requesting a determination of fitness for CFP® certification. A Respondent whose conduct falls within the "Unacceptable" list set forth in the *Fitness Standards for Candidates and Professionals Eligible for Reinstatement* may not file a Petition for Fitness Determination and may not obtain CFP® certification.

### **5.2 PROVING FITNESS**

The factors relevant to fitness include:

- a. The Relevant Conduct;
- b. Whether and how Respondent has taken actions that are designed to prevent the Relevant Conduct from reoccurring in the future;
- c. Whether and how Respondent has integrated the *Code and Standards* in Respondent's practice;
- d. Whether Respondent has submitted positive letters of reference from current clients, supervisors, colleagues, or other professionals concerning the Relevant Conduct or the Respondent's character; and
- e. Any other relevant factors.

## **ARTICLE 6: RESPONDENT'S REQUEST FOR DOCUMENTS**

### **6.1 TIMING AND SCOPE OF DOCUMENT REQUESTS**

After CFP Board delivers a Complaint or Respondent files a Petition, Respondent may request, in writing to CFP Board Counsel, the production of relevant documents in CFP Board's investigative file for Respondent that are not privileged or confidential, do not constitute attorney or expert work product, or are not prohibited from disclosure by law. CFP Board must respond to any request and produce documents within 20 calendar days of delivery of the request. Respondent may use any document that CFP Board produces only in the proceeding in which Respondent requested the document.



## **ARTICLE 7: NO CHALLENGE IN CFP BOARD PROCEEDING TO CRIMINAL CONVICTION, PROFESSIONAL DISCIPLINE, OR CIVIL LIABILITY**

### **7.1 CRIMINAL CONVICTION**

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.

### **7.2 PROFESSIONAL DISCIPLINE**

A record from a (a) federal, state, local, or foreign governmental agency, (b) self-regulatory organization, or (c) other regulatory authority imposing discipline upon Respondent (“Professional Discipline”) conclusively establishes the existence of such Professional Discipline and is conclusive proof of the facts and violations that serve as the basis for such Professional Discipline. The fact that Respondent has not admitted or denied the findings contained in the record does not affect the conclusiveness of the proof. Professional Discipline includes a censure, injunction, undertaking, order to cease and desist, fine, suspension, bar, or revocation, and the surrender of a professional license or certification in response to a regulatory action or regulatory investigation. A record of Professional Discipline includes a settlement agreement, order, consent order, and Letter of Acceptance, Waiver, and Consent (AWC).

### **7.3 CIVIL FINDING**

A record from any court of civil jurisdiction containing a Finding (as defined in the *Code and Standards*) against Respondent in that court that Respondent violated a law, rule, or regulation governing Professional Services, or engaged in conduct involving fraud, theft, misrepresentation, or other dishonest conduct (“Civil Finding”), is conclusive proof of the existence of such Finding and that Respondent engaged in the conduct that led to the Finding.

### **7.4 APPEAL OF, OR CHALLENGE TO, CRIMINAL CONVICTION, PROFESSIONAL DISCIPLINE, OR CIVIL FINDING**

A Criminal Conviction that is subject to appeal, Professional Discipline that is under challenge in a civil court or an appropriate regulatory body, or a final order containing a Civil Finding that is subject to appeal may be the basis for an Interim Suspension Order but otherwise is not admissible in a CFP Board proceeding.

### **7.5 NO CHALLENGE IN CFP BOARD PROCEEDING**

If CFP Board proves or Respondent admits Respondent’s Criminal Conviction, Civil Finding, or Professional Discipline, Respondent may not challenge the Criminal Conviction, Civil Finding, or Professional Discipline in the CFP Board proceeding, and may introduce evidence only concerning an appropriate sanction resulting from the Criminal Conviction, Civil Finding, or Professional Discipline.

## **ARTICLE 8: SETTLEMENT PROCEDURE**

### **8.1 SETTLEMENT OFFER**

CFP Board Counsel and Respondent may agree on a Settlement Offer, including a proposed Consent Order, that would resolve an investigation, Complaint, or Petition. If either CFP Board Counsel or Respondent does not agree to a Settlement Offer, the investigation will continue or the matter will proceed to hearing.

### **8.2 REQUIRED CONTENT OF PROPOSED CONSENT ORDER**

- a. **Resolution of Investigations or Complaints.** The Settlement Offer must be in the form of a proposed Consent Order that contains and describes in reasonable detail:
  1. The findings of fact and violations to which Respondent consents;
  2. Any mitigating and/or aggravating factors;
  3. A statement identifying the form of discipline to be imposed;

4. Where applicable, the number of years after the publication when Respondent may file a Petition to Remove Publication, which must not be less than 5 years or more than ten years after the date of publication;
  5. The content of the public notice if the form of discipline is public;
  6. A statement that Respondent consents to the entry of the proposed Consent Order, and if there is to be public notice, then the issuance of a public notice; and
  7. A waiver of all rights of appeal to CFP Board's Appeals Committee or any other contractual or judicial forum, or to otherwise challenge or contest the validity of the Consent Order if the DEC accepts the proposed Consent Order.
- b. **Resolution of Petitions for Fitness Determination.** The Settlement Offer must be in the form of a proposed Consent Order that contains and describes in reasonable detail facts relevant to Respondent's fitness and the proposed determination.
  - c. **Resolution of Petitions for Reinstatement Following Order of Suspension for More than One Year.** The Settlement Offer must be in the form of a proposed Consent Order that contains and describes in reasonable detail facts relevant to Respondent's rehabilitation, fitness, and compliance with the terms of the DEC Order, and the proposed determination.

### 8.3 SETTLEMENT REVIEW PANEL; SETTLEMENT HEARING

A Settlement Review Panel must review the proposed Consent Order. A Settlement Review Panel must consist of at least three persons. A majority of the Settlement Review Panel must be CFP® Professionals, and a majority must be DEC members. A DEC member must serve as Chair of the Settlement Review Panel. The DEC must deliver to Respondent notice of the identities of the members of the Settlement Review Panel and the DEC members. The Settlement Review Panel must consider a proposed Consent Order without a hearing unless CFP Board Counsel or the Settlement Review Panel requests a Settlement Hearing. The Settlement Review Panel may hold the Settlement Hearing telephonically or in person. The Settlement Review Panel must propose a recommendation to the DEC.

### 8.4 RESOLUTION OF SETTLEMENT OFFER

The DEC must determine whether the proposed Consent Order is reasonable and serves the public interest. In reviewing the proposed Consent Order, the DEC must accept as true the findings of fact and violations to which Respondent consents. The DEC must determine whether the terms of the proposed Consent Order are clear, the proposed Consent Order resolves the alleged violations, and the proposed sanction and time frame when Respondent may file a Petition to Remove Publication aligns with the relevant *Anonymous Case Histories* and *Sanction Guidelines*. The DEC must enter the proposed Consent Order, reject the proposed Consent Order with no Counteroffer, or reject the proposed Consent Order and propose a Counteroffer.

- a. **Acceptance of Proposed Consent Order.** If the DEC accepts and enters the proposed Consent Order, the Consent Order is the final decision of CFP Board.
- b. **Rejection of Proposed Consent Order.** If the DEC rejects the proposed Consent Order and does not propose a Counteroffer, CFP Board Counsel will continue the investigation or the matter will proceed to hearing.
- c. **Rejection of Proposed Consent Order and Counteroffer.** If the DEC rejects the proposed Consent Order and proposes a Counteroffer, Respondent must accept the Counteroffer within 20 calendar days of service of the Counteroffer or the Counteroffer will be void. If Respondent accepts the Counteroffer, the DEC will enter the Counteroffer as a Consent Order. If Respondent does not accept the Counteroffer, the investigation will continue, the matter will proceed to hearing, or CFP Board Counsel and Respondent will present another proposed Consent Order to the DEC.
- d. The DEC must not give any weight to a proposed Consent Order or a statement made during or in the context of the negotiation of a Proposed Consent Order in the later adjudication of a Complaint.

### 8.5 NO APPEAL OF CONSENT ORDER OR REJECTION OF PROPOSED CONSENT ORDER

A Consent Order is not subject to appeal under Article 14. The rejection of a Proposed Consent Order is not subject to appeal under Article 14.

## **ARTICLE 9: OTHER MOTIONS**

In addition to motions specifically identified elsewhere in these *Procedural Rules*, which must be resolved as set forth therein, Respondent and CFP Board Counsel may file written, non-dispositive motions prior to the hearing, including concerning any issue that these *Procedural Rules* do not otherwise address, which the Chair of the DEC will decide. The movant must state the grounds for the motion, the relief requested, and whether the movant requests oral argument. The opposing party may file a response within 10 calendar days of service of the motion, or at such other time that the Chair of the DEC directs. The movant may file a reply within three calendar days of service of the response, or at such other time that the Chair of the DEC directs. The Chair of the DEC has discretion whether to schedule oral argument on the motion. Parties also may make oral motions during a hearing, which the Hearing Panel Chair will decide.

## **ARTICLE 10: HEARINGS**

### **10.1 NOTICE OF HEARING**

CFP Board must hold a hearing in any case presented to the DEC if Respondent, CFP Board Counsel, or the DEC requests a hearing. If a hearing is requested, CFP Board may hold the hearing in person, by telephone, or by video conference. Not less than 30 calendar days before a hearing, the Chair of the DEC must deliver to Respondent a Notice of Hearing that provides the date, place, and time of the hearing. The Hearing Panel may proceed with the hearing if either Respondent or CFP Board Counsel fails to appear at the hearing. If a hearing is not requested, the Chair of the DEC must notify Respondent that the matter will be resolved on the written record.

### **10.2 REQUESTS FOR CONTINUANCE OF HEARING**

A Respondent may submit a written request for continuance of the hearing that provides good cause for the request. CFP Board Counsel may grant or deny the request. If CFP Board Counsel denies the request, Respondent may file a Motion for Continuance of the Hearing, which the Chair of the DEC will decide.

### **10.3 DOCUMENTS, WITNESSES, WRITTEN STATEMENTS, AND STIPULATIONS**

- a. **Documents.** No later than 40 calendar days after delivery of the Complaint or filing of a Petition, or by a time the DEC Chair otherwise specifies, CFP Board Counsel and Respondent may file with the Hearing Panel, which they must contemporaneously deliver to all other parties, documents that they may introduce at the hearing. The Hearing Panel will not consider documents unless they are timely filed and delivered, except for good cause shown.
- b. **Witnesses.** No later than 40 calendar days after delivery of the Complaint or the filing of a Petition, or by a time the DEC Chair otherwise specifies, CFP Board Counsel and Respondent must file a notice identifying all witnesses. The Hearing Panel will not allow a witness to testify unless timely identified, except for good cause shown. The party identifying the witness must provide the witness's phone number, email address, and mailing address, state the subject matter of the witness's anticipated testimony, and indicate whether the witness will appear at the hearing in person, by telephone, or by video conference if CFP Board makes video conference available. A Hearing Panel may permit a witness to testify at the hearing only upon swearing an appropriate oath or affirmation. Other than a Respondent, a fact witness may attend a hearing only while testifying.
- c. **Written Statements.** No later than 15 calendar days before the hearing or 15 calendar days after delivery of notice that the matter will be resolved on the written record, a party to a proceeding may submit a written statement setting forth the party's position concerning any issue relevant to the allegations raised in the Complaint, defenses raised in the Answer, or matters raised in a Petition.
- d. **Stipulations.** At or before the hearing or within 15 calendar days of delivery of notice that the matter will be resolved on the written record, CFP Board Counsel and Respondent may submit agreed-upon written stipulations of fact that will be binding on the parties to the stipulation.

### **10.4 NOTICE OF DEC MEMBERS AND HEARING PANEL MEMBERS**

Prior to the hearing, CFP Board must provide to Respondent a list of the DEC members and potential Hearing Panel members, and must timely supplement the list.

## **10.5 THE HEARING PANEL**

A Hearing Panel will conduct the hearing. A Hearing Panel must consist of at least three persons. A majority of the Hearing Panel must be CFP® professionals, and a majority must be DEC members. A DEC member must serve as Chair of the Hearing Panel.

## **10.6 EVIDENCE; OATH OR AFFIRMATION; TRANSCRIPTION**

The Hearing Panel will determine, in its discretion, the conduct of the hearing, including the order of proof and allocation of time for argument and the presentation of evidence. The parties must have an opportunity to present documents and testimony, cross-examine witnesses called by another party, and present argument to the Hearing Panel. The Hearing Panel may exclude evidence and determine what weight to give any evidence. The Hearing Panel may consider, but is not bound by, evidentiary and procedural rules applicable in a court of law. The Chair of the Hearing Panel must administer oaths or affirmations to testifying witnesses. CFP Board must obtain a written transcript of the hearing and make it available to the Appeals Committee and any Appeal Panel upon appeal.

## **10.7 RESPONDENT'S AND CFP BOARD COUNSEL'S RECOMMENDATION**

Respondent and CFP Board Counsel may present evidence and argument and make recommendations regarding an appropriate sanction.

## **10.8 CLOSING OF HEARING**

The hearing will remain open until the DEC issues a final order in accordance with Article 11.3. Until the DEC issues a final order, the Hearing Panel may request additional information and schedule additional hearings.

## **ARTICLE 11: RESOLUTION OF COMPLAINTS**

### **11.1 BURDEN OF PROOF AND GROUNDS FOR DISCIPLINE**

CFP Board Counsel must prove grounds for discipline raised in a Complaint by a preponderance of the evidence. A violation of the *Code and Standards* or the *CFP® Certification Candidate Agreement* constitutes grounds for discipline. A preponderance of the evidence is a standard of review that means "more probable than not," i.e., evidence which shows that, as a whole, the fact sought to be proved is more probable than not to have occurred.

### **11.2 RECOMMENDATION OF THE HEARING PANEL**

- a. The Hearing Panel must recommend to the DEC whether to find that there are grounds for discipline, and, if so, the appropriate sanction.
- b. The Hearing Panel's recommendation must include factual findings, any mitigating or aggravating factors, and the Sanctions Guidelines and *Anonymous Case Histories* that the Hearing Panel found relevant.
- c. The Hearing Panel must recommend the number of years after the publication when Respondent may file a Petition to Remove Publication, or that Respondent may not file a Petition to Remove Publication.

### **11.3 REVIEW BY THE DEC AND ISSUANCE OF FINAL ORDER**

- a. The DEC must review *de novo* and accept, reject, or modify the Hearing Panel's findings and recommendations. *De novo* means that the DEC must consider the matter anew, as if the Hearing Panel had rendered no recommendation. The DEC gives no deference to the Hearing Panel, except that the DEC must give deference to, but is not bound by, the Hearing Panel's determination of a witness's credibility that is based upon its observation of the witness's demeanor. The DEC must issue a final order that finds whether there are grounds for discipline, and if so, issue a cautionary letter or impose a sanction.
- b. The final order must set forth the DEC's factual findings, any mitigating or aggravating factors, and the Sanctions Guidelines and *Anonymous Case Histories* that the DEC found relevant.

- c. The DEC must include in the final order the number of years after the publication when Respondent may file a Petition to Remove Publication, or state that Respondent may not file a Petition to Remove Publication.
- d. If the DEC finds no grounds for discipline, the DEC must dismiss the Complaint as without merit.

## 11.4 SANCTIONS

### a. Categories

1. **Private Censure.** A private censure is an unpublished written reproach of Respondent that the DEC delivers to a censured Respondent.
2. **Public Censure.** A public censure is a written reproach of Respondent that CFP Board publishes in accordance with Article 16.7.
3. **Suspension.** A suspension is a period of time in which Respondent remains subject to the *Terms and Conditions of Certification and Trademark License* but is not Certified or Licensed and is prohibited from using the CFP® certification marks, stating or suggesting that Respondent is a CFP® professional, or holding out to the public as being certified by CFP Board. The DEC may issue a suspension for a specified period, not less than 90 calendar days or greater than five years. CFP Board publishes a suspension in accordance with Article 16.7.
4. **Revocation.** A revocation is the termination of a Respondent's Certification and Trademark License. CFP Board publishes a revocation in accordance with Article 16.7. A Respondent whose CFP® Certification and License is revoked is permanently barred from applying for or obtaining CFP® Certification.
5. **Temporary Bar.** A temporary bar is a period of time in which a Respondent who currently is not a CFP® professional is prohibited from applying for or obtaining CFP® certification. CFP Board publishes a temporary bar in accordance with Article 16.7.
6. **Permanent Bar.** A permanent bar is a permanent prohibition on the ability of a Respondent who currently is not a CFP® professional to apply for or obtain CFP® Certification. CFP Board publishes a permanent bar in accordance with Article 16.7.

### b. Applicable Sanctions

When Respondent is a CFP® professional, the DEC may order a Private Censure, Public Censure, Suspension, or Revocation. When Respondent is not a CFP® professional, but is subject to discipline under either the *Terms and Conditions of Certification and Trademark License* or the *CFP® Certification Candidate Agreement*, the DEC may order a Private Censure, Public Censure, Temporary Bar, or Permanent Bar. In either case, the DEC also may order remedial education or work.

### c. Use of Sanction in Other CFP Board Proceedings

CFP Board will include any sanction in Respondent's disciplinary history and may consider the sanction in subsequent proceedings.

## 11.5 APPLICABILITY OF PETITION TO REMOVE PUBLICATION

- a. The DEC must include in the final order the number of years after the publication when Respondent may file a Petition to Remove Publication, which must not be less than 5 years or more than 10 years after the date of publication, when the final order imposes a:
  1. Public censure;
  2. Suspension of one year or less; or
  3. Temporary bar of one year or less.

- b. The DEC must state in the final order that Respondent may not file a Petition to Remove Publication when the final order imposes a:
  1. Suspension of more than one year;
  2. Revocation;
  3. Temporary bar of more than one year; or
  4. Permanent bar.

### **11.6 REQUIRED ACTION AFTER PUBLIC CENSURE, TEMPORARY BAR, OR PERMANENT BAR**

A Respondent who is the subject of an Order of Public Censure, Temporary Bar, or Permanent Bar must deliver to CFP Board Counsel, within 30 calendar days of delivery of the Order, written evidence that Respondent has:

- a. Advised the CFP® Professional's Firm(s), in writing, of the Public Censure, Temporary Bar or Permanent Bar; and
- b. Advised all Clients of the Public Censure, Temporary Bar, or Permanent Bar, and provided all Clients the location of CFP Board's website that sets forth Respondent's disciplinary history.

### **11.7 REQUIRED ACTION AFTER REVOCATION OR SUSPENSION**

A Respondent whose Certification and License is suspended or revoked must not use the CFP® certification marks, state or suggest that Respondent is a CFP® professional, or hold out to the public as being certified by CFP Board. Within 30 calendar days of delivery of an Order of Suspension or Revocation, Respondent must deliver to CFP Board Respondent's sworn statement of assurance that Respondent will comply with the Order of Suspension or Revocation, and written evidence that Respondent has:

- a. Ceased all use of the CFP® certification marks and not stated or suggested that Respondent is a CFP® professional;
- b. Removed the CFP® certification marks from all internet sites and all tangible materials that Respondent exposes to the public, including screenshots of websites, including Respondent's businesses, social media, third party financial advisor listing website profiles that Respondent controls, signage, and, when applicable, copies of Respondent's new interim business cards, letterhead, marketing and promotional materials, as well as anywhere else the CFP® certification marks previously appeared publicly in reference to Respondent or Respondent's services;
- c. Advised the CFP® Professional's Firm(s), in writing, of any public Suspension or Revocation that CFP Board imposed; and
- d. Advised all Clients that Respondent's certification has been suspended or revoked and has provided to all Clients the location of CFP Board's website that sets forth Respondent's disciplinary history.

### **11.8 DEFAULT FOR FAILURE TO TAKE REQUIRED ACTION AFTER REVOCATION OR SUSPENSION**

If a Respondent whose Certification and License is suspended fails to provide the information required by this Article, CFP Board Counsel may declare Respondent in default and deliver an Administrative Order of Revocation under Article 4.2.

### **11.9 MOTION FOR REINSTATEMENT AFTER SUSPENSION OF ONE YEAR OR LESS**

- a. CFP Board Counsel may reinstate a Respondent whose Certification and License has been suspended for one year or less if Respondent has:
  1. Complied with the terms of the DEC Order;
  2. Provided a properly-completed CFP Board Ethics Disclosure Questionnaire;
  3. Paid the reinstatement fee and any outstanding costs owed to CFP Board; and
  4. Otherwise satisfied CFP Board's certification requirements.
- b. If CFP Board Counsel does not reinstate a Respondent whose Certification and License has been suspended for one year or less, Respondent may file a Motion for Reinstatement, which the Chair of the DEC will decide.

## **11.10 REINSTATEMENT AFTER SUSPENSION OF MORE THAN ONE YEAR**

A Respondent whose Certification and License has been suspended for more than one year may file a Petition for Reinstatement in accordance with Article 13.

## **11.11 NO REINSTATEMENT AFTER REVOCATION**

Revocation is permanent. There will be no opportunity for reinstatement.

## **ARTICLE 12: RESOLUTION OF PETITIONS FOR FITNESS DETERMINATION**

### **12.1 BURDEN OF PROOF**

A Respondent who has filed a Petition for Fitness Determination must prove by a preponderance of the evidence Respondent's fitness for CFP® certification. A preponderance of the evidence is a standard of review that means "more probable than not," i.e., evidence which shows that, as a whole, the fact sought to be proved is more probable than not to have occurred.

### **12.2 RECOMMENDATION OF THE HEARING PANEL**

The Hearing Panel reviewing a Petition for Fitness Determination must recommend to the DEC whether to grant, deny, or deny with a right to re-apply for a period not to exceed five years. The Hearing Panel's recommendation must include factual findings, any mitigating or aggravating factors, and any *Anonymous Case Histories* that the Hearing Panel found relevant.

### **12.3 REVIEW BY THE DEC AND ISSUANCE OF FINAL ORDER**

The DEC must review *de novo* and accept, reject, or modify the Hearing Panel's findings and recommendations. The DEC must give deference to, but is not bound by, the Hearing Panel's determination of a witness's credibility that is based upon its observation of the witness's demeanor. The DEC must issue a final order that grants, denies, or denies with a right to re-apply after a period that does not exceed five years. The final order also must set for the DEC's factual findings, any mitigating or aggravating factors, and the *Anonymous Case Histories* that the DEC found relevant.

## **ARTICLE 13: RESOLUTION OF PETITIONS FOR REINSTATEMENT FOLLOWING ORDER OF SUSPENSION OF MORE THAN ONE YEAR**

### **13.1 PETITION FOR REINSTATEMENT**

CFP Board must not reinstate a Respondent whose Certification and License the DEC has suspended for a period longer than one year unless Respondent has filed a written Petition for Reinstatement and the DEC has granted the Petition. A hearing may be scheduled in accordance with Article 10.1. Respondent's Petition must not proceed unless Respondent has:

- a. Completed the suspension;
- b. Provided a properly-completed CFP Board Ethics Disclosure Questionnaire;
- c. Provided a written certification that Respondent has read, understands, and will comply with, the *Code and Standards*;
- d. Paid the reinstatement fee and any outstanding costs owed to CFP Board; and
- e. Otherwise satisfied CFP Board's certification requirements.

### **13.2 BURDEN OF PROOF**

A Respondent seeking reinstatement following an Order of suspension of more than one year must prove by clear and convincing evidence the Respondent's rehabilitation, fitness for CFP® certification, and compliance with the terms of the DEC Order. Clear and convincing evidence is a standard of review that is higher than a preponderance of the evidence, and means "a high probability," i.e., evidence which shows that, as a whole, the fact sought to be proved is highly probably to have occurred.

### 13.3 PROVING REHABILITATION AND FITNESS

Factors relevant to rehabilitation and fitness include:

- a. Whether Respondent has violated CFP Board's *Code and Standards* since the issuance of the DEC's Order, or engaged in a prior violation of CFP Board's *Code and Standards* that previously was unknown to CFP Board;
- b. Whether and how Respondent has taken actions that are designed to prevent the circumstances that resulted in discipline;
- c. Whether and how Respondent has integrated the *Code and Standards* in Respondent's practice; and
- d. Whether Respondent has submitted positive letters of reference from current clients, supervisors, colleagues, or other professionals concerning the circumstances that resulted in discipline or the Respondent's character.

### 13.4 RECOMMENDATION OF THE HEARING PANEL

The Hearing Panel must recommend whether a Petition for Reinstatement should be granted, denied, or denied with a right to re-apply for a period not to exceed five years. The Hearing Panel's recommendation must include factual findings, any mitigating or aggravating factors, and any *Anonymous Case Histories* that the Hearing Panel found relevant.

### 13.5 REVIEW BY THE DEC AND ISSUANCE OF FINAL ORDER

The DEC must review *de novo* and accept, reject, or modify the Hearing Panel's findings and recommendations. *De novo* means that the DEC must consider the matter anew, as if the Hearing Panel had rendered no recommendation. The DEC gives no deference to the Hearing Panel, except that the DEC must give deference to, but is not bound by, the Hearing Panel's determination of a witness's credibility that is based upon its observation of the witness's demeanor. The DEC must issue a final order that grants or denies the Petition and states the date, if any, after which Respondent may file a Renewed Petition for Reinstatement. The final order also must set forth the DEC's factual findings, any mitigating or aggravating factors, and the *Anonymous Case Histories* that the DEC found relevant. If the DEC denies Respondent's Petition for Reinstatement and does not authorize a Renewed Petition for Reinstatement, or the DEC denies Respondent's Renewed Petition for Reinstatement, the DEC must issue a Revocation, which CFP Board will publish in accordance with Article 16.7.

## ARTICLE 14: APPEALS

### 14.1 INITIATION OF APPEAL

Except where otherwise provided in these *Procedural Rules*, a Respondent or CFP Board Counsel may appeal any final Order to the Appeals Committee.

- a. **Time for filing appeal.** An Appellant must deliver a Notice of Appeal within 15 calendar days from delivery of the final Order. CFP Board will not consider or grant a request for more time to initiate an appeal. Failure to initiate an appeal timely waives the right to appeal from a final Order. A party that did not file a Notice of Appeal may file a Notice of Cross Appeal within 10 calendar days of the service of the other party's Notice of Appeal.
- b. **Content of Notice of Appeal or Cross Appeal.** The Notice of Appeal and Notice of Cross Appeal must be set forth on a form that CFP Board provides, or a short one-page document that identifies the party initiating the appeal, designates the final Order that is the subject of the appeal, and notes whether the Appellant requests an appeal hearing.
- c. **Stay of Final Order.** Upon the successful initiation of an appeal, the final Order is stayed pending a decision by the Appeals Committee.
- d. **Costs and Fees for Appellate Hearing.** When a Respondent files a Notice of Appeal or Notice of Cross Appeal, CFP Board will assess the costs and fees that CFP Board has established for the appeal. Respondent must pay the costs and fees within 14 calendar days of the assessment, unless Respondent has obtained a waiver due to financial hardship pursuant to Article 16.4. The Chair of the Appeals Committee may administratively dismiss an appeal for failure to pay the costs and fees.



## 14.2 APPEALS COMMITTEE AND APPEAL PANEL

- a. **Appeals Committee.** The Appeals Committee of the Board of Directors will review all appeals. Pursuant to Article 14.7.b, CFP Board must identify Appeals Committee members in the Notice of Appeal Hearing.
- b. **Referrals to Appeal Panel.** The Appeals Committee may refer the appeal or any portion of the appeal to an Appeal Panel for a recommendation to the Appeals Committee. An Appeal Panel must submit its recommendation to the Appeals Committee for final review and decision in accordance with Articles 14.8 and 14.9.

## 14.3 APPELLATE STANDARD OF REVIEW

- a. **Appeals from DEC Orders Resolving Complaints.**
  1. **Factual Findings.** The Appeals Committee must accept the DEC's factual findings unless the factual findings are unsupported by substantial evidence under the applicable burden of proof.
  2. **Interpretation or Application.** The Appeals Committee must accept the DEC's interpretation or application of the *Code and Standards* unless that interpretation or application is unreasonable.
  3. **Sanctions.** The Appeals Committee must accept the DEC's imposition of a sanction unless the Appeals Committee determines that the imposition of a sanction is an abuse of discretion.
- b. **Appeals from Administrative Orders.** The Appeals Committee must affirm an Administrative Order unless Appellant establishes that the Administrative Order is unsupported by substantial evidence or is the result of "excusable neglect," which means that the failure to take proper steps at a proper time, were not a consequence of carelessness, but rather resulted from some unavoidable hindrance or occurrence. In determining whether excusable neglect exists, relevant circumstances include:
  1. The reason for the default, including whether it was within the Appellant's control;
  2. Whether the Appellant acted in good faith; and
  3. The potential prejudice to the public or CFP Board.
- c. **Appeals from DEC Orders Resolving Petitions.**
  1. **Factual Findings.** The Appeals Committee must accept the DEC's factual findings unless the factual findings are unsupported by substantial evidence under the applicable burden of proof.
  2. **Interpretation or Application.** The Appeals Committee must accept the DEC's interpretation or application of the Fitness Standards, *Code and Standards*, or *Procedural Rules* unless that interpretation or application is unreasonable.
  3. **Fitness or Rehabilitation.** The Appeals Committee must accept the DEC's determination of fitness or rehabilitation unless the Appeals Committee determines that the DEC's determination is an abuse of discretion.

## 14.4 THE PARTIES' BRIEFS

- a. **Appellant's Brief.** The party filing a Notice of Appeal and the party filing a Notice of Cross Appeal must deliver an Appellant's Brief no later than 45 calendar days of the final Order. The content of the Appellant's Brief must be as follows:
  1. **Appeal from Order issued by the DEC.** Appellant's Brief, which should be no longer than 50 double-spaced pages, must identify the final Order at issue in the appeal and must state the grounds upon which the Appellant seeks a modification or reversal of the final Order. The contents of Appellant's Brief must be limited to the evidence contained in the record from the proceeding that resulted in the final Order. Appellant must not raise new claims but may raise new arguments about claims addressed by the final Order.
  2. **Appeal from Administrative Order.** Appellant's Brief, which should be no longer than 50 double-spaced pages, must identify the final Order at issue in the appeal and must state the grounds upon which the Appellant seeks a modification or reversal of the final Order. Appellant must not raise arguments or submit evidence concerning the substantive allegations contained in the Notice of Investigation or Complaint in an appeal addressing the entry of the final Order.

- b. **Appellee's Brief.** Appellee's Brief must be filed within 30 calendar days of delivery of Appellant's Brief. Appellee's Brief, which should be no longer than 50 double-spaced pages, must specify the party filing Appellee's Brief, and respond to the issues raised in Appellant's Brief. The contents of the Appellee's Brief must be limited to the evidence contained in the record of the proceeding that resulted in the final Order. Appellee must not raise new claims but may raise new arguments about claims addressed by the final Order.
- c. **Reply Brief.** An Appellant must file a Reply Brief within 10 calendar days of the delivery of Appellee's Brief that must not exceed 10 double-spaced pages. The content of the Reply Brief must be limited to responding to those issues raised in Appellee's Brief.
- d. **Motion for More Time.** A party may extend the time for filing a brief by obtaining the consent of the other party. If a party seeking more time is unable to obtain the other party's consent, the party may file a Motion for More Time prior to the deadline for filing the brief that provides good cause for the request. The Chair of the Appeals Committee or Appeal Panel must rule on a Motion for More Time, and deliver the Order to Respondent.

## 14.5 APPELLATE MOTIONS

An Appellant or Appellee may file a written motion not to exceed 10 double-spaced pages regarding non-dispositive matters. Except for good cause shown, motions must be filed no later than 30 calendar days prior to the appeal hearing. An Appellant or Appellee may file a written response, which must be no longer than 10 double-spaced pages, within 10 calendar days of any motion delivered by another party. An Appellant or Appellee may file a rebuttal within five calendar days of any response and must not exceed 10 double-spaced pages.

The Chair of the Appeals Committee must rule on all motions, objections, and other matters raised on appeal prior to, during, and after the hearing. If the Appeals Committee has referred the appeal or any portion of the appeal to an Appeal Panel, the Chair of the Appeal Panel must rule on all motions, objections, and other matters relevant to the appeal or portion of the appeal that the Appeals Committee has referred to the Appeals Panel.

The Chair may hold oral argument on a motion either in person, telephonically, or by video. The Chair must deliver all Orders to the parties.

## 14.6 THE RECORD ON APPEAL

- a. **Appeals from Final Orders Issued by the DEC.** The record on appeal will consist of the record provided to the DEC, the DEC's final Order, the transcript of any hearing before the DEC, the Notice of Appeal, all Briefs filed by the parties, and any appeal hearing transcript.
- b. **Appeals from Administrative Orders.** The record on appeal will consist of the Administrative Order, the Notice of Appeal, all Briefs filed by the parties, and any appeal hearing transcript.
- c. **Preparation of Record.** CFP Board Counsel must prepare the record on appeal, submit it to the Appeals Committee, and deliver a copy upon the Appellee or Appellant.

## 14.7 APPEAL RESOLUTION

- a. **Authority to Hold a Hearing.** The Chair of the Appeals Committee must determine whether an appeal hearing will be held and whether the appeal hearing will be in person, by telephone, or by video conference.
- b. **Notice of Appeal Hearing.** Not less than 30 calendar days prior to the date set for an appeal hearing, CFP Board must send written notice of such hearing to each party, and designating the date, place, and time of the hearing. The Notice of Appeal Hearing must also inform the parties if the Appeals Committee has referred the appeal to an Appeal Panel, and identify the members of the Appeals Committee and the members of the Appeal Panel if the Appeals Committee has made a referral. If the Appeals Committee referred an appeal to an Appeal Panel, the Appeal Panel must conduct the hearing.
- c. **Presentations at Hearing.** At the hearing, both Appellant and Appellee may make affirmative presentations limited to 20 minutes each, and Appellant will be permitted an additional 5 minute presentation to provide a rebuttal to Appellee's affirmative presentation. Affirmative presentations

must address only those issues raised in the Notice of Appeal and the parties' Briefs. The rebuttal must address only those issues raised Appellee's affirmative presentation.

1. **Motion for More Time.** The Appeals Committee or the Appeal Panel may consider motions from the Appellant or Appellee requesting additional time for affirmative presentations and may grant such motions upon a showing of good cause.
2. **Questioning.** The Appeals Committee or Appeal Panel may ask questions at any time during or after the presentations. Subject to the right of Appellee to move for more time, the time allotted for presentation will not be extended solely because the Appeals Committee or Appeals Panel asked questions.

d. **Transcript of Appeal Hearing.** CFP Board must obtain a written transcript of an appeal hearing.

#### **14.8 APPEAL PANEL RECOMMENDATIONS.**

When the Appeals Committee has referred a matter to an Appeal Panel, the Appeal Panel must prepare a written recommendation, which will be reviewed by the Appeals Committee. The Appeals Committee must review *de novo* the Appeal Panel recommendation and either (a) issue a final order, (b) conduct further proceedings, or (c) resubmit the matter to the Appeal Panel with instructions. Neither Appellant nor Appellee may appear during the Appeals Committee's review of the Appeal Panel's recommendations. De novo means that the Appeals Committee must consider the matter anew, as if the Appeal Panel had rendered no previous decision. The Appeals Committee gives no deference to the Appeal Panel.

#### **14.9 APPEALS COMMITTEE ORDERS.**

The Appeals Committee must issue a final order in writing, which must be delivered to both parties. Appeals Committee orders are not subject to further appeal or review by CFP Board.

### **ARTICLE 15: DELIVERING AND FILING DOCUMENTS, AND DETERMINING WHEN A DOCUMENT IS DUE**

These *Procedural Rules* set deadlines for a Respondent and CFP Board to deliver and file documents. This Article sets forth the requirements for delivering and filing documents and calculating the date when a document is due.

#### **15.1 DOCUMENTS DELIVERED BY CFP BOARD**

A Respondent is required to provide CFP Board an email address and mailing address, and to notify CFP Board within 30 calendar days of any changes to that information. CFP Board may send or deliver documents to Respondent through the email address Respondent has provided to CFP Board, or if no email address is available, by first class mail to the mailing address the Respondent has provided to CFP Board. In matters where Respondent has designated counsel, CFP Board must deliver documents to Respondent's counsel. CFP Board may utilize the same methods of delivery on appeal.

#### **15.2 DOCUMENTS DELIVERED TO CFP BOARD**

Except where CFP Board otherwise specifies, a Respondent may deliver documents to CFP Board, including on appeal, through the email address or to the mailing address that CFP Board provides for delivery.

#### **15.3 FILINGS**

Respondent must file documents with CFP Board Counsel, who must make filings available to the Hearing Panel, DEC, Appeal Panel, or Appeals Committee, as appropriate. A document is filed with CFP Board when it is delivered to CFP Board Counsel.

#### **15.4 DATE OF DELIVERY**

The date of delivery will be the day a document is made available through email or mail. This date will be determined by the day noted on the document being delivered. The document must be delivered on the date of the document. A postmark on an envelope is presumptive evidence of the date the document was delivered.

## 15.5 CALCULATION OF TIME

When the *Procedural Rules* state a time in calendar days:

- a. Exclude the day of the event that triggers the period;
- b. Count every day, including intervening Saturdays, Sundays, and federal legal holidays; and
- c. Include the last day of the period, but, if the last day is a Saturday, Sunday, or federal legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or federal legal holiday.

## ARTICLE 16: GENERAL PROVISIONS

### 16.1 CONFIDENTIALITY

- a. Except as otherwise provided in these *Procedural Rules*, the existence of an investigation by CFP Board and the record of proceedings conducted pursuant to these *Procedural Rules* (“Confidential Information”) will be confidential and will not be made public, except as provided below.
- b. CFP Board may disclose Confidential Information:
  1. In Publication of public discipline pursuant to Article 16.7;
  2. Within CFP Board and to third parties, but only as necessary to assess a Respondent’s compliance with CFP Board’s *Code and Standards*, including to:
    - a) Members of the DEC, Hearing Panels, and Settlement Review Panels;
    - b) Members of the Appeals Committee or an Appeal Panel, if an Order is appealed under these *Procedural Rules*;
    - c) Counsel designated by Respondent;
    - d) Respondents in a consolidated matter and their designated counsel;
    - e) CFP Board’s staff and Board of Directors;
    - f) Individuals under a confidentiality agreement with CFP Board who are assisting CFP Board in the proceeding;
    - g) Counsel for witnesses in an oral examination or a hearing;
    - h) Individuals not otherwise authorized to review Confidential Information, to the extent necessary to conduct the investigation, prepare the individual for an oral examination or a hearing, or to question the individual during the oral examination or hearing, but in no event may the individual be permitted to retain a copy of a document containing Confidential Information; and
    - i) Stenographers or video equipment operators who assist with the recordation of an oral examination or a hearing.
  3. If such disclosure is required by legal process of a court of law, governmental agency or an industry self-regulatory organization having appropriate jurisdiction;
  4. To a governmental agency or industry self-regulatory organization having appropriate jurisdiction;
  5. If Respondent has waived confidentiality.
- c. A Respondent or CFP Board may designate as Confidential Information excerpts of testimony in or documents referenced in the transcript of an oral examination taken pursuant to Article 1.3 within 10 calendar days after receipt of the transcript. CFP Board will redact such designated Confidential Information from the transcript prior to disclosing the transcript to the examinee.
- d. To the extent Confidential Information is disclosed to Respondent, Respondent must keep the Confidential Information confidential, must not make the Confidential Information public, and must use such Confidential Information solely in connection with Respondent’s defense of the investigation or prosecution, or any appeal thereof.

## 16.2 RETENTION OF COUNSEL

A Respondent, Appellant, or Appellee may be represented by Counsel during proceedings conducted pursuant to these *Procedural Rules*. Respondent's Counsel, if any, must be identified to CFP Board prior to any scheduled on the record testimony or hearing. Respondent must provide the counsel's contact information as well as whether the Counsel will appear in person, via telephone, or via video conference (if CFP Board makes video conference available) for any on the record interview, oral argument, or hearing conducted under these *Procedural Rules*. Respondent's counsel must be an active member in good standing of the bar of a state of the United States, the District of Columbia, or any jurisdiction, possession, territory or dependency of the United States. The DEC Chair and Appeals Committee Chair may prohibit the appearance of Respondent's Counsel if either determines that Respondent's Counsel has not complied with any guidelines or standards that CFP Board establishes for outside counsel. If CFP Board prohibits Respondent's counsel from appearing, Respondent may designate substitute counsel. Respondent must promptly inform CFP Board in the event Respondent's counsel withdraws or otherwise ceases to represent Respondent in the proceedings.

## 16.3 RECUSAL

- a. **Standard for Recusal.** A member of the DEC, a Hearing Panel, a Settlement Review Panel, the Appeals Committee, or an Appeal Panel ("Member") must not participate in any proceeding in which the Member's impartiality might reasonably be questioned, including but not limited to the following circumstances:
  1. The Member has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.
  2. The Member knows, or reasonably should know, that the Member or a member of the Member's Family (as defined in the *Code and Standards*) is:
    - a) A party or member of a party's Family;
    - b) An officer, director, general partner, managing member, or employee of a business entity that the party or members of the party's Family Control (as defined in the *Code and Standards*);
    - c) A person who has an economic interest in the proceeding or a business entity that a party or members of the Family of a party Control;
    - d) A person who has any other interest that could be substantially affected by the outcome of the proceeding; or
    - e) Likely to be a witness in the proceeding.
- b. **Process for Recusal.** CFP Board must provide Respondent or Appellant and Appellee with notice of the members of the Hearing Panel, the DEC, the Settlement Review Panel, Appeals Committee and/or the Appeal Panel, as applicable. Respondent, Appellant or Appellee must promptly file a motion requesting the recusal of a Member and state with particularity the grounds for the motion. Respondent's failure to promptly file a motion for recusal will result in the waiver of an objection to the participation of the Member. The Chair of the DEC or the Appeals Committee, as applicable, must rule upon any request for recusal. No person who is the subject of a motion for recusal may participate in the consideration of the motion except to raise the issue.

## 16.4 FEES AND FINANCIAL HARDSHIP

CFP Board may impose fees on Respondent or Appellant. Respondent or Appellant must submit the fee to CFP Board within 20 calendar days of the assessment. To receive a waiver or reduction of fees, Respondent or Appellant must submit a written request and supporting documentation demonstrating a financial hardship, as required by CFP Board. All such requests must be submitted to CFP Board no later than 20 calendar days after the fee assessment. CFP Board Counsel may reduce or waive the required fees. Failure by Respondent or Appellant to submit any fees owed to CFP Board, or to receive a waiver of such fees, will result in a Default under Article 4.1 and CFP Board will not schedule a hearing. If the DEC finds no ground for discipline, CFP Board must refund Respondent the fee.

## 16.5 ACTIONS REQUIRED TO BE TAKEN BY A CHAIR

Any action that these *Procedural Rules* require to be taken by a Chair of the Hearing Panel, DEC, Appeals Panel, or Appeals Committee may be taken by another member designated by the Chair.

## 16.6 SANCTION GUIDELINES AND ANONYMOUS CASE HISTORIES

- a. **Sanction Guidelines.** The *Sanction Guidelines* identify specific categories of conduct that violate CFP Board's *Code and Standards*, the sanction guideline for that conduct, and policy notes for the DEC to consider when imposing the appropriate sanction. The DEC is not bound by the *Sanction Guidelines*. When considering the appropriate sanction in a particular case, the DEC may deviate from the sanction guideline if aggravating facts warrant a more severe sanction or mitigating factors warrant a less severe sanction.
- b. **Anonymous Case Histories.** *Anonymous Case Histories* are summaries of final orders of the DEC. CFP Board intends for the *Anonymous Case Histories* to guide the DEC's determinations. The DEC is not bound by the *Anonymous Case Histories*.

## 16.7 PUBLICATION

- a. In the event that a proceeding conducted pursuant to these *Procedural Rules* results in public discipline against Respondent, CFP Board will publish the order imposing such public discipline and/or a summary of the contents of the order in a press release, on CFP Board's website, and any other form of publicity that CFP Board determines is appropriate. In the publication, CFP Board will have the right to identify Respondent and the form of discipline, and provide some or all of the facts, as CFP Board has determined them to be, that CFP Board has determined are relevant to the discipline, including information which otherwise may be private or confidential under these *Procedural Rules*.
- b. Publication of discipline will remain on CFP Board's website until after Respondent files, and the DEC grants, a Petition to Remove Publication. A Respondent may file a Petition to Remove Publication when:
  1. The DEC has issued a final order authorizing Respondent to file the Petition to Remove Publication;
  2. The DEC's final order does not state whether Respondent is or is not authorized to file a Petition to Remove Publication, the DEC imposed a Public Letter of Admonition or a Suspension of one year or less, and not less than 10 years has passed since the date of publication; or
  3. Respondent's bankruptcy was disclosed pursuant to CFP Board's Bankruptcy Disclosure Procedures, and not less than ten years have passed since Respondent's bankruptcy.
- c. The DEC must grant the Petition to Remove Publication if Respondent proves by a preponderance of the evidence (a standard of review that means "more probable than not," i.e., evidence which shows that, as a whole, the fact sought to be proved is more probable than not to have occurred) that Respondent:
  1. Complied with the terms of the final order imposing discipline;
  2. Provided CFP Board a properly-completed Ethics Disclosure Questionnaire;
  3. Was not the subject of a separate bankruptcy disclosure or CFP Board public sanction;
  4. Is not currently under investigation or the subject of a Complaint; and
  5. In the case of a Respondent who is not a CFP® professional, did not engage in conduct and was not found to have engaged in conduct that violates CFP Board's *Code and Standards* after the publication of bankruptcy or public discipline.
- d. If the DEC grants a Petition to Remove Publication, then:
  1. CFP Board must remove the publication of bankruptcy or public discipline from CFP Board's website;
  2. CFP Board's verification of Respondent's CFP® certification and background must not reflect the bankruptcy or public discipline.
- e. The DEC may vacate the Order granting the Petition to Remove Publication if:
  1. Respondent makes a false or misleading representation to CFP Board in connection with the Petition to Remove Publication; or
  2. CFP Board issues Respondent another public sanction other than an Interim Suspension.

- f. If the DEC vacates the Order granting the Petition to Remove Publication, then:
  1. CFP Board must restore the publication of bankruptcy or public discipline to CFP Board’s website; and
  2. CFP Board’s verification of Respondent’s CFP® certification and background must reflect the bankruptcy or public discipline.
- g. If Respondent makes a false or misleading representation to CFP Board in connection with the Petition to Remove Publication, then CFP Board Counsel retains the authority to deliver to Respondent a Complaint based upon the false or misleading representation.

## 16.8 LIMITATIONS

- a. CFP Board Counsel may not issue a Notice of Investigation after the later of:
  1. Seven years after the date of the last action constituting a violation of the *Code and Standards*;
  2. Two years after the date on which Respondent is the subject of a Criminal Conviction, Civil Finding, or Professional Discipline; or
  3. The date the DEC establishes in an order granting a Motion for Extension of Time to Commence Investigation.
- b. The DEC must issue an order granting a Motion for Extension of Time to Commence Investigation if CFP Board Counsel proves by a preponderance of the evidence that there are extraordinary circumstances for enlarging the time to issue a Notice of Investigation. The DEC must find that extraordinary circumstances exist if Respondent was required, but failed, to report to CFP Board in a timely manner the matter that CFP Board Counsel intends to investigate.
- c. CFP Board Counsel may not issue an original Complaint to a Respondent more than four years after the date on which CFP Board issued a Notice of Investigation, unless:
  1. CFP Board Counsel and Respondent agree to extend the time for CFP Board to issue a Complaint; or
  2. The DEC grants a Motion for Extension of Time to Issue Complaint and specifies a time for CFP Board Counsel to issue a Complaint.
- d. The DEC must issue an order granting a Motion for Extension of Time to Issue Complaint if CFP Board Counsel proves by a preponderance of the evidence that there is good cause for extending the time for issuing a Complaint. The DEC must find good cause if:
  1. The matter under investigation is the subject of a pending Regulatory Investigation, Regulatory Action, Civil Action, or criminal proceeding in which Respondent has been charged with a Felony or Relevant Misdemeanor; or
  2. The circumstances warrant consolidation of multiple matters concerning Respondent that are under investigation, at least one of which occurred less than four years after CFP Board issued a Notice of Investigation.
- e. If CFP Board Counsel files a Motion for Extension of Time to Commence Investigation or Issue Complaint, Respondent may file a response within 20 calendar days of delivery of the Motion, and CFP Board Counsel may file a reply to Respondent’s response with 10 calendar days of delivery of the response.
- f. In resolving a Complaint, the DEC may consider as aggravating factors conduct that occurred outside of the limitations period set forth in this Article.



CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

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