

March 24, 2020

## CFP Board Requests Comments on Revised Proposed *Procedural Rules*

Today, CFP Board released a [revised proposed \*Procedural Rules\*](#) for public comment.

The *Procedural Rules* are intended to consolidate and replace the existing *Disciplinary Rules and Procedures* and *Appeal Rules and Procedures*. CFP Board intends for the *Procedural Rules* to improve the process that governs those who are subject to CFP Board's enforcement function.

The revised proposed *Procedural Rules* include changes responsive to feedback on an initial draft of proposed *Procedural Rules* that was released for public comment from November 27, 2018, through January 29, 2019. CFP Board expects the final *Procedural Rules* will become effective on June 30, 2020, when CFP Board will begin enforcement of the new *Code of Ethics and Standards of Conduct*.

[Read the revised proposed \*Procedural Rules\* >](#)

SUBMIT A COMMENT

**The deadline for comments is April 24, 2020.** All comments submitted to CFP Board will be posted on our website with the name of the commenter and date submitted (new comments will be posted on at least a weekly basis).

### Background on the *Procedural Rules*

When CFP Board issued the initial proposed *Procedural Rules* in November 2018, CFP Board identified the following key changes:

- Allowing for the removal of public discipline from CFP Board's website after the passage of time, which ordinarily will be between five and ten years from the date of the initial publication, when the discipline involved a public letter of admonition or suspension of one year or less and the Respondent has not engaged in other misconduct;

- Expanding on the ways in which CFP Board may access information during the disciplinary process, including “on-the-record” examinations;
- Clarifying who may review confidential information;
- Clarifying the duty that a Respondent and a CFP® professional who is not a Respondent has to cooperate with CFP Board during an investigation;
- Establishing an expedited process for complaints involving one bankruptcy that will allow a Respondent to accept a public censure and thereby avoid payment of a hearing fee;
- Providing that a Respondent who is the subject of an adverse final determination by a civil court will be bound by that determination in a CFP Board proceeding;
- Requiring a Respondent to obtain CFP Board staff’s agreement before presenting a settlement offer to the Disciplinary and Ethics Commission (DEC);
- Placing a time limitation on when CFP Board staff may issue a Notice of Investigation, which ordinarily will be seven years after the alleged violation, subject to certain exceptions, and placing a limit on when CFP Board staff may issue a complaint after commencing an investigation; and
- Clarifying the standard of review that applies to an appeal of a decision of the DEC to the Appeals Committee of the Board of Directors.

The revised proposed *Procedural Rules* addresses a number of topics that CFP® professionals and others raised about the initial proposed *Procedural Rules* that were issued for public comment in November 2018, and contains some new provisions, including the following:

- A number of commenters addressed the prior proposal to allow petitions for the removal of public discipline from CFP Board’s website. CFP Board has decided to delay action regarding this topic until after CFP Board forms a Commission on Sanctions later in 2020 to evaluate and recommend changes to CFP Board’s *Sanctions Guidelines* and *Fitness Standards*. Any proposed changes to the *Procedural Rules* resulting from that work will be evaluated by the Board of Directors and issued for public comment before becoming final.
- A number of commenters questioned the proposed provision that requires a Respondent to obtain CFP Board Counsel’s agreement to be able to present a settlement offer to the DEC. CFP Board has decided to retain this provision because it will prevent a Respondent from presenting unreasonable offers that would impose burdens on the time and resources of both CFP Board Counsel and the DEC.
- Some commenters questioned whether CFP Board Counsel should be granted authority to determine whether a bankruptcy demonstrates a CFP® professional’s inability to

manage responsibly the Respondent's financial affairs. However, CFP Board is committed to a peer review process that calls for the DEC to make those determinations.

- A commenter suggested that CFP Board Counsel should be able to open an investigation only when CFP Board has received a Complaint or a disclosure. However, CFP Board Counsel always has had the authority to investigate a Respondent when CFP Board obtains information that warrants an investigation, regardless of the source of that information. The *Procedural Rules* continues to grant CFP Board counsel that authority. The same commenter expressed concern about a provision that would require a CFP® professional to execute documents that authorize and request third parties to provide information and documents to CFP Board. However, the concerns that the commenter raised are addressed by the limitation that the CFP® professional undertake “reasonable efforts” to do so. Finally, the same commenter requested that CFP Board make clear that an expert witness may attend a hearing when not testifying. CFP Board agrees with that comment, and has made the relevant change in the revised *Procedural Rules*.
- Another commenter requested that CFP Board change an existing procedural rule, retained in the *Procedural Rules*, that provides that a CFP® professional is bound in a CFP Board proceeding by a CFP® professional's Letter of Acceptance, Waiver, and Consent (AWC) with the Financial Industry Regulatory Authority. CFP Board has retained the provision. As a professional body, CFP Board must be able to rely upon enforcement actions resulting in professional discipline in reviewing the professional conduct of CFP® professionals. A CFP® professional will know that the acceptance of professional discipline will be binding in a CFP Board proceeding.
- A new provision addresses the situation where a Respondent has multiple settled customer complaints but does not produce related documents or information requested by CFP Board Counsel. The provision states that the existence of the settled customer complaints will constitute grounds for sanction unless a Respondent proves by a preponderance of the evidence that the allegations of misconduct raised in the settled customer complaints are without merit. A Respondent will be permitted to provide oral testimony concerning the allegations raised in the settled customer complaints.
- A new provision requires CFP Board Counsel to provide regular updates to individuals who file a Complaint against a Respondent, including notices every six months about the Complaint remaining under review or investigation. CFP Board Counsel also must provide notice that a public sanction has or has not been issued when the matter is dismissed or finally adjudicated.