

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 22601

This is a summary of a decision issued following the November 2011 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. Issues Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he: 1) prepared complex legal instruments for a mentally impaired individual (“Client”) he had never met; 2) did not conduct an assessment of the Client’s mental capacity prior to having her execute the legal instruments; and 3) had the Client execute legal instruments she did not and could not fully comprehend.

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

The Law Firm was appointed by the circuit court (“Court”) to serve as conservator for Client’s estate. In May 2009, the Law Firm filed an amended civil action (“2009 Law Firm Civil Suit”) in court on behalf of Client. According to the amended complaint (“2009 Law Firm Complaint”), Client had been mentally impaired since her birth in 1935. In 1988, Client inherited her parents’ residence (“Homestead”). Sometime after her parents’ death, Client’s sister-in-law (“Sister-in-Law”) became her caregiver, and Client became dependent on Sister-in-Law for the management of her finances. In March 2003 and May 2003, Sister-in-Law met with Respondent to discuss the preparation of legal instruments related to Client’s health, welfare and property. Client was not present at either of those meetings.

Respondent met Sister-in-Law and her attorney in March 2003 when he was retained to prepare a trust and deed to position Client to qualify for Medicaid Assistance. Respondent stated that Client had an existing will and power of attorney at the time and the documents he prepared for the Client were substantively the same. Respondent also stated that Client’s attorney was also present at the March 2003 meeting with Sister-in-Law.

Client’s first meeting with Respondent was in June 2003, the same date she executed four instruments prepared by Respondent: 1) a Trust (“Trust”), a 63-page document naming Sister-in-Law as trustee and Sister-in-Law’s children as successor trustees; 2) a will, naming Sister-in-Law as executor and Sister-in-Law’s children as successor executors; 3) a Deed of Gift of the Homestead to Sister-in-Law’s children for no consideration; and 4) a durable general power of attorney appointing Sister-in-Law as her attorney-in-fact and Sister-in-Law’s children as alternates. Upon Client’s death all her property was to pass to the Trust, effectively leaving everything to Sister-in-Law’s children, the sole distributees of the Trust.

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Respondent did not conduct any assessment of the Client's capacity to execute such instruments or discuss with her the contents of the legal instruments. In July 2005, a psychologist determined that Client's cognitive function precluded sufficient understanding of the ramifications of the financial and legal decisions Client had been asked to make by Respondent and Sister-in-Law in 2003. In 2006, the Court determined that Sister-in-Law was financially abusing Client.

In his response to CFP Board, Respondent stated that he should have been more diligent in evaluating Client's disability. In April 2011, the Court issued Final Order of Dismissal pursuant to a settlement agreement.

The Commission determined that Sister-in-Law, not Client, was Respondent's client and therefore Respondent was justified in preparing all the documents with the exception of Client's will. The Commission found that although Respondent made mistakes, there was no evidence of dishonesty, fraud, deceit or misrepresentation. Respondent relied on an existing power of attorney, which empowered Sister-in-Law to act as agent for Client, in order to qualify Client for Medicaid. Instead of Client, Respondent should have had Sister-in-Law sign the other documents.

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 determined that Respondent failed to exercise reasonable and prudent professional judgment in providing professional services when he mistakenly had Client execute legal instruments she did not and could not fully comprehend, when Sister-in Law, as Client's guardian, should have sign all documents, except the will. Thus, Respondent violated *Code of Ethics* Rule 201.

B. *Rule 606(b) – In all professional activities, a CFP Board designee shall perform services in accordance with applicable rules, regulations and other established policies of CFP Board.*

The Commission determined that Respondent failed to perform services in accordance with the applicable rules, regulations and other established policies of CFP Board when he: 1) prepared complex legal instruments for Client, a mentally impaired individual he had never met; 2) did not conduct an assessment of Client's mental capacity prior to having her execute the legal instruments; and 3) had Client execute legal instruments she did not and could not fully comprehend. As a result, Respondent violated Rules 201, 607 and 701 of the *Code of Ethics*. Thus, Respondent violated *Code of Ethics* Rule 606(b).

C. *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 determined that Respondent engaged in conduct that reflects adversely on his integrity and fitness as a CFP® professional, upon the CFP® marks and upon the profession when he: 1) prepared complex legal instruments for Client, a mentally impaired individual he had never met; 2) failed to conduct an assessment of Client’s mental capacity prior to having her execute the legal instruments; and 3) had Client execute legal instruments she did not and could not fully comprehend. Thus, Respondent violated *Code of Ethics* Rule 607.

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

The Commission determined that Respondent failed to provide services diligently when he mistakenly had Client execute legal instruments she did not and could not fully comprehend, when Sister-in Law, as Client’s guardian, should have sign all documents, except the will. Thus, Respondent violated *Code of Ethics* Rule 701.

IV. Discipline Imposed

Article 3(a) of CFP Board’s *Disciplinary Rules and Procedures* (“*Disciplinary Rules*”) provides grounds for discipline for any act or omission that violates the *Code of Ethics*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rules 201, 606(b), 607 and 701 of the *Code of Ethics*. Pursuant to Article 4.1 of the *Disciplinary Rules*, the Commission issued a Private Censure to Respondent.

The Commission considered as mitigating factors that: 1) Respondent freely admitted that he made mistakes with regards to having Client sign legal documents; 2) Respondent’s mistakes were not the proximate cause of Sister-in Law’s abuse of Client and the abuse began years before Respondent was retained by Sister-in Law; 3) Respondent had no other complaints during his many years of practice; and 4) Respondent fully cooperated with CFP Board.

The Commission considered no aggravating factors.