

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 29234

This is a summary of a Settlement Agreement entered into at the February 2015 hearings of the Disciplinary and Ethics Commission (“DEC”) of Certified Financial Planner Board of Standards, Inc. (“CFP Board”). The conduct at issue in this case occurred after January 1, 2009. Rules 1.1 through 6.5 of the *Rules of Conduct* were in effect.

I. Issue Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he disclosed his compensation structure as “fee-only” on CFP Board’s “Find a CFP® Professional” search function while serving as a registered representative of a broker-dealer.

II. Findings of Fact

CFP Board’s Fee-Only Definition and Guidance to CFP® Professionals

On August 7, 2013, CFP Board mailed every CFP® professional a physical copy of the *Notice to CFP® Professionals: Importance of Accurate Compensation Disclosures* (“Notice”). The Notice informed CFP® professionals about the following:

The *Rules of Conduct* require CFP® professionals to disclose to clients and prospective clients certain information concerning the CFP® Professional’s compensation. In the terminology section set forth on page 4 of the *Standards of Professional Conduct*, CFP Board defines “compensation” as “any non-trivial economic benefit, whether monetary or non-monetary, that a certificant or related party receives or is entitled to receive for providing professional activities.” Therefore, in addition to informing a client or prospective client of the compensation that the CFP® professional receives or is entitled to receive for providing professional activities, a CFP® professional is required to disclose the compensation that a related party, such as the CFP® professional's employer, receives or is entitled to receive for providing professional activities. This includes:

- Compensation that the CFP® professional receives or is entitled to receive from a client or prospective client for providing professional activities;
- Compensation that related parties, such as the CFP® professional’s employer, receives or is entitled to receive from a client, prospective client, or other source for providing professional activities; and
- Compensation the CFP® professional receives or is entitled to receive from related parties, such as the CFP® professional’s employer or other sources, for providing professional activities.

Note that as set forth in the “compensation” definition, compensation includes “any non-trivial economic benefit, whether monetary or non-monetary.” As a general rule, CFP Board considers as non-trivial any consideration received in exchange for providing professional activities.

Additionally, on August 7, 2013, CFP Board presented an online webinar entitled “How to Avoid Misleading Compensation Disclosures.” The webinar was available for all CFP® professionals to view live. CFP Board then posted both the *Notice* and the webinar on CFP Board’s Web site, www.cfp.net, for public access.

CFP Board allows CFP® professionals to create a profile that is searchable by the public through CFP Board’s “Find a CFP® Professional” search tool. On September 19, 2013, CFP Board removed the term “fee-only” from the profiles of every CFP® professional who listed “fee-only” as their compensation method on the “Find a CFP® Professional” search tool. On September 20, 2013, CFP Board sent an email to the CFP® professionals who were affected by the “fee-only” removal. The email stated:

ACTION REQUIRED: Because you have identified your compensation as “fee-only” in our “Find” search tool, we are asking you to carefully review CFP Board’s compensation disclosure rules and definitions and to update your search profile with the description that accurately reflects your compensation.

CFP Board recently mailed to you and other CFP® professionals a [notice on the importance of accurate compensation disclosures](#). As set forth in that notice, “fee-only” is strictly defined in CFP Board’s *Standards of Professional Conduct* as follows:

A certificant may describe his or her practice as “Fee-only” if, and only if, all of the certificant’s compensation from all of his or her client work comes exclusively from the clients in the form of fixed, flat, hourly, percentage or performance-based fees.

The “fee-only” description is appropriate only when the CFP® professional and any related parties receive, or are entitled to receive, only fees for providing professional activities. As a general rule, if you are a registered representative of a broker/dealer, are dually-registered, or are an employee of an insurance firm, your compensation may not be described as “fee-only.”

CFP® professionals are responsible for disclosing their compensation consistent with our compensation disclosure rules and definitions. Should it come to our attention, subsequent to the opportunity to fully understand and comply with our rules, that a CFP® professional is misrepresenting their compensation, the matter will be referred to our enforcement process.

The September 20, 2013 email provided a link to the *Notice* and informed each CFP® professional that any subsequent misrepresentation would be referred to CFP Board’s enforcement process.

Respondent’s Use of Fee-Only on the “Find a CFP® Professional” Search Tool

Respondent represented his compensation method on CFP Board’s “Find a CFP® Professional” search tool as “fee only” in 2013 until CFP Board removed it in September 2013. In September 2013, Respondent edited his public profile and selected “fee only” as his compensation method. As of December 2014, Respondent continued to list his compensation method as “fee only” on the “Find a CFP® Professional” search tool.

Respondent is the senior trust and investment officer of Bank. Respondent is compensated by salary, bonus, and profit sharing. Respondent is also a registered representative with Firm, a broker-dealer. Respondent also maintains an insurance license. Respondent stated that Bank conducts brokerage transactions through Firm by another registered representative at the bank. Respondent states that the trust department of Bank is separate from the brokerage department.

III. Discipline Imposed

The Commission found grounds for discipline under Article 3(a) of CFP Board's *Disciplinary Rules and Procedures* ("*Disciplinary Rules*"). Article 3(a) of CFP Board's *Disciplinary Rules* provides grounds for discipline for any act or omission that violates the *Rules of Conduct*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rules 2.1, 2.2(a) and 6.5 of the *Rules of Conduct*. The Commission and Respondent entered into a Settlement Agreement in which Respondent consented to the findings of fact and grounds for discipline. Based on the terms of the Settlement Agreement, the Commission issued to Respondent a Private Censure, pursuant to Article 4.1 of the *Disciplinary Rules*.

In reaching its decision, the Commission cited in mitigation that:

1. Respondent's conduct did not result in client harm;
2. Respondent is employed as a trust officer and does not directly solicit clients; and
3. After CFP Board initiated its investigation, Respondent admitted his error and corrected his compensation disclosure on CFP Board's website.

The Commission did not cite any aggravating factors.

In arriving at its decision, the Commission reviewed Anonymous Case Histories 29019 and 29044 as well as Sanction Guideline 20(d) (Misrepresentation to clients and prospective clients).