

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 23966

---

This is a summary of a decision issued following the June 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) engaged in outside business activity without providing prompt written notice to his firm; and 2) entered into a Financial Industry Regulatory Authority, Inc. (“FINRA”) Letter of Acceptance, Waiver and Consent (“AWC”) wherein he consented to a 10-day suspension from association with any FINRA member and a \$5,000 fine.

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

Between November 2003 and April 2004, Respondent loaned \$40,000 to a business through his corporation. In January 2005, Respondent’s corporation, acting through Respondent, assigned its loan to one of Respondent’s financial clients. In February 2008, the client filed a Statement of Claim against Respondent in FINRA Dispute Resolution. The client requested \$200,000 in damages based on allegations that Respondent recommended unsuitable investments, including the loan assigned from Respondent’s business and speculative options trades. In August 2008, Respondent’s broker-dealer terminated Respondent for failing to disclose outside business activities as a result of the loan assignment. In October 2008, Respondent’s former broker-dealer settled with the client for \$100,000 with no individual contribution from Respondent.

In March 2010, Respondent’s former broker-dealer reported Respondent’s 2008 termination in a Form U5 amendment to Respondent’s Central Registration Depository record. FINRA opened an investigation into Respondent’s termination.

In July 2010, Respondent entered into a FINRA AWC wherein he consented to a 10-day suspension from association with any FINRA member and a \$5,000 fine. The AWC states that Respondent violated NASD Conduct Rules 3030 and 2110 by engaging in outside business activity without providing prompt written notice to his firm regarding Respondent’s assignment of the loan to his client.

### III. Commission's Analysis and Conclusions Regarding Rule Violations

- A. *Rule 409 – When engaged in a personal business transaction with a client, separate from regular professional services provided to that client, failure to conduct the transaction on terms which are fair and reasonable to the client or failure to disclose, in writing, the risks of the transaction, conflict(s) of interest of the CFP Board designee, and other relevant information, if any, necessary to make the transaction fair to the client.*

The Commission determined that Respondent engaged in a personal business transaction with a client, separate from regular professional services provided to that client, and failed to disclose, in writing, the risks of the transaction and conflicts of interest necessary to make the transaction fair to the client when he failed to disclose the conflicts of interest, in writing, to his client before assigning the loan to her. Thus, Respondent violated *Code of Ethics* Rule 409.

- B. *Rule 606(a) – In all professional activities, a CFP Board designee shall perform professional services in accordance with the applicable laws, rules and regulations of governmental agencies and other applicable authorities.*

The Commission determined that Respondent failed to perform professional services in accordance with the applicable laws, rules and regulations of governmental agencies and other applicable authorities when he: 1) engaged in outside business activity without providing prompt written notice to his firm; and 2) entered into a FINRA AWC wherein he consented to a 10-day suspension from association with any FINRA member and a \$5,000 fine for violations of NASD Conduct Rules 3030 and 2110. Thus, Respondent violated *Code of Ethics* Rule 606(a).

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

The Commission determined that Respondent violated *Code of Ethics* Rules 409, 606(a) and 607, and thus failed to perform professional services in accordance with the applicable rules, regulations and other established policies of CFP Board when he: 1) engaged in outside business activity without providing prompt written notice to his firm; and 2) entered into a FINRA AWC wherein he consented to a 10-day suspension from association with any FINRA member and a \$5,000 fine for violations of NASD Conduct Rules 3030 and 2110. Thus, Respondent violated *Code of Ethics* Rule 606(b).

- D. *Rule 607 – A CFP Board designee shall not engage in any conduct which reflects adversely on 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 Board designee, upon the marks, and upon the profession when he: 1) engaged in outside business activity without providing prompt written notice to his firm; and

2) entered into a FINRA AWC wherein he consented to a 10-day suspension from association with any FINRA member and a \$5,000 fine for violations of NASD Conduct Rules 3030 and 2110. Thus, Respondent violated *Code of Ethics* 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 the *Code of Ethics*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rules 409, 606(a), 606(b) and 607 of the *Code of Ethics*. Pursuant to Article 4.2 of the *Disciplinary Rules*, the Commission issued Respondent a Public Letter of Admonition.

The Commission considered the following mitigating factors: 1) Respondent was timely in disclosing his matters to CFP Board; and 2) Respondent showed a willingness to continue his education and professional growth.

The Commission did not consider any aggravating factors.