CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 28992

This is a summary of a decision issued following the February 2017 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 after January 1, 2009. The Rules in effect at that time under the *Rules of Conduct* were Rules 1.1 through 6.5.

I. Issues Presented

Whether a CFP® professional ("Respondent") violated CFP Board's *Standards of Professional Conduct* when he: 1) engaged in outside business activities ("OBAs") without provide notice to, and obtaining approval from, his firm in accordance with ICP's procedures; 2) served in a fiduciary capacity as either a primary or successor trustee, or attorney-in-fact for clients without adequately disclosing to the clients how those roles might conflict with his position as their financial advisor; 3) encouraged and assisted a client to make him the beneficiary of the client's annuity without adequately disclosing the conflict of interest created between Respondent serving as the client's financial advisor and being designated as the beneficiary of one of the client's assets; and 4) advised clients not to seek advice regarding the conflict of interest of making him the fiduciary of their estate and/or trust a beneficiary.

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

FINRA Action

In July 2014, ABC terminated Respondent. On his Form U5, ABC explained that Respondent was terminated because he "acted in a fiduciary and discretionary capacity, and had check writing privileges for numerous clients. Also named as a beneficiary in three clients' accounts." In July 2014, FINRA contacted Respondent regarding the Form U5 filing. In May 2015, FINRA advised Respondent that it had made a preliminary determination to recommend that disciplinary action be brought against him, and that Respondent could file a Wells submission indicating why an action should not be brought against him. Respondent did not file a Wells submission in response to the Wells Notice.

In August 2015, Respondent entered into a Letter of Acceptance, Waiver and Consent ("AWC") with the Financial Industry Regulatory Authority, Inc. ("FINRA", formerly known as the National Association of Securities Dealers, Inc. or "NASD") in which he accepted and consented to, without admitting or denying, the following findings:

> Between 2001 and 2012, while associated with ABC, Respondent engaged in OBAs by serving in a fiduciary capacity as either a primary or successor trustee for several trusts associated with certain ABC clients. The OBAs included:
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> - In 2001, Respondent served as trustee and attorney-in-fact of the AG Trust for which he received $3,000 in compensation;
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> - In July 2010, Respondent was appointed as successor trustee and attorney-in-fact of the PM Trust but never assumed the role of trustee;
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> - In 2011, Respondent served as trustee and attorney-in-fact of the MH Trust, for which he received $3,000 in compensation for "estate service fees" and $20,000 in reimbursements of costs related to the trust's management;

- In October 2012, Respondent was appointed as successor trustee and attorney-in-fact of the BW Trust but never assumed the role of trustee.

- In November 2012, Respondent served as trustee and attorney-in-fact of the PS Trust, for which he received approximately $14,000 for reimbursement of costs related to the trust's management.

The AWC further stated that Respondent failed to provide notice to ABC of the foregoing fiduciary roles and to obtain approval for those roles in accordance with ABC's procedures. Respondent therefore violated NASD Rules 3030 and 2110 and FINRA Rules 3270 and 2010. In addition, in March 2011, April 2012, and January 2013, Respondent falsely stated on ABC's annual compliance questionnaires that he had disclosed all current OBAs and had received written approval before engaging in such OBAs when in fact he had not done so. As a result, Respondent violated FINRA Rule 2010.

Respondent consented to the imposition of the following sanctions: (a) a suspension from association with any FINRA member in any and all capacities for a period of six months; and (b) a $25,000 fine. Respondent's suspension was effective from September 2015 through March 2016.

During FINRA's investigation, Respondent disclosed that three of his clients, RF, PS and WD, who he claimed had become long-time friends, had named him as a beneficiary for certain assets of theirs. Specifically, Respondent was designated the beneficiary on RF's and WD's annuity contracts. Respondent also indicated that he received, under a transfer on death arrangement, over $667,000 from two of PS's accounts.

Respondent also disclosed to FINRA that four of his clients, AK, FH, PS, and HN and MN, had named him as Successor Trustee with check-writing privileges. Respondent admitted to using this authority to write checks to pay bills and final expenses, and to make estate distributions. As reflected in the AWC, Respondent admitted that some of the bills he paid on his clients' behalf were to himself, including: a) the $3,000 check he paid himself for successor trustee fees (of the AG Trust) for selling AK's apartment and settling her estate; b) the $3,000 check he paid himself as a fee for "estate services" on behalf of FH, which was in addition to the $20,000 he collected in cash disbursements and checks as gifts and reimbursement for costs associated with managing the MH Revocable Trust; and c) the $400 check he paid himself for preparing PS's 2011 tax return, which was in addition to the $14,000 he received as reimbursement for costs associated with managing her revocable trust. Respondent also admitted to paying himself over $31,000 for trustee fees on behalf of HN and MN, for whom he began serving as attorney-in-fact and as a successor trustee in 2012.

Client: PS

PS was a long-term client and "a cherished friend" of Respondent until her death in November 2012. Respondent met PS when she was 70 years old and retired. According to Respondent, PS had no family other than her sister. Respondent indicated that after PS's sister died, she "turned more frequently to [Respondent] for friendship and guidance." Respondent indicated that he frequently spoke with PS about her personal life in addition to providing her with investment advice and preparing her taxes. Respondent also indicated that he assisted PS with household tasks such as making repairs and caring for animals.

Respondent served as successor trustee on PS's Revocable Trust and had Power of Attorney. In this capacity Respondent wrote at least one check to himself for the preparation of tax returns. Respondent also indicated he retained $10,000 to feed and attend to PS's cats.

Respondent indicated that PS raised the issue of Respondent serving as the transfer on death ("TOD") on her accounts. Respondent claims that he and PS discussed other potential relatives that could be named as

TOD on her account. Respondent asserts that he informed PS that he could not be the TOD on her accounts. According to Respondent, PS replied "Why can't I leave my money to whom I wish?"

Respondent informed PS that if she really wanted to make him a TOD on her accounts, she should put something in writing to that effect. Respondent further asserts that PS agreed and asked Respondent to help her write a letter expressing her intent to make Respondent a TOD on her accounts. Respondent prepared a letter in which PS explained that she wanted to name Respondent as the TOD on some of her accounts and that she did not try to make this change through her attorney in an effort to save money on attorney fees. PS signed the letter and initialed each paragraph. Respondent was made the TOD as of December 2011 through TOD forms PS signed on four BT managed accounts and on her checking account at WF.

In November 2012, PS passed away. PS transferred assets, under TOD arrangements, worth approximately $653,000 from her securities accounts and $18,500 from her bank account to Respondent.

Client: WD

Respondent indicated that WD had been a client since 2005. WD was not married and had no children. WD had siblings but he not want to leave any assets to them. Respondent indicated that WD wanted to leave his assets to charity and Respondent. Respondent indicated WD wanted to leave assets to him because WD was appreciative of the things Respondent had done for WD, including securing a new home for him.

According to Respondent, after he assisted WD with finding a new home, WD wanted to make Respondent the beneficiary on his annuity contracts. Respondent insisted he was uncomfortable with this and asked WD to sign a letter evidencing his intent. Respondent prepared a letter in which WD explained that he wanted to name Respondent as the beneficiary on his annuities and that he did not try to make this change through his attorney in an effort to save money on attorney fees.

In October 2012, Respondent became 50% beneficiary on WD's annuity contracts. In July 2013, WD made Respondent 100% beneficiary on the annuity contracts. WD named Respondent the successor trustee on WD's revocable trust, but removed Respondent from that position in November 2013.

Client: RF

According to Respondent, RF and his wife, who were clients for over 20 years, never had any children and did not maintain close relationships with any of their relatives. Respondent began his relationship with the Mr. and Mrs. F in 1994. Respondent indicated that Mr. and Mrs. F were among his "longest-term and most dearly admired and respected clients." Respondent further indicated that Mr. and Mrs. F consider him a "good friend" and a "trusted advisor."

As Mr. and Mrs. F grew older, they increasingly relied on Respondent for tasks beyond managing their investments. By December 2013, Mrs. F's health was poor and, according to Respondent, RF expressed concern about who would take care of his wife if he could not. Respondent asserts that he encouraged RF to address estate planning, but RF refused to take any affirmative steps. Respondent indicated that he had "countless discussions" with RF to seek out family members that could help Mrs. F if RF were to pass. Despite these conversations, RF refused to specify any family members. Respondent asserts that RF asked Respondent to take care of his wife if it became necessary. Respondent indicated that he was reluctant to do so, and encouraged RF to select a family member to take care of Mrs. F. Respondent took RF to the bank to allow RF to "hear from the bank what types of paperwork and actions he would need to take if he wanted to appoint" an attorney-in-fact. According to Respondent, while he was "working through" these estate planning issues, RF decided to make Respondent the beneficiary of his PL Annuity. Respondent indicated the idea was for Respondent to have the funds to care for Mrs. F.

Respondent obtained the change of beneficiary forms from PL, and in December 2013, RF executed a change of beneficiary form on his PL Annuity, changing the beneficiary from his wife, to Respondent.

In December 2013, the Department of Children and Families, Adult Protective Services ("DCF") was contacted regarding concern over RF's physical and mental condition and the possibility that he was at risk for exploitation.

In January 2014, DCF Capacity Evaluator JO conducted an interview with RF and his neighbor, KO. In January 2014, CG, Adult Protective Services Investigator, filed two Petitions with the Circuit Court, Probate Division ("Court"). The first was a Petition for Appointment of Emergency Temporary Guardian requesting plenary guardianship, and the second was a Petition to Determine Incapacity.

The next day, in January 2014, the Court appointed BS as RF's Emergency Temporary Guardian by Court Order. Later that same day, BS met RF for the first time in the hospital. She found him to be talkative, but confused, and he had no insight into his limitations. BS testified at the hearing that RF was "forgetful, had a very poor attention span and poor ability to focus and limited self-awareness." BS also testified that her impression was that RF lacked the ability to manage his affairs and that it was apparent after speaking with RF.

In January 2014, BS took charge of RF's affairs. She worked on his bank arrangements, went through his mail, paperwork, met his neighbors, rekeyed his locks, and even cared for his dog that had been neglected. In January 2014, BS spoke with Respondent for the first time on the telephone, and she informed him that she would be marshaling RF's assets. According to Respondent he cooperated with the BS and was "happy to see that [Mr. and Mrs. F] were being cared for."

In February 2014, JL, LCSW filed her "Report of the Examining Committee Member" with the Court. In the report, JL described her assessment of RF, which took place in February 2014. JL indicated that RF "had difficulty providing a history of recent events other than to report that he was living at home with his wife." JL also indicated that RF was "vague at best" about his finances and stated that he "had more money than he'll ever need" and planned to find charities to donate to. JL also indicated that RF's judgement was poor and that he was at risk for exploitation. JL determined that that RF could not "contract" or "manage property or [] make gifts or disposition of property." Finally, JL determined that based on her examination RF was not "capacitated."

In February 2014, SN, MD filed her "Report of the Examining Committee Member" with the Court. In the report, SN described her assessment of RF, which took place in February 2014. SN indicated that RF was "forgetful, with a difficulty learning and retaining new information. SN also indicated that RF had "poor judgment" and determined that RF could not "contract" or "manage property or [] make gifts or disposition of property." Finally, SN determined that based on her examination RF was not "capacitated."

In February 2014, MB, Psy. D., filed his "Report of the Examining Committee Member" with the Court. In the report, MB described his assessment of RF, which took place in February 2014. MB indicated that RF had "significant memory impairment," "poor attention span," and poor judgment and insight. MB also determined that RF could not "contract" or "manage property or [] make gifts or disposition of property." Finally, MB determined that based on his examination RF was not "capacitated."

In February 2014, RF's Incapacity Hearing was held, and in March 2014, the Court issued its Order Determining Limited Incapacity, finding RF's incapacities to be mental confusion, dementia, paranoia, and self-neglect. The Court determined that RF could not "contract" or "manage property or [] make gifts or disposition of property." That same day, BS was appointed Limited Guardian of the person and property of RF. Also in February 2014, the Court issued an Order Designating Depository For Assets, which authorized

BS, as RF's Guardian, to marshal his assets (approximately $850,000), to protect and authorize investments through a fiduciary relationship with GP Bank and Trust, the Court-designated depository.

In March 2014, BS submitted a withdrawal request to PL, requesting the surrender of RF's Pacific Life Annuity. In March 2014, BS received a check for almost $200,000 from PL for the surrender of RF's annuity. RF paid a surrender charge of $10,000, which BS thought was justified due to her concern that RF could pass away before she could process the change of beneficiary and it would not be in the interest of RF or his wife for the assets to pass to Respondent.

In April 2014, Respondent attempted to visit RF at his home. When he arrived, RF's caregiver contacted BS who called RF's home so she could speak with Respondent. During their conversation, BS told Respondent that it was not acceptable for him to visit RF. According to BS, she was concerned about Respondent's intentions toward RF and his possible undue influence over RF. In December 2014, RF passed away with no will, no estate plan, but significant assets.

III. Commission's Analysis and Conclusions Regarding Grounds for Discipline

First Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules and Procedures* ("*Disciplinary Rules*"), there are grounds to discipline Respondent for acts or omissions that violate Rule 201 of the *Code of Ethics*, which provides that a CFP Board designee shall exercise reasonable and prudent professional judgment in providing professional services.

Article 13.1 of the *Disciplinary Rules* provides that a letter or other writing from a governmental or industry self-regulatory authority to the effect that a Respondent has been the subject of an order of professional discipline by such authority shall conclusively establish the existence of such professional discipline for purposes of disciplinary proceedings and shall be conclusive proof of the basis for such discipline by the Respondent. As defined in Article 13.4 of the *Disciplinary Rules*, professional discipline "shall include the suspension, bar or revocation as disciplinary measure by . . . [an] industry self-regulatory organization or professional association."

FINRA is an industry self-regulatory authority. The AWC is an order of professional discipline by FINRA, and Respondent is the subject of that order. Therefore, the AWC conclusively establishes the existence of such discipline for purposes of this disciplinary proceeding and is conclusive proof of the fact that Respondent, from 2001 through 2008, engaged in OBAs, failed to provide notice to ABC of the OBAs, and failed to obtain approval from ABC for the OBAs in accordance with ABC's procedures.

Therefore, the Commission found that Respondent, a certificant, failed to exercise reasonable and prudent professional judgment in providing professional services when, from 2001 through 2008, he engaged in OBAs, failed to provide notice to ABC of the OBAs, and failed to obtain approval from ABC for the OBAs in accordance with ABC's procedures. The Commission also noted that Respondent did not contest this allegation at the hearing and acknowledged that he violated this Rule 201. Thus, Respondent violated *Code of Ethics* Rule 201.

Second Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 401(a) of the *Code of Ethics*, which provides that in rendering professional services, a CFP Board designee shall disclose to the client material information relevant to the professional relationship, including conflict(s) of interest, the CFP Board designee's business affiliation, address, telephone number, credentials, qualifications, licenses, compensation structure and any agency relationships, and the scope of the CFP Board designee's authority in that capacity.

The Commission found that Respondent, a certificant, failed to disclose to the client material information relevant to the professional relationship when he failed to disclose to clients that it was a conflict of interest for him to serve as an investment advisor and to perform roles such as trustee and attorney-in-fact for the same clients. The Commission first noted that CFP Board's Complaint alleged Respondent failed to make these disclosures in writing, but that a writing was not required by Rule 401(a) of the *Code of Ethics*. Thus, the Commission evaluated whether Respondent made the required disclosures in writing or orally.

Respondent testified that when he serves as a trustee or attorney-in-fact for a client that he discusses the situation with them. Respondent further testified that he tells clients that serving in a dual role such as he served with clients in this matter was a conflict of interest, that it "looks bad" and that it looks like he "is trying to take advantage of [clients]." Respondent held this out as evidence that he orally discussed the conflicts with his clients when acting as a trustee or attorney-in-fact. The Commission, however, determined that Respondent's testimony lacked credibility. The Commission noted that Respondent did not provide any specific details on the disclosures, such as when and how he made the disclosures to each client, or the content of his disclosure regarding the conflict of interest to support his statements. The Commission did not believe, and noted that Respondent did not provide any testimony on this issue, that Respondent gave the client full and clear disclosures of all material information, including an explanation of why it was a conflict for Respondent to serve in dual roles, the extent of the deviation from normal and customary practice in the industry to hold dual roles for clients, that Respondent had failed to make adequate disclosures to his firm and obtain proper consent to his firm to serve in dual roles for his clients, and the potential harm that could occur to the clients due to the conflict of interest. Therefore, the Commission did not believe Respondent orally disclosed material information about the conflict of interest his duals role presented.

The Commission also did not believe that Respondent provided evidence that he made written disclosures other than those he identified with respect to FH, for whom Respondent identified one instance where he made a "written disclosure" in FH's estate planning documents. When viewing these "disclosures", the Commission determined that these were general acknowledgements of a disclosure, not a detailed disclosure in and of itself. Thus, if Respondent identifies the information in the estate planning documents as a "disclosure," his disclosure was inadequate. Thus, Respondent violated *Code of Ethics* Rule 401(a).

Third Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 406 of the *Code of Ethics*, which provides that a CFP Board designee who is an employee shall perform professional services with dedication to the lawful objectives of the employer and in accordance with this *Code of Ethics*.

The Commission found that Respondent, a certificant, failed to perform professional services with dedication to the lawful objectives of the employer and in accordance with this *Code of Ethics* when, from 2001 through 2008, he engaged in OBAs, failed to provide notice to ABC of the OBAs, and failed to obtain approval from ABC for the OBAs in accordance with ABC's procedures. The Commission noted that Respondent did not contest this allegation at hearing and acknowledged that he violated this Rule 406. Thus, Respondent violated *Code of Ethics* Rule 406.

Fourth Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 407(a) of the *Code of Ethics*, which provides that a CFP Board designee shall advise his/her employer of outside affiliations which reasonably may compromise service to an employer.

The Commission found that Respondent, a certificant, failed to advise his employer of outside affiliations which reasonably may compromise service to an employer when, from 2001 through 2008, he engaged in OBAs, failed to provide notice to ABC of the OBAs and failed to obtain approval from ABC for the OBAs in accordance with ABC's procedures. The Commission also noted that Respondent did not contest this allegation at the hearing and acknowledged that he violated this Rule 407(a). Thus, Respondent violated *Code of Ethics* Rule 407(a).

Fifth Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 606(a) of the *Code of Ethics*, which provides that 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, a certificant, failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities when, from 2001 through 2008, he engaged in OBAs, failed to provide notice to ABC of the OBAs, and failed to obtain approval from ABC for the OBAs in accordance with ABC's procedures, in violation of NASD Rules 3030 and 2110. The Commission also noted that Respondent did not contest this allegation at the hearing and acknowledged that he violated this Rule 606(a). Thus, Respondent violated *Code of Ethics* Rule 606(a).

Sixth Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 1.4 of the *Rules of Conduct*, which provides that a certificant shall at all times place the interest of the client ahead of his or her own. When the certificant provides financial planning, the certificant owes to the client the duty of care of a fiduciary as defined by CFP Board.

The Commission found that Respondent, a certificant, failed to at all times place the interest of the client ahead of his own when he: a) agreed to serve in various fiduciary roles, such as trustee, co-trustee and attorney-in-fact, for certain investment advisory clients, which created a conflict of interest that Respondent failed to properly disclose to his clients; b) advised PS and WD to not seek advice regarding the conflict of interest of making him the fiduciary of their estate and/or trust a beneficiary; and c) encouraged and assisted RF in making Respondent the beneficiary on his PL Annuity when RF was mentally incapacitated, as determined by a court.

With respect to subpart a), the Commission previously discussed Respondent's failure to disclose material information about the conflicts of interest. With respect to subpart b), Respondent testified that he told clients that he could achieve their desired outcome of naming Respondent the beneficiary or the TOD, while saving them attorney fees by making the changes himself. If Respondent was placing the clients' interests ahead of his own, he would have encouraged the clients to consult another professional or introduced a third party into the transactions at issue. Even if the client decided not to consult another professional, it would have had the effect of making the client's aware of the option and Respondent would have at least attempted to introduce a third party into the transaction. Even if Respondent did not have an ill intent in advising the clients not to consult an attorney to accomplish their desired transactions, his advice had the effect of guiding the clients towards a situation where they were not receiving advice on the transactions from a disinterested third party. Additionally, his advice having this effect is made worse by his lack of full and clear disclosure because he has not made the required disclosures and encouraged client not to seek out a third-party.

Finally, with respect to subpart c), the record is replete with evidence that RF was determined mentally incapacitated by the State and was diagnosed with dementia and degenerative eye disease. Further, all three members of the Examining Committee found that RF had poor judgement and was unable to "contract" or

"manage property or [] make gifts or disposition of property." These diagnoses occurred approximately one and a half months after Respondent effectuated the change of beneficiary on RF's annuity. BS testified that RF was "impaired for quite a while" and that RF's incapacity was going on "for years." The Commission determined that it was not credible that Respondent would not have been aware of RF's inability to consent to the designation of Respondent as the beneficiary given the overwhelming and unanimous testimony and evidence regarding RF's incapacity.

Finally, the Commission noted that Respondent generated almost $71,000 in revenue and/or fees for himself based on these transactions, which provides additional evidence that Respondent placed his interests ahead of his own. Each of these subparts individually evidence that Respondent failed to at all times place the interest of the client ahead of his own. Thus, Respondent violated Rule 1.4 of the *Rules of Conduct*.

Seventh Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 2.2B of the *Rules of Conduct*, which provides that a certificant shall disclose to a prospective client or client a general summary of likely conflicts of interest between the client and the certificant, the certificant's employer or any affiliates or third parties, including, but not limited to, information about any familial, contractual or agency relationship of the certificant or the certificant's employer that has a potential to materially affect the relationship.

The Commission found that Respondent, a certificant, failed to disclose to a client a general summary of likely conflicts of interest between the client and the certificant when he: a) served in a fiduciary capacity as either a primary or successor trustee, or attorney-in-fact for clients without adequately disclosing to the clients how those roles might conflict with his position as their financial advisor; and b) encouraged and assisted RF in making Respondent the beneficiary of RF's PL Annuity without adequately disclosing the conflict of interest created between Respondent serving as RF's financial advisor and being designated as the beneficiary of one of RF's assets.

With respect to subpart a), Respondent testified that when he serves as a trustee or attorney-in-fact for a client that he discusses the situation with them. Respondent further testified that he tells clients that serving in a dual role such as he served with clients in this matter was a conflict of interest, that it "looks bad" and that it looks like he "is trying to take advantage of [clients]." Respondent held this out as evidence that he orally discussed the conflicts with his clients when acting as a trustee or attorney-in-fact. The Commission, however, believed that Respondent's testimony lacked credibility. The Commission noted that Respondent did not provide any specific details on the disclosures, such as when and how he made the disclosures to each client, or the content of his disclosure regarding the conflict of interest to support his statements. The Commission did not believe, and noted that Respondent did not provide any testimony on this issue, that Respondent gave the client full and clear disclosures of all material information, including an explanation of why it was a conflict for Respondent to serve in dual roles, the extent of the deviation from normal and customary practice in the industry to hold dual roles for clients, that Respondent had failed to make adequate disclosures to his firm and obtain proper consent to his firm to serve in dual roles for his clients, and the potential harm that could occur to the clients due to the conflict of interest. Therefore, the Commission did not believe Respondent orally disclosed material information about the conflict of interest his duals role presented.

The Commission also did not believe that Respondent provided evidence that he made written disclosures other than those he identified with respect to FH, for whom Respondent identified one instance where he made a "written disclosure" in FH's estate planning documents. When viewing these "disclosures", the Commission determined that these were general acknowledgements of a disclosure, not a detailed disclosure in and of itself. Thus, if Respondent identifies the information in the estate planning documents as a "disclosure," his disclosure was inadequate.

With respect to subpart b), the same rationale applies. Couple this with the fact that RF was obviously impaired and unable to make decisions for himself. It is unclear to the Commission how Respondent made the required disclosures to RF that would have resulted in RF effectively understanding and consenting to the conflict of interest. Thus, Respondent violated Rule 2.2B of the *Rules of Conduct*.

Eighth Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 4.1 of the *Rules of Conduct*, which provides that a certificant shall treat prospective clients and clients fairly and provide professional services with integrity and objectivity.

The Commission found that Respondent, a certificant, failed to treat a client fairly and provide professional services with integrity and objectivity when he encouraged and assisted RF in making Respondent the beneficiary on his PL Annuity when RF was mentally incapacitated, as determined by a court. The record is replete with testimony that RF was determined mentally incapacitated by the State and was diagnosed with dementia and degenerative eye disease. Further, all three members of the Examining Committee found that RF had poor judgement and was unable to "contract" or "manage property or [] make gifts or disposition of property." These diagnoses occurred approximately one and a half months after Respondent effectuated the change of beneficiary for RF's annuity. BS testified that RF was "impaired for quite a while" and that RF's incapacity was going on "for years." The Commission determined that it was not credible that Respondent would not have been aware of RF's inability to consent to the designation of Respondent as the beneficiary given the overwhelming and unanimous testimony and evidence regarding RF's capacity. Thus, Respondent violated Rule 4.1 of the *Rules of Conduct*.

Ninth Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 4.3 of the *Rules of Conduct*, which provides that a certificant shall comply with applicable regulatory requirements governing professional services provided to the client.

The Commission found that Respondent is a certificant, failed to comply with applicable regulatory requirements governing professional services provided to the client. The AWC is conclusive proof that Respondent failed to comply with FINRA Rules 3270 and 2010, which are regulatory requirements governing professional services provided to the client. The Commission also noted that Respondent did not contest this allegation at hearing and acknowledged that he violated this Rule 4.3. Thus, Respondent violated Rule 4.3 of the *Rules of Conduct*.

Tenth Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 4.4 of the *Rules of Conduct*, which provides that a certificant shall exercise reasonable and prudent professional judgment in providing professional services to clients.

The Commission found that Respondent, a certificant, failed to exercise reasonable and prudent professional judgment in providing professional services to clients when he encouraged and assisted RF in making Respondent the beneficiary on his PL Annuity when RF was apparently mentally incapacitated, as determined by a court. The record is replete with testimony that RF was determined mentally incapacitated by the State and was diagnosed with dementia and degenerative eye disease. Further, all three members of the Examining Committee found that RF had poor judgement and was unable to "contract" or "manage property or [] make gifts or disposition of property." These diagnoses occurred approximately one and a half months after Respondent effectuated the change of beneficiary for RF's annuity. The Commission determined that it was not credible that Respondent would not have been aware of RF's inability to consent

to the designation of Respondent as the beneficiary given the overwhelming and unanimous testimony and evidence regarding RF's capacity. Thus, Respondent violated Rule 4.4 of the *Rules of Conduct*.

Eleventh Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 5.1 of the *Rules of Conduct*, which provides that a certificant who is an employee/agent shall perform professional services with dedication to the lawful objectives of the employer/principal and in accordance with CFP Board's *Code of Ethics*.

The Commission found that Respondent, a certificant, failed to perform professional services with dedication to the lawful objectives of the employer/principal and in accordance with CFP Board's *Code of Ethics* when, from 2009 through 2012 he engaged in OBAs, failed to provide notice to ABC of the OBAs, and failed to obtain approval from ABC for the OBAs in accordance with ABC's procedures; and when, from 2011 through 2013 he falsely stated on ABC's annual compliance questionnaires that he had disclosed all current OBAs and had received written approval from ABC. The Commission also noted that Respondent did not contest this allegation at the hearing and acknowledged that he violated this Rule 5.1. Thus, Respondent violated Rule 5.1 of the *Rules of Conduct*.

Twelfth Ground for Discipline

Pursuant to Article 3(d) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts that are the proper basis for professional discipline. The acts set forth in the AWC are the proper basis for professional discipline, and the AWC constitutes professional discipline. Therefore, the AWC is conclusive proof that there are grounds to discipline Respondent for acts that are a proper basis for professional discipline.

IV. Discipline Imposed

The Commission determined that Respondent's conduct violated Rules 201, 401(a), 406, 407(a), 606(a) of the *Code of Ethics*, and Rules 1.4, 2.2(b), 4.1, 4.3, 4.4 and of the *Rules of Conduct*, providing grounds for discipline under Articles 3(a) and 3(d) of the *Disciplinary Rules*. Pursuant to Article 4.4 of the *Disciplinary Rules*, the Commission issued Respondent an Order to Permanently Revoke Respondent's right to use the CFP® marks.

In arriving at its decision, the Commission consulted *Sanction Guidelines* 5 (Breach of Fiduciary Duty), 7 (Conflict of Interest), 12 (Employer Policies Violation), 13 (Failure to Act in Client's Interests Outside a Financial Planning Relationship), 20(c) (Misrepresentation to Clients), 30 (Securities Law Violation) and 34 (Professional Discipline Involving a Suspension for More than 3 Months) The Commission also consulted *Anonymous Case Histories* ("ACH") 26286, 28127 and 28285.

The Commission cited in mitigation that Respondent had been a CFP® professional since 1987 and had no prior disciplinary history.

The Commission considered in aggravation that:

1. Respondent engaged in Outside Business Activities for over 10 years from 2001 to 2012 in violation of his firm's policies and procedures;
2. Respondent provided false attestations to ABC on compliance questionnaires regarding outside business activities;
3. Respondent inappropriately attempted to contact RF after knowing that the court had appointed a guardian for RF;

4. Respondent should have known, given his experience in the industry, that the conflict of interest transactions he in which he engaged with clients were generally deemed to be inappropriate;
5. Respondent was consistently unable to comprehend that his conduct was not in the best interests of his client; and
6. Respondent received $667,000 as TOD from PS and was named as the beneficiary of WD's annuity contracts;
7. Respondent displayed an inability or unwillingness to assess his clients' mental and physical decline, and to guide them in making sound decisions requiring the need for the court to appoint an emergency temporary guardian for one client.

The Commission considered whether Respondent could be rehabilitated. The Commission acknowledged that Respondent no longer served in the roles that produced the conflicts of interest, but the Commission was deeply troubled by Respondent's seeming inability to understand that his egregious actions with vulnerable elderly were grossly inappropriate. Respondent maintained throughout his testimony he was helping his clients do what they wanted. Rather than saying he could not act as a trustee or be named as a beneficiary of assets, he went along with the self-serving appointments to "help his clients" rather than offering other suitable choices that would not be in conflict in his role as trusted advisor. This inability to understand led the Commission to determine that Respondent could not be rehabilitated through a suspension. Thus, the Commission decided to permanently revoke the CFP® certification.