

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 24078

This is a summary of a Settlement Agreement approved at the June 2010 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 did not report trust fees as income on his tax returns for the years 2002 to 2003 and was subsequently suspended from legal practice.

II. Findings of Fact

Respondent, a licensed attorney, signed a partnership agreement with a law firm (“Firm”) in 1995. According to the partnership agreement, Respondent was required to turn over to the Firm as partnership income: 1) any fees received for serving as a trustee under a trust agreement; and 2) any income received for practicing law or performing legal services.

A client retained Respondent to handle various estate matters, including three trusts. Between 1999 and 2004, Respondent received over \$200,000 in fees (“Fees”) for serving as co-trustee of the trusts, which he did not turn over to the Firm until 2004, when he resigned for unrelated reasons. Respondent did not include the Fees on his state and federal tax returns for the years 1999 to 2003. Respondent filed amended returns that included the Fees in 2005.

In May 2006, the state department overseeing attorney regulation (“Legal Department”) filed a complaint against Respondent alleging that Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of the state rules of attorney conduct (“State Rules of Conduct”) when he: 1) personally retained and converted the Fees rather than turning them over to the Firm; and 2) failed to report the Fees as income on his tax returns until 2005.

According to a subsequent 2008 order (“Order”) issued by the state supreme court (“Court”), Respondent stated that became aware in 2002 that he had not previously reported the Fees on his 1999-2001 tax returns. Respondent also stated that did not report the Fees on his 2002-2003 tax returns because he had family financial obligations and decided to pay the taxes at a later date. The Court found that Respondent violated a provision of the State Rules of Conduct when he: 1) knowingly failed to report the Fees as income in 2002-2003; and 2) did not file an amended tax

ACH 24078

-1-

return reporting the Fees until 2005, after the Legal Department had initiated an investigation of Respondent. The Court imposed a nine-month suspension of Respondent's license to practice law, to begin in May 2008.

CFP Board initially certified Respondent in September 2006. Respondent answered "no" to a question in the Declaration section of his Initial Application for CFP® Certification asking whether he had been a defendant or respondent in any governmental agency or self-regulatory organization proceeding or the subject of a governmental agency or self-regulatory organization inquiry or investigation. Respondent again answered "no" to the question on his 2007 Renewal Application for CFP® Certification ("Renewal Application"). Respondent answered "yes" to the question on his 2009 Renewal Application.

According to Article 12.2 of CFP Board's *Disciplinary Rules and Procedures*, a CFP® professional who is the subject of a professional suspension is obligated to notify CFP Board in writing of such suspension within 10 calendar days. Respondent did not disclose his license suspension to CFP Board until March 2009.

III. Rule Violations

- A. *Rule 102 – In the course of professional activities, a CFP Board designee shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly make a false or misleading statement to a client, employer, employee, professional colleague, governmental or other regulatory body or official, or any other person or entity.*

The Commission found that Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation and knowingly made a false or misleading statement to the Internal Revenue Service, a governmental body, when he knew he should report the Fees as income on his 2002-2003 tax returns, but failed to do so. The Commission further found that Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation and knowingly made a false or misleading statement to CFP Board when he attested to CFP Board in 2006 and 2007 that he was not the subject of a governmental agency or self-regulatory organization investigation when he was aware of the Legal Department investigation in 2005. Thus, Respondent violated Rule 102 of CFP Board's *Code of Ethics*.

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

The Commission found that Respondent failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities because he violated a provision of the State Rules of Conduct, which resulted in suspension of his license to practice law. Thus, Respondent violated Rule 102.

C. *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 found that Respondent failed to perform services in accordance with applicable rules, regulations and other established policies of CFP Board when he: 1) did not report the suspension of his license to practice law within ten days as required by Article 12.2 of the *Disciplinary Rules*; and 2) violated Rules 102, 606(a) and 607 of the *Code of Ethics*. Thus, Respondent violated Rule 606(b).

D. *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, upon the marks and upon the profession when he: 1) omitted income from his 2002 and 2003 tax returns that he knew he should have reported; and 2) stated twice to CFP Board that he was not the subject of a governmental agency or self-regulatory organization investigation when, in fact, he was. Thus, Respondent violated Rule 607.

IV. Discipline Imposed

Article 3(a) of CFP Board's *Disciplinary Rules and Procedures* 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 102, 606(a), 606(b) and 607 of the *Code of Ethics*. The Commission and Respondent entered into a Settlement Agreement in which Respondent consented to the above Findings of Fact and Rule Violations. Pursuant to the Settlement Agreement, the Commission issued to Respondent a Suspension of three years.

The Commission considered as a mitigating factor that Respondent disclosed his license suspension to CFP Board. The Commission considered as an aggravating factor that Respondent was unable to obtain tax returns requested by CFP Board.