

**CFP BOARD**

# **PROCEDURAL RULES**

(AS REVISED, EFFECTIVE SEPTEMBER 1, 2023)

In November 2021, the Board of Directors of Certified Financial Planner Board of Standards, Inc. (CFP Board), adopted changes to the *Procedural Rules* that do not become effective until January 2024. Those changes, which are not reflected in this document, will modify Articles 3.3, 3.4, and 11.1 to address the delivery of a Complaint for Failure to Timely Report Information and a Respondent's Answer to such a Complaint, and to permit a Respondent to accept without a hearing or hearing fee a Public Censure for Failure to Timely Report Information. [View a redlined document that includes these changes.](#) When these changes become effective, CFP Board will update the *Procedural Rules* accordingly.

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# PREAMBLE

CFP Board is a non-profit organization that has established high standards of competency and ethics for personal financial planners for the benefit of the public. CFP Board enforces its standards through a 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 sanction, an opportunity to present documents, witnesses, and argument at a hearing, and a written order that sets forth the basis for the decision that may be appealed within CFP Board. 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* (the "Terms and Conditions") or *Pathway to CFP® Certification 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 Enforcement Counsel ("Enforcement Counsel," a term, as used in the *Procedural Rules*, that includes individuals who are operating at the direction of Enforcement Counsel) has the authority to investigate and file a Complaint against a Respondent for alleged violations of (a) the *Code of Ethics and Standards of Conduct* or, where applicable, its predecessors, including the *Standards of Professional Conduct* ("Code and Standards"), (b) the *Pathway to CFP® Certification Agreement*, or (c) the *Terms and Conditions*. CFP Board's Disciplinary and Ethics Commission (the "DEC"), which is a peer-review body composed of CFP® professionals and members of the public, has the authority to issue a final order that finds facts, determines whether a violation has occurred and, where appropriate, imposes discipline in the form of a sanction. Such a sanction may include, but is not limited to, a private censure, a public censure, a suspension or revocation of a CFP® professional's Certification and Trademark License to use the CFP Board Certification Marks, or a temporary or permanent bar on Respondent's ability to obtain CFP® certification. CFP Board will publish the decision in a press release and on CFP Board's website in accordance with these *Procedural Rules*.

Enforcement Counsel also has the authority to investigate a Respondent who is applying for CFP® certification. Enforcement Counsel may require a Respondent to file a Petition for Fitness Determination in accordance with CFP Board's *Fitness Standards for Candidates for CFP® Certification and Former CFP® Professionals Seeking Reinstatement* ("Fitness Standards"). In certain circumstances, a Respondent who is subject to an order of suspension may file a Petition for Reinstatement. The DEC has the authority to issue a final DEC order that resolves a Petition.

The DEC, Hearing Panels, Settlement Review Panels, and counsel for the DEC ("DEC Counsel," a term, as used in the *Procedural Rules*, that includes individuals who are operating at the direction of DEC Counsel) have the authority set forth in these *Procedural Rules*. The DEC has broad authority to issue orders that decide Complaints and Petitions and that control the conduct of the proceedings. Hearing Panels and Settlement Review Panels have authority to make recommendations to the DEC. DEC Counsel has authority to (a) provide legal counsel to the DEC, Hearing Panels, and Settlement Review Panels, (b) decide Motions, and (c) facilitate hearings.

Except where these *Procedural Rules* otherwise specify, Respondent or CFP Board Appellate Counsel ("Appellate Counsel," a term as used in the *Procedural Rules* that includes individuals operating at the direction of Appellate Counsel) may appeal a final DEC order to CFP Board's Appeals Commission. The Appeals Commission is a peer-review body composed of CFP® professionals and members of the public and has the authority to issue CFP Board's final decision. The Appeals Commission and counsel for the Appeals Commission ("Appeals Commission Counsel," a term, as used in the *Procedural Rules*, that includes individuals who are operating at the direction of Appeals Commission Counsel) have the authority set forth in these *Procedural Rules*. The Appeals Commission has broad authority to issue orders that decide Appeals and that control the conduct of the appeal proceedings. Appeals Commission Counsel has authority to provide legal counsel to the Appeals Commission.

# ARTICLE 1: INVESTIGATION AND INFORMAL INQUIRY

## 1.1 COMMENCEMENT OF INVESTIGATION OR INFORMAL INQUIRY

Enforcement Counsel has the authority to commence an investigation into conduct by a Respondent and to make informal inquiries to a Respondent and other individuals or entities.

- a. **Informal Inquiry.** When commencing an informal inquiry, Enforcement Counsel may seek information regarding potential misconduct from any individual or entity. Enforcement Counsel may use in an investigation any information obtained in an informal inquiry.
- b. **Investigation.** When commencing an investigation, Enforcement Counsel must deliver to Respondent a written Notice of Investigation stating that Respondent is under investigation, identifying the general nature of the investigation, and providing Respondent the address and means for delivery and filing of documents (provided that if no address and means are provided, then documents must be delivered by email to [investigations@cfpboard.org](mailto:investigations@cfpboard.org)). Respondent must deliver to Enforcement Counsel a document acknowledging receipt of the Notice of Investigation within 14 calendar days from delivery to Respondent of the Notice of Investigation. If Respondent fails to deliver a timely acknowledgement of receipt, then Enforcement Counsel must re-deliver the Notice of Investigation via certified mail, hand-delivery, or any commercially available delivery service that provides a record of delivery using the mailing address Respondent provided to CFP Board, or such other address that Enforcement Counsel reasonably believes to be Respondent's current mailing address. If Respondent fails to deliver to Enforcement Counsel a document acknowledging receipt of the Notice of Investigation within 14 calendar days of delivery of the second Notice of Investigation, then Respondent is in default, and Enforcement Counsel may take action in accordance with Article 4.2. Upon 14 days advance notice to a Respondent, Enforcement Counsel may consolidate investigations against two or more Respondents that involve related facts. Upon motion, DEC Counsel may issue an Order severing a consolidated investigation at any time, for good cause shown.

## 1.2 PROCEDURES FOR INFORMAL INQUIRY OR INVESTIGATION

- a. **Enforcement Counsel Investigative Authority.** Enforcement Counsel has broad authority and discretion to conduct an informal inquiry or investigation. Enforcement Counsel may use any reasonable means to conduct an informal inquiry or investigation, including any of the procedures described in this Article. Enforcement Counsel may use these procedures at any time, including prior to and after delivering a Complaint.
- b. **Requests for Documents and Information.** Enforcement Counsel may deliver requests relating to or arising out of the informal inquiry or investigation that ask Respondent or third parties 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 Enforcement Counsel ("Requests for Admission"). Enforcement Counsel may include Requests for Production, Requests for Information, and Requests for Admission in the Notice of Investigation or send them later.
- c. **Response to Requests for Production and Requests for Information.** Unless the request specifies a different timeframe, Respondent must deliver responsive documents or information within 14 calendar days from delivery of a Request for Production or Request for Information. Enforcement Counsel has the authority to grant extensions for good cause shown. If Enforcement Counsel receives no response or an incomplete response, then Enforcement Counsel may deliver a Notice of Failure to Cooperate in accordance with Article 1.3.
- d. **Response to Requests for Admission.**
  1. Unless the request specifies a longer timeframe, Respondent must deliver a response to a Request for Admission within 14 calendar days. Enforcement Counsel has the authority to grant extensions for good cause shown.
  2. For each Request for Admission, Respondent must:
    - a) Admit, deny, or declare a lack of knowledge sufficient to admit or deny the substance of the Request for Admission;
    - b) Provide the factual basis for any denial, and
    - c) State, for any declaration based on lack of knowledge sufficient to admit or deny the substance of a Request for Admission, that Respondent has made a reasonable inquiry and that the information Respondent knows or can readily obtain is insufficient to enable Respondent to admit or deny.

3. Any statement of fact for which an Admission is requested and to which Respondent fails to provide the required information within the time frame set forth in a Notice of Failure to Cooperate, is deemed admitted.
- e. **Questions by Oral Examination.** Enforcement Counsel may question by oral examination Respondent or third parties with respect to any matter relating to or arising out of an informal inquiry or investigation. The examination must be under oath or affirmation.
1. **Notice, Location, and Method.** At least 14 calendar days in advance of the oral examination or as otherwise agreed by the parties, Enforcement Counsel must deliver to Respondent and any third-party examinee a notice identifying the date, time, and location of the examination. Enforcement Counsel may conduct the examination in person, telephonically, or by video conference. All oral examinations must be completed at least 30 calendar days prior to the hearing unless the parties agree otherwise.
  2. **Attendance.** Unless Enforcement 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 video and/or stenographic reporter. Respondent, Respondent's counsel, witnesses, and experts may appear in person or video at any in person oral examination, and by video at any video oral examination. For good cause shown, Enforcement Counsel may grant a participant permission to appear by telephone at either an in person oral examination or a video oral examination, using the video platform provided by CFP Board. (An expert is a person retained by a party who is qualified to offer an opinion by knowledge, skill, experience, training, or education.) Enforcement Counsel may conduct the examination and deliver a Notice of Failure to Cooperate in accordance with Article 1.3 if Respondent or Respondent's counsel fails to appear at the date, time, and location specified in the Notice.
  3. **Order of Questioning.** After Enforcement Counsel questions the examinee, Respondent or Respondent's counsel may question the examinee. Enforcement Counsel then may ask the examinee additional questions. Counsel for an examinee other than Respondent then may question the examinee. Enforcement Counsel then may ask the examinee additional questions.
  4. **Federal or State Evidentiary or Procedural Rules.** The examination is not a deposition and is not required to follow federal or state evidentiary or procedural rules.
  5. **Availability of Transcript and Video.** Enforcement Counsel must obtain a written transcript and video recording (if applicable) of the examination. Upon request to CFP Board Counsel in accordance with Article 17.1, an examinee may receive a copy of the transcript of the examinee's testimony and any exhibits that the examinee produced in the proceeding conducted pursuant to these *Procedural Rules*. A Respondent may request a copy of the transcript, video, and exhibits in accordance with Article 6.1.
  6. **Use of Transcript and Video.** The transcript and video of the examination, if relevant, is admissible at a hearing or settlement review pursuant to these *Procedural Rules*.
- f. **Witness Interviews.** Enforcement Counsel may interview Respondent or third parties with respect to any matter relating to or arising out of the informal inquiry or investigation.

### 1.3 DUTY OF COOPERATION

- a. A Respondent, including a Respondent under investigation or a Respondent who has information about a Respondent under investigation, (in either case, a "Request Recipient") has a Duty of Cooperation under the *Terms and Conditions*, the *Pathway to CFP® Certification Agreement*, the *Code and Standards*, and the *Procedural Rules*. The Duty of Cooperation includes, but is not limited to:
1. Timely providing all documents requested in a Request for Production that are in Request Recipient's control that are not privileged and that do not constitute attorney or expert work product (an expert is a person retained by a party who is qualified to offer an opinion by knowledge, skill, experience, training, or education), other than the expert disclosures required under Article 10.3.c.4.;
  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, truthfully, and completely admitting, denying, or declaring a lack of knowledge sufficient to admit or deny as to all Requests for Admission, providing the factual basis for any denial, stating for any declaration of a 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, and providing the factual basis for any declaration of a lack of knowledge;

4. Appearing for Questions by Oral Examination upon the request of Enforcement 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 Enforcement Counsel;
    - b) Using reasonable efforts to require others to execute documents that authorize and request third parties to provide information or documents to Enforcement Counsel; and
    - c) Executing documents and requiring third parties to execute documents that release third parties from any potential liability for providing to Enforcement Counsel the information and/or documents that Enforcement Counsel has requested.
  6. For a Respondent who is the subject of an inquiry or investigation, updating Respondent's account with CFP Board and notifying Enforcement Counsel promptly of any change in contact information, including email address, mailing address, and telephone numbers.
- b. A Request Recipient has a duty to supplement documents and information provided to Enforcement Counsel pursuant to this Article, in a timely manner, if the Request Recipient learns that the disclosure or response is incomplete or incorrect in some material respect.
  - c. Notwithstanding any suspension, expiration, relinquishment, revocation, or termination of Request Recipient's Certification and Trademark License, Request Recipient will continue to be subject to sanction in accordance with the *Terms and Conditions* and will continue to be bound by the Duty of Cooperation.
  - d. If Enforcement Counsel contends that a Request Recipient failed to satisfy the Duty of Cooperation, then Enforcement Counsel may deliver a Notice of Failure to Cooperate that identifies the failure to cooperate and provides Request Recipient 14 calendar days to cure the failure.
  - e. A Request Recipient's failure to comply with the Duty of Cooperation constitutes a ground for sanction. A Request Recipient's failure to comply with the Duty of Cooperation may also give rise to an adverse inference that presumes Request Recipient would have provided the requested documents or information if they were not unfavorable to the Request Recipient.

## 1.4 RESULTS OF INFORMAL INQUIRIES AND INVESTIGATIONS

- a. **Resolution of Informal Inquiry.** Enforcement Counsel must close an informal inquiry or begin an investigation. Enforcement Counsel is not required to communicate the results of an informal inquiry to the person the inquiry was directed.
- b. **Resolution of an Investigation.** After delivering a Notice of Investigation and conducting an investigation, Enforcement Counsel must resolve the investigation in one of the following ways:
  1. Determine that the matter does not warrant further investigation and dismiss the investigation, while reserving the right to reopen the investigation in the future.
  2. Determine there is no probable cause to believe that Respondent violated the *Code and Standards* or the *Pathway to CFP® Certification Agreement* and dismiss the investigation, while reserving the right to reopen the investigation in the future.
  3. Determine that there is probable cause to believe that Respondent violated the *Code and Standards* or the *Pathway to CFP® Certification Agreement*, and take one or more of the following actions:
    - a) Letter of Caution: Dismiss the investigation with a Letter of Caution indicating that Enforcement Counsel has determined, based upon the available evidence, that Respondent may have violated the *Code and Standards*, or the *Pathway to CFP® Certification Agreement*, but that Respondent's conduct does not warrant referral to the DEC for a sanction, while reserving the right to reopen the investigation in the future. Respondent may submit a letter responding to the Letter of Caution that must become part of Respondent's record with CFP Board and must 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.
4. Determine that a Respondent's conduct requires Respondent to file a Petition for Fitness Determination in accordance with Article 5 and deliver to Respondent a Notice to Commence a Petition for Fitness Determination.

## ARTICLE 2: INTERIM SUSPENSIONS

An interim suspension is a suspension of a CFP® professional's Certification and Trademark License during the pendency of 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. Enforcement Counsel may file with the DEC and contemporaneously deliver to Respondent a Petition for Interim Suspension Order, together with a proposed Order granting the Petition for Interim Suspension Order. The Petition for Interim Suspension Order must state whether Enforcement Counsel requests a hearing and request expedited pre-hearing deadlines. DEC Counsel must deliver to the parties notice of the name and employer of each member of the Hearing Panel as required by Article 17.3.b. Respondent must file a response to the Petition for Interim Suspension, and indicate whether Respondent requests a hearing, within 14 calendar days of delivery of the Petition for Interim Suspension, or at such other time as DEC Counsel directs. Enforcement Counsel may file a reply to Respondent's response within seven calendar days of delivery of the response, or at such other time as DEC Counsel directs.
2. A Hearing Panel, as defined in Article 10.5, must consider the Petition for Interim Suspension Order. DEC Counsel must determine whether the Hearing Panel will hold a hearing on the Petition for Interim Suspension. The hearing may be held in person or by video conference. If DEC Counsel decides to hold a hearing, then DEC Counsel must issue to Respondent and Enforcement Counsel a Notice of Hearing that provides the date, place, and time of the hearing. Any hearing participant may appear in person or by video at any in person hearing, and by video at any video hearing. For good cause shown, DEC Counsel may grant a hearing participant permission to appear by telephone at either an in person hearing or a video hearing, using the video platform provided by CFP Board. The Notice of Hearing must also set deadlines for filing the documents that the parties intend to introduce at the hearing, identifying witnesses, and submitting agreed-upon written stipulations of fact that will be binding on the parties to the stipulation. Respondent must attend any hearing on a Petition for Interim Suspension Order and answer questions. If Respondent fails to attend the hearing or answer questions, then the Hearing Panel may presume that factual allegations presented by Enforcement Counsel, whether made in the Petition or at a hearing, are true. The Hearing Panel may proceed with the hearing if either Respondent or Enforcement Counsel fails to appear at the date, time, and place established for the hearing. At any hearing on a Petition for Interim Suspension Order, DEC Counsel facilitates the hearing as described in these *Procedural Rules*.
3. The Hearing Panel must grant the Petition and issue an Interim Suspension Order if the Hearing Panel determines that Enforcement Counsel has demonstrated 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 matter sought to be proved is more probable than not to have occurred) that: (a) Respondent's conduct or alleged conduct reflects adversely on his/her integrity or fitness as a CFP® professional, on the CFP Board certification marks, or on the profession; (b) Respondent's conduct or alleged conduct (if later proven) likely would result in a sanction of a Suspension or greater pursuant to CFP Board's *Sanction Guidelines*; and (c) an Interim Suspension Order would be in the public interest. For purposes of an Interim Suspension Order based on alleged conduct, such allegations must be made by (i) a federal, state, local, or foreign governmental agency, self-regulatory organization, or other regulatory authority, or (ii) an individual with appropriate authority to file a criminal allegation in a court of criminal jurisdiction.

- b. **Automatic Interim Suspension:** Upon notice from Enforcement Counsel to DEC Counsel and Respondent that there are grounds for an Automatic Interim Suspension, DEC Counsel, without action by a Hearing Panel or the DEC, may deliver an Interim Suspension Order if Respondent:
  1. Is the subject of a misdemeanor Criminal Conviction, or a felony Criminal Conviction, as defined in Article 7.1, for fraud, theft, misrepresentation, violence, or a crime of moral turpitude;
  2. Is the subject of a Civil Finding, as defined in Article 7.3, that Respondent engaged in fraud, theft, misrepresentation, or other dishonest conduct;
  3. Is the subject of Professional Discipline, as defined in Article 7.2, that resulted in a revocation, bar, or an equivalent sanction;
  4. Voluntarily terminates or surrenders a financial professional license or registration while Respondent is the subject of a Regulatory Action or Regulatory Investigation; or
  5. Consents to the entry of an Interim Suspension Order.
- c. **Delivery of Interim Suspension Order:** DEC Counsel must deliver an Interim Suspension Order to Respondent and Enforcement Counsel.
- d. **Term of Interim Suspension Order:** An Interim Suspension Order will remain in place until: (1) the DEC or, if an appeal is filed, the Appeals Commission issues a final order addressing the conduct at issue in the Interim Suspension Order; (2) Enforcement Counsel dismisses the investigation of the conduct at issue in the Interim Suspension Order and either: (i) Respondent files and DEC Counsel grants a Petition to Vacate the Interim Suspension under Article 2.4 or (ii) Enforcement Counsel files and DEC Counsel grants a Motion to Terminate the Interim Suspension under Article 9.1; (3) Respondent fails to file timely a Petition for Reinstatement After Interim Suspension Order and DEC Counsel grants Enforcement Counsel's Motion for an Administrative Order; (4) Respondent fails to satisfy the requirements of Article 2.3 and DEC Counsel grants Enforcement Counsel's Motion for an Administrative Order; or (5) the DEC grants a Petition for Reinstatement After Interim Suspension Order filed by Respondent and Respondent has completed all requirements for CFP® certification.
- e. **No Appeals of Interim Suspensions:** An Interim Suspension Order is not subject to appeal under Article 15.

## 2.2 PUBLICATION OF AN INTERIM SUSPENSION ORDER

CFP Board publishes an Interim Suspension Order in accordance with Article 17.7.

## 2.3 RESPONSIBILITIES OF RESPONDENT FOLLOWING INTERIM SUSPENSION ORDERS

A Respondent subject to an Interim Suspension Order must not use the CFP Board certification marks, state or suggest that Respondent is a CFP® professional, or hold out to the public as being certified by CFP Board while the Interim Suspension Order is in effect. Within 45 calendar days of delivery of an Interim Suspension Order, Respondent must deliver to Enforcement Counsel evidence of compliance with the Interim Suspension Order, written evidence in accordance with Article 11.2 (Notice to Respondent's Firm(s) and Clients Required after Public Sanction), and a statement of assurance and proof of compliance in accordance with Article 11.3 (Prohibition Against Use of CFP Board Certification Marks By a Respondent Who is Subject to a Suspension, Interim Suspension, Administrative Suspension, Revocation, Administrative Revocation, Temporary Bar, Administrative Temporary Bar, Permanent Bar, or Administrative Permanent Bar). If a Respondent fails to satisfy the requirements of this Article, then Enforcement Counsel may declare Respondent in default and move for an Administrative Order under Article 4.2.

## 2.4 VACATING AN INTERIM SUSPENSION ORDER

- a. **Vacating a Discretionary Interim Suspension.** A Hearing Panel or DEC Counsel may vacate an Interim Suspension Order issued pursuant to Article 2.1.a (Discretionary Interim Suspension) if Respondent demonstrates 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 matter sought to be proved is more probable than not to have occurred) that:
  1. Respondent did not engage in the conduct or alleged conduct that was the basis for the Interim Suspension Order, and
  2. Vacating the Interim Suspension Order would be in the public interest.

- b. **Vacating an Automatic Interim Suspension.** A Hearing Panel or DEC Counsel may vacate an Interim Suspension Order issued pursuant to Article 2.1.b (Automatic Interim Suspension) if:
1. Respondent demonstrates 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 matter sought to be proved is more probable than not to have occurred) that the Criminal Conviction, Civil Finding, or Professional Discipline has been vacated or reversed, the financial professional license or registration that was voluntarily terminated or suspended while the Respondent was the subject of a Regulatory Action or Investigation has been reinstated, or Respondent was not the subject of the Criminal Conviction, Civil Finding, or Professional Discipline, and
  2. Enforcement Counsel does not establish by a preponderance of the evidence that there are grounds for a discretionary interim suspension under Article 2.1.a.
- c. **Request for Order to Vacate.** Respondent or Enforcement Counsel may request in writing that DEC Counsel issue an order vacating an Interim Suspension Order. A party opposing a written request may file a response within 14 calendar days of service of the written request, or at such other time that DEC Counsel directs. The party requesting the order may file a reply within 5 calendar days of service of the response, or at such other time that DEC Counsel directs.
- d. **DEC Review of Petition to Vacate.**
1. A Respondent may file with the DEC and contemporaneously deliver to Enforcement Counsel a Petition to Vacate an Interim Suspension Order if DEC Counsel does not deliver an order vacating an Interim Suspension Order when requested by Respondent or Enforcement Counsel. A Respondent must base the Petition to Vacate an Interim Suspension Order on the grounds for vacating an Interim Suspension Order articulated in Article 2.4.a. or Article 2.4.b.
  2. When a Petition to Vacate an Interim Suspension Order is filed with the DEC, DEC Counsel must deliver to the parties notice of the name and employer of each potential member of the Hearing Panel and the DEC as required by Article 17.3.b. Enforcement Counsel must file a response to the Petition to Vacate an Interim Suspension Order within 14 calendar days of delivery of the Petition to Vacate an Interim Suspension Order, or at such other time as DEC Counsel directs. Respondent may file a reply to Enforcement Counsel’s response within seven calendar days of delivery of the response, or at such other time as DEC Counsel directs.
  3. A Hearing Panel will consider the Petition to Vacate. DEC Counsel must determine whether to hold a hearing on the Petition to Vacate, which may occur in person or by video conference. If DEC Counsel decides to hold a hearing, then DEC Counsel must issue to Respondent and Enforcement Counsel a Notice of Hearing that provides the date, place, and time of the hearing. The Notice of Hearing also must set deadlines for filing the documents that the parties intend to introduce at the hearing, identifying witnesses, and submitting agreed-upon written stipulations of fact that will be binding on the parties to the stipulation. Any hearing participant may appear in person or by video at any in person hearing, and by video at any video hearing. For good cause shown, DEC Counsel may grant a hearing participant permission to appear by telephone at either an in person hearing or a video hearing, using the video platform provided by CFP Board. Respondent must attend any hearing on a Petition to Vacate an Interim Suspension Order and answer questions. If Respondent fails to attend the hearing or answer questions, then the Hearing Panel must deny the Petition to Vacate the Interim Suspension Order. The Hearing Panel may proceed with the hearing if Enforcement Counsel fails to appear at the date, time, and place established for the hearing. At any hearing on a Petition to Vacate, DEC Counsel will facilitate the hearing as described in these *Procedural Rules*.
  4. The Hearing Panel reviewing a Petition to Vacate must recommend to the DEC whether to grant the Petition or whether to deny the Petition. The Hearing Panel’s recommendation must include factual findings and an analysis of the factors relevant to the Petition to Vacate.
  5. The DEC must review *de novo* and accept, reject, or modify the Hearing Panel’s findings and recommendations concerning the Petition. *De novo* means that the DEC must consider the matter anew, as if the Hearing Panel had rendered no recommendation, except that the DEC must give deference to rulings on procedural and evidentiary motions unless the DEC finds that such a ruling was arbitrary and capricious. The DEC must issue a final order that grants or denies the Petition. The DEC’s final order also must set forth the DEC’s factual findings and an analysis of the factors relevant to vacating an Interim Suspension Order.

- e. **Request for Removal of Interim Suspension Publication.** If DEC Counsel or the DEC issues an order vacating an Interim Suspension Order, then CFP Board must not reflect the Interim Suspension Order in CFP Board’s public verification of Respondent’s certification and background. In addition, the order must notify Respondent of the opportunity to file a written request for DEC Counsel to:
  1. Remove the publication of the Interim Suspension Order from CFP Board’s website, and/or
  2. Publish in a press release and on CFP Board’s website the fact that CFP Board vacated the Interim Suspension Order and some or all the facts that are relevant to the order vacating the Interim Suspension Order.
- f. **Removal of Interim Suspension Publication.** If Respondent files a written request pursuant to Article 2.4.e., then CFP Board must remove the publication and/or publish the press release.
- g. **Subsequent Proceedings.** Enforcement Counsel retains the authority to deliver to Respondent a Complaint based upon the same or other factual allegations.
- h. **Appeal of a Petition to Vacate.** Denial of a Petition to Vacate an Interim Suspension Order is subject to appeal under Article 15. An Order granting a Petition to Vacate an Interim Suspension Order is not subject to appeal.

## 2.5 REINSTATEMENT AFTER INTERIM SUSPENSION ORDER

- a. **Eligibility for Reinstatement After Interim Suspension Order.** A Respondent who is the subject of an Interim Suspension Order must file with the DEC and contemporaneously deliver to Enforcement Counsel a Petition for Reinstatement After Interim Suspension no later than two years after the first day the Interim Suspension Order is effective. Enforcement Counsel has the authority to grant extensions for good cause shown. To be eligible for reinstatement after an Interim Suspension Order, Respondent must request from Enforcement Counsel a certification that Enforcement Counsel has completed its investigation. If Enforcement Counsel does not provide Respondent with the requested certification, Enforcement Counsel must grant Respondent an extension of the deadline to file a Petition for Reinstatement Eligibility After Interim Suspension until Enforcement Counsel provides the requested certification. Upon receipt of a Petition for Reinstatement After Interim Suspension, DEC Counsel must provide the parties with notice of the name and employer of each potential member of the Hearing Panel and the DEC as required by Article 17.3.b.
- b. **Petition for Reinstatement After Interim Suspension.**
  1. A Petition for Reinstatement After Interim Suspension must include:
    - a) Evidence of Respondent’s rehabilitation and fitness for CFP® certification, as set forth in Article 11.8 of the *Procedural Rules*; and
    - b) 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.
  2. Enforcement Counsel must file with the DEC and contemporaneously deliver to Respondent its Response to the Petition for Reinstatement After Interim Suspension within 30 calendar days of the date Respondent delivered the Petition to Enforcement Counsel. Enforcement Counsel’s response must indicate whether Enforcement Counsel has a position on whether the DEC should grant Respondent’s Petition, state whether Enforcement Counsel requests a hearing, and the amount of hearing time Enforcement Counsel requests for the hearing. If Enforcement Counsel fails to provide the hearing time statement, Enforcement Counsel waives the right to contest the amount of time allotted for the hearing.
- c. **Burden of Proof.** A Respondent who seeks reinstatement by filing a Petition for Reinstatement After Interim Suspension Order must prove by a preponderance of the evidence the Respondent’s fitness for reinstatement after an Interim Suspension Order. 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 matter sought to be proved is more probable than not to have occurred.
- d. **Recommendation of the Hearing Panel.** A Hearing Panel will consider the Petition for Reinstatement After Interim Suspension. DEC Counsel must determine whether to hold a hearing on the Petition for Interim Suspension. The Hearing Panel may hold a hearing in person or by video conference. If DEC Counsel

decides to hold a hearing, then DEC Counsel must issue to Respondent and Enforcement Counsel a Notice of Hearing that provides the date, place, and time of the hearing. Any hearing participant may appear in person or by video at any in person hearing, and by video at any video hearing. For good cause shown, DEC Counsel may grant a hearing participant permission to appear by telephone at either an in person hearing or a video hearing, using the platform provided by CFP Board. The Notice of Hearing also must set deadlines for filing the documents that the parties intend to introduce at the hearing, identifying witnesses, and submitting 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 Enforcement Counsel fails to appear at the date, time, and place established for the hearing. At any hearing on a Petition for Reinstatement After Interim Suspension, DEC Counsel will facilitate the hearing as described in these *Procedural Rules*. The Hearing Panel reviewing a Petition for Reinstatement After Interim Suspension must recommend to the DEC whether to grant the Petition or whether to deny the Petition. The Hearing Panel's recommendation must include factual findings, an analysis of the factors relevant to fitness for reinstatement after an Interim Suspension Order, any mitigating or aggravating factors, and identify the *Sanction Guidelines* and *Case Histories* that the Hearing Panel found relevant.

e. **Review by the DEC and Issuance of the DEC's Final Order.**

1. The DEC must review de novo and accept, reject, or modify the Hearing Panel's findings and recommendations concerning the Petition. De novo means that the DEC must consider the matter anew, as if the Hearing Panel had rendered no recommendation, except that the DEC must give deference to rulings on procedural and evidentiary motions unless the DEC finds that such a ruling was arbitrary and capricious.
2. The DEC must issue a final order that grants or denies the Petition. The DEC's final order also must set forth the DEC's factual findings, an analysis of the factors relevant to fitness for reinstatement after an Interim Suspension Order, any mitigating or aggravating factors, and identify the *Sanction Guidelines* and *Case Histories* that the Hearing Panel found relevant. In the final order, the DEC has the authority to issue a sanction in accordance with Article 11. If the DEC grants the Petition, then the DEC must state the effective date of Respondent's eligibility for reinstatement. CFP Board will not remove the Interim Suspension publication from CFP Board's Website.
3. If the DEC or Appeals Commission has granted a Petition for Reinstatement After Interim Suspension, Respondent must timely satisfy any remaining CFP Board certification requirements before CFP Board will reinstate Respondent.

f. **Failure to File Petition for Reinstatement After Interim Suspension.** If Respondent fails to file timely a Petition for Reinstatement After Interim Suspension Order, then Enforcement Counsel may file a Motion for an Administrative Order under Article 4.2.

## ARTICLE 3: COMPLAINT AND ANSWER

### 3.1 COMPLAINTS AND AMENDED COMPLAINTS

- a. If Enforcement Counsel determines there is probable cause to believe grounds for sanction exist, then Enforcement Counsel may deliver to Respondent, and contemporaneously file with the DEC, a Complaint. Enforcement Counsel may amend the Complaint at any time 60 days prior to the hearing. Within 60 days of the hearing, Enforcement Counsel may amend the Complaint only upon the consent of Respondent or if DEC Counsel grants a motion for leave to amend the Complaint. A Complaint must include:
  1. Numbered paragraphs setting forth the grounds for sanction, including a detailed factual description of the conduct and a specific statement of the alleged violations. Enforcement Counsel will use reasonable efforts to redact any exhibits to the Complaint pursuant to Article 6.1.
  2. A statement indicating the amount of hearing time Enforcement Counsel requests to present the grounds for sanction. 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.
- b. Enforcement Counsel may deliver a consolidated Complaint, or consolidate separate Complaints, against two or more Respondents that involve related facts. DEC Counsel may issue an Order severing a consolidated action at any time, for good cause shown.

- c. After Enforcement Counsel files a Complaint with the DEC, 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*.

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

Respondent must deliver to Enforcement Counsel, and contemporaneously file with the DEC, a written Answer within 30 calendar days of delivery of the Complaint, unless Enforcement Counsel delivers an Amended Complaint before the Answer is due. Respondent must deliver, and contemporaneously file with the DEC, a written Answer to an Amended Complaint no later than the later of 14 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. Respondent will use reasonable efforts to redact any exhibits to the Answer pursuant to Article 6.1.
- c. A statement certifying that Respondent has satisfied the duty to supplement documents and information provided to Enforcement Counsel, in accordance with Article 1.3.b.
- d. A statement indicating the amount of hearing time Respondent requests to present a defense. If Respondent fails to provide the hearing time statement, then Respondent waives the right to contest the amount of time allotted for the hearing.

### **3.3 COMPLAINT FOR SINGLE BANKRUPTCY OR INACCURATE ETHICS DECLARATION**

- a. Enforcement Counsel has authority to file either a Complaint for Single Bankruptcy or Inaccurate Ethics Declaration under this Article, or a Complaint under Article 3.1.
- b. Enforcement Counsel may deliver to Respondent, and contemporaneously file with the DEC, a Complaint for Single Bankruptcy or Inaccurate Ethics Declaration, with or without delivering a Notice of Investigation, if:
  1. In the case of a Complaint for Single Bankruptcy, Enforcement Counsel has probable cause to believe that Respondent or an entity over which Respondent was a Control Person (as defined in the *Code and Standards*) has filed for or been the subject of a personal bankruptcy or business bankruptcy (each a "Bankruptcy Matter"), Respondent has no other Bankruptcy Matter;
  2. In the case of a Complaint for Inaccurate Ethics Declaration, Enforcement Counsel has probable cause to believe that Respondent inaccurately completed any Ethics Declaration, and Respondent has had no other inaccurate Ethics Declaration or failure to report; and
  3. In the case of a Complaint for Single Bankruptcy or Inaccurate Ethics Declaration, there is no probable cause to believe that other grounds for sanction exist.

### **3.4 ANSWER TO COMPLAINT FOR SINGLE BANKRUPTCY OR INACCURATE ETHICS DECLARATION**

- a. Within 30 calendar days of delivery of the Complaint for Single Bankruptcy, Respondent must deliver to Enforcement Counsel and contemporaneously file with the DEC, using a form that CFP Board provides, an Answer that admits or denies the existence of the Bankruptcy Matter, admits or denies that the Bankruptcy Matter demonstrates an inability to manage responsibly the Respondent's or the business's financial affairs, 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, the court in which the Bankruptcy Matter is or was pending, the case number of the Bankruptcy Matter, and a copy of any petition filed in the Bankruptcy Matter. In this circumstance:
  1. Enforcement Counsel must deliver and contemporaneously file with the DEC, an Amended Complaint to Respondent; and

2. Respondent must deliver to Enforcement Counsel and contemporaneously file with the DEC, within 30 calendar days of delivery of the Amended Complaint, a written Answer to the Amended Complaint that satisfies the requirements of Article 3.2.
- c. Within 30 calendar days of delivery of the Complaint for Inaccurate Ethics Declaration, Respondent must deliver to Enforcement Counsel and contemporaneously file with the DEC, using a form that CFP Board provides, an Answer that admits or denies that Respondent submitted an inaccurate Ethics Declaration. Where the Answer admits an Inaccurate Ethics Declaration, the Answer must state whether Respondent contends that Respondent is able to demonstrate a mitigating factor as set forth in the *Sanction Guidelines*.
  - d. If Respondent (i) has no other Bankruptcy Matter and admits that the Bankruptcy Matter demonstrates an inability to manage responsibly the Respondent's or the business's financial affairs, or (ii) admits the inaccurate Ethics Declaration and that Respondent is unable to demonstrate a mitigating factor as set forth in the *Sanction Guidelines*, Enforcement Counsel must deliver to Respondent, and contemporaneously file with DEC Counsel, a Joint Motion for an Order of Public Censure. DEC Counsel must grant such Motion and issue an Order of Public Censure. The DEC must not hold a hearing, and CFP Board must not charge Respondent the adjudication fee. CFP Board must publish an Order of Public Censure in accordance with Article 17.7. The Order of Public Censure is not subject to appeal under Article 15.
  - e. If Respondent (i) has no other Bankruptcy Matter and denies that the Bankruptcy Matter demonstrates an inability to manage responsibly the Respondent's or the business's financial affairs, or (ii) denies the inaccurate Ethics Declaration or contends that Respondent may demonstrate a mitigating factor as set forth in the *Sanction Guidelines*, then Respondent must provide the factual basis for Respondent's denial in the Answer. In this circumstance, the Complaint must proceed to a hearing as set forth in Article 10, CFP Board must charge Respondent the adjudication fee, and Enforcement Counsel may deliver to Respondent and contemporaneously file with the DEC a written statement, no later than 30 calendar days prior to the Hearing, setting forth Enforcement Counsel's position concerning Respondent's denial.

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

Prior to the deadline for delivering an Answer or Amended Answer (each an "Answer"), Respondent may request an extension of time to file the Answer. Enforcement Counsel may grant the request for good cause shown and deliver to Respondent and contemporaneously file with DEC Counsel a notice of the extended deadline to file the Answer. If Enforcement Counsel denies the request, then Respondent may file with DEC Counsel, and contemporaneously deliver to Enforcement Counsel, a Motion for Extension of Time to File an Answer in accordance with Article 9.1. DEC Counsel must issue an order resolving the Motion for Extension of Time to File an Answer.

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

Enforcement Counsel may withdraw a Complaint by delivering to Respondent and contemporaneously filing with the DEC a Notice of Withdrawal. Enforcement Counsel may redeliver and refile a Complaint that has been withdrawn but may not redeliver and refile a Complaint based on or including the same allegations raised in a Complaint that Enforcement Counsel withdrew on two prior occasions.

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

### **4.1 DEFAULT**

Respondent is in default if Respondent:

- a. Fails to acknowledge receipt of a Notice of Investigation pursuant to Article 1.1;
- b. Indicates a clear intention not to participate or to cease participation in CFP Board's investigation;
- c. Fails to cure a Notice of Failure to Cooperate in accordance with Article 1.3.d;
- d. Fails to file a Petition for Reinstatement After Interim Suspension in accordance with Article 2.5.d;
- e. Fails to file an Answer in accordance with Articles 3.2 or 3.4;
- f. Fails to satisfy the requirements of Article 11.2 (Notice to Respondent's Firm(s) and Clients Required after Public Sanction);

- g. Fails to satisfy the requirements of Article 11.3 (Prohibition Against Use of CFP Board Certification Marks By a Respondent Who is Subject to a Suspension, Interim Suspension, Administrative Suspension, Revocation, Administrative Revocation, Temporary Bar, Administrative Temporary Bar, Permanent Bar, or Administrative Permanent Bar); or
- h. Fails to comply with the terms of an Order issued by Enforcement Counsel, DEC Counsel, the DEC or a Hearing Panel, or the Appeals Commission.

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

If Respondent is in default, then, based upon Enforcement Counsel's determination of the seriousness, scope, and harmfulness of the allegations, Enforcement Counsel may file and deliver to Respondent, and file with DEC Counsel, a Motion for an Order of Administrative Suspension, Administrative Revocation, Administrative Temporary Bar, or Administrative Permanent Bar (each, an "Administrative Order") that states with reasonable particularity the grounds for default. Enforcement Counsel must file a proposed Administrative Order with the Motion. The Motion for an Administrative Order must be resolved in accordance with Article 9.1.

#### **4.3 APPEAL OF ADMINISTRATIVE ORDER**

An Administrative Order issued pursuant to Article 4.2 and an order denying a Petition for Reinstatement Eligibility Following an Administrative Order of Suspension (as described in Article 4.6) are subject to appeal under Article 15.

#### **4.4 PUBLICATION OF ADMINISTRATIVE ORDER**

CFP Board publishes an Administrative Order in accordance with Article 17.7.

#### **4.5. RESPONSIBILITIES OF RESPONDENT FOLLOWING ADMINISTRATIVE ORDER**

A Respondent subject to an Administrative Order 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 while the Interim Suspension Order is in effect. Within 45 calendar days of delivery of an Administrative Order that is not subject to appeal, Respondent must deliver to Enforcement Counsel evidence of compliance with the Administrative Order, written evidence in accordance with Article 11.2 (Notice to Respondent's Firm(s) and Clients Required after Public Sanction, and a statement of assurance and proof of compliance in accordance with Article 11.3 (Prohibition Against Use of CFP Board Certification Marks By a Respondent Who is Subject to a Suspension, Interim Suspension, Administrative Suspension, Revocation, Administrative Revocation, Temporary Bar, Administrative Temporary Bar, Permanent Bar, or Administrative Permanent Bar).

#### **4.6 REQUEST FOR REINSTATEMENT ELIGIBILITY FOLLOWING AN ADMINISTRATIVE ORDER OF SUSPENSION OR TEMPORARY BAR**

Respondent may request reinstatement eligibility following an Administrative Order of Suspension or Temporary Bar.

- a. To request reinstatement eligibility, Respondent must deliver to Enforcement Counsel and contemporaneously file with DEC Counsel a written request for reinstatement that includes:
  - 1. Evidence that Respondent has cured the default;
  - 2. Evidence that Respondent is fully cooperating with any proceedings under these *Procedural Rules*; and
  - 3. Evidence of Respondent's rehabilitation and fitness for CFP® certification, as set forth in Article 11.8 of the *Procedural Rules*.
- b. Enforcement Counsel must file within 30 calendar days a statement indicating whether Enforcement Counsel opposes Respondent's request for reinstatement eligibility.
- c. DEC Counsel may approve Respondent's request for reinstatement eligibility. If DEC Counsel does not approve Respondent's request for reinstatement eligibility within 30 calendar days after receiving Enforcement Counsel's statement, then Respondent may file a Petition for Reinstatement Following an Administrative Order of Suspension or Temporary Bar, which the DEC must decide by issuing a written final order. Enforcement Counsel may file a response to a Petition for Reinstatement Eligibility within



14 calendar days of service of the Petition and Respondent may file a reply to Enforcement Counsel's response within five calendar days of service of the response.

- d. A Respondent seeking approval for reinstatement through a Petition for Reinstatement Eligibility Following an Administrative Order of Suspension or Temporary Bar must prove by clear and convincing evidence that Respondent has met the requirements of Article 11.8, 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 that shows that, as a whole, it is highly probable that the matter sought to be proved is true.
- e. A Hearing Panel will consider the Petition for Reinstatement Eligibility Following an Administrative Order of Suspension or Temporary Bar. DEC Counsel must determine whether to hold a hearing, which may be held in person or by video conference. If DEC Counsel decides to hold a hearing, then DEC Counsel must issue to Respondent and Enforcement Counsel a Notice of Hearing that provides the date, place, and time of the hearing. Any hearing participant may appear in person or by video at any in person hearing, and by video at any video hearing. For good cause shown, DEC Counsel may grant a hearing participant permission to appear by telephone at either an in person hearing or a video hearing, using the platform provided by CFP Board. The Notice of Hearing also must set deadlines for filing the documents that the parties intend to introduce at the hearing, identifying witnesses, and submitting 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 Enforcement Counsel fails to appear at the date, time, and place established for the hearing. At any hearing on a Petition for Reinstatement Eligibility Following an Administrative Order of Suspension or Temporary Bar, DEC Counsel will facilitate the hearing as described in these *Procedural Rules*.
- f. The Hearing Panel reviewing a Petition for Reinstatement Eligibility Following an Administrative Order of Suspension or Temporary Bar must recommend to the DEC whether to grant the Petition or whether to deny the Petition. The Hearing Panel's recommendation must include factual findings, an analysis of the factors relevant to fitness for reinstatement after an Interim Suspension Order, any mitigating or aggravating factors, and identify the *Sanction Guidelines* and *Case Histories* that the Hearing Panel found relevant. At any hearing on the Petition, DEC Counsel will facilitate the hearing as described in these *Procedural Rules*.
- g. The DEC must review de novo and accept, reject, or modify the Hearing Panel's findings and recommendations concerning the Petition. De novo means that the DEC must consider the matter anew, as if the Hearing Panel had rendered no recommendation, except that the DEC must give deference to rulings on procedural and evidentiary motions unless the DEC finds that such a ruling was arbitrary and capricious. The DEC must issue a final order that grants or denies the Petition. The DEC's final order also must set forth the DEC's factual findings, an analysis of the factors relevant to fitness for reinstatement after an Administrative Order of Suspension or Temporary Bar, any mitigating or aggravating factors, and identify the *Sanction Guidelines* and *Case Histories* that the Hearing Panel found relevant.
- h. A Respondent who is reinstated remains subject to the completion of the investigation or sanctions proceeding in which the default occurred, and depending on the outcome of the investigation or proceeding, may be subject to the imposition of a sanction in accordance with Article 11.1. If the DEC determines that Respondent is eligible for reinstatement, then the DEC must state the effective date of Respondent's eligibility for reinstatement.
- i. If a Respondent who is subject to an Administrative Order of Suspension or Temporary Bar does not seek reinstatement within one year of such Suspension or Temporary Bar, then Enforcement Counsel may deliver to Respondent and contemporaneously file with DEC Counsel a Motion for an Administrative Order of Revocation or Permanent Bar.

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

CFP Board has adopted *Fitness Standards* that apply to Respondents who are candidates for CFP® certification and former CFP® professionals seeking reinstatement who have relinquished CFP® certification.

### **5.1 ELIGIBILITY TO FILE PETITION FOR FITNESS DETERMINATION**

- a. A Respondent whose conduct falls within the "Unacceptable" list set forth in the *Fitness Standards* may not file a Petition for Fitness Determination and may not obtain CFP® certification.

- b. A Respondent who the *Fitness Standards* requires to obtain a fitness determination from the DEC may file a Petition for Fitness Determination requesting a determination of fitness for CFP® certification if Respondent has signed the *Pathway to CFP® Certification Agreement*.
- c. Enforcement Counsel may deliver to a Respondent who is required to file a Petition for Fitness Determination, and contemporaneously file with the DEC, a Notice to Commence Petition for Fitness Determination (“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 Determination. 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.
- d. 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 Determination.

## **5.2 PETITION FOR FITNESS DETERMINATION**

- 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 Determination no later than 14 calendar days from the delivery of the Amended Fitness Notice or the date a Petition for Fitness Determination was originally due. A Petition for Fitness Determination 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 rehabilitation and fitness for CFP® certification, as set forth in Article 11.8 of the *Procedural Rules*; 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 Determination, 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 Determination. 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 Determination. DEC Counsel must issue an order resolving the Motion for Extension of Time to File a Petition for Fitness Determination.

## **5.4 FAILURE TO FILE PETITION FOR FITNESS DETERMINATION**

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

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

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

After Enforcement Counsel delivers a Complaint or Respondent files a Petition, Respondent may request, in writing to Enforcement Counsel, the production of relevant documents in Enforcement Counsel's file for Respondent that are not privileged or confidential, do not constitute attorney or expert work product (as defined in Article 1.3.a.1.) (other than the expert disclosures required under Article 10.3.c.4.), were not previously provided to Respondent, or were not provided to Enforcement Counsel by Respondent. Enforcement Counsel must respond to any request and produce responsive documents within 30 calendar days of delivery of the request. Enforcement Counsel will undertake reasonable efforts to redact from a document an individual's birthdate or social security number, the name of an individual known to be a minor, a financial account number, taxpayer identification number, credit card or debit card number, passport number, driver's license number, or state-issued identification number. Respondent may use any document that Enforcement Counsel produces only in the proceeding in which Respondent requested the document.

# **ARTICLE 7: NO CHALLENGES IN CFP BOARD PROCEEDING TO CRIMINAL CONVICTIONS, 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, (c) other regulatory authority, or (d) court of civil jurisdiction imposing discipline upon Respondent ("Professional Discipline") is conclusive proof of the existence of such Professional Discipline and the facts and violations that serve as the basis for such Professional Discipline. The fact that Respondent has not admitted or denied the findings or allegations contained in the record does not affect the conclusiveness of the proof. Professional Discipline includes a censure, a Finding (as defined in the *Code and Standards*), injunction, undertaking, order to cease and desist, disgorgement, restitution, fine, suspension, bar, or revocation, the temporary or permanent surrender of a professional license or certification in response to a Regulatory action or Regulatory investigation, and statutory disqualification. A record of Professional Discipline includes a settlement agreement, order, consent order, and Letter of Acceptance, Waiver, and Consent.

## **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 under appeal, Professional Discipline that is under challenge in a civil court or before an appropriate regulatory body, or a final order containing a Civil Finding that is under appeal may be the basis for an Interim Suspension Order but otherwise is not conclusive proof of the Criminal Conviction, Professional Discipline, or Civil Finding in a CFP Board proceeding.

## 7.5 CERTAIN CHALLENGES NOT ALLOWED IN CFP BOARD PROCEEDINGS

If CFP Board proves or Respondent admits a Criminal Conviction, Civil Finding, or Professional Discipline, then 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

Enforcement Counsel and Respondent may agree on a Settlement Offer, in the form of a proposed Consent Order, that would resolve an investigation, Complaint, or Petition. The parties must file with the DEC a Notice of Settlement Offer within two business days of reaching agreement on the Settlement Offer. If Enforcement Counsel filed a Complaint, then a Notice of Settlement Offer stays the Article 3 deadline for Respondent to file an Answer and the relevant Article 10.3 deadlines.

## 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 grounds for sanctions to which Respondent consents (with the parties attaching to the proposed Consent Order the Complaint or Notice to Commence Petition if the findings of fact are incorporated into the Consent Order by reference to either of those documents);
  2. Any mitigating and/or aggravating factors relevant to the Settlement Offer;
  3. A statement identifying the form of sanction to be imposed;
  4. A statement that Respondent consents to the entry of the proposed Consent Order, and, if the Consent Order provides for a public sanction, that Respondent consents to publication of the public sanction in accordance with Article 17.7 of these *Procedural Rules*;
  5. A statement that Respondent must not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, (a) denying, directly or indirectly, any finding in the Consent Order or any statement in the Article 17.7 publication of the public sanction, or (b) creating the impression that the Consent Order or the Article 17.7 publication of the public sanction is without factual basis; and
  6. A waiver of all rights:
    - a) To a hearing;
    - b) Of appeal to CFP Board's Appeals Commission; and
    - c) To challenge or contest any issue related to the Consent Order or the Article 17.7 publication of the public sanction in any other contractual or judicial forum, including an arbitration, in an action or proceeding in which CFP Board is a party.
- b. **Resolution of Petitions for Fitness Determination.** The Settlement Offer must be in the form of a proposed Consent Order that contains the information required in Article 8.2.a.1-6. and describes in reasonable detail the facts and misconduct 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; SETTLEMENT WRITTEN STATEMENT; SETTLEMENT DEC BOOK; WITHDRAWAL OF SETTLEMENT

- a. **Settlement Review Panel.** 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. DEC Counsel must deliver to the parties notice of the name and employer of each member of the potential Settlement Review Panel and DEC as required by Article 17.3.b. Any motions for recusal must be made in accordance with Article 17.3.b.

- b. **Settlement Review Hearing.** The Settlement Review Panel must hold a Settlement Hearing if Respondent, Enforcement Counsel, DEC Counsel, or the DEC requests a hearing. The Settlement Review Panel may hold the Settlement Hearing in person or by video conference. A hearing participant may appear in person or by video at any in person hearing, and by video at any video hearing. For good cause shown, DEC Counsel may grant a hearing participant permission to appear by telephone at either an in person hearing or a video hearing, using the video platform provided by CFP Board. DEC Counsel will determine the conduct of the hearing, including the allocation of time for argument, and administer oaths or affirmations to testifying witnesses. CFP Board must obtain a written transcript of the hearing.
- c. **Settlement Written Statement.** No later than 21 calendar days after Enforcement Counsel files the Notice of Settlement Offer, Enforcement Counsel and Respondent must file with the DEC the proposed Consent Order and may file with the DEC joint or individual written statements addressing the settlement factors in support of a proposed Consent Order (which the parties should identify as Settlement Memoranda) and a statement indicating whether the parties request a settlement review hearing and the amount of hearing time the parties request for the hearing. The parties will use reasonable efforts to redact any exhibits to Settlement Memoranda pursuant to Article 6.1. After the parties file a proposed Consent Order and Settlement Memoranda with the DEC, DEC Counsel will send to the parties a scheduling order with any relevant case deadlines and events, including a range of projected hearing or review dates.
- d. **Settlement DEC Book.** Not less than 45 calendar days prior to the first day of the range of dates initially provided by DEC Counsel after the filing of the Complaint or Petition, DEC Counsel must assemble and provide to Enforcement Counsel, Respondent, the Hearing Panel, and the DEC a “DEC Book” that includes the items identified in “Hearing Materials” described in Article 10.5, including any Settlement Memoranda.
- e. **Withdrawal of Settlement.** If either party withdraws their agreement to the Settlement Offer prior to the DEC’s acceptance of the Settlement Offer, then the withdrawing party must file a Notice of Withdrawal of Settlement Offer with the DEC. If Enforcement Counsel previously filed a Complaint, then DEC Counsel must issue an order with revised case deadlines.

#### 8.4 RESOLUTION OF SETTLEMENT OFFER

- a. **Settlement Factors.** The factors the DEC must consider in determining whether to accept a settlement include whether the terms of the proposed Consent Order are clear, reasonable, serve the public interest, and:
  - 1. For proposed Consent Orders that would resolve an alleged violation, whether the proposed Consent Order resolves the alleged violations. The DEC must accept as true the findings of fact and grounds for sanction to which Respondent consents.
  - 2. For proposed Consent Orders that would resolve a Petition for Fitness Determination, whether the proposed Consent Order demonstrates that Respondent is fit for CFP® certification under the factors set forth in Article 11.8.
  - 3. For proposed Consent Orders that would resolve a Petition for Reinstatement, whether the proposed Consent Order demonstrates that Respondent has been rehabilitated and is fit for CFP® certification under the factors set forth in Article 11.8.
- b. **Recommendation of the Settlement Review Panel.** The Settlement Review Panel must apply the Settlement Factors set forth in Article 8.4.a., identify the *Sanction Guidelines*, *Fitness Standards*, and *Case Histories* that the Hearing Panel found relevant, and recommend to the DEC whether to accept or reject the proposed Consent Order. DEC Counsel or the Hearing Panel may request that the parties provide additional information and may permit the parties to modify the Settlement Offer and proposed Consent Order.
- c. **Review by the DEC and Issuance of the DEC’s Final Order.** The DEC must review de novo and accept, reject, or modify the Settlement Review Panel’s recommendations. De novo means that the DEC must consider the matter anew, as if the Settlement Review Panel had rendered no recommendation. The DEC must apply the Settlement Factors set forth in Article 8.4.a., identify the *Sanction Guidelines*, *Fitness Standards*, and *Case Histories* that the Hearing Panel found relevant, and either accept or reject

the proposed Consent Order. DEC Counsel or the DEC may request that the parties provide additional information and may permit the parties to modify the Settlement Offer and proposed Consent Order.

1. **Acceptance of Proposed Consent Order.** If the DEC accepts and issues the proposed Consent Order, then the Consent Order is the final decision of CFP Board.
2. **Rejection of Proposed Consent Order.** If the DEC rejects the proposed Consent Order, then Enforcement Counsel will continue the investigation, take other action pursuant to Article 1.4.b., or proceed to hearing. If the DEC notifies the parties that the DEC will not consider any further settlement offers, then the parties must not submit any further settlement offers to the DEC. If Enforcement Counsel has filed a Complaint, then DEC Counsel must issue an order with revised case deadlines.
3. **No Admissibility in Later Adjudication.** The DEC must not admit, in the later adjudication of a Complaint or Petition, any evidence regarding the existence of a proposed Consent Order, or any statement made by Respondent, Enforcement Counsel, DEC Counsel, or the DEC during or in the context of the negotiation or presentation of a Proposed Consent Order.

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

A Consent Order is not subject to appeal under Article 15. The rejection of a Proposed Consent Order is not subject to appeal under Article 15.

# **ARTICLE 9: OTHER MOTIONS**

In addition to motions specifically identified elsewhere in these *Procedural Rules*, which must be resolved as set forth therein, Respondent or Enforcement Counsel may raise motions in accordance with this Article, including with respect to any issue that these *Procedural Rules* do not otherwise address, which unless otherwise specified in these *Procedural Rules*, DEC Counsel will decide.

## **9.1 PRE-HEARING AND POST-HEARING MOTIONS**

Respondent or Enforcement Counsel may, prior to or after a hearing on the merits of a case, file written, non-dispositive motions. A post-hearing motion must address only the admissibility of additional documentary evidence or reliance on additional case histories and must state why the evidence or case histories were not introduced at the hearing. The movant must state the grounds for the motion, the relief requested, and whether the movant requests oral argument. The movant must file with the motion an editable version of a proposed Order. DEC Counsel has discretion whether to schedule oral argument on the motion.

## **9.2 BRIEFING SCHEDULE**

The party opposing a written motion may file a response within 14 calendar days of service of the motion, or at such other time that DEC Counsel directs. The movant may file a reply within 5 calendar days of service of the response, or at such other time that DEC Counsel directs.

## **9.3 MOTIONS DURING A HEARING**

Respondent or Enforcement Counsel may make oral, non-dispositive motions during a hearing. The non-moving party will have the opportunity to respond.

## **9.4 MEET AND CONFER REQUIREMENT**

Prior to filing any written motion, the movant must meet and confer (or attempt to meet and confer) with the other party in a reasonable and good faith attempt to resolve or narrow the issue. The meeting may take place by email, telephone, video conference, in person, or by any other means the parties select. The motion must certify that movant met with the other party (or attempted to meet with the other party) and identify the date(s) the parties met. DEC Counsel may deny a motion that does not contain the required certification. The non-moving party's refusal to meet and confer may constitute grounds for DEC Counsel to grant the motion.

# ARTICLE 10: HEARINGS

## 10.1 NOTICE OF HEARING

CFP Board must hold a hearing in any case presented to the DEC if Respondent, Enforcement Counsel, DEC Counsel, or the DEC requests a hearing. The Hearing Panel may hold the hearing in person or by video conference. If a hearing is not requested, then a Hearing Panel must hold a hearing or resolve the matter on the written record. Not less than 30 calendar days before a hearing, the DEC must deliver a Notice of Hearing that provides the date, place, and time of the hearing, and states whether the parties may appear in person or by video conference. Hearing participants may appear in person or by video at any in person hearing, and by video at any video hearing. For good cause shown, DEC Counsel may grant a hearing participant permission to appear by telephone at either an in person hearing or a video hearing, using the video platform provided by CFP Board. The Hearing Panel may proceed with the hearing if either Respondent or Enforcement Counsel fails to appear at the hearing.

## 10.2 CONTINUANCE OF HEARING

DEC Counsel may continue a hearing by delivering to Respondent and Enforcement Counsel, not less than 30 calendar days before the revised hearing date (unless DEC Counsel and the parties agree to an earlier date), a Revised Notice of Hearing. Enforcement Counsel or Respondent may file a Motion for Continuance of the Hearing, which must be resolved in accordance with Article 9.1.

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

- a. **Documents.** No later than 60 calendar days before the first day of the range of projected hearing or review dates initially provided by DEC Counsel after the filing of the Complaint or Petition (“Projected Review Date”), or by a time DEC Counsel otherwise specifies, Enforcement Counsel and Respondent may file and contemporaneously deliver to all other parties, documents that they may seek to introduce at the hearing. The parties, the Hearing Panel, or the DEC will use reasonable efforts to redact pursuant to Article 6.1. DEC Counsel has the authority not to admit a document into the record if the document is not timely filed and may require a party to show good cause for not timely filing the document.
- b. **Witnesses.** No later than 60 calendar days before the Projected Review Date, or by a time DEC Counsel otherwise specifies, each party must file a notice identifying all witnesses. The Hearing Panel must not allow a witness to testify unless timely identified, except for good cause shown upon motion of a party. 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 in person or by video conference at an in person hearing or by video at a video conference hearing. A Hearing Panel may permit a witness to testify at the hearing only upon swearing an appropriate oath or affirmation. Other than a Respondent and an expert witness, a witness may attend a hearing only while testifying.
- c. **Expert Witnesses.**
  1. **Admissibility.** A party may introduce at a hearing a witness to present expert testimony if DEC Counsel determines that the expert testimony would be helpful to the DEC to understand the evidence or to determine a fact in issue. Factors relevant to whether the expert testimony would be helpful include whether: (a) the proposed expert possesses scientific, technical, or other specialized knowledge that is relevant to the issues raised by the Complaint or Petition, (b) the proposed expert testimony is based on sufficient facts, data or other information, (c) the testimony is the product of reliable principles, knowledge, experience, and methods, and (d) the proposed expert has reliably applied the principles, knowledge, experience, and methods to the facts of the case.
  2. **Motion for Leave to Introduce Expert Witness.** A party seeking to introduce a witness to present expert testimony must file a Motion for Leave to Introduce Expert Witness no later than 60 calendar days after delivery of the Complaint or the filing of a Petition, or by a time DEC Counsel otherwise specifies. The Motion for Leave to Introduce Expert Witness must include a summary of the proposed expert’s qualifications, a summary of the proposed expert’s anticipated testimony and an explanation as to why the proposed expert’s testimony would be helpful to the DEC. The opposing party may file a response within 14 calendar days of service of the motion, or at such other later time that DEC Counsel directs. The movant may file a reply within 5 calendar days of service of the response, or at such other time that DEC Counsel directs. DEC Counsel must issue an order resolving the Motion for Leave to

Introduce Expert Witness. DEC Counsel may require the movant to provide the required disclosures set forth in Article 10.3.c.4 prior to issuing an order resolving the Motion.

3. **Rebuttal Experts.** If DEC Counsel issues an order granting a Motion for Leave to Introduce Expert Witness, then no later than 14 calendar days after the date of the order, the non-moving party may file a Motion for Leave to Introduce Expert Witness that is intended solely to contradict or rebut evidence on the same subject matter as the testimony of the expert whose testimony DEC Counsel has admitted.
4. **Required Disclosures.** If DEC Counsel issues an order granting a Motion for Leave to Introduce Expert Witness, then no later than 14 calendar days after the date of the order, the party introducing the expert witness testimony must file with DEC Counsel and contemporaneously deliver to the non-moving party the following information: (a) a complete statement that describes any opinion the expert will provide at the hearing, the facts, data, or other information considered by the expert in forming any opinion, (b) any documents used in forming any opinion, and (c) the qualifications of the expert, including a list of all publications authored by the witness within the preceding ten years and a list of all matters in which the expert testified as an expert witness within the preceding five years.
5. **Availability of Oral Examination.** A party may conduct an oral examination of an expert no later than 14 calendar days after the delivery of the required disclosures or at such other time that DEC Counsel directs.
6. **Admission of Expert Testimony.** At the hearing, DEC Counsel must determine the admissibility of any expert witness testimony.
- d. **Written Statements.** No later than 60 calendar days before the Projected Review Date, or by a time DEC Counsel otherwise specifies, each 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.
- e. **Stipulations.** No later than 60 calendar days before the Projected Review Date, or by a time DEC Counsel otherwise specifies, the parties 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 POTENTIAL HEARING PANEL MEMBERS**

At least 30 days before the Projected Review Date, DEC Counsel must deliver to the parties notice of the name and employer of each member of the potential Hearing Panel and DEC as required by Article 17.3.b. Any motions for recusal must be made in accordance with Article 17.3.b.

#### **10.5. HEARING MATERIALS**

Not less than 45 calendar days before the Projected Review Date, DEC Counsel must assemble and make available to Enforcement Counsel, Respondent, the Hearing Panel, and the DEC a paginated compilation of the hearing materials that will be referred to as the "DEC Book." All hearing participants must have the DEC Book available for use at the hearing. When referring to the DEC Book at the hearing, the parties must identify the relevant page number of the DEC Book. The DEC Book must include:

- a. A Cover Sheet identifying the first and last name and CFP Board identification number of Respondent and the case number;
- b. A Table of Contents;
- c. If there is a Notice to Commence Petition, then the Notice to Commence Petition and accompanying cover letter;
- d. If there is a Complaint, then the Complaint and Respondent's Answer to the Complaint and any Exhibits;
- e. If there is a Petition, then the Petition and any Exhibits;
- f. Any written pre-hearing motions, responses, replies, and written orders from DEC Counsel;
- g. Any filings made by the parties pursuant to Article 10.3. "Documents, Witnesses, Written Statements, and Stipulations;" and
- h. The Notice of Hearing and its attachments.



## 10.6 THE HEARING PANEL AND DEC COUNSEL

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. The Hearing Panel and the DEC will be represented by DEC Counsel.

## 10.7 EVIDENCE; OATH OR AFFIRMATION; TRANSCRIPTION

DEC Counsel 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. Subject to DEC Counsel's determination of the admissibility of evidence, the parties have an opportunity to present documents and testimony, cross-examine witnesses called by another party to testify orally at the hearing, and present arguments to the Hearing Panel. The Hearing Panel also must have the opportunity to question all parties, Counsel, and witnesses. Relevant hearsay is admissible. DEC Counsel must make decisions regarding the admissibility of evidence and may exclude evidence that is not relevant or that has not been provided to the opposing party in accordance with these *Procedural Rules*. The Hearing Panel may determine what weight to give any evidence. DEC Counsel may consider, but is not bound by, federal or state evidentiary or procedural rules. DEC Counsel 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 Commission and to the parties upon appeal.

## 10.8 RESPONDENT'S AND ENFORCEMENT COUNSEL'S RECOMMENDATION

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

## 10.9 CLOSING OF HEARING

The hearing will remain open until the DEC issues its final order. Until the DEC issues its final order, DEC Counsel, the Hearing Panel, or the DEC may request additional documents or information from Respondent or Enforcement Counsel and schedule additional hearings.

# ARTICLE 11: SANCTIONS, POST-SANCTION REQUIREMENTS, REINSTATEMENT, AND PROOF REQUIRED FOR REHABILITATION AND FITNESS

## 11.1 SANCTIONS

### a. Categories of Sanction

1. **Private Censure.** A private censure is an unpublished written reproach of Respondent that the DEC issues to a censured Respondent.
2. **Public Censure.** A public censure is a written reproach of Respondent that CFP Board publishes in accordance with Article 17.7.
3. **Suspension.** A suspension is a period in which Respondent remains subject to the *Terms and Conditions* but is prohibited from using the CFP Board 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 17.7.
4. **Interim Suspension.** An interim suspension is a suspension issued prior to a final order. An interim suspension may be in place for a period not greater than five years. CFP Board publishes an interim suspension in accordance with Article 17.7.
5. **Administrative Suspension.** An administrative suspension is a suspension imposed pursuant to Article 4. An administrative suspension will be in place until Respondent has been deemed eligible for reinstatement in accordance with Article 4.6. CFP Board publishes an administrative suspension in accordance with Article 17.7.
5. **Revocation.** A revocation is the termination of a Respondent's Certification and Trademark License. CFP Board publishes a revocation in accordance with Article 17.7. A Respondent whose Certification

and Trademark License is revoked is permanently barred from applying for or obtaining CFP® certification.

6. **Administrative Revocation.** An administrative revocation is a revocation imposed pursuant to Article 4. CFP Board publishes an administrative revocation in accordance with Article 17.7. A Respondent whose Certification and Trademark License is revoked is permanently barred from applying for or obtaining CFP® certification.
7. **Temporary Bar.** A temporary bar is a period 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 17.7.
8. **Administrative Temporary Bar.** An administrative temporary bar is a temporary bar imposed pursuant to Article 4. An administrative temporary bar will be in place until Respondent has been deemed eligible to apply for CFP® certification in accordance with Article 4.6. CFP Board publishes an administrative temporary bar in accordance with Article 17.7.
9. **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 17.7. A Respondent who is subject to a permanent bar is permanently barred from applying for or obtaining CFP® certification.
10. **Administrative Permanent Bar.** An administrative permanent bar is a permanent bar imposed pursuant to Article 4. CFP Board publishes an administrative permanent bar in accordance with Article 17.7. A Respondent who is subject to an administrative permanent bar is permanently barred from applying for or obtaining CFP® certification.
11. **Continuing Education or Other Undertakings.** Continuing education that exceeds the minimum certification requirements or other undertakings that the DEC requires. If an Order imposes another sanction on Respondent that CFP Board publishes in accordance with Article 17.7, then CFP Board will include in that publication any requirement for Continuing Education or Other Undertakings.

#### b. **Applicable Sanctions**

If Respondent is a CFP® professional, then an Order issued pursuant to these *Procedural Rules* may impose one of the following sanctions on Respondent: Private Censure, Public Censure, Interim Suspension, Administrative Suspension, Suspension, Administrative Revocation, or Revocation. If Respondent is not a CFP® professional but is subject to sanction under either the *Terms and Conditions* or the *Pathway to CFP® Certification Agreement*, then an Order issued pursuant to these *Procedural Rules* may impose one of the following sanctions on Respondent: Private Censure, Public Censure, Administrative Temporary Bar, Temporary Bar, Administrative Permanent Bar, or Permanent Bar. In addition to these sanctions, CFP Board has authority to sanction a Respondent in accordance with the *Pathway to CFP® Certification Agreement*. If Respondent is not a CFP® professional but has filed a Petition for Fitness determination in accordance with the *Fitness Standards* and these *Procedural Rules*, then an Order issued pursuant to these *Procedural Rules* may impose a Temporary Bar or a Permanent Bar. In addition, the DEC may order Continuing Education or Other Undertakings.

#### c. **Use in Other CFP Board Proceedings**

CFP Board may consider in a subsequent proceeding any Letter of Caution, Respondent's response to a Letter of Caution, and DEC or Appeals Commission final order finding that Respondent violated the *Code and Standards* or the *Pathway to CFP® Certification Agreement*.

## **11.2 NOTICE TO RESPONDENT'S FIRM(S) AND CLIENTS REQUIRED AFTER ORDER OF PUBLIC SANCTION**

- a. A Respondent who is the subject of a public sanction (an Order of Public Censure, Suspension, Interim Suspension, Administrative Suspension, Revocation, Administrative Revocation, Temporary Bar, Administrative Temporary Bar, Permanent Bar, or Administrative Permanent Bar) that is not under appeal must deliver to Enforcement Counsel, within 45 calendar days of issuance of the order, written evidence that Respondent has:
  1. Advised Respondent's Firm(s), in writing, of the public sanction; and
  2. Advised all Clients of the public sanction and provided all Clients the location of CFP Board's website that sets forth Respondent's disciplinary history.

- b. Respondent shall advise Respondent's Firm(s) in the manner set forth in Standard D.3. of the *Code and Standards* and shall advise Clients in the manner set forth in Standard A.10 of the *Code and Standards*.

### **11.3 PROHIBITION AGAINST USE OF CFP BOARD CERTIFICATION MARKS BY A RESPONDENT WHO IS SUBJECT TO A SUSPENSION, INTERIM SUSPENSION, ADMINISTRATIVE SUSPENSION, REVOCATION, ADMINISTRATIVE REVOCATION, TEMPORARY BAR, ADMINISTRATIVE TEMPORARY BAR, PERMANENT BAR, OR ADMINISTRATIVE PERMANENT BAR**

- a. **Continuing Obligation Not to Use CFP Board Certification Marks.** A Respondent who is subject to an Order of Suspension, Interim Suspension, Administrative Suspension, Revocation, Administrative Revocation, Temporary Bar, Administrative Temporary Bar, Permanent Bar, or Administrative Permanent Bar ("Order Prohibiting Use of CFP Board Certification Marks") must not use the CFP Board certification marks, state or suggest that Respondent is a CFP® professional, or hold out to the public as being certified by CFP Board.
- b. **Statement of Assurance and Proof of Compliance.** Within 45 calendar days of delivery of an Order Prohibiting Use of CFP Board Certification Marks that is not subject to a Petition to Vacate or Appeal, Respondent must stop using the CFP Board certification marks (if Respondent had been using the CFP Board certification marks), deliver to Enforcement Counsel Respondent's statement of assurance that Respondent will not use the CFP Board certification marks, and deliver to CFP Board Enforcement Counsel proof that Respondent is not using the CFP Board certification marks on any internet site or other tangible materials that Respondent exposes to the public. Respondent must submit screenshots of websites, including of Respondent's businesses, social media, and third party financial advisor listing website profiles Respondent controls, pictures of signage, and, when applicable, copies of Respondent's new interim business cards, letterhead, marketing, and promotional materials, as well as pictures of any other materials Respondent controls in which the CFP Board certification marks previously appeared publicly in reference to Respondent or Respondent's services.

### **11.4 DEFAULT FOR FAILURE TO SATISFY THE REQUIREMENTS OF ARTICLES 11.2 OR 11.3**

If a Respondent fails to satisfy the requirements of Articles 11.2 or 11.3, then Enforcement Counsel may declare Respondent in default and move for an Administrative Order under Article 4.2.

### **11.5 MOTION OR PETITION FOR REINSTATEMENT ELIGIBILITY AFTER SUSPENSION OF ONE YEAR OR LESS**

- a. A Respondent whose Certification and Trademark License has been suspended for one year or less may file with DEC Counsel and contemporaneously deliver to Enforcement Counsel a motion for reinstatement eligibility no earlier than 30 days prior to the last day of the suspension and no later than five years from the first day of the suspension. Within 30 days of the Motion for Reinstatement Eligibility, Enforcement Counsel must file with DEC Counsel a response to the Motion that provides Enforcement Counsel's position on whether Respondent is eligible for reinstatement. DEC Counsel may grant the Motion for Reinstatement Eligibility regarding a Respondent whose Certification and Trademark License has been suspended for one year or less, effective no earlier than the end of the suspension period, if DEC Counsel determines that:
1. Respondent has provided evidence of Respondent's rehabilitation and fitness for CFP® certification, as set forth in Article 11.8 of the *Procedural Rules*; and
  2. Enforcement Counsel has agreed that DEC Counsel should approve Respondent's motion for reinstatement eligibility.
- b. If DEC Counsel grants the Motion for Reinstatement Eligibility, then Respondent must timely satisfy any remaining CFP Board certification requirements before CFP Board will reinstate Respondent's Certification and Trademark License. If DEC Counsel does not determine that a Respondent whose Certification and Trademark License has been suspended for one year or less is eligible for reinstatement, then Respondent may file a Petition for Reinstatement After Suspension in accordance with Article 14.
- c. If Respondent does not request reinstatement eligibility within five years of the first date of the suspension, then Respondent has relinquished CFP® certification permanently, with no opportunity for reinstatement.

## 11.6 REINSTATEMENT ELIGIBILITY AFTER SUSPENSION OF MORE THAN ONE YEAR

A Respondent whose Certification and Trademark License has been suspended for more than one year may file a Petition for Reinstatement Eligibility After Suspension in accordance with Article 14.

## 11.7 NO REINSTATEMENT AFTER REVOCATION

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

## 11.8 PROVING REHABILITATION AND FITNESS

Factors relevant to rehabilitation and fitness include:

- a. If Respondent was the subject of an Interim Suspension Order or received a Fitness Notice, whether in the matter that was the subject of the Interim Suspension Order or Fitness Notice, or in another matter that previously was unknown to CFP Board, Respondent violated CFP Board's *Code and Standards* or failed to satisfy the *Fitness Standards*;
- b. If Respondent is applying for reinstatement after the issuance of an order imposing a sanction, whether Respondent has violated CFP Board's *Code and Standards* since the issuance of the order, or engaged in a prior violation of CFP Board's *Code and Standards* that previously was unknown to CFP Board;
- c. Whether and how Respondent has taken actions that are designed to prevent the circumstances that required Respondent to file a Petition;
- d. Whether and how Respondent has integrated the *Code and Standards* in Respondent's practice;
- e. Whether Respondent has submitted positive letters of reference from current clients, supervisors, colleagues, or other professionals concerning the circumstances that required Respondent to file a Petition or the Respondent's character;
- f. Whether Respondent has provided sufficient evidence that Respondent has complied with the applicable requirements of these *Procedural Rules*, including Article 2.3 (Responsibilities of Respondent Following Interim Suspension Order); Article 4.5 (Responsibilities of Respondent Following Administrative Order); Article 11.2 (Notice to Respondent's Firm(s) and Clients Required after Public Sanction), and Article 11.3 (Prohibition Against Use of CFP Board Certification Marks By a Respondent Who is Subject to a Suspension, Interim Suspension, Administrative Suspension, Revocation, Administrative Revocation, Temporary Bar, Administrative Temporary Bar, Permanent Bar, or Administrative Permanent Bar);
- g. Whether Respondent has provided a written certification that Respondent has read, understands, and will comply with, the *Code and Standards*;
- h. Whether Respondent has provided a properly completed CFP Board Ethics Disclosure Questionnaire;
- i. Whether Respondent has complied with the terms of an applicable order that required Respondent to Petition; and
- j. Any other factors the DEC or DEC Counsel determines are relevant to Respondent's circumstances

# ARTICLE 12: RESOLUTION OF COMPLAINTS

## 12.1 BURDEN OF PROOF AND GROUNDS FOR SANCTION

- a. **Enforcement Counsel Burden of Proof.** Enforcement Counsel must prove grounds for sanction raised in a Complaint by a preponderance of the evidence. A violation of the *Code and Standards* or the *Pathway to CFP® Certification Agreement* constitutes grounds for sanction. 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 matter sought to be proved is more probable than not to have occurred.
- b. **Respondent Has Burden of Proof**
  1. **Circumstances Involving Multiple Allegations of Misconduct.** If Respondent is alleged to have engaged in multiple instances of misconduct that is the subject of settled customer disputes and Respondent does not produce documents or information Enforcement Counsel requests that is material to the allegations of misconduct raised in or by the customer disputes, then the existence

of the settled customer disputes will constitute grounds for sanction unless Respondent proves by a preponderance of the evidence that the allegations of misconduct raised in the settled customer disputes are without merit.

2. **Bankruptcy.** As set forth in section E.2.c. of the *Code and Standards*, a Respondent has the burden of rebutting the presumption that a bankruptcy demonstrates an inability to manage responsibly the CFP® professional's or the business's financial affairs.

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

- a. The Hearing Panel must recommend to the DEC whether to find that a violation has occurred and whether there are grounds for sanction, and, if so, the appropriate sanction.
- b. The Hearing Panel's recommendation must include factual findings, any determination of a witness's credibility that is material to the recommendation, any mitigating or aggravating factors, and the *Sanction Guidelines* and *Case Histories* that the Hearing Panel found relevant.

## **12.3 REVIEW BY THE DEC AND ISSUANCE OF THE DEC'S 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, except that the DEC must give deference to rulings on procedural and evidentiary motions unless the DEC finds that such a ruling was arbitrary and capricious.
- b. The DEC must issue a final order that sets forth the DEC's factual findings, determine whether Respondent violated the *Code and Standards* or the *Pathway to CFP® Certification Agreement*, describe any mitigating or aggravating factors, and identify the *Sanction Guidelines* and *Case Histories* that the DEC found relevant. The DEC's final order also must:
  1. Dismiss the case if the DEC finds no violation of the *Code and Standards* or the *Pathway to CFP® Certification Agreement*; or
  2. Dismiss the case or dismiss the case with caution if the DEC finds a violation of the *Code and Standards* or the *Pathway to CFP® Certification Agreement* that does not warrant a sanction; or
  3. Impose a sanction if the DEC finds a violation of the *Code and Standards* or the *Pathway to CFP® Certification Agreement* that does warrant a sanction.

## **12.4 PUBLICATION OF PUBLIC CENSURE, SUSPENSION, TEMPORARY BAR, REVOCATION, AND PERMANENT BAR**

CFP Board publishes a Public Censure, Suspension, Temporary Bar, Revocation, and Permanent Bar in accordance with Article 17.7.

# **ARTICLE 13: RESOLUTION OF PETITIONS FOR FITNESS DETERMINATION**

## **13.1 BURDEN OF PROOF**

A Respondent who has filed a Petition for Fitness Determination must prove by a preponderance of the evidence, under the factors set forth in Article 5.2, 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 matter sought to be proved is more probable than not to have occurred.

## **13.2 RECOMMENDATION OF THE HEARING PANEL**

The Hearing Panel reviewing a Petition for Fitness Determination must recommend to the DEC whether to grant the Petition or whether to deny the Petition and impose either a Temporary Bar or Permanent Bar. The Hearing Panel's recommendation must include factual findings, any mitigating or aggravating factors, and any *Sanctions Guidelines* or *Case Histories* that the Hearing Panel found relevant.

### **13.3 REVIEW BY THE DEC AND ISSUANCE OF THE DEC'S FINAL ORDER**

- a. The DEC must review de novo and accept, reject, or modify the Hearing Panel's findings and recommendations concerning the Petition for Fitness Determination. De novo means that the DEC must consider the matter anew, as if the Hearing Panel had rendered no recommendation, except that the DEC must give deference to rulings on procedural and evidentiary motions unless the DEC finds that such a ruling was arbitrary and capricious.
- b. The DEC must issue its final order that either grants the Petition or denies the Petition and imposes a Temporary Bar or a Permanent Bar. The DEC's final order also must set forth the DEC's factual findings, any mitigating or aggravating factors, and the *Sanctions Guidelines* and *Case Histories* that the DEC found relevant.

### **13.4 PUBLICATION OF TEMPORARY BAR AND PERMANENT BAR**

CFP Board publishes a Temporary Bar and Permanent Bar in accordance with Article 17.7.

## **ARTICLE 14: RESOLUTION OF PETITIONS FOR REINSTATEMENT ELIGIBILITY FOLLOWING ORDER OF SUSPENSION OF MORE THAN ONE YEAR**

### **14.1 PETITION FOR REINSTATEMENT ELIGIBILITY**

- a. A Respondent whose Certification and Trademark License the DEC, Code and Standards Enforcement Committee, or Appeals Commission has suspended for a period longer than one year is not eligible for reinstatement unless (i) Respondent has filed a written Petition for Reinstatement After Suspension with the DEC, and contemporaneously delivered the Petition to Enforcement Counsel, and (ii) the DEC (or if the DEC's decision is appealed to the Appeals Commission, then the Appeals Commission) has granted the Petition. Respondent must file a Petition no earlier than six months prior to the last day of the suspension and no later than five years after the first day of the suspension. Respondent will use reasonable efforts to redact any exhibits to the Petition pursuant to Article 6.1. Respondent's Petition must include:
  1. Evidence of Respondent's rehabilitation and fitness for CFP® certification, as set forth in Article 11.8 of the *Procedural Rules*; and
  2. 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. Upon receipt of Respondent's Petition, DEC Counsel must deliver to the parties notice of the name and employer of each potential member of the Hearing Panel and the DEC as required by Article 17.3.b.
- c. Enforcement Counsel must file with the DEC and contemporaneously deliver to Respondent its Response to the Petition within 30 calendar days of the date Respondent delivered the Petition to Enforcement Counsel. Enforcement Counsel's response must indicate whether Enforcement Counsel has a position on whether the DEC should grant Respondent's Petition, state whether Enforcement Counsel requests a hearing, and the amount of hearing time Enforcement Counsel requests for the hearing.
- d. If Respondent does not file a written Petition for Reinstatement Eligibility within five years of the first date of the suspension, then Respondent has relinquished CFP® certification permanently, with no opportunity for reinstatement.

### **14.2 BURDEN OF PROOF**

A Respondent seeking reinstatement eligibility 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's 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, it is highly probable that the matter sought to be proved is true.

### 14.3 RECOMMENDATION OF THE HEARING PANEL

The Hearing Panel must recommend whether a Petition for Reinstatement Eligibility After Suspension should be granted, denied, or denied with a right to re-apply for a period not to exceed 5 years. The Hearing Panel's recommendation must include factual findings, any mitigating or aggravating factors, and any *Sanction Guidelines* and *Case Histories* that the Hearing Panel found relevant.

### 14.4 REVIEW BY THE DEC AND ISSUANCE OF THE DEC'S FINAL ORDER

- a. The DEC must review de novo and accept, reject, or modify the Hearing Panel's findings and recommendations concerning the Petition for Reinstatement Eligibility After Suspension. De novo means that the DEC must consider the matter anew, as if the Hearing Panel had rendered no recommendation, except that the DEC must give deference to rulings on procedural and evidentiary motions unless the DEC finds that such a ruling was arbitrary and capricious.
- b. The DEC must issue its final order that grants or denies the Petition and states the date, if any, after which Respondent may file a Renewed Petition for Reinstatement Eligibility After Suspension. The DEC's final order also must set forth the DEC's factual findings, any mitigating or aggravating factors, and any *Sanction Guidelines* and *Case Histories* that the DEC found relevant. If the DEC grants the Petition then the DEC must state the effective date of Respondent's eligibility for reinstatement. If the DEC denies Respondent's Petition and does not authorize a Renewed Petition, or the DEC denies Respondent's Renewed Petition, then the DEC must issue a revocation.
- c. If the DEC or Appeals Commission has granted a Petition for Reinstatement Eligibility or Renewed Petition for Reinstatement Eligibility, then Respondent must timely satisfy any remaining CFP Board certification requirements before CFP Board will reinstate Respondent.

### 14.5 PUBLICATION OF REVOCATION

CFP Board will publish a revocation in accordance with Article 17.7.

## ARTICLE 15: APPEALS

### 15.1 INITIATION OF APPEAL

Except where otherwise provided in these *Procedural Rules*, a Respondent or Appellate Counsel may appeal any final order of the DEC or Administrative Order to the Appeals Commission.

- a. **Time for filing appeal.** A party must deliver a Notice of Appeal within 30 calendar days from the issuance of the DEC's final order or the delivery of the Administrative Order. In addition to the delivery requirements set forth in Article 16, for the Notice of Appeal to be effective, the Appellant also must deliver the Notice by email to [compliance@cfpboard.org](mailto:compliance@cfpboard.org) and by regular mail to CFP Board, attention General Counsel, 1425 K Street NW, Suite 800, Washington DC 20005. CFP Board will not consider or grant a request for more time to initiate an appeal. Failure timely to initiate an appeal waives the right to appeal. A party that did not file a Notice of Appeal may file a Notice of Cross Appeal within 14 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 one-page document that identifies the party initiating the appeal, designates the DEC's final order or the Administrative Order that is the subject of the appeal, and notes whether the party requests an appeal hearing.
- c. **Stay of the DEC's Final Order or the Administrative Order.** Upon the successful initiation of an appeal, the order or the Administrative Order is stayed pending a decision by the Appeals Commission.
- d. **Costs and Fees for Appeal.** 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 30 calendar days of delivery of the assessment unless Respondent has obtained a waiver due to financial hardship pursuant to Article 17.4. The Chair of the Appeals Commission may dismiss an appeal for failure to pay the costs and fees.

## 15.2 APPEALS COMMISSION

The Appeals Commission will review and decide all appeals. The Appeals Commission will be represented by counsel, including during any hearing.

## 15.3 APPELLATE STANDARD OF REVIEW

### a. Appeal from DEC Order Resolving Complaint.

1. **Factual Findings.** The Appeals Commission must accept the DEC's factual findings unless the factual findings are unsupported by substantial evidence under the applicable burden of proof. Substantial evidence is such relevant evidence as a reasonable person might accept as adequate to support a conclusion. The burden of proof for grounds for sanction is a preponderance of the evidence, which means "more probable than not," i.e., evidence which shows that, as a whole, the matter sought to be proved is more probable than not to have occurred.
2. **Interpretation or Application.** The Appeals Commission must accept the DEC's interpretation or application of the *Code and Standards*, *Pathway to CFP® Certification Agreement*, and *Procedural Rules* unless that interpretation or application is unreasonable.
3. **Sanctions.** The Appeals Commission must accept the DEC's imposition of a sanction unless the Appeals Commission determines that the imposition of a sanction is an abuse of discretion. An abuse of discretion is an error of judgment in issuing an order that is clearly unreasonable, erroneous, or arbitrary and not justified by the facts or the applicable standard.

### b. Appeals from Administrative Order.

The Appeals Commission must affirm an Administrative Order unless Appellant establishes that the order (i) is unsupported by substantial evidence to support a finding of default as defined in Article 4.1 or (ii) resulted from Appellant's "excusable neglect," which means that the failure to take proper steps at a proper time was not a consequence of carelessness but rather resulted from some unavoidable hindrance or occurrence. The choice of sanction imposed in an Administrative Order is not appealable. In determining whether excusable neglect exists, relevant considerations 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 a DEC Order Resolving a Petition.

1. **Factual Findings.** The Appeals Commission must accept the DEC's factual findings unless the factual findings are unsupported by substantial evidence under the applicable burden of proof. Substantial evidence is such relevant evidence as a reasonable person might accept as adequate to support a conclusion.
  - a) The burden of proof for a Respondent who file a Petition for Reinstatement Eligibility Following an Administrative Order of Suspension is clear and convincing evidence.
  - b) The burden of proof for a Respondent who filed a Petition for Reinstatement Eligibility After an Interim Order of Suspension is a preponderance of the evidence.
  - c) The burden of proof for a Respondent who filed a Petition for Fitness Determination is a preponderance of the evidence.
  - d) The burden of proof for a Respondent who filed a Petition for Reinstatement Eligibility After Suspension is clear and convincing evidence.
  - e) The burden of proof for grounds for sanction is a preponderance of the evidence, which means "more probable than not," i.e., evidence which shows that, as a whole, the matter sought to be proved is more probable than not to have occurred.
2. **Interpretation or Application.** The Appeals Commission must accept the DEC's interpretation or application of the *Fitness Standards*, *Code and Standards*, *Pathway to CFP® Certification Agreement*, and *Procedural Rules* unless that interpretation or application is unreasonable.



3. **Fitness or Rehabilitation.** The Appeals Commission must accept the DEC's determination of fitness or rehabilitation unless the Appeals Commission determines that the DEC's determination of fitness or rehabilitation is an abuse of discretion. An abuse of discretion is an error of judgment in issuing an order that is clearly unreasonable, erroneous, or arbitrary and not justified by the facts or the applicable standard.
  4. **Decision to Vacate.** The Appeals Commission must accept the DEC's decision whether to vacate an Interim Suspension unless the Appeals Commission determines that the decision is an abuse of discretion. An abuse of discretion is an error of judgment in issuing an order that is clearly unreasonable, erroneous, or arbitrary and not justified by the facts or the applicable standard.
  5. **Sanctions.** The Appeals Commission must accept the DEC's imposition of a sanction unless the Appeals Commission determines that the imposition of a sanction is an abuse of discretion. An abuse of discretion is an error of judgment in issuing an order that is clearly unreasonable, erroneous, or arbitrary and not justified by the facts or the applicable standard.
- d. **Harmless Error.** The Appeals Commission must not reverse a final order unless the Appeals Commission determines that the error or errors that form the basis for the decision prejudicially affected the substantial rights of Appellant. An error must not be deemed to have prejudicially affected the substantial rights of the appellant if the Appeals Commission determines, with fair assurance and considering all the facts and circumstances, that the final order was not substantially swayed by the error.

#### 15.4 THE PARTIES' BRIEFS

- a. **Appellant's Brief.** The party filing a Notice of Appeal must deliver an Appellant's Brief no later than 60 calendar days after the DEC issues its final order. The party filing a Notice of Cross Appeal must deliver an Appellant's Brief no later than 75 calendar days after the DEC issues its 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 30 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's Brief must not include or refer to evidence not 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 30 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 include as an appendix to the Brief any documents not already contained within the Record on Appeal relevant and necessary to considering whether the final order at issue in the appeal resulted from excusable neglect. 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 60 calendar days from delivery of Appellant's Brief. Appellee's Brief, which should be no longer than 30 double-spaced pages, must specify the party filing Appellee's Brief, respond to the issues raised in Appellant's Brief, and note whether Appellee requests an appeal hearing. Appellee's Brief must not include or refer to evidence not 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 may file a Reply Brief within 14 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 any 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 Commission must issue an order resolving the Motion for More Time.
- e. **Failure to Comply with Requirements for Content of Appellant's Brief.** If the Appeals Commission determines that an Appellant failed to satisfy the requirements of Article 15.4.a., then the Appeals Commission may dismiss the appeal without a hearing.

## 15.5 APPELLATE MOTIONS

- a. **Briefing.** An Appellant or Appellee may file a written motion not exceeding 10 double-spaced pages regarding non-dispositive matters. Except for good cause shown, pre-hearing motions must be filed no later than 45 calendar days prior to the appeal hearing. A party may file a written motion for leave to file a post-hearing motion no later than 14 calendar days after the appeal hearing. An Appellant or Appellee may file a written response, which may not exceed 10 double-spaced pages, within 14 calendar days of any motion delivered by another party. An Appellant or Appellee may file a rebuttal of no more than 10 double-spaced pages within 5 calendar days of the delivery of any response.
- b. **Rulings.** The Chair of the Appeals Commission must rule on all motions, objections, and other matters raised on appeal.
- c. **Oral Argument.** The Chair of the Appeals Commission may, at his or her sole discretion, hold oral argument on a motion either in person, telephonically, or by video conference. The Chair must issue all orders to the parties.

## 15.6 THE RECORD ON APPEAL

- a. **Appeal from Final Order Issued by the DEC.** The record on appeal will consist of the documents provided to the DEC; all motions, responses to motions and orders resolving motions; the transcript of any hearing before the Hearing Panel; the DEC's final order; the Notice of Appeal; and all Briefs filed by the parties on appeal. A Hearing Panel or Settlement Review Panel recommendation is not discoverable and is not part of the record on appeal.
- b. **Appeal from Administrative Order.** The record on appeal will consist of the Administrative Order; the Notice of Appeal; and all Briefs and appendices filed by the parties on appeal.
- c. **Preparation of Record.** Appellate Counsel must prepare the record on appeal, submit it to the Appeals Commission, and deliver a copy to the Appellee or Appellant.

## 15.7 APPEAL RESOLUTION

- a. **Authority to Hold a Hearing.** The Chair of the Appeals Commission must determine whether an appeal hearing will be held and whether the appeal hearing will be in person or by video conference, considering the following factors: whether a party has requested a hearing; the novelty and complexity of the issues; and whether the facts and legal arguments are adequately presented in the briefs and record, such that oral argument will not significantly aid the decision-making process.
- b. **Notice of Appeal Hearing.** Not less than 60 calendar days prior to the date set for an appeal hearing, the Chair of the Appeals Commission must issue written notice of such hearing that designates the date, time, place, and manner of the hearing. The parties and counsel may appear in person or by video at any in person hearing, and by video at any video hearing. For good cause shown, the Chair of the Appeals Commission may grant a hearing participant permission to appear by telephone at either an in person hearing or a video hearing, using the video platform provided by CFP Board.
- 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-minutes to present a rebuttal to Appellee's affirmative presentation. Affirmative presentations must address only those issues raised in the parties' Briefs. The rebuttal must address only those issues raised during Appellee's affirmative presentation.
  1. **Motion for More Time.** The Chair of the Appeals Commission 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. A motion for more than 5 additional minutes of presentation time must be made in writing not less than 30 calendar days prior to the date set for an appeal hearing. A motion for 5 minutes or less of additional presentation time may be made at the appeal hearing.
  2. **Objections and Procedural Issues Arising During the Appeal Hearing.** The Chair of the Appeals Commission will decide any objections or issues regarding procedural matters that arise during the appeal hearing.
  3. **Questioning.** Members of the Appeals Commission may ask questions at any time during or after the presentations. Subject to the right of Appellant or Appellee to move for more time, the time allotted for presentation must not be extended solely because the Appeals Commission asked questions.

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

## **15.8 APPEALS COMMISSION ORDERS.**

The Appeals Commission must issue its final order in writing. Appeals Commission orders are not subject to further appeal or review.

# **ARTICLE 16: DELIVERING AND FILING DOCUMENTS, DETERMINING WHEN A DOCUMENT MUST BE DELIVERED, AND ISSUING NOTICES AND ORDERS**

These *Procedural Rules* set deadlines for a Respondent and Enforcement Counsel to deliver and file documents. This Article sets forth the requirements for delivering and filing documents, determining the date when a document is due, and issuing notices and orders.

## **16.1 DOCUMENTS DELIVERED BY CFP BOARD TO RESPONDENT**

A Respondent is required to provide CFP Board an email address and mailing address, and to notify CFP Board promptly 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 either by attaching the document to the email or by providing in the email the information necessary for Respondent to access the documents by electronic means, or if no email address is available, then 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. A Respondent's failure to provide accurate contact information will not prevent CFP Board from acting pursuant to these *Procedural Rules*, including by issuing an Administrative Order of Revocation or a final order of sanction.

## **16.2 DOCUMENTS DELIVERED BY RESPONDENT TO CFP BOARD**

Respondent must deliver documents to Enforcement Counsel through the means specified by Enforcement Counsel or, if no means are provided, to [investigations@CFPBoard.org](mailto:investigations@CFPBoard.org).

## **16.3 ORDERS ISSUED BY THE DEC, DEC COUNSEL, AND THE APPEALS COMMISSION; FILING WITH THE DEC, DEC COUNSEL, AND APPEALS COMMISSION**

The DEC, DEC Counsel, or the Appeals Commission may issue an order or notice to Respondent through the email address Respondent has provided to CFP Board either by attaching the document to the email or by providing in the email the information necessary for Respondent to access the documents by electronic means, or if no email address is available, by hand-delivery or any commercially available delivery service that provides a record of delivery to the mailing address the Respondent has provided to CFP Board. The DEC, DEC Counsel, or the Appeals Commission may issue an order or notice to Enforcement Counsel by email by attaching the document to the email or by providing in the email the information necessary for Enforcement Counsel to access the documents by electronic means. A party may file a document with the DEC or DEC Counsel through the email address [decfilings@cfpboard.org](mailto:decfilings@cfpboard.org). The party filing the document must copy the other party on the communication to the DEC or DEC Counsel. A party may file a document with the Appeals Commission through the email address [compliance@cfpboard.org](mailto:compliance@cfpboard.org). The party filing the document must copy the other party on the communication to the Appeals Commission.

## **16.4 ENCRYPTION**

If a party attaches documents to an email, the party must make reasonable efforts to encrypt the documents in a manner that requires a password or other similar security mechanism to open the documents. The party must deliver the password or other similar security mechanism to the other party, and the DEC, DEC Counsel, or the Appeals Commission, if appropriate, in a separate email from the email attaching the documents.

## **16.5 DATE OF FILING AND DELIVERY**

The date of filing and delivery will be the day a document is transmitted. The parties shall include the date of filing and delivery on the document being filed and delivered. The document must be transmitted for delivery

or filing on the date of the document. A postmark on an envelope is presumptive evidence of the date the document was transmitted for delivery. For documents sent by email, the date and time reflected in the metadata of the email is presumptive evidence of when the document was transmitted.

## **16.6 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 17: GENERAL PROVISIONS**

## **17.1 CONFIDENTIALITY**

- a. Except as provided below, the existence of an investigation and adjudication by CFP Board and the information obtained pursuant to these *Procedural Rules* (“Confidential Information”) will be confidential and will not be made public. Respondent must use such Confidential Information solely in connection with Respondent’s defense of the investigation or Complaint, or any appeal thereof, except as provided below. Respondent, Respondent’s counsel, experts, and witnesses must not record any examination or hearing.
- b. CFP Board or Respondent may disclose Confidential Information:
  1. To counsel designated by Respondent;
  2. To Respondents in a consolidated matter and their designated counsel;
  3. To a potential expert (an expert is a person retained by a party who is qualified to offer an opinion by knowledge, skill, experience, training, or education) as necessary to assist in proceedings conducted pursuant to these *Procedural Rules*, provided that the expert executes a written confidentiality agreement that prohibits the expert from disclosing the Confidential Information to third parties, and that the expert is required to return or destroy any copy of any document containing Confidential Information at the conclusion of the expert’s engagement;
  4. To a potential witness (and counsel for the witness) as necessary to assist in proceedings conducted pursuant to these *Procedural Rules*, provided that the witness (and counsel for the witness) is not permitted to retain a copy of a document containing Confidential Information;
  5. To stenographers or video equipment operators who assist with the recordation of an oral examination or a hearing;
  6. As required to comply with federal, state, or local law;
  7. As required to comply with a properly authorized civil, criminal, or regulatory investigation or examination, or a subpoena or summons, by a governmental authority or self-regulatory organization; and
  8. As required to comply with a request from another party, or a subpoena issued, in a civil action or arbitration.
- c. CFP Board also may disclose Confidential Information:
  1. In publication of a public sanction pursuant to Article 17.7;
  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) DEC Counsel and members of the DEC, Hearing Panels, and Settlement Review Panels;
    - b) Members of the Appeals Commission and counsel to the Appeals Commission, if an Order is appealed under these *Procedural Rules*; and
    - c) Enforcement Counsel, Appellate Counsel, CFP Board’s staff and Board of Directors.

3. To individuals who filed a complaint with CFP Board against a Respondent, but unless otherwise provided in this Article, only to notify the individual that their complaint remains under review or investigation, or that the review of their complaint is complete and that a public sanction has or has not been issued.
  4. To a governmental agency or industry self-regulatory organization having appropriate jurisdiction over Respondent; and
  5. If Respondent has waived confidentiality.
- d. Upon request, CFP Board also may disclose to an examinee who testified at an oral examination or hearing a copy of the transcript of the examinee's testimony and any exhibits that the examinee produced in the proceeding conducted pursuant to these *Procedural Rules*. The transcript may be redacted to exclude quotations from exhibits that are not produced to the examinee.
- e. If the disclosure is not otherwise prohibited, then Respondent also may disclose Confidential Information:
1. To Respondent's Firm, except for Confidential Information concerning a client who is not a client of Respondent's Firm;
  2. As necessary to defend against allegations of wrongdoing made by a governmental authority or self-regulatory organization having appropriate jurisdiction;
  3. As necessary to defend against a claim raised by a client or former client in a civil action or arbitration, provided that Respondent discloses to the client or former client all Confidential Information in the proceeding conducted pursuant to these *Procedural Rules* that relate to the claim; and
  4. As necessary to provide information to professional organizations that are assessing Respondent's compliance with professional standards.

## 17.2 RETENTION OF COUNSEL

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 in Respondent's Answer to the Complaint, Petition for Consideration, or Petition for Reinstatement. Respondent must provide the counsel's contact information as well as whether the counsel will appear in person or by video conference (if CFP Board makes video conference available) for any oral examination, 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. DEC Counsel and Appeals Commission Chair may prohibit the appearance of Respondent's counsel if either determines that Respondent's counsel has (i) not complied with any guidelines or standards that CFP Board establishes for outside counsel or (ii) has engaged in unethical or improper professional conduct. 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.

## 17.3 RECUSAL

- a. **Standard for Recusal.** A member of the DEC, a Hearing Panel, a Settlement Review Panel, or the Appeals Commission ("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 counsel, 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.** The DEC (or DEC Counsel) or the Appeals Commission (or Appeals Commission Counsel), as applicable, must provide Respondent or Appellant and Appellee with notice of the name and employer of each potential member of the Hearing Panel, the DEC, the Settlement Review Panel, and/or Appeals Commission, and must timely supplement the list as needed. Respondent, Appellant or Appellee must file, within 14 calendar days of delivery of this notice, any motion requesting the recusal of a Member and state with particularity the grounds for the motion. Respondent's failure timely to 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 Commission, as applicable, must rule upon any motion for recusal, unless the Chair is the subject of the motion, in which case a Member who DEC Counsel or Appeals Commission Counsel designates must rule upon the motion. No person who is the subject of a motion for recusal may participate in the consideration of the motion except to raise the issue.

#### **17.4 FEES AND FINANCIAL HARDSHIP**

CFP Board may impose fees on Respondent or Appellant, including for a settlement review, hearing, or appeal. Respondent or Appellant must submit the fee to CFP Board within 30 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 30 calendar days after the fee assessment. CFP Board then may reduce or waive the required fees. If the DEC or, if the case is appealed, the Appeals Commission, finds no ground for sanction or grants a Petition for Fitness Determination filed under Article 5.2, then CFP Board must refund Respondent the fee.

#### **17.5 ACTIONS REQUIRED TO BE TAKEN BY A CHAIR**

Unless otherwise provided in these *Procedural Rules*, any action that these *Procedural Rules* require to be taken by a Chair of the Hearing Panel, DEC, or Appeals Commission may be taken by another member designated by the Chair.

#### **17.6 SANCTION GUIDELINES AND CASE HISTORIES**

- a. **Sanction Guidelines.** The *Sanction Guidelines* identifies 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 determining the appropriate sanction. The DEC and Appeals Commission are not bound by the *Sanction Guidelines*. When considering the appropriate sanction in a particular case, deviations from the *Sanction Guidelines* may occur if aggravating factors warrant a more severe sanction, mitigating factors warrant a less severe sanction, or the DEC or Appeals Commission determines there are other reasons for doing so.
- b. **Case Histories.** *Case Histories* are orders or summaries of orders. CFP Board intends for the *Case Histories* to provide guidance. The DEC and Appeals Commission are not bound by the *Case Histories*.

#### **17.7 PUBLICATION**

In the event that a proceeding conducted pursuant to these *Procedural Rules* results in a public sanction against Respondent, CFP Board will publish the order imposing the public sanction and/or a summary of the contents of the order in a press release, on CFP Board's website, and any other form of public disclosure that CFP Board determines is appropriate. In the publication, CFP Board will have the right to identify Respondent and the form of sanction, 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 sanction, including information which otherwise may be private or confidential under these *Procedural Rules*. Publication of the sanction will remain on CFP Board's website. CFP Board may characterize or otherwise describe in public statements the sanction and facts relevant to the sanction.

#### **17.8 LIMITATIONS**

- a. Enforcement Counsel may not deliver a Notice of Investigation without consent of Respondent after the later of:

1. 7 years after the date of the last action constituting a potential violation of the *Code and Standards*;
  2. 2 years after the date on which Respondent is the subject of a Criminal Conviction, Civil Finding, or Professional Discipline;
  3. 2 years after Respondent provides information to CFP Board that Respondent is required to provide under Standard E.3 of the *Code and Standards* or any predecessor reporting requirement (“Matter Required to be Reported”); or
  4. The date DEC Counsel establishes in an order granting a Motion for Extension of Time to Commence Investigation.
- b. If Enforcement Counsel delivers a Notice of Investigation and later determines that the Notice of Investigation otherwise would be untimely under this rule, then Enforcement Counsel either shall dismiss the investigation or file a Motion for Leave to Continue Investigation.
  - c. CFP Board Counsel may file a Motion for Extension of Time to Commence Investigation.
  - d. DEC Counsel shall review any Motion for Extension of Time to Commence Investigation or Motion for Leave to Continue Investigation. DEC Counsel must issue an order granting a Motion for Extension of Time to Commence Investigation or Motion for Leave to Continue Investigation if Enforcement Counsel 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 matter sought to be proved is more probable than not to have occurred) that good cause exists for extending the time to deliver a Notice of Investigation or for continuing the Investigation. DEC Counsel must find that good cause exists if Respondent was required, but failed, to report to CFP Board in a timely manner the matter that Enforcement Counsel intends to investigate.
  - e. Enforcement Counsel may not deliver an original Complaint to a Respondent more than 4 years after the date on which Enforcement Counsel delivered a Notice of Investigation, unless:
    1. Enforcement Counsel and Respondent agree to extend the time for CFP Board to deliver a Complaint; or
    2. DEC Counsel grants a Motion for Extension of Time to Deliver Complaint and specifies a time for CFP Board Counsel to deliver a Complaint.
  - f. Enforcement Counsel may file a Motion for Extension of Time to Deliver Complaint. DEC Counsel shall review the motion and make findings and recommendations. DEC Counsel must issue an order granting a Motion for Extension of Time to Deliver Complaint if Enforcement Counsel 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 matter sought to be proved is more probable than not to have occurred) that there is good cause for extending the time for issuing a Complaint. DEC Counsel 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 4 years after CFP Board delivered a Notice of Investigation.
  - g. If Enforcement Counsel files a Motion for Extension of Time to Commence Investigation, a Motion for Leave to Continue Investigation, or a Motion for Extension of Time to Deliver Complaint, Respondent may file a response within 20 calendar days of delivery of the Motion, and Enforcement Counsel may file a reply to Respondent’s response within 10 calendar days of delivery of the response. DEC Counsel has discretion whether to schedule oral argument on the motion.
  - h. The limitations periods in these *Procedural Rules* do not apply to matters involving a Respondent who is a candidate for CFP® certification.

## **17.9 NOTICE TO INDIVIDUALS WHO FILED A COMPLAINT WITH CFP BOARD**

Enforcement Counsel must provide to any individual who filed a complaint against a Respondent notice every 6 months that the individual’s pending complaint remains under review or investigation, and when the individual’s complaint is dismissed or finally adjudicated, notice that a public sanction has or has not been issued.

## **17.10 HEARING PANEL MODIFICATION OR REVERSAL OF DEC COUNSEL'S RULINGS ON MOTIONS AND OBJECTIONS**

A Hearing Panel may consider de novo and modify or reverse DEC Counsel's resolution of any motion or objections made pursuant to these *Procedural Rules*. De novo means that the DEC must consider the matter anew, as if DEC Counsel had not resolved the motion or objections. The parties must not submit any written requests for a modification or reversal of DEC Counsel's decision.

**Note:** The changes to the *Procedural Rules* will become effective immediately on the effective date (September 1, 2023) and shall govern in all proceedings then pending or thereafter commenced



**CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.**

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