

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 30577

This is a summary of a Settlement Agreement entered into at the June 2017 hearings of the Disciplinary and Ethics Commission (“the Commission”) of Certified Financial Planner Board of Standards, Inc. (“CFP Board”). The conduct at issue in this case occurred after January 1, 2009. The Rules in effect at that time under the *Rules of Conduct* were Rules 1.1 through 6.5.

I. Issues Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he: 1) filed a separate tax return for WF for 2013 after receiving a request by BS to file jointly and without informing BS that WF requested Respondent file a separate tax return for that tax year; and 2) improperly assessed a BS a fee for his services.

II. Findings of Fact

Respondent joined Company A in 1997 as a Staff Accountant and has since advanced to Principal. From 2002 to 2014, Respondent provided tax services to BS and WF, a married couple who filed for divorce in 2011 and divorced in 2015. Respondent prepared personal income tax returns for BS and WF, as well as for their corporations.

In 2012, Respondent informed BS that he would be able to continue preparing her tax returns as well as WF’s and the corporations’ tax returns. He did not make a conflict of interest disclosure to BS or to WF. Respondent prepared joint tax returns for BS and WF in 2011 and 2012.

On January 29, 2014, BS’s attorney sent a letter to Respondent stating BS’s request to file a joint return for 2013. In April 2014, Respondent filed an extension with the Internal Revenue Service (“IRS”) for a joint return for 2013.

In June 2014, Respondent presented the tax liabilities of separate versus joint returns to WF and WF’s attorney. Respondent advised that WF would owe no taxes if he filed separately, but BS would owe approximately \$21,274. If they filed jointly, they would owe approximately \$10,219. Respondent did not provide this analysis to BS.

In August 2014, Respondent recommended to WF that he file a joint tax return with BS. WF instructed him to file a separate return for 2013, which he did. Respondent states that he thought WF and BS’s attorneys would communicate regarding the tax return, and he did not inform BS that WF had filed a separate tax return.

In October 2014, Respondent contacted BS to inform her that her tax return was prepared and ready to be signed. BS inquired about the separate filing, its results, and what she ought to do about the amount she owed. Respondent informed her that he had filed a separate tax return for WF for 2013, per WF’s request, and recommended that BS wait for correspondence from the IRS and the State regarding the amount due, at which time she could request an installment agreement.

On December 9, 2014, BS and WF’s divorce trial began. WF agreed to amend his tax return to file jointly.

On December 31, 2014, BS received an invoice from Respondent assessing the costs of preparing for testimony and being present during the divorce trial. BS’s attorney contended that Respondent had received a witness fee of

\$10.00 per day and no other payment obligation should arise from services related to his appearance. Company A's counsel agreed with BS's counsel, and Respondent wrote off the invoice.

On January 30, 2015, BS received a second invoice from Respondent for services regarding the corporation she owned equally with WF. BS claims that between 2011 and 2014, she received no invoices regarding the corporation, which had ceased to operate in 2009, and contends that the bills during that time were paid and deducted by another corporation owned solely by WF. Respondent states that the costs were the result of preparing information regarding numerous transactions that spanned several years to present at trial at the request of BS's attorney, preparing a projection to analyze the effect of issuing dividends out of the corporation, and meeting with BS's attorney to review results of the requested transaction history. Respondent further asserts that costs of preparing the information for trial as well as the dividend projection were split between BS and WF, and only the cost of meeting with BS's attorney was invoiced solely to BS.

On April 30, 2015, BS received a third invoice from Respondent billing her for the amended 2013 separate tax returns. Respondent states that BS and WF were each billed half of the total costs.

Respondent asserts that the January 30, 2015 and April 30, 2015 invoices were valid, which BS denies. Company A's office managing partner and Chief Financial Officer considered the likely cost of additional collection efforts weighed against the likelihood of successfully collecting and agreed to write off all outstanding charges in an effort to expedite a resolution to all matters raised by BS.

On February 15, 2016, BS filed a complaint with the State Board of Accountancy ("SBOA") regarding the conflict of interest arising from her 2013 tax return and the fees Company A assessed her for services.

On August 26, 2016, Respondent entered a Consent Agreement with SBOA, which found that he had violated American Institute of Certified Public Accountants ("AICPA") Code of Professional Conduct rules 102 and 201. Rule 102 requires a CPA to maintain objectivity and integrity and be free of conflicts of interest in the performance of professional services. Rule 201 says that a CPA must exercise due care in the performance of professional services. The Consent Agreement also required Respondent to pay a \$1,000 fine, pay costs incurred in conjunction with the investigation, and complete the AICPA Comprehensive Ethics exam and attain a score of 90% or higher.

On November 2, 2016, Respondent disclosed the August 26, 2016 Consent Agreement to CFP Board in the Ethics Declaration section of his Renewal Application.

III. Grounds for Discipline

First Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules and Procedures* ("*Disciplinary Rules*"), there are grounds to discipline Respondent for acts or omissions that violate Rule 4.1 of the *Rules of Conduct*, which provides that a certificant shall treat prospective clients and clients fairly and provide professional services with integrity and objectivity.

Respondent, a certificant, failed to treat clients fairly and provide professional services with integrity and objectivity when he filed a separate tax return for WF for 2013 after receiving a request by BS to file jointly and without informing BS that WF requested Respondent file a separate tax return for that tax year.

Second Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 4.3 of the *Rules of Conduct*, which provides that a certificant shall comply with applicable regulatory requirements governing professional services provided to the client.

Respondent is a certificant. The Consent Agreement is conclusive proof that Respondent failed to comply with AICPA Code of Professional Conduct rules 102 and 201, which are regulatory requirements governing professional services provided to the client.

Third Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 4.4 of the *Rules of Conduct*, which provides that a certificant shall exercise reasonable and prudent professional judgment in providing professional services to clients.

Respondent, a certificant, failed to exercise reasonable and prudent professional judgment in providing professional services to clients when he filed a separate tax return for WF for 2013 after receiving a request by BS to file jointly and without informing BS that WF requested Respondent file a separate tax return for that tax year.

IV. Discipline Imposed

The Commission and Respondent entered into a Settlement Agreement in which Respondent consented to the Findings of Fact and Grounds for Discipline. Pursuant to the terms of the Settlement Agreement, the Commission issued to Respondent a private censure pursuant to Article 4.1 of the *Disciplinary Rules*.

The Commission consulted *Sanctions Guidelines 7* (Conflict of Interest). The Commission also consulted *Anonymous Case Histories 24706* in reaching its decision.

The Commission cited no aggravating factors.

The Commission noted in mitigation that:

1. Respondent disclosed his misconduct to CFP Board
2. Respondent and his firm have developed procedures to address conflicts of interests; and
3. Respondent had no prior disciplinary history.