

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 26986

This is a summary of a decision issued following the March 2012 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 and after 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. The Rules in effect for conduct occurring after January 1, 2009 were *Rules of Conduct* Rules 1.1 through 6.5.

I. Issue Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he was convicted of Driving While Intoxicated (“DWI”), a criminal misdemeanor, three times over a period of eight years.

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

In August 2002, the police stopped Respondent. He failed his sobriety test and was arrested. In January 2003, Respondent pleaded no contest to DWI in a county court (“Court”). The Court required Respondent to complete a DWI education course. The Court also required Respondent to pay a \$300 fine and complete 18 months of probation. Respondent’s license was suspended for one year. The Court discharged Respondent from probation in July 2004.

In June 2006, the police stopped Respondent for suspected DWI. Respondent’s blood alcohol content was at the legal limit, and he was arrested for DWI – Enhanced due to his prior DWI conviction. In February 2007, Respondent pleaded no contest to the charge in the Court. The Court required Respondent to complete a repeat offender’s education course, pay a \$300 fine and complete 18 months of probation. Respondent’s driver’s license was suspended for one year. The Court discharged Respondent from probation in August 2008.

In August 2010, Respondent stopped to change a flat tire. An officer stopping to help him noticed Respondent smelled of alcohol. Respondent refused to provide a breath sample and the trooper arrested him for DWI. In July 2011, Respondent pleaded guilty to DWI – Enhanced, a misdemeanor, in a state district court (“District Court”). The District Court required Respondent to complete another repeat offender’s education course, pay a \$1,000 fine and complete two years of probation. The District Court suspended Respondent’s driver’s license for two years.

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 determined that Respondent engaged in conduct that reflected adversely on his integrity and fitness as a CFP Board designee, upon the marks, and upon the profession when he pleaded no contest to two criminal misdemeanor DWI charges, in January 2003 and February 2007. Thus, Respondent violated *Code of Ethics* Rule 607.

B. *Rule 6.5 – A certificant shall not engage in conduct which reflects adversely on his or her integrity or fitness as a certificant, upon the CFP® marks, or upon the profession*

The Commission determined that Respondent engaged in conduct that reflected adversely on his integrity and fitness as a CFP Board designee, upon the marks, and upon the profession when he pleaded guilty to a third criminal misdemeanor DWI charge in July 2011. Thus, Respondent violated Rule 6.5 of the *Rules of Conduct*.

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* and *Rules of Conduct*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rule 607 of the *Code of Ethics* and Rule 6.5 of the *Rules of Conduct*. Article 3(c) of CFP Board's *Disciplinary Rules* provides grounds for discipline for any act or omission that violates the criminal laws of any state or of the United States. The Commission found grounds for discipline under Article 3(c) because Respondent pleaded guilty to a misdemeanor DWI charge. Pursuant to Article 4.3 of the *Disciplinary Rules*, the Commission issued a two-year suspension to Respondent.

The Commission considered the following mitigating factors: 1) Respondent's misconduct did not result in any client harm; 2) Respondent was contrite; and 3) Respondent admitted all of the facts presented by CFP Board Staff Counsel.

The Commission considered the following aggravating factors: 1) Respondent's most recent DWI is his third DWI conviction; 2) CFP Board cautioned Respondent regarding his first two DWI convictions; 3) With three DWIs, Respondent has demonstrated an unacceptable pattern of conduct; and 4) Respondent's third DWI charge was originally a felony that was plea bargained with the state to a misdemeanor.