

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 22868

This is a summary of a decision issued following the February 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. Issue Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he pleaded guilty to misdemeanor attempted dissemination of indecent materials to minors and served 35 days in jail as a result of the guilty plea.

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

In June 2007, the State filed a felony complaint against Respondent. The complaint alleged that on three occasions, Respondent violated state law, which prohibited the attempted dissemination of indecent materials to minors in the first degree. On each occasion, the felony complaint alleged that Respondent engaged in adult communications with an undercover investigator portraying herself as a 15-year-old girl.

In June 2007, Respondent pleaded not guilty to the felony charges. When asked by CFP Board to explain the circumstances surrounding the felony charges, Respondent stated in his narrative that he was performing research for an article with the premise that poorly litigated divorces and poor judicial decisions placed children at risk. Further, Respondent stated that the communications involved “simple information that [was] being used as a barometer for risk factors.” Finally, Respondent asserted in his narrative that the felony charges were withdrawn in January 2009.

In January 2009, Respondent waived his right to an indictment and consented to be prosecuted by an Information charging Respondent with one misdemeanor count of violating state law, which prohibited the attempted dissemination of indecent materials to minors in the Second Degree. The Information alleged that Respondent engaged in electronic communication with an investigator who was acting in the capacity of a 15-year-old female. Respondent pleaded guilty to the above-referenced criminal charge.

Respondent was sentenced to 60 days imprisonment, three years of probation and ordered to pay a \$500 fine. Respondent notified CFP Board in December 2009 that he served 35 days in jail, from October 2009 to December 2009.

III. Commission’s Analysis and Conclusions Regarding Rule Violations

- A. *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 found that Respondent engaged in conduct that reflects adversely on his integrity and fitness as a CFP Board designee, upon the marks, and upon the profession when he: 1) was charged with three felony counts of “Attempted Disseminating Indecent Material to Minors in the First Degree;” and 2) ultimately pleaded guilty to, and served 35 days in jail for, one misdemeanor count of “Attempted Disseminating Indecent Material to Minors in the Second Degree.” Thus, Respondent violated Rule 607.

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 CFP Board’s *Code of Ethics*. The Commission found Article 3(a) grounds for discipline because Respondent violated *Code of Ethics* Rule 607. The Commission issued a five-year suspension to Respondent, pursuant to Article 4.3 of the *Disciplinary Rules*.

The Commission did not consider any aggravating or mitigating factors.