

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 30164

This is a summary of a decision issued following the October 2016 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 for conduct occurring after January 1, 2009 were Rules 1.1 through 6.5 of CFP Board’s *Rules of Conduct*.

I. Issue Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he was convicted of two counts of battery.

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

On January 6, 2016, Respondent answered “Yes” to Question 2 on CFP Board’s Ethics Declaration, which asks “Are you currently charged with or have you ever been convicted of a misdemeanor (other than minor traffic violations) within the last five years?” Respondent provided a written disclosure in which he indicated he pleaded guilty to two counts of misdemeanor battery against his 22-year old stepson.

Respondent testified that he had been arrested on three occasions. His first arrest occurred while he, his wife, his step-son and his in-laws were driving to an event. Respondent’s wife commented on his driving and he told her he was capable of driving. Respondent’s step-son did not like Respondent’s tone and “went off” on Respondent. When Respondent parked, he began yelling at his step-son and put his hand on his arm. Respondent testified that he did not physically batter his step-son. Respondent indicated that a bystander called the police, who arrested Respondent and took him to jail.

Respondent testified that a few months later he had an issue with his wife. Respondent’s wife did not like the way he was interacting with his step-son, resulting in an argument between Respondent and his wife during which Respondent grabbed his wife’s arm. His wife called the police, who arrested Respondent.

Respondent testified that he was arrested on a third occasion, when his step-son asked him a question in a “real smart-alecky way” to which Respondent said “[l]et’s step outside and settle this like men.” Respondent’s step-son called the police, who arrested Respondent and took him to jail.

Respondent acknowledged that drinking was behind all three incidents. Respondent testified that he had not been drinking for almost two years. Respondent testified that he is currently separated from his wife and had his own home for close to two years.

According to the record, in September 2014, Respondent was charged with one count of Domestic Battery – Bodily Harm, and one count of Domestic Battery – Physical Contact, both Class A Misdemeanors. Respondent indicated that this incident stemmed from the exchange with his stepson where his stepson talked back to him and Respondent “threatened him to go outside and settle things like men...”

In February 2016, a Circuit Court in State (“Court”) issued an Order of Conditional Discharge (“Order”) in which he was found guilty of two counts of misdemeanor battery. In the section for “Case No.” at the top of the page, two cases are listed. In the section where it lists the counts for which Respondent had entered

a guilty plea or been found guilty, there is a notation of “battery x2” on the Order. In the Order the Court imposed a Conditional Discharge of 18 months, a \$500 fine, and \$240 in court costs and 26 weeks in a Partner Abuse Intervention Program (“PAIP”). The Court also required Respondent to obtain a drug and alcohol assessment. The Order also indicated that the Court had issued an Order of Protection that would be extended for two years.

The Order also purports to dispose of additional charges involving Respondent from two previous cases. With respect to the first case and Count II of the second case there is a notation “N/P”, which likely indicates that the state decided to *nolle prosequi* the charges. Respondent testified that the guilty plea referenced in the Order disposed of all three events for which an arrest occurred.

In February 2016, Respondent received a Discharge Summary (“Summary”) indicating he completed 50 hours of outpatient substance abuse treatment with Braden Counseling Center (“Center”). The Summary indicated that the circumstances surrounding the behavior that lead to Respondent’s criminal charges included a lack of “awareness of the impairment alcohol and drug use leads to...” The Summary indicated that Respondent’s prognosis was “Excellent”. A previous letter from the Center indicated that Respondent had completed 26 weeks in the PAIP.

III. Commission’s Analysis and Conclusions Regarding Rule Violations

First Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules and Procedures* (“*Disciplinary Rules*”), there are grounds to discipline Respondent for any acts or omissions that violate Rule 6.5 of the *Rules of Conduct*, which provides that 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.

Article 13.1 of the *Disciplinary Rules* provides that a certificate from the clerk of any court of criminal jurisdiction indicting that a Respondent has been convicted of a crime in that court shall conclusively establish the existence of such conviction for purposes of disciplinary proceedings and shall be conclusive proof of the commission of that crime by the Respondent. The record contains documents that are from the Court indicating that Respondent was convicted of two counts of misdemeanor battery. This is conclusive proof that Respondent was convicted of two counts of misdemeanor battery. Therefore, the Commission found that Respondent violated Rule 6.5 of the *Rules of Conduct*.

Second Ground for Discipline

Pursuant to Article 3(c) of the *Disciplinary Rules*, there are grounds to discipline Respondent for any acts or omissions that violate the criminal laws of any State or of the United States. Respondent, a certificant, violated a criminal law of State when he was adjudicated guilty on two counts of battery. Respondent agreed that he was “guilty” of this ground for discipline.

Third Ground for Discipline

Pursuant to Article 3(e) of the *Disciplinary Rules*, there are grounds to discipline Respondent for any acts or omissions that violate the *Disciplinary Rules*.

Article 13.2 of the *Disciplinary Rules* requires every CFP® professional who receives a conviction to notify CFP Board in writing of such conviction within thirty (30) calendar days after the date on which the CFP® professional is notified of the conviction. Per Article 13.1, a certificate from the clerk of any court of

criminal jurisdiction indicating that a Respondent has been convicted of a crime in that court conclusively establishes the existence of such conviction. Respondent received a certificate indicating his conviction of two counts of battery in February 2015. Respondent reported the conviction in January 2016. Respondent admitted in testimony that he was “guilty” of this ground for discipline. Therefore, Respondent failed to notify CFP board of his conviction within the required thirty (30) calendar days, and this omission is a violation of Article 13.2

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 provided grounds for discipline under Articles 3(a), 3(c) 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*.

In arriving at its decision, the Commission consulted *Anonymous Case Histories* 29853 and 22544. The Commission also consulted *Sanction Guideline* 14 (Failure to Disclose to CFP Board) and 24 (Misdemeanor Criminal Conviction).

The Commission considered in mitigation that:

1. Respondent successfully completed the probation and all court-ordered classes.
2. Respondent indicated that he regularly attends Alcoholics Anonymous meetings, is volunteering for the American Red Cross and serves as a job coach for unemployed individuals.
3. Respondent has removed himself from the family-dynamic that led to the criminal charges.
4. Respondent’s conduct did not involve clients.

The Commission considered as aggravating factors that:

1. Respondent has prior disciplinary history with CFP Board. He was involving in the following matters:
 - a. A 2001 Driving Under the Influence that resulted in a closed investigation by CFP Board;
 - b. A 2001 National Association of Securities Dealers, Inc. arbitration, a 2002 New York Stock Exchange arbitration and a 2003 customer complaint that resulted in a closed investigation.
 - c. A 2007 bankruptcy stemming from an arbitration with a former employer that resulted in the Commission issuing a private censure to Respondent.
2. Respondent’s conduct involved violence, anger and alcohol.

During the hearing there was confusion regarding the number of criminal cases in which Respondent was a defendant. CFP Board Counsel recommended holding the hearing open to obtain addition information to eliminate this confusion. The Commission determined it was unnecessary to hold the hearing open to obtain additional information as it was satisfied with Respondent’s explanation of the three events and was able to tie those events to the three criminal cases disposed of by the Order.