

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 19410

This is a summary of a decision issued following the November 2008 hearings of the Disciplinary and Ethics Commission (“Commission”) of Certified Financial Planner Board of Standards, Inc. (“CFP Board”). The conduct at issue in this case occurred prior to January 1, 2009. The Rules in effect at that time under the *Code of Ethics and Professional Responsibility* (“*Code of Ethics*”) were Rules 101 through 705.

I. Issue Presented

Whether a CFP® certificant (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he recommended that his client (“Client”) sign an individual retirement account (“IRA”) liquidation form without first discussing the consequences with her.

II. Findings of Fact Relevant to the Commission’s Decision

In 2001, the Client and her husband formulated an estate plan to: 1) provide the surviving spouse with sufficient income to live comfortably for his or her anticipated life span; and 2) minimize tax payments, thus increasing the assets available to the surviving spouse and to his or her heirs. The Client and her husband met with Respondent in September 2001 to finalize papers related to their estate plan. During the meeting, Respondent phoned the attorney of the Client and her husband (“Attorney”) to discuss the rationale behind certain aspects of the plan.

In April 2002, the Client’s husband passed away, leaving an IRA. At a meeting attended by Respondent, the Client and the Client’s sons, the Client made clear to Respondent that it was not her desire to liquidate her deceased husband’s IRA and take a lump sum distribution.

In April 2002, after the Client’s husband’s death, Respondent mailed an IRA liquidation form to the Client. The form would initiate a lump sum distribution of the IRA, result in the imposition of a substantial tax on the Client and deprive her of the ability to defer investment gains. The Client attempted to contact Respondent by phone to inquire about the form, but instead reached Respondent’s broker–dealer. The broker–dealer contacted Respondent, who was on vacation, and Respondent advised the broker–dealer to have the Client sign the form and to have it filed. Respondent did not inform the Client of the tax consequences of signing the form.

The Client first learned of her tax issue in 2003, when she received a copy of the form 1099R filed with the Internal Revenue Service reporting her lump sum distribution. The Client was then required to pay taxes and interest due on the lump sum distribution resulting from her signing the liquidation form.

III. Commission's Analysis and Conclusions Regarding Rule Violations

A. *Rule 201 – A CFP Board designee shall exercise reasonable and prudent professional judgment in providing professional services.*

The Commission found that Respondent should have: 1) made a determination as to whether complete liquidation conformed with the Client and her late husband's tax and estate plan; and 2) advised the Client to wait until his return from vacation to discuss the liquidation form rather than advising her to sign the form without first explaining the consequences. The Commission found that Respondent failed to exercise reasonable and prudent judgment in providing professional services because he failed to advise the Client to wait until his return from vacation to discuss the matter. Thus, Respondent violated Rule 201.

B. *Rule 607 – A CFP Board designee shall not engage in any conduct which reflects adversely on his or her integrity or fitness as a CFP Board designee, upon the marks, or upon the profession.*

The Commission noted that Respondent claimed during his hearing that he was acting only as a broker, not as a CFP[®] certificant. The Commission found that Respondent clearly represents himself as a CFP[®] certificant on his business letterhead, and thus held himself to the standards of a CFP[®] certificant. The Commission found that Respondent engaged in conduct which reflects adversely on his integrity as a CFP Board designee because he failed to explain to the Client the consequences of signing the distribution form. Thus, Respondent violated Rule 607.

C. *Rule 701 – A CFP Board designee shall provide services diligently.*

The Commission noted that Respondent met with the Client and her husband and discussed their financial plan with the Attorney, and thus knew or should have known that a full distribution of the trust assets would result in tax consequences to the Client. The Commission also noted that Respondent had 60 days to rectify the distribution and could have questioned it and the resulting tax consequences. The Commission found that Respondent failed to provide services diligently because he advised that the Client sign the form without first determining the tax consequences or discussing them with the Client. Thus, Respondent violated Rule 701.

IV. Discipline Imposed

Article 3(a) of CFP Board's *Disciplinary Rules and Procedures* provides grounds for discipline for any act or omission which violates the *Code of Ethics*. The Commission found grounds for discipline because Respondent violated *Code of Ethics* Rules 201, 607 and 701.

The Commission issued a Private Censure to Respondent pursuant to Article 4.1 of the *Disciplinary Rules*. The Commission ordered Respondent to complete the following continuing education classes: 1) two hours of ethics within the six month period following the decision; 2) three hours of minimum distribution planning; and 3) three hours of trusts. The Commission considered no mitigating or aggravating factors.