

CFP BOARD

**PROPOSED
PROCEDURAL
RULES**

PUBLIC RELEASE DATE: MARCH 24, 2020

CFP BOARD

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

PROCEDURAL RULES (Effective June 30, 2020)

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 to a committee of the Board of Directors. The parties to a proceeding also have the right to be represented by counsel of their choice.

CFP Board applies these *Procedural Rules* to any person who has agreed to CFP Board's *Terms and Conditions of Certification and Trademark License* or *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 Counsel (a term, as used in the *Procedural Rules*, that includes CFP Board staff operating at the direction of CFP Board 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 ("*Code and Standards*"), or (b) the *Pathway to CFP® Certification Agreement*. CFP Board's Disciplinary and Ethics Commission (the "DEC"), which is composed primarily of CFP® professionals, 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 License to use the CFP® marks, or a temporary or permanent bar on Respondent's ability to obtain CFP® certification. In the event there is a public sanction, CFP Board will publish the decision in a press release and on CFP Board's website.

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

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

ARTICLE 1: INVESTIGATION

1.1 Commencement of Investigation

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

1.2 Procedures for Investigation

- a. **Requests for Documents and Information.** CFP Board Counsel may deliver to Respondent requests relating to or arising out of the allegations raised in the Notice of Investigation or during the investigation that ask Respondent to produce documents ("Requests for Production"), provide answers to questions ("Requests for Information"), and/or either admit or deny the truth of matters asserted by CFP Board ("Requests for Admission"). CFP Board Counsel may include Requests for Production, Requests for Information, and Requests for Admission in the Notice of Investigation or send them later.
- b. **Response to Requests for Production and Requests for Information.** Unless the request specifies a different timeframe, Respondent must deliver responsive documents or information within 30 calendar days from delivery of an initial Request for Production or initial Request for Information, and within 14 calendar days from delivery of any subsequent Request for Production or subsequent Request for Information. If CFP Board receives no response or an incomplete response, CFP Board Counsel may deliver a Notice of Failure to Cooperate in accordance with Article 1.3.
- c. **Response to Requests for Admission.**
 1. Unless the request specifies a longer timeframe, Respondent must deliver a response to an initial Request for Admission within 30 calendar days, and within 14 calendar days from delivery of a subsequent Request for Admission.
 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. If Respondent fails to provide the required information in response to a Request for Admission, CFP Board may deliver a Notice of Failure to Cooperate in accordance with Article 1.3.
- d. **Questions by Oral Examination.** CFP Board Counsel may question by oral examination Respondent or third parties with respect to any matter relating to or arising out of the Notice of Investigation or investigation. The examination will be under oath or affirmation.
1. **Notice, Location, and Method.** At least 14 calendar days in advance of the oral examination, CFP Board Counsel must deliver to Respondent and any third-party examinee a notice identifying the date, time, and location of the examination. CFP Board Counsel may conduct the examination in person, telephonically, or by video conference. All oral examinations must be completed at least 30 calendar days prior to the hearing.
 2. **Attendance.** Unless CFP Board Counsel otherwise authorizes, attendance at the examination is limited to CFP Board staff and representatives, the examinee, the examinee's counsel, Respondent, Respondent's counsel, and the video and/or stenographic reporter. CFP Board Counsel may conduct the examination if Respondent or Respondent's counsel fails to appear at the date, time, and location specified in the Notice.
 3. **Order of Questioning.** After CFP Board Counsel completes the examination, Respondent or Respondent's counsel may question the examinee. CFP Board Counsel then may ask the examinee additional questions. Counsel for an examinee other than Respondent then may question the examinee. CFP Board Counsel then may ask the examinee additional questions.
 4. **Federal or State Evidentiary or Procedural Rules.** The examination is not a deposition and does not follow federal or state evidentiary or procedural rules.
 5. **Availability of Transcript and Video.** CFP Board must obtain a written transcript and video recording (if applicable) of the examination. An examinee or Respondent may receive a copy of the transcript and video (if applicable) from CFP Board Counsel upon request.
 6. **Use of Transcript and Video.** There is a presumption that the transcript and video of the examination will be admissible at a hearing, which a party may overcome for good cause shown.

1.3 Duty of Cooperation

- a. Both a Respondent and a CFP® professional who is not a Respondent (in either case, a "Request Recipient") have a Duty of Cooperation under the *Terms and Conditions of Certification and Trademark License*, 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 possession, custody, or control that are not privileged and that do not constitute attorney or expert work product (an expert is a specialist retained by a party who is qualified to offer an opinion by expertise, training, and special knowledge);

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 CFP Board Counsel, and providing truthful and complete responses to questions raised during the examination;
5. Using reasonable efforts to procure documents, information, and witness appearances from third parties as requested, including:
 - a) Executing documents that authorize and request third parties to provide information or documents to CFP Board;
 - b) Using reasonable efforts to require others to execute documents that authorize and request third parties to provide information or documents to CFP Board; and
 - c) Executing documents and requiring third parties to execute documents that release third parties from any potential liability for providing to CFP Board the information and/or documents that CFP Board Counsel has requested.
- b. A Request Recipient has a duty to supplement documents and information provided to CFP Board 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 expiration, relinquishment, revocation, or termination of Request Recipient's Certification and License, Request Recipient will continue to be subject to sanction in accordance with the *Terms and Conditions of Certification and License* and will continue to be bound by the Duty of Cooperation.
- d. If CFP Board Counsel contends that a Request Recipient failed to satisfy the Duty of Cooperation, then CFP Board 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. The DEC will determine whether a Request Recipient failed to comply with the Duty of Cooperation. 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 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 Investigation

After delivering a Notice of Investigation and conducting an investigation, CFP Board Counsel must

determine whether there is probable cause to believe grounds for sanction exist.

- a. If CFP Board Counsel finds no probable cause to believe that Respondent violated the *Code and Standards* or the *Pathway to CFP® Certification Agreement*, then CFP Board Counsel must dismiss the investigation as not warranting further action at this time, while reserving the right to reopen the investigation in the future.
- b. If CFP Board Counsel finds probable cause to believe that Respondent violated the *Code and Standards* or the *Pathway to CFP® Certification Agreement*, then CFP Board Counsel must take one of the following actions:
 1. **Letter of Dismissal:** Dismiss the investigation with a Letter of Dismissal indicating that CFP Board Counsel has determined, based upon the available evidence, that Respondent 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. Respondent may submit a letter responding to the Letter of Dismissal that will become part of Respondent's record with CFP Board, and will be available for the DEC's consideration in the future.
 2. **Settlement Offer:** Present a Settlement Offer to the DEC in accordance with Article 8.
 3. **Complaint:** Deliver a Complaint against Respondent in accordance with Article 3.

ARTICLE 2: INTERIM SUSPENSIONS

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

2.1 Grounds for Interim Suspensions

a. Discretionary Interim Suspension

1. CFP Board Counsel may deliver a Motion for Interim Suspension Order to Respondent, together with a proposed Order granting the Motion for Interim Suspension Order. The Motion for Interim Suspension Order must identify the current members of the DEC, request a hearing date, and request expedited pre-hearing deadlines. Respondent must file a response to the Motion for Interim Suspension within 14 calendar days of delivery of the Motion for Interim Suspension, or at such other time as the Chair of the DEC directs. CFP Board Counsel may file a reply to Respondent's response within 7 calendar days of delivery of the response, or at such other time as the Chair of the DEC directs.
2. A Hearing Panel will consider the Motion for Interim Suspension Order. The Chair of the DEC must determine whether to hold a hearing on the Motion for Interim Suspension. The Hearing Panel may hold a hearing in person, by telephone, or by video conference. If the Chair of the DEC decides to hold a hearing, then the Chair of the DEC must issue to Respondent and CFP Board 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. The Hearing Panel may proceed with the hearing if either Respondent or CFP Board Counsel fails to appear at the date, time, and place established for the hearing.

3. The Hearing Panel must grant the Motion and issue an Interim Suspension Order to Respondent and CFP Board Counsel if the Hearing Panel determines that CFP Board Counsel has demonstrated by a preponderance of the evidence that Respondent's conduct poses a significant threat to the public or significantly impinges upon the reputation of the profession or the CFP® certification marks. A preponderance of the evidence is a standard of review that means "more probable than not," *i.e.*, evidence which shows that, as a whole, the matter sought to be proved is more probable than not to have occurred.
- b. **Automatic Interim Suspension:** CFP Board 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, violence, or an act of moral turpitude;
 3. Is the subject of Professional Discipline, as defined in Article 7.2, that resulted in a revocation, bar, or equivalent sanction; or
 4. Voluntarily terminates or surrenders a financial professional license or registration while Respondent is the subject of a Regulatory Investigation.
 - c. **Delivery of Interim Suspension Order:** The DEC must issue the discretionary Interim Suspension Order to Respondent. CFP Board Counsel must deliver the automatic Interim Suspension Order to Respondent.
 - d. **Term of Interim Suspension Order:** An Interim Suspension Order will remain in place until the DEC or, if an appeal is filed, the Appeals Committee issues a final order.
 - e. **No Appeals of Interim Suspensions:** An Interim Suspension Order and an Order deciding a Petition to Vacate an Interim Suspension Order are 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® certification marks or state or suggest that Respondent is a CFP® professional while the Interim Suspension Order is in effect. Within 10 calendar days of delivery of an Interim Suspension Order, Respondent must deliver to CFP Board Counsel evidence of compliance with the Interim Suspension Order. Such evidence must include Respondent's sworn statement of assurance that Respondent will comply with the Interim Suspension Order and proof that Respondent has removed the CFP® certification marks from all internet sites and all tangible materials that Respondent exposes to the public. Respondent must submit screenshots of websites, including of Respondent's businesses, social media, and third party financial advisor listing website profiles that 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 that the CFP® certification marks previously

appeared publicly in reference to Respondent or Respondent's services. If Respondent fails to comply with or deliver proof of compliance with the Interim Suspension Order, CFP Board may declare Respondent in default under Article 4.1.

2.4 Petition to Vacate an Interim Suspension Order

- a. CFP Board Counsel may deliver an order vacating an Interim Suspension Order if the Criminal Conviction, Civil Liability, or Professional Discipline has been vacated or reversed, the financial professional license or registration that was voluntarily terminated or suspended while the Respondent was the subject of a Regulatory Investigation has been reinstated, or Respondent has provided sufficient evidence indicating that Respondent was not the subject of the Criminal Conviction, Civil Liability, or Professional Discipline.
- b. A Respondent may file a Petition to Vacate an Interim Suspension Order. The Chair of the DEC must determine whether to hold a hearing on the Petition to Vacate, which may occur in person, by telephone, or by video conference. If the Chair of the DEC decides to hold a hearing, then the Chair of the DEC must issue to Respondent and CFP Board 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. The Hearing Panel may proceed with the hearing if either Respondent or CFP Board Counsel fails to appear at the date, time, and place established for the hearing.
- c. A Hearing Panel may issue an order vacating an Interim Suspension Order if:
 1. Respondent files a Petition to Vacate and proves by a preponderance of the evidence (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 Respondent was not the subject of the Criminal Conviction, Civil Liability, or Professional Discipline, the Criminal Conviction, Civil Liability, or Professional Discipline has been reversed, or the financial professional license or registration that was voluntarily terminated or suspended in response to a Regulatory Investigation has been reinstated; and
 2. CFP Board does not establish by a preponderance of the evidence that Respondent has engaged in conduct that poses a significant threat to the public or significantly impinges upon the reputation of the profession or the CFP® certification marks.
- d. If CFP Board Counsel delivers or a Hearing Panel issues an order vacating an Interim Suspension Order, CFP Board must not reflect the Interim Suspension Order in CFP Board's public verification of Respondent's CFP® certification and background. In addition, CFP Board Counsel will deliver the order to Respondent and notify Respondent of the opportunity to file a written request for CFP Board 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 of the facts that are relevant to the order vacating the Interim Suspension Order.
- e. If CFP Board Counsel delivers or a Hearing Panel issues an order vacating an Interim Suspension Order, then upon the written request of Respondent, CFP Board must remove the publication and/or publish the press release.

- f. CFP Board Counsel retains the authority to deliver to Respondent a Complaint based upon the same or other factual allegations.

ARTICLE 3: COMPLAINT AND ANSWER

3.1 Complaints and Amended Complaints

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

3.2 Answers and Amended Answers

Respondent must deliver to CFP Board Counsel a written Answer within 30 calendar days of delivery of the Complaint, unless CFP Board Counsel delivers an Amended Complaint before the Answer is due. Respondent must deliver 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.
- c. A statement indicating whether Respondent requests a hearing or for the matter to be resolved on the written record. If Respondent requests a hearing, Respondent must state whether Respondent intends to appear in person, by telephone, or by video conference if CFP Board makes video conference available.

3.3 Complaint for Single Bankruptcy

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

- a. CFP Board receives credible evidence 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”);
- b. Respondent has no other Bankruptcy Matter; and
- c. There is no probable cause to believe that other grounds for sanction exist.

3.4 Answer to Complaint for Single Bankruptcy

- a. Within 30 calendar days of delivery of the Complaint for Single Bankruptcy, Respondent must deliver to CFP Board Counsel, using a form that CFP Board provides, a Bankruptcy 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. CFP Board Counsel must deliver an Amended Complaint to Respondent; and
 2. Respondent must deliver to CFP Board Counsel, 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. If Respondent 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, then Respondent may accept an Order of Public Censure, in which case CFP Board Counsel will deliver to Respondent an Order of Public Censure, the DEC will not hold a hearing, and CFP Board will not charge Respondent the hearing fee. CFP Board publishes an Order of Public Censure in accordance with Article 17.7
- d. If Respondent 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, then Respondent must provide the factual basis for Respondent’s denial in the Bankruptcy Answer. In this circumstance, the Complaint for Single Bankruptcy will proceed to a hearing as set forth in Article 10, CFP Board will charge Respondent the hearing fee, and CFP Board Counsel may file a written statement, no later than 30 calendar days prior to the Hearing, setting forth CFP Board’s position concerning Respondent’s denial.

3.5 Request for Extension of Time

Prior to the deadline for delivering an Answer, Amended Answer, or Bankruptcy Answer (each an “Answer”), Respondent may request an extension of time to file the Answer. CFP Board Counsel may grant the request, for good cause shown. If CFP Board Counsel denies the request, Respondent may file a Motion for Extension of Time to File an Answer. The Chair of the DEC must issue an order resolving the Motion for Extension of Time to File an Answer.

3.6 Withdrawal of a Complaint

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

ARTICLE 4: DEFAULT; SUSPENSION, REVOCATION, OR BAR

4.1 Default

Respondent is in default if Respondent fails to:

- a. Acknowledge receipt of a Notice of Investigation pursuant to Article 1.1;
- b. File an Answer in accordance with Article 3.2 or 3.4;
- c. Provide proof of compliance after an Interim Suspension Order in accordance with Article 2.3, written evidence after a Public Censure, Temporary Bar, or Permanent Bar in accordance with Article 11.3, or a sworn statement and written evidence after an Order of Suspension in accordance with Article 11.4; or
- d. Pay the fees that CFP Board assesses pursuant to Article 17.4, except in cases where CFP Board Counsel has granted a waiver due to financial hardship.

4.2 Administrative Order of Suspension, Revocation, or Bar

- a. If Respondent is in default, then based upon CFP Board Counsel's determination of the seriousness, scope, and harmfulness of the allegations, CFP Board Counsel must deliver to Respondent:
 1. An Administrative Order of Suspension that suspends Respondent's Certification and License for one year and one day;
 2. An Administrative Order of Temporary Bar that temporarily bars Respondent from seeking CFP® certification for one year and one day;
 3. An Administrative Order of Revocation that revokes Respondent's Certification and License; or
 4. An Administrative Order of Permanent Bar that permanently bars Respondent from seeking CFP® certification.
- b. An Administrative Order must state with reasonable particularity the grounds for default.

4.3 Appeal of Administrative Order

An Administrative Order and an order denying a Petition for Reinstatement Following an Administrative Order is 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 Request for Reinstatement after Administrative Order of Suspension

Respondent may request reinstatement following an Administrative Order of Suspension.

- a. In support of a request for reinstatement, Respondent must deliver to CFP Board Counsel the proof required by Article 14.1, cure the default, and fully cooperate with any proceedings under these *Procedural Rules*.
- b. CFP Board Counsel may reinstate Respondent. If CFP Board Counsel does not reinstate Respondent within 30 calendar days after receiving Respondent's request for reinstatement, then Respondent may file a Petition for Reinstatement Following an Administrative Order of Suspension, which the Chair of the DEC must decide by issuing a written final order. CFP Board may file a response to a Petition for Reinstatement and Respondent may file a reply to CFP Board Counsel's response in accordance with Article 9.
- c. A Respondent seeking reinstatement through a Petition for Reinstatement Following an Administrative Order of Suspension must prove by clear and convincing evidence that Respondent has met the requirements of Article 14.1, cured the default, and has fully cooperated with any proceedings under these *Procedural Rules*. Clear and convincing evidence is a standard of review that is higher than a preponderance of the evidence, and means "a high probability," *i.e.*, evidence that shows that, as a whole, it is highly probable that the matter sought to be proved is true.
- d. 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.

ARTICLE 5: PETITIONS FOR FITNESS DETERMINATION

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

5.2 Proving Fitness

The factors relevant to a Respondent's fitness for CFP® certification include:

- a. The extent to which the Relevant Conduct reflects adversely upon the profession or the CFP® certification marks;

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

ARTICLE 6: RESPONDENT'S REQUEST FOR DOCUMENTS

6.1 Timing and Scope of Document Requests

After CFP Board delivers a Complaint or Respondent files a Petition, Respondent may request, in writing to CFP Board Counsel, the production of relevant documents in CFP Board's investigative file for Respondent that are not privileged or confidential, or do not constitute attorney or expert work product (as defined in Article 1.3.a.1.). CFP Board Counsel must respond to any request and produce responsive documents within 30 calendar days of delivery of the request. Respondent may use any document that CFP Board 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, or (c) other regulatory authority 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 contained in the record does not affect the conclusiveness of the proof. Professional Discipline includes a censure, injunction, undertaking, order to cease and desist, fine, suspension, bar, or revocation, the 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 ("AWC").

7.3 Civil Finding

A record from any court of civil jurisdiction containing a Finding (as defined in the *Code and Standards*) against Respondent in that court that Respondent violated a law, rule, or regulation governing Professional Services, or engaged in conduct involving fraud, theft, misrepresentation, or other

dishonest conduct (“Civil Finding”), is conclusive proof of the existence of such Finding and that Respondent engaged in the conduct that led to the Finding.

7.4 Appeal of or Challenge to Criminal Conviction, Professional Discipline, or Civil Finding

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

CFP Board 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. A Settlement Offer shall stay the Article 3 deadline for a Respondent to file a Complaint. If either CFP Board Counsel or Respondent does not agree to a Settlement Offer, then the investigation will continue or the matter will proceed to hearing.

8.2 Required Content of Proposed Consent Order

- a. **Resolution of Investigations or Complaints.** The Settlement Offer must be in the form of a proposed Consent Order that contains and describes in reasonable detail:
 1. The findings of fact and grounds for sanctions to which Respondent consents;
 2. Any mitigating and/or aggravating factors relevant to the Settlement Offer;
 3. A statement identifying the form of sanction to be imposed;
 4. The content of the public notice, if the form of sanction is public;
 5. A statement that Respondent consents to the entry of the proposed Consent Order, and, if there is to be public notice, that Respondent consents to the issuance of a public notice;
 6. 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, denying, directly or indirectly, any finding in the Consent Order or create the impression that the Consent Order is without factual basis; and
 7. A waiver of all rights:
 - a) Of appeal to CFP Board’s Appeals Committee; or

- b) To challenge or contest any issue related to the Consent Order 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)-(7) 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

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. CFP Board Counsel must deliver to Respondent notice of the name and employer of each member of the Settlement Review Panel and the DEC. The Settlement Review Panel must consider a proposed Consent Order without a hearing unless CFP Board Counsel or the Settlement Review Panel requests a Settlement Hearing. The Settlement Review Panel may hold the Settlement Hearing in person, by telephone, or by video conference if CFP Board makes video conference available. A Settlement Review Panel will be represented by counsel, including at any hearing. The Settlement Review Panel must propose a recommendation to the DEC regarding the proposed Consent Order.

8.4 Resolution of Settlement Offer

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

- a. **Acceptance of Proposed Consent Order.** If the DEC accepts and issues the proposed Consent Order, the Consent Order is the final decision of CFP Board.
- b. **Rejection of Proposed Consent Order.** If the DEC rejects the proposed Consent Order and does not propose a Counteroffer, CFP Board Counsel will continue the investigation, or the matter will proceed to hearing.
- c. **Rejection of Proposed Consent Order and Counteroffer.** If the DEC rejects the proposed Consent Order and proposes a Counteroffer, Respondent must accept the Counteroffer within 14 calendar days of issuance of the Counteroffer or the Counteroffer will be void. If Respondent accepts the Counteroffer, then the DEC will issue the Counteroffer as a Consent Order that is the final decision of CFP Board. If Respondent does not accept the Counteroffer, then the investigation will continue, the matter will proceed to hearing, or CFP Board Counsel and Respondent will present another proposed Consent Order to the DEC.

- d. The DEC must not give any weight, in the later adjudication of a Complaint, to a proposed Consent Order or to any statement made by Respondent or CFP Board Counsel during or in the context of the negotiation 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

9.1 Other Motions

In addition to motions specifically identified elsewhere in these *Procedural Rules*, which must be resolved as set forth therein, Respondent and CFP Board Counsel may file written, non-dispositive motions prior to the hearing, including with respect to any issue that these *Procedural Rules* do not otherwise address, which unless otherwise specified in these *Procedural Rules*, the Chair of the DEC will decide. The movant must state the grounds for the motion, the relief requested, and whether the movant requests oral argument. The opposing party may file a response within 14 calendar days of service of the motion, or at such other time that the Chair of the DEC directs. The movant may file a reply within 5 calendar days of service of the response, or at such other time that the Chair of the DEC directs. The Chair of the DEC has discretion whether to schedule oral argument on the motion. Parties also may make oral motions during a hearing, which the Hearing Panel Chair will decide.

ARTICLE 10: HEARINGS

10.1 Notice of Hearing

CFP Board must hold a hearing in any case presented to the DEC if Respondent, CFP Board Counsel, or the DEC requests a hearing. If a hearing is not requested, then the DEC may hold a hearing or resolve the matter on the written record. Not less than 30 calendar days before a hearing, CFP Board Counsel 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, by telephone, or by video conference. The Hearing Panel may proceed with the hearing if either Respondent or CFP Board Counsel fails to appear at the hearing.

10.2 Continuance of Hearing

CFP Board Counsel may continue a hearing by delivering to Respondent, not less than 30 calendar days before the revised hearing date, a Revised Notice of Hearing. A Respondent may deliver a written request for continuance of the hearing that provides good cause for the request. CFP Board Counsel may grant or deny the request. If CFP Board Counsel denies the request, Respondent may file a Motion for Continuance of the Hearing, which shall be resolved in accordance with Article 9.1.

10.3 Documents, Witnesses, Written Statements, and Stipulations

- a. **Documents.** No later than 45 calendar days after delivery of the Complaint or filing of a Petition, or by a time the DEC Chair otherwise specifies, CFP Board Counsel and Respondent may file and contemporaneously deliver to all other parties, documents that they may seek to introduce at the hearing. The Hearing Panel will not consider documents unless they are timely filed, except for good cause shown upon motion of a party.

- b. **Witnesses.** No later than 30 calendar days after delivery of the Complaint or the filing of a Petition, or by a time the DEC Chair otherwise specifies, each party must file a notice identifying all witnesses. The Hearing Panel will not allow a witness to testify unless timely identified, except for good cause shown 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 at the hearing in person, by telephone, or by video conference if CFP Board makes video conference available. A Hearing Panel may permit a witness to testify at the hearing only upon swearing an appropriate oath or affirmation. Other than a Respondent and an expert witness, a witness may attend a hearing only while testifying.
- c. **Written Statements.** No later than 45 calendar days after delivery of the Complaint or the filing of a Petition, or by a time the DEC Chair 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.
- d. **Stipulations.** No later than 45 calendar days after delivery of the Complaint or the filing of a Petition, or by a time the DEC Chair 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 Hearing Panel Members

Prior to the hearing, CFP Board must provide to Respondent a list of the names and employers of DEC members and potential Hearing Panel members, and must timely supplement the list. Any motions for recusal must be made in accordance with Article 17.3.b.

10.5 The Hearing Panel

A Hearing Panel will conduct the hearing. A Hearing Panel must consist of at least three persons. A majority of the Hearing Panel must be CFP® professionals, and a majority must be DEC members. A DEC member must serve as Chair of the Hearing Panel. The Hearing Panel and the DEC will be represented by counsel, who may assist the Hearing Panel during any hearing.

10.6 Evidence; Oath or Affirmation; Transcription

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

10.7 Respondent's and CFP Board Counsel's Recommendation

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

10.8 Closing of Hearing

The hearing will remain open until the DEC issues its final order in accordance with Article 12.3. Until the DEC issues its final order, the Hearing Panel or the DEC may request additional documents or information from Respondent or CFP Board Counsel and schedule additional hearings.

ARTICLE 11: SANCTIONS, POST-SANCTION REQUIREMENTS, AND REINSTATEMENT

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 of Certification and Trademark License* but is prohibited from using the CFP® certification marks, stating or suggesting that Respondent is a CFP® professional, or holding out to the public as being certified by CFP Board. The DEC may issue a suspension for a specified period, not less than 90 calendar days or greater than five years. CFP Board publishes a suspension in accordance with Article 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 by CFP Board Counsel pursuant to Article 4. An administrative suspension will be in place for one year and one day. CFP Board publishes an administrative suspension in accordance with Article 17.7.
6. **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 CFP® Certification and License is revoked is permanently barred from applying for or obtaining CFP® certification.
7. **Administrative Revocation.** An administrative revocation is a revocation imposed by CFP Board Counsel pursuant to Article 4. CFP Board publishes an administrative revocation in accordance with Article 17.7.
8. **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.
9. **Administrative Temporary Bar.** An administrative temporary bar is a temporary bar imposed by CFP Board Counsel pursuant to Article 4. An administrative temporary bar will be in place for one year and one day. CFP Board publishes an administrative temporary bar in accordance with Article 17.7.

10. **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.
11. **Administrative Permanent Bar.** An administrative permanent bar is a permanent bar imposed by CFP Board Counsel pursuant to Article 4. CFP Board publishes an administrative permanent bar in accordance with Article 17.7.

b. Applicable Sanctions

When Respondent is a CFP® professional, the DEC may order a Private Censure, Public Censure, Interim Suspension, Suspension, or Revocation and CFP Board Counsel may order an Interim Suspension, Administrative Suspension, Administrative Revocation, or Order of Public Censure in a single bankruptcy matter. When Respondent is not a CFP® professional but is subject to sanction under either the *Terms and Conditions of Certification and Trademark License* or the *Pathway to CFP® Certification Agreement*, the DEC may order a Private Censure, Public Censure, Temporary Bar, or Permanent Bar and CFP Board Counsel may order an Administrative Temporary Bar, Administrative Permanent Bar, or Order of Public Censure in a Single Bankruptcy Matter. In a non-administrative order, the DEC also may order remedial education or work.

c. Use in Other CFP Board Proceedings

CFP Board may consider in a subsequent proceeding any DEC final order finding that Respondent violated the *Code and Standards* or the *Pathway to CFP® Certification Agreement*.

11.3 Required Action after Public Censure, Temporary Bar, or Permanent Bar

A Respondent who is the subject of an Order of Public Censure, Temporary Bar, or Permanent Bar that is not under appeal must deliver to CFP Board Counsel, within 45 calendar days of issuance of the order, written evidence that Respondent has:

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

11.4 Required Action after Revocation or Suspension

A Respondent whose Certification and License is suspended or revoked must not use the CFP® certification marks, state or suggest that Respondent is a CFP® professional, or hold out to the public as being certified by CFP Board. Within 45 calendar days of issuance of an Order of Suspension or Revocation that is not under appeal, Respondent must deliver, to CFP Board Counsel, Respondent's sworn statement of assurance that Respondent will comply with the Order of Suspension or Revocation, and written evidence that Respondent has:

- a. Ceased all use of the CFP® certification marks and not stated or suggested that Respondent is a CFP® professional;
- b. Removed the CFP® certification marks from all internet sites and all tangible materials that Respondent exposes to the public, including Respondent's businesses, social media, third party financial advisor listing website profiles that Respondent controls, signage, and, when

applicable, copies of Respondent's new interim business cards, letterhead, marketing and promotional materials, as well as anywhere else the CFP® certification marks previously appeared publicly in reference to Respondent or Respondent's services;

- c. Advised the CFP® Professional's Firm(s), in writing, of the Suspension or Revocation; and
- d. Advised all Clients of the Suspension or Revocation, and provided to all Clients the location of CFP Board's website that sets forth Respondent's disciplinary history.

11.5 Default for Failure to Take Required Action

If a Respondent fails to provide the sworn statement or written evidence required by this Article, then CFP Board Counsel may declare Respondent in default and deliver an Administrative Order under Article 4.2.

11.6 Request or Petition for Reinstatement after Suspension of One Year or Less

- a. A Respondent whose Certification and License has been suspended for one year or less may request reinstatement 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. CFP Board Counsel may reinstate a Respondent whose Certification and License has been suspended for one year or less if Respondent has:
 - 1. Complied with the terms of the DEC order;
 - 2. Provided a properly-completed CFP Board Ethics Disclosure Questionnaire;
 - 3. Not violated CFP Board's *Code and Standards* since the issuance of the DEC's order, or engaged in a prior violation of CFP Board's *Code and Standards* that previously was unknown to CFP Board;
 - 4. Paid the reinstatement fee and any outstanding costs owed to CFP Board, including any certification fees that accrued during the suspension; and
 - 5. Otherwise satisfied CFP Board's certification requirements, including any continuing education requirement that accrued during the suspension.
- b. If CFP Board Counsel does not reinstate a Respondent whose Certification and License has been suspended for one year or less, then Respondent may file a Petition for Reinstatement in accordance with Article 14.
- c. If Respondent does not request reinstatement within five years of the first date of the suspension, then Respondent has relinquished CFP® certification permanently, with no opportunity for reinstatement.

11.7 Reinstatement after Suspension of More than One Year

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

11.8 No Reinstatement after Revocation

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

ARTICLE 12: RESOLUTION OF COMPLAINTS

12.1 Burden of Proof and Grounds for Sanction

- a. **CFP Board Counsel Burden of Proof.** CFP Board 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. **When Respondent Has Burden of Proof: 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 CFP Board 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.

12.2 Recommendation of the Hearing Panel

- a. The Hearing Panel must recommend to the DEC whether to find that there are grounds for sanction, and, if so, the appropriate sanction.
- b. The Hearing Panel’s recommendation must include factual findings, any mitigating or aggravating factors, and the *Sanction Guidelines* and *Anonymous 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:
 1. Must give deference to, but is not bound by, the Hearing Panel’s determination of a witness’s credibility that is based upon its observation of the witness’s demeanor; and
 2. Must give deference to the Hearing Panel’s 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 *Anonymous Case Histories* that the DEC found relevant. The DEC’s final order also must either:
 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 *Anonymous 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:
 1. Must give deference to, but is not bound by, the Hearing Panel's determination of a witness's credibility that is based upon its observation of the witness's demeanor; and
 2. Must give deference to the Hearing Panel's 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 *Anonymous 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 FOLLOWING ORDER OF SUSPENSION OF MORE THAN ONE YEAR

14.1 Petition for Reinstatement

- a. CFP Board must not reinstate a Respondent whose Certification and License the DEC or Appeals Committee has suspended for a period longer than one year unless Respondent has filed a written Petition for Reinstatement and the DEC or Appeals Committee has granted the Petition. A 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. A hearing on a Respondent's Petition may be scheduled in accordance with Article 10.1. The DEC shall not consider Respondent's Petition unless Respondent has:
 1. Completed the suspension;
 2. Provided a properly-completed CFP Board Ethics Disclosure Questionnaire;
 3. Provided a written certification that Respondent has read, understands, and will comply with, the *Code and Standards*;
 4. Paid the reinstatement fee and any outstanding costs owed to CFP Board, including any certification fees that accrued during the suspension; and
 5. Otherwise satisfied CFP Board's certification requirements, including any continuing education requirement that accrued during the suspension.
- b. If Respondent does not request reinstatement 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 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 Proving Rehabilitation and Fitness

Factors relevant to rehabilitation and fitness include:

- a. Whether Respondent has violated CFP Board's *Code and Standards* since the issuance of the DEC's order, or engaged in a prior violation of CFP Board's *Code and Standards* that previously was unknown to CFP Board;
- b. Whether and how Respondent has taken actions that are designed to prevent the circumstances that resulted in a sanction from reoccurring in the future;
- c. Whether and how Respondent has integrated the *Code and Standards* in Respondent's practice;

- d. Whether Respondent has submitted positive letters of reference from current clients, supervisors, colleagues, or other professionals concerning the circumstances that resulted in a sanction or the Respondent's character; and
- e. Any other factors the DEC determines are relevant to Respondent's circumstances.

14.4 Recommendation of the Hearing Panel

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

14.5 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. *De novo* means that the DEC must consider the matter anew, as if the Hearing Panel had rendered no recommendation, except that the DEC:
 - 1. Must give deference to, but is not bound by, the Hearing Panel's determination of a witness's credibility that is based upon its observation of the witness's demeanor; and
 - 2. Must give deference to the Hearing Panel's 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. The DEC's final order also must set forth the DEC's factual findings, any mitigating or aggravating factors, and the *Anonymous Case Histories* that the DEC found relevant. If the DEC denies Respondent's Petition for Reinstatement and does not authorize a Renewed Petition for Reinstatement, or the DEC denies Respondent's Renewed Petition for Reinstatement, the DEC must issue a revocation.

14.6 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 CFP Board Counsel may appeal any final order of the DEC or Administrative Order to the Appeals Committee.

- 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. 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 short 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 Committee.
- 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 Committee may dismiss an appeal for failure to pay the costs and fees.

15.2 Appeals Committee and Appeal Panel

- a. **Appeals Committee.** The Appeals Committee of the Board of Directors will review and decide all appeals. The Appeals Committee will be represented by counsel, including during any hearing.
- b. **Referrals to Appeal Panel.** The Appeals Committee may refer the appeal or any portion of the appeal to an Appeal Panel for a recommendation to the Appeals Committee. An Appeal Panel will be represented by counsel, including during any hearing. An Appeal Panel must submit its recommendation to the Appeals Committee for final review and decision in accordance with Articles 15.8 and 15.9.

15.3 Appellate Standard of Review

a. Appeals from DEC Orders Resolving Complaints.

1. **Factual Findings.** The Appeals Committee must accept the DEC's factual findings unless the factual findings are unsupported by substantial evidence under the applicable burden of proof. Substantial evidence is such relevant evidence as a reasonable mind 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 Committee must accept the DEC's interpretation or application of the *Code and Standards* unless that interpretation or application is unreasonable.
3. **Sanctions.** The Appeals Committee must accept the DEC's imposition of a sanction unless the Appeals Committee determines that the imposition of a sanction is an abuse of discretion. 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 Orders and Orders Denying Petition for Reinstatement Following an Administrative Order.** The Appeals Committee must affirm an Administrative Order or an order denying a Petition for Reinstatement Following an Administrative Order unless Appellant establishes that the order is unsupported by substantial evidence or 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. 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 DEC Orders Resolving Petitions.

1. **Factual Findings.** The Appeals Committee must accept the DEC's factual findings unless the factual findings are unsupported by substantial evidence under the applicable burden of proof. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The burden of proof for a Respondent who filed a Petition for Reinstatement following an Order of Suspension is clear and convincing evidence. The burden of proof for a Respondent who filed a Petition for Fitness Determination is a preponderance of the evidence.
2. **Interpretation or Application.** The Appeals Committee must accept the DEC's interpretation or application of the *Fitness Standards, Code and Standards*, or *Procedural Rules* unless that interpretation or application is unreasonable.
3. **Fitness or Rehabilitation.** The Appeals Committee must accept the DEC's determination of fitness or rehabilitation unless the Appeals Committee determines that the DEC's determination 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.

15.4 The Parties' Briefs

- a. **Appellant's Brief.** The party filing a Notice of Appeal and the party filing a Notice of Cross Appeal must deliver an Appellant's Brief no later than 45 calendar days 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 30 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, and respond to the issues raised in Appellant's Brief. 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 Committee or Appeal Panel 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 Committee determines that an Appellant failed to satisfy the requirements of Article 15.4(a), then the Appeals Committee may dismiss the appeal without a hearing.

15.5 Appellate Motions

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 30 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 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.

If the Appeals Committee has referred the appeal or any portion of the appeal to an Appeal Panel, then the Chair of the Appeal Panel must rule on all motions, objections, and other matters relevant to the appeal or portion of the appeal that the Appeals Committee has referred to the Appeal Panel. If there has been no referral to an Appeal Panel, then the Chair of the Appeals Committee must rule on all motions, objections, and other matters raised on appeal prior to or after the hearing.

The Chair of the Appeal Panel or Appeals Committee 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.
- 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.** CFP Board Counsel must prepare the record on appeal, submit it to the Appeals Committee and to the Appeal Panel if it is referred any matters, and deliver a copy to the Appellee or Appellant.

15.7 Appeal Resolution

- a. **Authority to Hold a Hearing.** The Chair of the Appeals Committee must determine whether an appeal hearing will be held and whether the appeal hearing will be in person, by telephone, or by video conference, 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 30 calendar days prior to the date set for an appeal hearing, the Chair of the Appeals Committee must issue written notice of such hearing that designates the date, time, place, and manner of the hearing. The Notice of Appeal Hearing must also inform the parties if the Appeals Committee has referred the appeal to an Appeal Panel, and the name and employer of each member of the Appeals Committee and each member of the Appeal Panel if the Appeals Committee has made a referral. A party must file any motion for recusal in accordance with Article 17.3.b. If the Appeals Committee referred an appeal to an Appeal Panel, the Appeal Panel must conduct the hearing.
- c. **Presentations at Hearing.** At the hearing, both Appellant and Appellee may make affirmative presentations limited to 20 minutes each, and Appellant will be permitted an additional 5-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 Committee or the Appeal Panel may consider motions from the Appellant or Appellee requesting additional time for affirmative presentations and may grant such motions upon a showing of good cause. 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 Committee or the Appeal Panel will decide any objections or issues regarding procedural matters that arise during the appeal hearing.
 3. **Questioning.** Members of the Appeals Committee or Appeal Panel 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 shall not be extended solely because the Appeals Committee or Appeals Panel asked questions.
- d. **Transcript of Appeal Hearing.** CFP Board must obtain a written transcript of an appeal hearing.

15.8 Appeal Panel Recommendations.

When the Appeals Committee has referred a matter to an Appeal Panel, the Appeal Panel must prepare a written recommendation, which will be reviewed by the Appeals Committee. The Appeals Committee must review *de novo* the Appeal Panel recommendation and either (a) issue a final order, (b) conduct further proceedings, or (c) resubmit the matter to the Appeal Panel with instructions. Neither Appellant

nor Appellee may appear during the Appeals Committee's review of the Appeal Panel's recommendations. *De novo* means that the Appeals Committee must consider the matter anew, as if the Appeal Panel had rendered no previous decision. The Appeals Committee gives no deference to the Appeal Panel.

15.9 Appeals Committee Orders.

The Appeals Committee must issue its final order in writing. Appeals Committee 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 CFP Board 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

A Respondent is required to provide CFP Board an email address and mailing address, and to notify CFP Board within 30 calendar days of any changes to that information. CFP Board may send or deliver documents to Respondent through the email address Respondent has provided to CFP Board 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 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 to CFP Board

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

16.3 Orders Issued by the DEC and the Appeals Committee, and Notices and Orders Delivered by CFP Board Counsel

An order may be issued and a notice may be delivered 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 first class mail to the mailing address the Respondent has provided to CFP Board. An order may be issued to CFP Board Counsel by email or first class mail.

16.4 Filing

- a. **Method of Filing.** A Respondent may file a document with CFP Board by attaching the document to an email to CFP Board Counsel through the email address CFP Counsel has provided to Respondent or by providing in the email the information necessary for CFP Board to access the documents by electronic means, or by first class mail addressed to CFP Board's mailing address. CFP Board Counsel may file a document by delivering the document 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 first class mail to the mailing address Respondent has provided to CFP Board.

- b. **Availability of Filings.** CFP Board Counsel must make filings available to the Hearing Panel, DEC, Appeal Panel, or Appeals Committee, as appropriate.

16.5 Date of Delivery

The date of delivery will be the day a document is transmitted through email or mail. This date will be determined by the day noted on the document being delivered. The document must be transmitted for delivery 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 delivered.

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. The existence of an investigation by CFP Board and the record of proceedings conducted pursuant to these *Procedural Rules* ("Confidential Information") will be confidential and will not be made public, except as provided below.
- b. CFP Board may disclose Confidential Information:
 - 1. In publication of 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. Members of the DEC, Hearing Panels, and Settlement Review Panels;
 - b. Members of the Appeals Committee or an Appeal Panel, if an Order is appealed under these *Procedural Rules*;
 - c. Counsel designated by Respondent;
 - d. Respondents in a consolidated matter and their designated counsel;

- e. CFP Board's staff and Board of Directors;
 - f. Individuals subject to a confidentiality agreement with CFP Board who are assisting CFP Board in the proceeding;
 - g. Counsel for witnesses in an oral examination or a hearing;
 - h. Individuals not otherwise authorized to review Confidential Information, to the extent necessary to conduct the investigation, prepare the individual for an oral examination or a hearing, or to question the individual during the oral examination or hearing, but in no event may the individual be permitted to retain a copy of a document containing Confidential Information;
 - i. Individuals who filed a Complaint against a Respondent, but only to notify the Individual that the pending Complaint remains under review or investigation, or is complete and that a public sanction has or has not been issued; and
 - j. Stenographers or video equipment operators who assist with the recordation of an oral examination or a hearing.
3. If such disclosure is required by legal process of a court of law, governmental agency or an industry self-regulatory organization having appropriate jurisdiction;
 4. To a governmental agency or industry self-regulatory organization having appropriate jurisdiction; and
 5. If Respondent has waived confidentiality.
- c. Respondent or CFP Board may designate as Confidential Information excerpts of testimony in or documents referenced in the transcript of an oral examination taken pursuant to Article 1.2 within 14 calendar days after receipt of the transcript. CFP Board will redact such designated Confidential Information from the transcript prior to disclosing the transcript to the examinee.
 - d. To the extent Confidential Information is disclosed to Respondent, Respondent must keep the Confidential Information confidential, must not make the Confidential Information public, and must use such Confidential Information solely in connection with Respondent's defense of the investigation or Complaint, or any appeal thereof.

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, via telephone, or by video conference (if CFP Board makes video conference available) for any on the record interview, oral argument, or hearing conducted under these *Procedural Rules*. Respondent's counsel must be an active member in good standing of the bar of a state of the United States, the District of Columbia, or any jurisdiction, possession, territory or dependency of the United States. The DEC Chair and Appeals Committee Chair may prohibit the appearance of Respondent's Counsel if either determines that Respondent's counsel has not complied with any guidelines or standards that CFP Board establishes for outside counsel. If CFP Board prohibits Respondent's counsel from appearing, Respondent may designate

substitute counsel. Respondent must promptly inform CFP Board in the event Respondent's counsel withdraws or otherwise ceases to represent Respondent in the proceedings.

17.3 Recusal

- a. **Standard for Recusal.** A member of the DEC, a Hearing Panel, a Settlement Review Panel, the Appeals Committee, or an Appeal Panel ("Member") must not participate in any proceeding in which the Member's impartiality might reasonably be questioned, including but not limited to the following circumstances:
 1. The Member has a personal bias or prejudice concerning a party or a party's 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.** CFP Board must provide Respondent or Appellant and Appellee with notice of the name and employer of each member of the Hearing Panel, the DEC, the Settlement Review Panel, Appeals Committee and/or the Appeal Panel, as applicable. Respondent, Appellant or Appellee must file, within 7 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 Committee, as applicable, must rule upon any motion for recusal. No person who is the subject of a motion for recusal may participate in the consideration of the motion except to raise the issue.

17.4 Fees and Financial Hardship

CFP Board may impose fees on Respondent or Appellant. Respondent or Appellant must submit the fee to CFP Board within 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 Counsel then may reduce or waive the required fees. Failure by Respondent or Appellant to submit any fees owed to CFP Board, or to receive a waiver of such fees, will result in a Default under Article 4.1 and CFP Board will not schedule a hearing. If the DEC finds no ground for sanction, CFP Board must refund Respondent the fee.

17.5 Actions Required to be Taken by a Chair

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

17.6 Sanction Guidelines and Anonymous Case Histories

- a. **Sanction Guidelines.** The *Sanction Guidelines* identify specific categories of conduct that violate CFP Board's *Code and Standards*, the sanction guideline for that conduct, and policy notes for the DEC to consider when determining the appropriate sanction. The DEC and Appeals Committee 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 Committee determines there are other reasons for doing so.
- b. **Anonymous Case Histories.** *Anonymous Case Histories* are summaries of the DEC's final orders. CFP Board intends for the *Anonymous Case Histories* to provide guidance. The DEC and Appeals Committee are not bound by the *Anonymous 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.

17.8 Limitations

- a. CFP Board Counsel may not deliver a Notice of Investigation after the later of:
 1. 7 years after the date of the last action constituting a 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; or
 3. The date the DEC establishes in an order granting a Motion for Extension of Time to Commence Investigation.
- b. CFP Board Counsel may file a Motion for Extension of Time to Commence Investigation. A Hearing Panel that satisfies the requirements of Article 10.5 shall review the motion and make findings and recommendations. The DEC must review *de novo* the Hearing Panel's findings and recommendations and issue an order granting or denying the Motion. The DEC must issue an order granting a Motion for Extension of Time to Commence Investigation if CFP Board Counsel proves by a preponderance of the evidence (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 are extraordinary circumstances for extending the time to deliver a Notice of Investigation. The DEC must find that extraordinary circumstances exist if Respondent was required, but failed, to report to CFP Board in a timely

manner the matter that CFP Board Counsel intends to investigate.

- c. CFP Board Counsel may not deliver an original Complaint to a Respondent more than 4 years after the date on which CFP Board delivered a Notice of Investigation, unless:
 - 1. CFP Board Counsel and Respondent agree to extend the time for CFP Board to deliver a Complaint; or
 - 2. The DEC grants a Motion for Extension of Time to Deliver Complaint and specifies a time for CFP Board Counsel to deliver a Complaint.
- d. CFP Board Counsel may file a Motion for Extension of Time to Deliver Complaint. A Hearing Panel that satisfies the requirements of Article 10.5 shall review the motion and make findings and recommendations. The DEC must review *de novo* the Hearing Panel's findings and recommendations and issue an order granting or denying the Motion. The DEC must issue an order granting a Motion for Extension of Time to Deliver Complaint if CFP Board 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. The DEC must find good cause if:
 - 1. The matter under investigation is the subject of a pending Regulatory Investigation, Regulatory Action, Civil Action, or criminal proceeding in which Respondent has been charged with a Felony or Relevant Misdemeanor; or
 - 2. The circumstances warrant consolidation of multiple matters concerning Respondent that are under investigation, at least one of which occurred less than four years after CFP Board delivered a Notice of Investigation.
- e. If CFP Board Counsel files a Motion for Extension of Time to Commence Investigation or Deliver Complaint, Respondent may file a response within 20 calendar days of delivery of the Motion, and CFP Board Counsel may file a reply to Respondent's response with 10 calendar days of delivery of the response. The Chair of the Hearing Panel has discretion whether to schedule oral argument on the motion.
- f. In resolving a Complaint, the DEC may consider as aggravating factors conduct that occurred outside of the limitations period set forth in this Article.

17.9 Notice to Individuals Who Filed a Complaint

CFP Board Counsel shall provide to individuals who filed a Complaint against a Respondent notice every six 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.