

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 29425

This is a summary of a decision issued following the June 2015 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 for conduct occurring before January 1, 2009 were Rules 101 through 705 of CFP Board’s *Code of Ethics and Professional Responsibility* (“*Code of Ethics*”). The Rules in effect for conduct occurring after January 1, 2009 were Rules 1.1 through 6.5 of CFP Board’s *Rules of Conduct*.

I. Issues Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he was convicted of misdemeanor Reckless Driving in 2005 and misdemeanor driving under the influence (“DUI”) in 2014.

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

2014 DUI

In July 2014, Respondent attended a happy hour, drank alcohol, and then went home. He got into a dispute with his wife and left the house in his car. Police stopped Respondent and he failed a sobriety test. Respondent was initially charged with a felony DUI but was convicted of a misdemeanor DUI. Respondent took a leave of absence from work to attend an Intense Outpatient Program in Florida. He completed the program in August 2014. He also completed a 21-hour Substance Abuse Program. Respondent completed his probation in November 2015.

2005 Reckless Driving

In December 2005, Respondent had gone bowling and drank alcohol at a bowling alley. On his way home, police stopped him for speeding and charged him with a misdemeanor driving while under the influence. Respondent was convicted on a misdemeanor charge of Reckless Driving in April 2006.

Previous Case: 1987 Felony

In December 1987, Respondent was on vacation. After a day of fishing, he went out drinking. Respondent fell asleep at a table in a restaurant. A plainclothes police officer roused him and escorted him outside. Respondent got into an altercation with the officer. Police charged Respondent with Battery of Police Officer, Resisting with Violence, and Disorderly Intoxication. Respondent pleaded guilty but adjudication was withheld pending completion of parole. Respondent completed his 18-month probation.

During a routine background check, CFP Board discovered the 1987 Felony and a 1980 arrest for Possession of Marijuana. CFP Board opened an investigation in January 2000. In a letter from February 2000, CFP Board cautioned Respondent on the importance of disclosing all criminal matters to CFP Board and governing himself in a manner that reflects positively on the financial planning profession. CFP Board dismissed the case due to the substantial time that had passed since the matter occurred.

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 found that Respondent engaged in conduct which reflected adversely on his integrity and fitness as a CFP Board Designee, upon the marks and upon the profession when he was charged with a misdemeanor DWI and convicted on a misdemeanor charge of Reckless Driving in 2005. Thus, Respondent violated *Code of Ethics* Rule 607.

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

The Commission found that Respondent engaged in conduct which reflected adversely on his integrity and fitness as a CFP® professional, upon the marks and upon the profession when he was convicted of a misdemeanor DUI in 2014. Thus, Respondent violated Rule 6.5 of the *Rules of Conduct*.

IV. Discipline Imposed

Pursuant to Article 4 of the *Disciplinary Rules*, the Commission must establish grounds for discipline in order to impose discipline or sanctions. Once the Commission has established grounds for discipline, it has wide discretion to impose any sanction under Article 4 of the *Disciplinary Rules*. The Commission determined that Respondent's conduct violated Rule 6.5 of the *Rules of Conduct* and 607 of the *Code of Ethics* and provided grounds for discipline under Articles 3(a), 3(c), 3(d) and 3(e) of the *Disciplinary Rules*.

After careful consideration of the evidence in Respondent's matter, the Commission decided to issue Respondent a private censure pursuant to Article 4.1 of the *Disciplinary Rules*. The issuance of the private censure was contingent upon Respondent's successful completion of his probation, which was completed and terminated in November 2015.

The Commission considered in mitigation that:

1. Respondent admitted he was an alcoholic and had taken steps to treat this by:
 - a. Successfully completing a 30-day in-patient program;
 - b. Successfully completing a 21-hour out-patient program and counseling;
 - c. Regularly attending alcoholics anonymous meetings (and said he continues to do so three days a week); and
 - d. Practicing sobriety since July 2014;
2. Respondent's conduct resulted in no client harm, no client complaints and no discipline by his employer; and
3. Respondent's current employer supported and endorsed him (and testified on his behalf).

The Commission considered as an aggravating factor that this was Respondent's second alcohol-related conviction in 10 years, although only one was a DWI (the 2005 conviction was precipitated by alcohol, but the charge was reckless driving). Respondent's issues from the 80's were not considered by the Commission due to their age.

In arriving at its decision, the Commission consulted *Anonymous Case Histories* 22598, 26986, 28598 and 28988. The Commission also consulted *Sanction Guideline* 24 (Misdemeanor Criminal Conviction). The Commission did not find that the aggravating factors warranted a deviation from *Sanction Guideline* 24.

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