



CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

November 30, 2012

Amendments to Disciplinary Rules and Procedures

Effective January 1, 2013

The Board of Directors of Certified Financial Planner Board of Standards, Inc. (CFP Board) recently approved the following amendments to CFP Board's *Disciplinary Rules and Procedures* (*Disciplinary Rules*). These amendments are effective on January 1, 2013.

Background and Overview

Following review of comments received during a 45-day comment period held from August-October 2012, the Board of Directors recently approved amendments to the *Disciplinary Rules*. Through its *Disciplinary Rules* CFP Board enforces the *Code of Ethics and Professional Responsibility, Rules of Conduct* and *Financial Planning Practice Standards* and establishes a process for applying the *Standards of Professional Conduct* to actual professional activities.

During the comment period, CFP Board received a total of nine comments, the majority of which supported the proposed amendments.

These amendments clarify ambiguities, eliminate inconsistencies and ensure that CFP Board's disciplinary process is fair and credible to all participants.

The substantive amendments to the *Disciplinary Rules* include:

- Article 2.5 – Disqualification – Add a provision requiring a Respondent to identify in his/her Answer to the Complaint any potential conflict the Respondent believes exists with regard to any of the hearing panelists.
- Article 2.6 – CFP Board Counsel, CFP Board Designated Counsel and CFP Board Advisory Counsel, and the Duties thereof – Clarify that CFP Board Counsel's role is to serve as an advocate for CFP Board.
- Article 6.2(b) – Procedures for Investigation – Define “adverse inference” as “an inference, adverse to the concerned party, drawn from silence or absence of requested evidence.”
- Article 6.3 – Probable Cause Determination Procedures – Add a provision allowing a Respondent to file a response to a Letter of Caution issued by CFP Board. The Letter of Caution and the response letter would become part of

the Respondent's disciplinary record and be available for the Disciplinary and Ethics Commission's (DEC) review in any subsequent proceeding involving the Respondent.

- Article 9 – Motions – Add a provision to specifically allow for the submission of pre-hearing motions. Motions would be limited to procedural and evidentiary matters and cannot be more than two single-spaced pages with no more than 10 pages of attachments, which is consistent with the limitations imposed on motions in the *Appeal Rules and Procedures*.
- Article 10.3 – Procedure and Proof – Define “preponderance of the evidence” as “a legal standard of review which generally means ‘more probable than not’, i.e., evidence which shows that, as a whole, the fact sought to be proved is more probable than not to have occurred.” This definition is consistent with the definition that appears in the *Appeal Rules and Procedures*.
- Article 11.2 – Power of the DEC – Clarify that the DEC is required to mail its decision order to the Respondent within 45 calendar days of a hearing. Additionally, clarify that if the DEC does not approve the hearing panel's recommendation, it must remand the matter to the hearing panel for further consideration.
- Article 14 – Settlement Procedure – Amend to allow CFP Board Counsel more flexibility in negotiating a settlement agreement with Respondent.
- Article 15 – Required Action After Revocation or Suspension – Add a provision requiring a Respondent to submit proof of Respondent's compliance with an order of suspension or revocation. In the case of an order of suspension, failure to submit proof of compliance with the DEC's Order would result in a revocation, as provided in the DEC Order.
- Article 16.2 – Reinstatement After Suspension – Identify the criteria used by the DEC to assess a Respondent's rehabilitation and fitness to use the marks. Additionally, “clear and convincing evidence” is defined.
- Article 18.1 – Quorum – Increase the requirement for a quorum from a majority to two-thirds of the DEC.
- Article 18.6 – Anonymous Case Histories and Sanction Guidelines – Add a provision noting that the Anonymous Case Histories and Sanction Guidelines serve as guidance for the DEC during hearings and deliberations, and are available on CFP Board's website.

For more information on these amendments, please contact Michael P. Shaw, Managing Director, Professional Standards and Legal at 202-379-2230 or mshaw@cfpboard.org.

DISCIPLINARY RULES AND PROCEDURES
(as amended November 2012, effective January 1, 2013)

ARTICLE 1: INTRODUCTION

Certified Financial Planner Board of Standards, Inc. (“CFP Board”) has adopted the *Code of Ethics and Professional Responsibility* (“*Code of Ethics*”), *Rules of Conduct*, and *Financial Planning Practice Standards* (“*Practice Standards*”), which establish the expected level of professional conduct and practice for CFP® professionals. CFP Board has also established the *Fitness Standards for Candidates and Professionals Eligible for Reinstatement* (“*Fitness Standards*”), which apply to candidates for CFP® certification and individuals who were previously certified and are eligible to reinstate the CFP® certification (“*Professionals Eligible for Reinstatement*”).

The *Code of Ethics*, *Rules of Conduct*, *Practice Standards*, *Disciplinary Rules and Procedures* (“*Disciplinary Rules*”) and *Fitness Standards* may be amended from time to time, with revisions submitted to the public for comment before final adoption by CFP Board. To promote and maintain the integrity of its CFP®, CERTIFIED FINANCIAL PLANNER™,  and  certification marks (“the marks”) for the benefit of the clients and potential clients of CFP® professionals, CFP Board has the ability to enforce the provisions of the *Code of Ethics*, *Rules of Conduct* and *Practice Standards*. Adherence to the *Code of Ethics* and *Rules of Conduct* and compliance with the *Practice Standards* by CFP® professionals is required, with the potential for CFP Board sanctions against those who violate the regulations contained in these documents. CFP Board will follow the *Disciplinary Rules* set forth below when enforcing the *Code of Ethics*, *Rules of Conduct* and *Practice Standards* for CFP® professionals and enforcing the *Fitness Standards*.

Hereafter, CFP® professionals, candidates for CFP® certification and Professionals Eligible for Reinstatement may be referred to as “Respondent” or “Respondents.”

ARTICLE 2: DISCIPLINARY AND ETHICS DEC

2.1 Function and Jurisdiction of the DEC

CFP Board’s Disciplinary and Ethics Commission (referred to herein as “the DEC”), formed pursuant to and governed by the bylaws of CFP Board, is charged with the duty of reviewing and taking appropriate action with respect to alleged violations of the *Code of Ethics* and *Rules of Conduct*, alleged non-compliance with the *Practice Standards* and conduct reviewed pursuant to the *Fitness Standards*. The DEC shall have original jurisdiction over all such matters.

2.2 Powers and Duties of the DEC

The DEC shall be required to:

- (a) Evaluate the performance of the volunteers during the hearings;
- (b) Report annually to the Chief Executive Officer and Board of Directors of CFP

- Board on the operation of the DEC;
- (c) Provide input to the CEO on the selection of prospective DEC members. The DEC Chair and Chair-Designee shall provide input to the CEO on the selection of prospective volunteers who serve temporarily on a Hearing Panel;
- (d) At its summer meeting each year, the DEC shall recommend to the CEO, subject to the CEO's appointment, the DEC Chair to serve during the following calendar year;
- (e) Recommend to the CEO, as may be necessary and subject to review and approval of the Board of Directors, amendments to these *Disciplinary Rules*;
- (f) Adopt rules or procedures, subject to review and approval of the CEO, as may be necessary to ensure that the hearings, ratification process and disciplinary decisions are fair to all participants; and
- (g) Recommend to the CEO such other rules or procedures as may be necessary or appropriate.

2.3 Powers and Duties of the CEO of CFP Board

The CEO shall be required to:

- (a) Appoint the DEC Chair, members and volunteers of the DEC;
- (b) Oversee the DEC to ensure it follows the established rules and procedures required to provide a fair process to all participants;
- (c) Ensure that each Hearing Panel is comprised of individuals who act in an impartial and objective manner and have no conflicts of interest with the complainant or Respondent subject to the complaint;
- (d) Conduct appropriate background investigations of prospective DEC members and volunteers; seek the input of the Board of Directors and the DEC on prospective DEC members; and seek the input of the DEC Chair and Chair-Designee on prospective volunteers; and
- (e) Report to the Board of Directors the intended appointments to, and activities of, the DEC.

2.4 Hearing Panel

The Hearing Panel shall consist of three persons, two of whom must be CFP® professionals. A Hearing Panel shall be comprised of two DEC members and one volunteer, unless circumstances make it impractical. One member of each Hearing Panel shall serve as Chair of each hearing. The Hearing Panel Chair must be a DEC member. The Chair shall rule on all motions, objections and other matters presented at, or prior to, a hearing.

2.5 Disqualification

DEC members and volunteers shall not participate in any proceeding in which they, a member of their immediate family or a member of their firm have any interest or where such participation otherwise would involve a conflict of interest or the appearance of impropriety. A Respondent must identify any conflicts with potential Hearing Panel members in his or her Answer to CFP Board's Complaint. Failure to do so will result in

the waiver of an objection to the Hearing Panel member. A Respondent may raise any conflicts arising after the filing of his/her answer with the Hearing Panel at the start of the hearing and the Chair of the Hearing Panel shall make a ruling pursuant to Article 9.4.

2.6 “CFP Board Counsel,” “CFP Board Designated Counsel” and “CFP Board Advisory Counsel,” and the duties thereof:

- (a) CFP Board Counsel refers to the staff attorney who:
 - i. Conducts any investigation commenced under Article 6.1;
 - ii. Makes the probable cause determination under Article 6.3;
 - iii. Issues Administrative Orders of Revocation under Article 7.4; and
 - iv. Presents the case to the Hearing Panel as an advocate for CFP Board.
- (b) CFP Board Designated Counsel refers to the outside attorney who presents the case to the Hearing Panel as an advocate for CFP Board.
- (c) CFP Board Advisory Counsel refers to the attorney who acts in an advisory capacity in providing advice on the *Standards of Professional Conduct* and hearing procedures to the Hearing Panel and the DEC during the Ratification Meeting.
- (d) No person shall act as both CFP Board Counsel and CFP Board Advisory Counsel during the same set of hearings.

2.7 Venue

Unless otherwise approved by the Board of Directors, CFP Board’s headquarters shall serve as a central office for the filing of requests for:

- (a) the investigation of Respondent conduct;
- (b) the coordination of such investigations;
- (c) the administration of all disciplinary enforcement proceedings carried out pursuant to these *Disciplinary Rules*; and
- (d) the performance of such other activities as are designated by the CEO.

ARTICLE 3: GROUNDS FOR DISCIPLINE

Misconduct by a Respondent, individually or in concert with others, including the following acts or omissions, shall constitute grounds for discipline, whether or not the act or omission occurred in the course of a client relationship:

- (a) Any act or omission that violates the provisions of the *Code of Ethics* and/or *Rules of Conduct*;
- (b) Any act or omission that fails to comply with the *Practice Standards*;
- (c) Any act or omission that violates the criminal laws of any State or of the United States or of any province, territory or jurisdiction of any other country,

provided however, that conviction thereof in a criminal proceeding shall not be a prerequisite to the institution of disciplinary proceedings, and provided further, that acquittal in a criminal proceeding shall not bar a disciplinary action;

- (d) Any act that is the proper basis for professional discipline, as defined herein, provided professional discipline shall not be a prerequisite to the institution of disciplinary proceedings, and provided further, that dismissal of charges in a professional discipline proceeding shall not necessarily bar a disciplinary action;
- (e) Any act or omission that violates these *Disciplinary Rules* or that violates an order of discipline;
- (f) Failure to respond to a request by CFP Board staff, or obstruction of the DEC, or any panel thereof, or CFP Board staff in the performance of its or their duties;
- (g) Any false or misleading statement made to CFP Board.

The enumeration of the foregoing acts and omissions constituting grounds for discipline is not exclusive and other acts or omissions amounting to unprofessional conduct may constitute grounds for discipline.

ARTICLE 4: FORMS OF DISCIPLINE

In cases where no grounds for discipline have been established, the DEC may dismiss the matter as either without merit or with a cautionary letter. In all cases, the DEC has the right to require the Respondent to complete additional continuing education or other remedial work, which includes, but is not limited to, retaking the CFP® Certification Exam and/or completing the coursework required by a CFP Board-Registered Program. Such continuing education or remedial work may be ordered instead of, or in addition to, any discipline listed below. Where grounds for discipline have been established, any of the following forms of discipline may be imposed.

4.1 Private Censure

The DEC may order private censure of a Respondent, which shall be an unpublished written reproach mailed by the DEC to a censured Respondent.

4.2 Public Letter of Admonition

The DEC may order that a Public Letter of Admonition be issued against a Respondent, which shall be a publishable written reproach of the Respondent's behavior. It shall be standard procedure to publish the Public Letter of Admonition in a press release or in such other form of publicity selected by the DEC.

4.3 Suspension

The DEC may order suspension for a specified period of time, not to exceed five years. In the event of a suspension, CFP Board must publish the fact of the suspension together with identification of the Respondent in a press release, or in such other form of publicity as is selected by the DEC. Respondents receiving a suspension may qualify

for reinstatement to use the marks as provided in Article 15.

4.4 Revocation

The DEC may order permanent revocation of a Respondent's right to use the marks. In the event of a permanent revocation it shall be standard procedure to publish the fact of the revocation together with identification of the Respondent in a press release, or in such other form of publicity as is selected by the DEC.

ARTICLE 5: INTERIM SUSPENSION STATUS

Interim suspension is the temporary suspension by the DEC of a CFP[®] professional's right to use the marks for a definite or indefinite period of time, while proceedings conducted pursuant to these *Disciplinary Rules* are pending against the CFP[®] professional. Imposition of an interim suspension shall not preclude the imposition of any other form of discipline entered by the DEC in final resolution of the disciplinary proceeding.

5.1 Issuance of a Show Cause Order

Although a CFP[®] professional's right to use the marks shall not ordinarily be suspended during the pendency of such proceedings, when CFP Board receives evidence that a CFP[®] professional has engaged in conduct: 1) that poses an immediate threat to the public; and 2) the gravity of the conduct significantly impinges upon the stature and reputation of the marks, CFP Board Counsel may issue an Order to Show Cause why the CFP[®] professional's right to use the marks should not be suspended during the pendency of the proceedings.

5.2 Service

CFP Board shall serve the Order to Show Cause upon the CFP[®] professional as provided in Article 18.2.

5.3 Response

All responses to Orders to Show Cause shall be in writing and shall be submitted within 20 calendar days from the date of service of the Order to Show Cause upon the CFP[®] professional. Extensions and/or continuances are generally disfavored by CFP Board. CFP Board Counsel may, however, grant reasonable requests for extensions and continuances, as deemed appropriate. The CFP[®] professional shall, in the response, either request or waive the right to participate in the Show Cause Hearing.

5.4 Failure to Respond to the Order to Show Cause

If the CFP[®] professional fails to file a Response within the period provided in Article 5.3, the CFP[®] professional shall be deemed to have waived the right to respond, the allegations set forth in the Order to Show Cause shall be deemed admitted and an interim suspension will automatically be issued.

5.5 Show Cause Hearing

Upon receiving the CFP[®] professional's response as provided in Article 5.3, a hearing

shall be scheduled as soon as practicable before a Hearing Panel consisting of three members of the DEC, generally no more than 40 days from the date of service of the Order to Show Cause. The CFP[®] professional shall have the opportunity to participate at such hearing presenting arguments and evidence on his/her behalf. All evidence presented must be submitted to CFP Board Counsel with the CFP[®] professional's Response to the Order to Show Cause in accordance with Article 5.3. Either party may make a motion at the hearing to admit evidence discovered by either party after the CFP[®] professional files a Response to the Order to Show Cause. The Chair of the Hearing Panel shall have the discretion to grant or deny the motion. CFP Board Counsel will provide the CFP[®] professional with the evidence submitted to the Hearing Panel prior to the Show Cause Hearing. In making its determination whether to issue an interim suspension, the Hearing Panel shall consider all of the evidence presented.

5.6 Interim Suspension

Upon a showing of any of the factors listed in Article 5.1, an interim suspension shall be issued, subject to review by the DEC under the provisions of Article 11.2, unless the Hearing Panel determines that the CFP[®] professional has provided evidence that establishes by a preponderance of the evidence that the CFP[®] professional does not pose an immediate threat to the public and that the gravity of the CFP[®] professional's conduct does not significantly impinge upon the stature and reputation of the marks. The fact that a CFP[®] professional is seeking appellate review of a conviction or professional discipline shall not limit the power of the Hearing Panel to impose an interim suspension.

5.7 Automatic Interim Suspension

An interim suspension shall immediately be issued without a hearing when CFP Board Counsel receives evidence of a conviction or a professional discipline in accordance with Article 13.1 for any of the following conduct:

- (a) Felony conviction for any crime;
- (b) Misdemeanor conviction for fraud, misrepresentation or crimes of moral turpitude; or
- (c) Revocation of a financial professional license (securities, insurance, accounting or bank-related license) unless the revocation is administrative in nature, i.e. the result of the individual determining to not renew the license by not paying the required fee and/or not completing the required continuing education.

CFP Board Counsel will notify any CFP[®] professional subject to interim suspension under this Article as provided in Article 18.2.

5.8 Proceedings Subsequent to Interim Suspensions

After the issuance of an interim suspension or an automatic interim suspension, CFP Board Counsel shall continue to investigate as outlined in Article 6. After CFP Board Counsel issues a Complaint, as outlined in Article 7, a CFP[®] professional will have the opportunity to be heard in accordance with the *Disciplinary Rules*. An Interim

Suspension issued under this Article, however, is not subject to the CFP® professional's right of appeal as outlined in Article 12.

5.9 Automatic Reinstatement Upon Reversal of Conviction or Professional Discipline

A CFP® professional subject to a suspension under this Article shall have the suspension vacated immediately upon filing with the DEC a certificate demonstrating that the underlying criminal conviction or professional discipline has been reversed; provided, however, the reinstatement upon such reversal shall have no effect on any proceeding conducted pursuant to these *Disciplinary Rules* then pending against a CFP® professional.

ARTICLE 6: INVESTIGATION

6.1 Commencement

Proceedings involving potential ethics violations shall be commenced upon: 1) receipt of information by CFP Board Counsel indicating a potential violation of the *Code of Ethics, Rules of Conduct* and/or non-compliance with the *Practice Standards*; or 2) disclosure by a Respondent of any matter constituting a potential violation of the *Code of Ethics, Rules of Conduct* and/or non-compliance with the *Practice Standards*.

6.2 Procedures for Investigation

Upon receipt of a request for investigation containing allegations which, if true, could give rise to a violation of the *Code of Ethics, Rules of Conduct* and/or non-compliance with the *Practice Standards*, or upon the acquisition by CFP Board Counsel of information which, if true, could give rise to a violation of the *Code of Ethics, Rules of Conduct* and/or non-compliance with the *Practice Standards*, CFP Board Counsel shall give written notice to the Respondent that the Respondent is under investigation and of the general nature of the allegations asserted against the Respondent. The Respondent shall have 30 calendar days from the date of notice of the investigation to file a written response to the allegations with the CFP Board.

- (a) *No Response*. At the expiration of the 30 calendar-day period if no response has been received, CFP Board Counsel shall give written notice of a second request for information via certified mail. The Respondent shall have 20 calendar days from the date of the second request to file a written response to the allegations with CFP Board. At the expiration of the 20 calendar-day period if no response has been received, the matter shall be referred to the DEC.
- (b) *Adverse Inference*. Failure to provide requested information may give rise to an adverse inference with respect to the underlying subject matter. An adverse inference is an inference, adverse to the concerned party, drawn from silence or absence of requested evidence. This rule applies to evidence that has been destroyed, evidence that exists but the party refuses to produce, and evidence that the party has under his/her control and has not produced. This adverse inference is based upon the presumption that

the party who controls the evidence would have produced it, if it had been supportive of his/her position.

- (c) *Response*. Upon receipt of a response within the prescribed time period, CFP Board Counsel shall compile all documents and materials and commence probable cause determination procedures as soon thereafter as is reasonably practicable.

6.3 Probable Cause Determination Procedures

CFP Board Counsel or his/her designee shall be responsible for determining if there is probable cause to believe grounds for discipline exist and shall: 1) dismiss the allegations as not warranting further investigation at this time; 2) dismiss the allegations with a letter of caution indicating that CFP Board Counsel has determined that based on the available evidence, the Respondent's conduct may have violated the *Code of Ethics, Rules of Conduct* and/or not complied with the *Practice Standards* but does not warrant referral to the DEC; or 3) begin preparation and processing of a Complaint against the Respondent in accordance with Article 7. For matters that are dismissed, CFP Board reserves the right to reopen the investigation in the future if appropriate. When CFP Board Counsel issues a letter of caution, the Respondent may submit a letter in response to the letter of caution. The response letter will become part the Respondent's record, but will not receive any additional consideration by CFP Board Counsel. The letter of caution and the response to the letter of caution will be available for consideration by the DEC.

6.4 Disposition

CFP Board Counsel shall conduct CFP Board's investigation as expeditiously as reasonably practicable.

6.5 Relinquishment

A Respondent may not voluntarily relinquish his/her CFP® certification during the course of an investigation.

ARTICLE 7: COMPLAINT - ANSWER - DEFAULT

7.1 Complaint

An original Complaint shall be prepared by CFP Board Counsel and forwarded to the Respondent. Copies of the Complaint shall be included with the materials provided to the Hearing Panel in advance of the hearing. The Complaint shall reasonably set forth the grounds for discipline with which the Respondent is charged and the conduct or omission that gave rise to those charges.

7.2 Service of the Complaint

CFP Board Counsel shall promptly serve the Complaint upon the Respondent as provided in Article 18.2.

7.3 Answer

All Answers to Complaints shall be in writing. The Answer shall be submitted within 20

calendar days from the date of service of the Complaint on the Respondent. The Respondent shall file an original of such Answer with CFP Board. A copy of the Answer shall be included with the materials provided to the Hearing Panel in advance of the hearing. In the Answer, the Respondent shall respond to every material allegation contained in the Complaint. In addition, the Respondent shall set forth in the Answer any defenses or mitigating circumstances.

7.4 Default and Administrative Orders of Revocation

If the Respondent fails to file an Answer within the period provided by Article 7.3 or fails to pay the hearing costs assessed by CFP Board pursuant to Article 18.3, except in cases where CFP Board Counsel has granted a waiver due to financial hardship, such Respondent shall be deemed to be in default, and the allegations set forth in the Complaint shall be deemed admitted. In such circumstance, CFP Board Counsel shall serve upon the Respondent an Administrative Order of Revocation. Such orders shall state clearly and with reasonable particularity the grounds for the revocation of Respondent's right to use the marks. These orders are subject to the Respondent's right of appeal as outlined in Article 12.

7.5 Request for Appearance

Upon the filing of an Answer, the Respondent may request an appearance at the hearing before the Hearing Panel, at which the Respondent may present arguments, witnesses and evidence on his/her behalf. Alternatively, the Respondent may request a paper review in which the DEC will consider the Complaint and Answer as well as documents contained in CFP Board's files to make its decision. Neither CFP Board Counsel nor Respondent will be permitted to make an appearance or present witnesses.

7.6 Request for Extension or Continuance

A Respondent may request an extension to answer the Complaint or a continuance of the hearing no later than within 20 calendar days from the date of service of the Complaint. Upon receipt of the request, CFP Board Counsel shall either grant or deny all requests for extension and continuances. Extensions and/or continuances are generally disfavored by CFP Board Counsel. CFP Board Counsel may, however, grant reasonable requests for extensions and continuances, as deemed appropriate. CFP Board Counsel shall not grant any extension to file an Answer to the Complaint longer than 14 calendar days. CFP Board Counsel shall not grant more than one continuance. If more than one continuance is requested, the matter shall proceed to the DEC for review of the hearing materials without appearances by CFP Board or the Respondent.

ARTICLE 8: DISCOVERY AND EVIDENCE

8.1 Discovery

Discovery of a disciplinary case may be obtained only after a Complaint has been issued against a Respondent. A Respondent may obtain copies of all documents in the Respondent's disciplinary file that are not privileged or do not constitute attorney work

product and are relevant to the subject matter in the pending action before the Hearing Panel. Requests for copies of CFP Board documents must be made to CFP Board Counsel in writing. Release of information contained in a Respondent's disciplinary file is premised on the understanding that materials will be used only for purposes directly connected to the pending CFP Board action.

8.2 Documents

Documents submitted by a Respondent to the DEC for consideration in resolution of the issues raised during an investigation shall be limited to 100 pages. No evidence may be accepted less than 45 calendar days prior to the scheduled hearing, except by motion at the hearing. Should a Respondent deem it necessary to exceed the 100 page limit, the Respondent shall be required to submit a written memorandum that outlines clearly and with reasonable particularity how each and every document submitted by the Respondent or on his or her behalf relates to the allegations contained in the CFP Board Complaint. After reviewing such outline, the DEC shall determine which documents will be permitted.

8.3 Witnesses

Witnesses, if any, shall be identified by the Respondent and CFP Board no later than 45 calendar days prior to the scheduled hearing. When witnesses are identified, the Respondent and CFP Board shall also state the nature and extent of the witnesses' testimony, as well as whether the witnesses will appear in person or via telephone.

8.4 Respondent's Counsel

Respondent's Counsel, if any, shall be identified to CFP Board no later than 45 calendar days prior to the scheduled hearing. When Respondent's Counsel is identified, the Respondent shall provide the counsel's contact information as well as whether the counsel will appear in person or via telephone. Respondent's counsel must be an active member in good standing of the bar of a United States state, jurisdiction, possession, territory or dependency.

8.5 Administrative Dismissal

If, upon receipt of a Respondent's Answer to the Complaint, new information becomes available that eliminates all questions of fact and may warrant a dismissal of the case prior to review by a Hearing Panel, CFP Board Counsel may administratively dismiss the Complaint.

ARTICLE 9: MOTIONS

9.1 Motion

Respondent and/or CFP Board Counsel may file a written motion regarding procedural and/or evidentiary matters. The motion must be filed no later than 30 calendar days prior to the hearing, except as otherwise referenced in Articles 5.5 and 8.2. Filing is accomplished by depositing the motion in the U.S. Mail, by Certified Mail, return receipt requested, properly addressed in accordance with Articles 2.7 and/or 18.2. The motion must state with reasonable particularity the grounds for the motion, the relief sought and

whether a hearing is requested. If the motion pertains to a specific rule or rules, the motion must identify the rules. The Chair of the Hearing Panel shall have the discretion to summarily rule on a motion without a requested hearing.

9.2 Response

Respondent and/or CFP Board Counsel may file a written response to any motion filed by another party. Any response must be filed no later than 10 calendar days after the filing of the motion. Filing is accomplished by depositing the response in the U.S. Mail, by Certified Mail, return receipt requested, properly addressed accordance with Articles 2.7 and/or 18.2. If a response is filed, a rebuttal is not permitted.

9.3 Length

Motions shall not exceed two single-spaced pages. Attachments shall not exceed 10 pages.

9.4 Disposition of a Motion

The Chair of the Hearing Panel shall rule on all motions, objections and other matters presented at, or prior to, a hearing.

ARTICLE 10: HEARINGS

10.1 Notice

Not less than 30 calendar days before the date set for the hearing of a Complaint, notice of such hearing shall be given as provided in Article 18.2 to the Respondent, or to the Respondent's counsel. The notice shall designate the date and place of the hearing.

10.2 Designation of a Hearing Panel

All hearings on Complaints seeking disciplinary action against a Respondent shall be conducted by the Hearing Panel.

10.3 Procedure and Proof

The Hearing Panel may be guided by the rules of procedure and evidence applicable in a court of law to the extent it believes it is appropriate. Such rules, however, are not binding on the Hearing Panel. Proof of misconduct shall be established by a preponderance of the evidence. A preponderance of the evidence is a legal standard of review that generally means "more probable than not," i.e., evidence which shows that, as a whole, the fact sought to be proved is more probable than not to have occurred.. In the course of the proceedings, the Chair of the Hearing Panel shall administer affirmations. A complete record shall be made of all testimony taken at hearings before the Hearing Panel.

10.4 Recommendation

CFP Board Counsel or CFP Board Designated Counsel shall present to the Hearing Panel the information and documentation gathered during the investigation and make a recommendation regarding an appropriate sanction.

ARTICLE 11: REPORT, FINDINGS OF FACT AND RECOMMENDATION

11.1 Recommendation of the Hearing Panel

At the conclusion of the hearing, the Hearing Panel shall record its findings of fact and recommendations and report its findings and recommendations to the DEC for its consideration. In this report, the Hearing Panel shall: 1) determine that the Complaint is not proved or that the facts as established do not warrant the imposition of discipline and recommend the Complaint be dismissed, either as without merit or with caution; or 2) refer the matter to the DEC with the recommendation that discipline by the DEC is appropriate. The recommendation of the Hearing Panel shall state specifically the form of discipline the Hearing Panel deems appropriate. The Hearing Panel may also recommend that the DEC enter other appropriate orders. In making its recommendation, the Hearing Panel may take into consideration the Respondent's prior disciplinary record, if any, which includes, but is not limited to, any previous sanction issued by the DEC and/or a letter of caution issued by CFP Board Counsel.

11.2 Power of the DEC

The DEC reserves the authority to review any determination made by the Hearing Panel in the course of a disciplinary proceeding and to enter any order with respect thereto including an order directing that further proceedings be conducted as provided by these *Disciplinary Rules*. The DEC shall review the recommendation of the Hearing Panel and may either approve the recommendation or remand it to the Hearing Panel for further consideration. Within 45 calendar days of the hearing, the DEC must mail by certified mail to Respondent a final order containing the DEC's findings of fact and, if appropriate, the sanction imposed. Once the DEC has issued an order, the DEC's decision is final.

ARTICLE 12: APPEALS

All appeals from orders of the DEC and orders of CFP Board Counsel shall be submitted to CFP Board's Appeals Committee in accordance with the *Rules and Procedures of the Appeals Committee*. If an order of the DEC or an order of CFP Board Counsel is not appealed within 30 calendar days after notice of the order is sent to the Respondent, such order shall become final. All orders of the DEC and orders of CFP Board Counsel are appealable unless otherwise noted in these *Disciplinary Rules*.

ARTICLE 13: CONVICTION OF A CRIME OR PROFESSIONAL DISCIPLINE

13.1 Proof of Conviction or Professional Discipline

Except as otherwise provided in these *Disciplinary Rules*, a certificate from the clerk of any court of criminal jurisdiction indicating that a Respondent has been convicted of a crime in that court or 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 (as hereinafter defined) by such authority, shall conclusively establish the existence of such conviction or such professional discipline for purposes of disciplinary proceedings and shall be conclusive proof of the DEC of that crime or of the

basis for such discipline, by the Respondent.

13.2 Duty to Report Criminal Conviction or Professional Discipline

Every Respondent:

- (1) upon being convicted of a crime, other than minor traffic offenses;
- (2) upon being the subject of professional discipline; or
- (3) upon notification of a change to a matter previously disclosed under items (1) and (2) to CFP Board,

shall notify CFP Board in writing of such conviction or professional discipline within 30 calendar days after the date on which the Respondent is notified of the conviction or professional discipline.

13.3 Commencement of Disciplinary Proceedings Upon Notice of Conviction or Professional Discipline.

Upon receiving notice that a Respondent has been convicted of any crime occurring within the last 10 years, other than minor traffic offenses, or been the subject of professional discipline, CFP Board Counsel shall determine whether an investigation is warranted. CFP Board shall obtain the record of conviction or proof of discipline and, if appropriate, file a Complaint against the Respondent as provided in Article 7. If the Respondent's criminal conviction or professional discipline is either proved or admitted as provided herein, the Respondent shall have the right to be heard by the Hearing Panel only on matters of rebuttal of any evidence presented by CFP Board Counsel other than proof of the conviction or professional discipline.

13.4 Definition of Professional Discipline

Professional discipline as used herein shall include the suspension, bar or revocation as a disciplinary measure by any governmental agency, industry self-regulatory organization or professional association.

ARTICLE 14: SETTLEMENT PROCEDURE

A Respondent or CFP Board Counsel may propose an Offer of Settlement ("Offer") in lieu of a disciplinary hearing pursuant to these *Disciplinary Rules*. Submitting an Offer shall stay all proceedings conducted pursuant to these *Disciplinary Rules*.

14.1 Offer of Settlement

CFP Board Counsel shall be permitted to negotiate settlements with Respondents on behalf of CFP Board where it is in the best interests of all parties to attempt to arrive at an expedited resolution. Either CFP Board counsel or Respondent may initiate the settlement negotiations. CFP Board Counsel and Respondent may negotiate violations and penalties, but not factual findings unless evidence proving the contrary is produced during negotiations. CFP Board Counsel shall be authorized to reach a provisional agreement for CFP Board. Upon agreement, the final Offer shall be reduced to writing and signed for presentation by both parties to the DEC. The Offer shall be in writing

and must be submitted to CFP Board staff at least 40 calendar days prior to the Respondent's scheduled disciplinary hearing. CFP Board Counsel may endorse the Offer to the Hearing Panel.

A Hearing Panel shall consider the Offer and take one of the actions described in Articles 14.2 and 14.3. The Hearing Panel shall consider only one Offer after the Complaint is filed. Only the DEC shall have final decision making authority to accept or reject an Offer.

The Offer shall contain and describe in reasonable detail:

- (a) The act or practice which the Respondent is alleged to have engaged in or omitted;
- (b) The principle, rule, regulation or statutory provision which such act, practice or omission to act is alleged to have violated;
- (c) The mitigating factors that were considered during the negotiations;
- (d) Any evidence produced during negotiations that exonerated or resulted in the recommendation of a lesser violation or penalty or the removal of same;
- (e) Any other information CFP Board Counsel found relevant in settlement discussions.
- (f) Proposed acceptance and a statement that the Respondent consents to the entry of the Offer; and
- (g) A waiver of all rights of appeal to CFP Board's Appeals Committee and the courts or to otherwise challenge or contest the validity of the Order issued if the Settlement Agreement is accepted.

If negotiations between CFP Board Counsel and Respondent are unsuccessful, then Respondent shall have the right to present the Offer directly to the DEC.

14.2 Acceptance of Offer

If an Offer is accepted by a Hearing Panel, the decision of the Hearing Panel shall be reviewed by the DEC. The DEC's decision to affirm the decision of the Hearing Panel to accept the Offer shall conclude the proceeding as of the date the Offer is accepted. If the Offer includes a penalty of revocation or suspension, the revocation or suspension shall become effective immediately upon execution of the Offer by the Hearing Panel and affirmation by the DEC.

14.3 Rejection of Offer; Counter Offer

If the Offer is rejected by a Hearing Panel, the Offer shall be deemed void and the matters raised in the Complaint shall be set for hearing at the next meeting of the DEC. The Respondent shall not be prejudiced by the prior Offer, and it shall not be given consideration in the determination of the issues involved in the pending or any other proceeding.

If the Hearing Panel deems it appropriate, it may make a Counter Settlement Offer ("Counter Offer") to the Respondent modifying the proposed finding(s) of fact,

violation(s) and/or discipline. The Respondent must respond to CFP Board within 20 calendar days from the date of service of the Counter Offer by either accepting or rejecting the Counter Offer. Respondent's failure to respond within 20 calendar days shall be considered rejection of the Counter Offer. If the Counter Offer is rejected by the Respondent, the Offer and Counter Offer shall be deemed void and the matters raised in the Complaint will be set for hearing at the next meeting of the DEC. The Respondent shall not be prejudiced by the prior Offer or the Counter Offer, and neither shall be given consideration in the determination of the issues involved in the pending or any other proceeding.

ARTICLE 15: REQUIRED ACTION AFTER REVOCATION OR SUSPENSION

After the entry of an order of revocation or suspension is final, the Respondent shall promptly terminate any use of the marks and in particular shall not use them in any advertising, announcement, letterhead or business card. Within 30 days of receiving an order of suspension or the execution of an Offer in which a Respondent consented to a suspension, the Respondent must provide to CFP Board evidence that he/she has ceased all use of the marks by providing copies of documents requested by the DEC in its order. Failure to provide the information requested by the DEC will result in an automatic issuance of a revocation under Article 4.4.

ARTICLE 16: REINSTATEMENT AFTER DISCIPLINE

16.1 Reinstatement After Revocation

Revocation shall be permanent, and there shall be no opportunity for reinstatement.

16.2 Reinstatement After Suspension

Unless otherwise provided by the DEC in its order of suspension, a Respondent who has been suspended for a period of one year or less shall be automatically reinstated upon the expiration of the period of suspension, provided the Respondent files with CFP Board within 30 calendar days of the expiration of the period of suspension a request for reinstatement. A Respondent who has been suspended for a period longer than one year must petition the DEC for a reinstatement hearing within six months of the end of his/her suspension, or the Respondent shall be permanently barred from using the CFP® certification. Before any reinstatement hearing will be scheduled, the Respondent must meet all administrative requirements for recertification, pay the reinstatement hearing costs and provide evidence, if necessary, that all prior hearing costs have been paid. At the reinstatement hearing, the Respondent must prove by clear and convincing evidence that the Respondent has been rehabilitated, has complied with all applicable disciplinary orders and provisions of these *Disciplinary Rules*, and that the Respondent is fit to use the marks. Clear and convincing evidence means that the DEC must have no reasonable doubt that the Respondent has met his/her burden.

The Respondent may prove rehabilitation by providing to the DEC:

1. Evidence that the Respondent maintained competence and learning in the

- area of financial planning during the suspension period;
2. Evidence that the Respondent's conduct since the issuance of the DEC's order has been exemplary and beyond reproach;
 3. Evidence that the Respondent made restitution or settled all claims from persons injured or harmed by his/her misconduct; and
 4. Documentary evidence of all business activities during the suspension period.

The Respondent may prove that he/she is fit to use the marks by demonstrating to the DEC:

1. Whether the Respondent has a proper understanding of CFP Board's *Standards* and is willing to act in conformity with the *Standards*;
2. Whether the Respondent can be confidently recommended to the public as a CFP® professional;
3. How the Respondent plans to use the CFP® marks in his/her future business; and
4. Any other information obtained during the hearing that the DEC chooses to consider.

16.3 Investigation

Immediately upon receipt of a petition for reinstatement, CFP Board Counsel will initiate an investigation. The petitioner shall cooperate in any such investigation, and CFP Board Counsel or CFP Board Designated Counsel shall provide to the DEC the Respondent's past disciplinary record and any recommendation regarding reinstatement.

16.4 Successive Petitions

If a Respondent is denied reinstatement, he/she must wait two years to petition again for reinstatement. The second petition must be received by CFP Board within six months of the expiration of the two -year period, or the Respondent's right to use the marks will be revoked. If the second petition is denied, the Respondent will be permanently barred from using the marks.

16.5 Reinstatement Fee

Respondents petitioning for reinstatement will be assessed the costs of the reinstatement proceeding.

ARTICLE 17: CONFIDENTIALITY OF PROCEEDINGS

17.1 Confidentiality

Except as otherwise provided in these *Disciplinary Rules*, all proceedings conducted pursuant to these *Disciplinary Rules* shall be confidential and the records of the DEC, Hearing Panel, CFP Board Counsel and CFP Board staff shall remain confidential and shall not be made public.

17.2 Exceptions to Confidentiality

CFP Board may release the records of the proceedings, subject to privilege, if: 1) the proceeding is predicated on a criminal conviction or professional discipline as defined herein; 2) the Respondent has waived confidentiality; 3) such disclosure is required by legal process of a court of law, governmental agency or an industry self-regulatory organization having appropriate jurisdiction; 4) CFP Board Counsel provides the information to a governmental agency or industry self-regulatory organization having appropriate jurisdiction; or 5) in proceedings involving a consumer, CFP Board staff contacts the consumer and/or the Respondent's current and/or former employer to request documents relevant to the proceeding.

ARTICLE 18: GENERAL PROVISIONS

18.1 Quorum

Two-thirds of the members of the DEC must be present in order to constitute a quorum of such DEC, and the approval of a majority of the quorum shall be the action of such DEC.

18.2 Notice and Service

Except as may otherwise be provided in these *Disciplinary Rules*, notice shall be in writing and the giving of notice and/or service shall be sufficient when made by certified mail sent to the last known address of the Respondent according to the records of CFP Board. In matters where a Respondent has designated counsel, notice and service shall be accomplished by certified mail to counsel's address as provided by Respondent.

18.3 Submissions

All documents received by CFP Board shall be date-stamped and deemed filed on the date received by CFP Board. All such documents shall become part of the investigative file.

18.4 Costs

In all disciplinary cases wherein a proceeding is initiated, the DEC will assess against the Respondent the costs of the proceedings. In addition, a Respondent who desires an appearance, whether telephonically or in person, or a paper review, or who submits an Offer of Settlement pursuant to Article 14, will be required to submit hearing costs not less than 45 days prior to the date of the scheduled hearing. In the event that the hearing results in a dismissal without merit, the hearing costs shall be refunded to the Respondent. Hearing costs will not be refunded if the hearing results in any action other than a dismissal without merit. A Respondent who petitions for reinstatement from a suspension or revocation or who petitions for appeal shall bear the costs of such

proceeding.

Financial hardship. In the event a Respondent is unable to pay the required hearing costs due to financial hardship, the Respondent must submit a written statement and supporting documentation explaining his or her financial situation and request a deferral, reduction or waiver of the hearing costs. Upon receipt and review of such request, CFP Board Counsel shall have the discretion to defer, reduce or waive the required hearing costs. All written requests for a reduction or waiver of hearing costs due to financial hardship must be submitted with Respondent's Answer to the Complaint.

18.5 Electronic Signature

Some documents that require a handwritten signature may be submitted electronically through CFP Board's closed website. Any document received by CFP Board through this process shall constitute conclusive proof that: 1) the Respondent whose name appears on the document submitted such document; and 2) the Respondent intended to be bound by the terms and conditions contained therein. Accordingly, the document shall be as legally binding as any containing a handwritten signature.

18.6 Publication

It shall be standard procedure to publish the fact of an interim suspension, Public Letter of Admonition, suspension, revocation or permanent bar issued pursuant to Article 4, together with identification of the CFP® professional in a press release and on CFP Board's website. In the event proceedings pursuant to Article 14 result in a Public Letter of Admonition, suspension, revocation, or otherwise result in a termination of the right to use the marks, it shall be standard procedure to publish such fact together with identification of the Respondent in a press release and on CFP Board's website.

18.7 Anonymous Case Histories and Sanction Guidelines

Anonymous Case Histories are available through CFP Board's website. Anonymous Case Histories are summaries of prior decisions rendered by the DEC. While the Anonymous Case Histories may be relied on by the DEC during hearings and deliberations, the Anonymous Case Histories are not binding on the DEC.

The DEC considers all allegations of misconduct on a case-by-case basis, taking into consideration the details specific to each case. While CFP Board has attempted to capture in the Anonymous Case Histories the details relevant to each DEC decision, the summary nature of an Anonymous Case History may omit certain details affecting the decision. Accordingly, the decisions and/or rationale described in the Anonymous Case History may not apply to other cases reviewed by the DEC or reflect the DEC's future interpretation or application of the *Standards*.

The Sanction Guidelines identify specific conduct that is a violation of CFP Board's *Standards*, the sanction guideline for that conduct and policy notes for the DEC to consider when imposing the appropriate sanction. The DEC is not bound by the Sanction Guidelines, which are intended, along with the Anonymous Case Histories, to

guide the decision making of the DEC. When considering the appropriate sanction in a particular case, the DEC may deviate from the sanction guideline if there are aggravating facts that warrant a more severe sanction or mitigating factors that warrant a less severe sanction.