

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 31074

This is a summary of a Settlement Agreement entered into in connection with the October 2018 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 was convicted of Driving Under the Influence (“DUI”), which in this case was a class 4 felony because of prior misdemeanor convictions.

II. Findings of Fact

Background

Respondent was initially certified as a CFP® professional in September 2017. Respondent has passed the following Financial Industry Regulatory Authority (“FINRA”) examinations: (a) Series 7 – General Securities Representative Examination (2016); (b) Series 63 – Uniform Securities Agent State Law Examination (2004); (c) Series 65 – Uniform Investment Advisor Law Examination (2007); and (d) Series 66 – Uniform Combined State Law Examination (2016).

Respondent first became associated with a FINRA member firm in January 1999. He became registered as an investment adviser representative in 2003. He is no longer an investment adviser representative or an associated person of a FINRA member firm.

In June 2018, Respondent informed CFP Board that he pled guilty to a felony Driving Under the Influence (“DUI”) charge and was sentenced in May 2018 in State A. Article 5.7 of CFP Board’s *Rules* provides that “[a]n interim suspension shall immediately be issued without a hearing when CFP Board Counsel receives evidence of a conviction . . . in accordance with Article 13.1 for . . . felony conviction for any crime.”

Accordingly, in June 2018, CFP Board issued Respondent an Automatic Interim Suspension of his right to use the CFP® marks based on his 2018 felony DUI guilty plea.

Misdemeanor Convictions for Driving Under the Influence

State A Criminal Code provides that:

“A person who drives a motor vehicle or vehicle under the influence of alcohol or one or more drugs, or a combination of both alcohol and one or more drugs, commits driving under the influence. Driving under the influence is a misdemeanor, but it is a class 4 felony if the violation occurred after three or more prior convictions, arising out of separate and distinct criminal episodes . . .”

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State A Criminal Code also provides that:

“A person who drives a motor vehicle or vehicle while impaired by alcohol or by one or more drugs, or by a combination of both alcohol and one or more drugs, commits driving while ability impaired. Driving while ability impaired is a misdemeanor, but it is a class 4 felony if the violation occurred after three or more prior convictions, arising out of separate and distinct criminal episodes . . .”

As set forth below, Respondent has had three prior DUI misdemeanor convictions in State A.

In April 1991, Respondent was convicted of Driving While Ability Impaired (“DWAI”) in County Court. In August 2001, Respondent was charged with eight counts of criminal law violations, and was convicted for, among other things, DWAI in County Court. In October 2006, Respondent was charged with four counts of criminal law violations, including a DWAI-2nd Offense. Respondent was convicted of DWAI-2nd Offense in County Court.

Felony Conviction for Driving Under the Influence

In June 2016, two County police troopers were called to the scene of a hit and run accident in which the perpetrator had collided with a fence. The perpetrator fled the scene of the crime on foot, leaving behind his vehicle, a black Volvo Sedan. Trooper M was the first officer on the scene, followed shortly thereafter by Trooper N.

According to the troopers, while Trooper M was investigating the scene of the accident, Trooper N attempted to locate the driver of the vehicle. Trooper N investigated the license plate of the crashed vehicle, identified the address of its owner, Respondent, and went to Respondent’s residence. Trooper N rang the doorbell and a male came to the door. The individual appeared to have recently showered and changed his clothing. The trooper noted that the individual’s face appeared flushed and his eyes were bloodshot and watery. The trooper smelled a strong odor of alcohol on the individual’s breath. The individual’s gait was unsteady, and his hand movements were shaky.

Trooper N introduced himself and asked to speak with Respondent. The individual informed the trooper that he was the Respondent. The trooper asked Respondent if he had any information related to the vehicular crash. Respondent informed Trooper N that his friend had been driving his car when it crashed. Respondent also informed the trooper that his friend left his home shortly after informing him of the crash. Based on other witnesses’ statements, as set forth below, it appears that Respondent’s statements to Trooper N were false.

Trooper N asked Respondent for proof of insurance, vehicle registration, and identification. Respondent provided his driver’s license to the trooper and said that the proof of insurance and vehicle registration were inside the crashed vehicle. The trooper asked Respondent if he would accompany him to the crash site to obtain the vehicle documents and Respondent agreed to do so.

At the crash site, Trooper N introduced Respondent to Trooper M as the registered owner of the vehicle and informed him that Respondent intended to retrieve the vehicle’s proof of insurance and registration. Meanwhile, Trooper N interviewed a male and female (husband and wife) on the scene to ascertain whether they had any information related to the crash. The male identified himself and said that he had not observed the crash, but he had heard the noise of the crash. The man said that as he approached the scene, he observed a male running away. Trooper N asked the man if he could identify anyone on the scene as the male he had observed. The male witness said that Respondent appeared to be the same person, but that his clothes were different. The husband and wife informed Trooper N that the person who fled the scene had been wearing the same pair of sandals as Respondent.

Trooper N told Respondent that he believed him to be the driver of the vehicle at the time of the crash. Respondent continued to deny that he was the driver and provided a written statement in which he stated that he had not been driving the car at the time of the crash. Trooper N asked Respondent if he would voluntarily perform roadside maneuvers. He refused to do so, while persistently denying that he was not the driver.

Shortly thereafter, Trooper N arrested Respondent and informed him that he had probable cause to believe that Respondent had been driving while under the influence of alcohol or drugs or both, and while driving had crashed his vehicle. Respondent voluntarily consented to take a blood test which was taken at the local fire station. Thereafter, Trooper N took Respondent to the County Detox Facility and gave him a Summons.

The subsequent laboratory report reflects that Respondent was tested for both alcohol and drugs. The toxicology report shows that Respondent tested positive for ethanol with a blood alcohol content of 0.271. The tests did not detect any drugs in Respondent's system at the time of the crash.

In June 2016, State A filed a complaint against respondent based on the charges and witness testimony regarding his accident and arrest. State A charged Respondent with five counts of criminal law violations, including:

1. Driving under the Influence – with 3+ Priors, a Class 4 Felony
2. Driving under the Influence Per Se – with 3+ Priors, a Class 4 Felony
3. Leaving the Scene of Accident – Unattended Vehicle, a Class 2 Traffic Offense
4. Failing to Report Accident – Call Police, a Class 2 Traffic Offense
5. Careless Driving, a Class 2 Traffic Offense

In August 2016, State A issued Respondent a Notice of Revocation of his license based on his excess blood alcohol content level of 0.271. Respondent's driver's license was reinstated in January 2017, but he was ordered to use an ignition interlock device that required him to use an alcohol monitoring device prior to starting his car.

In March 2018, Respondent submitted a petition to the County Court to enter a guilty plea in the case. Pursuant to the plea agreement, Respondent pled guilty to the first count charged: Driving under the Influence – with 3+ Priors, a Class 4 Felony. The other four counts were dismissed pursuant to the plea agreement. In May 2018, Respondent was convicted of DUI with 3+ Priors. The Judge of the County Court ordered Respondent to serve two years of probation and 18 months of work release. In addition to other costs, Respondent was ordered to pay \$1,200 in probation supervision fees.

After Respondent's felony conviction in May 2018, his license was again revoked in connection with the same June 2016 accident. Respondent's driver's license privilege will be eligible for reinstatement as of February 2019.

Respondent contends that the 2016 accident occurred during the weekend before his wedding after he had been celebrating with friends. Respondent said that his life has changed dramatically since his marriage and the ensuing birth of his child. Respondent also contends that he has remained sober since June 2016. Respondent said that he has completed all court-ordered alcohol education, counseling, and community service. Respondent also said that he regularly attends meetings for people with alcohol and substance abuse at his church.

III. Grounds for Discipline

First 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 6.5 of the *Rules of Conduct*, which provides that a certificant shall not engage in conduct which reflects adversely on his or her integrity or fitness as a certificant, upon the CFP® marks, or upon the profession.

Respondent is a certificant. State A County Court's Order is conclusive proof that Respondent: (a) was convicted of a DUI with 3+ Priors, a felony, for an offense he committed in June 2016; (b) fled the scene of the crime to avoid detection for driving under the influence and did not notify the police of the crime; (c) falsely identified another individual as the driver of the vehicle at the time of the accident; and (d) falsely informed the arresting officer that he was not the driver of the vehicle at the time of the accident. The Respondent engaged in conduct that reflects adversely on his integrity or fitness as a CFP® certificant, such that he violated Rule 6.5 of the *Rules of Conduct*.

Second Ground for Discipline

Pursuant to Article 3(c) of the *Disciplinary Rules*, there are grounds to discipline Respondent for any act or omission that violates the criminal laws of any State or of the United States, provided however, that conviction thereof in a criminal proceeding shall not be a prerequisite to the institution of disciplinary proceedings, and provided further that acquittal in a criminal proceeding shall not bar disciplinary action.

Article 13.3 of the *Disciplinary Rules* provides that "Upon Receiving notice that Respondent has been convicted of any crime occurring within the last 10 years, other than minor traffic offenses . . . CFP Board Counsel shall obtain the record of conviction . . . and, if appropriate, file a Complaint against Respondent as provided in Article 7."

Article 13.1 of the *Disciplinary Rules* provides:

" . . . [A] certificate from the clerk of any court of criminal jurisdiction indicating that a Respondent has been convicted of a crime in that court . . . shall conclusively establish the existence of such conviction . . . and shall be conclusive proof of the commission of that crime . . . by Respondent."

The County Court is a court of criminal jurisdiction in State A. The Plea Agreement and the Court's Sentence Order are evidence of criminal conviction for Felony DUI. Therefore, the Court's Order conclusively establishes the existence of such conviction for the purposes of this disciplinary proceedings and is conclusive proof of the basis for such conviction of the Respondent.

In May 2018, Respondent was convicted of DUI with 3+ Priors, a violation of the State A Criminal Code and a Class 4 Felony, for an offense he committed in June 2016. Thus, there are grounds for discipline pursuant to Articles 3(c) and 13.3 of the *Disciplinary Rules*.

Pursuant to Article 13.3 of the *Disciplinary Rules*, Respondent shall have the right to be heard by the Hearing Panel only on matters of rebuttal evidence presented by CFP Board counsel other than proof of the conviction because Respondent's criminal conviction has been proven.

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 Suspension for One Year and One Day as provided in Article 4 of the *Disciplinary Rules*.

The Commission found the following *Sanction Guideline* relevant to its decision: Conduct 10 – Felony conviction within the past 10 years (Public Letter of Admonition).

In coming to its decision to enter into the Settlement Agreement, the Commission considered the following aggravating factors:

- 1) Respondent has had multiple infractions (3 prior DWAI convictions) before the instant conviction;
- 2) Respondent fled the scene of the accident;
- 3) Respondent made false statements to the police;
- 4) Respondent tried to blame a friend for driving his car.

The Commission did not consider any mitigating factors.

Additionally, the Commission consulted *Anonymous Case History* (“ACH”) 26986. In ACH 26986, a CFP® professional had three DUIs in eight years; the Commission issued that CFP® professional a two-year suspension. The Commission also considered ACH 28598, in which the respondent received a suspension of one year and one day after receiving 3 DUIs and causing serious bodily injury. Lastly, the Commission considered ACH 29571, in which the CFP® professional incurred two DUIs and voluntarily entered herself into rehab; for this matter, the Commission issued the respondent a public letter. The Commission found ACH 26986 to be most instructive because the conduct was similar to the instant case.