

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR CLAY
COUNTY, FLORIDA

CASE NO.:

DIVISION:

JEFFREY M. CAMARDA AND
KIMBERLY K. CAMARDA, individuals,

Plaintiffs,

vs.

CERTIFIED FINANCIAL PLANNER
BOARD OF STANDARDS, INC., a
corporation organized and existing
under the laws of the State of Colorado,

Defendant.

NOTICE OF FILING AFFIDAVIT OF JEFFREY M. CAMARDA

NOTICE IS HEREBY given that Plaintiffs Jeffrey M. Camarda and Kimberly K. Camarda
are filing the Affidavit of Jeffrey M. Camarda.

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By

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CAMARDA AND KIMBERLY K. CAMARDA

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AFFIDAVIT OF JEFFREY M. CAMARDA

STATE OF FLORIDA
COUNTY OF CLAY

BEFORE ME, the undersigned authority, personally appeared Jeffrey Camarda who,
being by me first duly sworn, deposes and says:

1. My name is Jeffrey M. Camarda and I have personal knowledge of all matters
contained herein unless specifically indicated to the contrary. I am over the age of 18 and am
competent to make this Affidavit.

2. I am a Managing Member of Camarda Financial Advisors LLC f/k/a Camarda
Financial Advisors, Inc. ("Camarda Advisors") and of Camarda Consultants, LLC ("Camarda
Consultants"), (collectively, "Camarda Companies"). In my various positions with the Camarda
Companies, I am familiar with the business, professional practices, operations, and records of
the Camarda Companies for all times material.

3. My wife, Kimberly Camarda ("Kim Camarda"), is also a Managing Member of
Camarda Financial Advisors and a Manager of Camarda Consultants.

A. Background of the Camarda Companies

4. Camarda Advisors is a Florida limited liability company which was originally formed in 1992 as a Florida corporation. Camarda Advisors was converted to a limited liability company in 2009. Camarda Advisors provides fee-only investment management services to its clients across the United States, and primarily in the Southeast, with a concentration of clients in Florida.

5. Camarda Consultants is a Florida limited liability company formed in 2007. Camarda Consultants is a licensed insurance agency and financial consulting firm providing business planning, tax, estate planning, insurance, and other non-investment-advisory services to its clients for both fees and commissions. Camarda Consultants is a small company that has never produced substantial revenue as compared to our primary business, Camarda Advisors. Neither I nor Kim Camarda has ever received "compensation" from Camarda Consultants (as that term is utilized in the applicable Rules discussed herein); it has never earned a profit.

6. Since their respective inceptions, Camarda Advisors and Camarda Consultants are and have always been two separate and distinct legally formed and organized entities under Florida law. Camarda Consultants employs 1099 licensed insurance agents or brokers who sell insurance policies on a commission basis. Camarda Advisors does not and never has. Camarda Consultants is separately licensed as an insurance agency with the State of Florida. Camarda Advisors is not and never has been. Moreover, Camarda Advisors has only ever provided "fee-only" investment services. Camarda Consultants has never advertised itself as providing "fee-only investment" services.

7. Similarly, Camarda Advisors and Camarda Consultants maintain separate corporate filings with the Florida Secretary of State, file separate state and federal tax returns, and, at all relevant times, Camarda Consultants and Camarda Advisors have maintained separate websites, advertising, and personnel. At all relevant times, Camarda Advisors's

website has represented that Camarda Advisors provided "fee-only" investment services and offered no other services

8. Likewise, Camarda Advisors's Form ADV Part II also states that Camarda Advisors provides "fee-only" investment services to clients. In addition to the Form ADV (which satisfies SEC disclosure requirements), every current and former client of Camarda Advisors and/or Camarda Consultants receives a written disclosure statement regarding the services provided by each separate entity and the compensation each entity might receive for its services. All prospective Camarda Consultants clients, including Camarda Advisors clients, were and are required to sign this statement.

9. Thus, the Camarda Companies's disclosure statement provides a clear explanation to clients and potential clients that only Camarda Consultants sells insurance products on a commission basis, and that any business relationship with Camarda Consultants is a separate and distinct relationship from any with Camarda Advisors. This process makes it impossible for any prospective or existing client to be misinformed as to the separate and distinct nature of and compensation received by Camarda Consultants and Camarda Advisors.

B. Use of the Certified Financial Planner Mark

10. In 1992, I was granted the right to use the CFP® (Certified Financial Planner) certification mark by the Certified Financial Planner Board of Standards, Inc. ("CFP Board"). In 2000, Kim Camarda was granted the same right.

11. I use my CFP certifications and marks in the course of our business operations with Camarda Advisors. Although Kim Camarda holds a CFP certification, she is not a CFP practitioner. Rather, her role with Camarda Advisors is more of an executive and administrative role. She does not service clients, do financial planning, or dispense investment advice to clients. Other than her formal designation as a "Manager" for purposes of LLC Florida registration, Kim Camarda has absolutely no involvement in Camarda Consultants whatsoever.

12. The CFP Board is a private organization which grants CFP® certifications and CFP® marks to individuals, such as Kim Camarda and me, who meet the CFP Board's required standards for competent and ethical personal financial planning. The CFP Board is a non-profit corporation which derives virtually all of its considerable revenue from the manufacture and licensing of the CFP® professional service trademark.

13. The CFP Board holds itself out on its own website as a "public service" organization with its supposed "mission" being "to benefit the public by granting the CFP® certification and upholding it as the recognized standard of excellence for competent and ethical personal financial planning." To that end, the CFP Board requires individuals who utilize the CFP® mark to abide by the CFP Board's standards of professional conduct and practices specified in the Board's Code of Ethics and Rules of Conduct.

14. The CFP Board maintains Disciplinary Rules and Procedures ("Rules") to investigate any alleged violations of its rules, and to enforce its code of ethics and professional responsibility. The Rules provide a process by which CFP certificants are given notice of potential Rules violations and furthermore establishes the written procedures to investigate and discipline its members for any supposed violations – all with specific requirements to provide proper notice and an opportunity to be heard to any certificant accused of Rules violations. A true and correct copy of the Disciplinary Rules and Procedures is attached hereto as Exhibit A.

C. Anonymous Disgruntled Competitor's "Complaint" to the CFP Board

15. According to the CFP Board, on February 1, 2011, it received an anonymous "complaint" from one of our local business competitors wrongly alleging that Camarda Advisors purportedly made misrepresentations to clients in violation of the CFP Board's Code of Ethics by advertising that Camarda Advisors provided "fee-only" investment services when it supposedly also provided non-"fee-only" services too.

16. On March 8, 2011, the Board began an investigation of these allegations and notified us about it. In response, we immediately provided CFP Board with all information

requested, including tax returns, financials, leases, payrolls, disclosure documents, and other requested material. During its investigation, however, the CFP Board apparently did nothing else, i.e., it gathered no other additional evidence, interviewed no clients, or performed any further investigation into the veracity of the "complaint" other than requesting the documents that we expeditiously provided to it.

17. The sole basis that the CFP Board ever identified as a so-called "violation" of the Rules was that Camarda Advisors's advertisements describing itself as a "fee-only" entity constituted a misrepresentation to clients or prospective clients because the CFP Board had unilaterally determined that Camarda Advisors and Camarda Consultants were supposedly "functionally one entity" (as the CFP Board construed its Rules) and because Camarda Consultants -- a separate and distinct corporate entity from Camarda Advisors at all times -- also provides services to its own distinct customers that are commission based, Camarda Advisors could not advertise as "fee-only."

18. Solely on these purported grounds, on December 14, 2011, the CFP Board sent us a conclusory, unsupported "finding of fact" unilaterally advising that Kim Camarda and I had allegedly violated Rule 2.1 and 6.5 of the Code of Ethics and indicated that it was going to impose discipline on both of us as set forth in the Rules. Because there was no basis to any of these so-called "violations," we immediately invoked our right to a hearing to contest and dispute the Board's actions rather than accept any such unjustifiable discipline.

19. Even though we had committed no such violations or purported "misrepresentations" to our clients and viewed the CFP Board's allegations otherwise as meritless, we nonetheless in the spirit of compromise and in order to attempt to address the CFP Board's concerns, we immediately without having or being asked to do so amended Camarda Advisors's marketing materials to remove the phrase "fee-only investment management," which appeared to be the CFP Board's only complaint, and submitted the term

"fee-based" which they preferred. Despite these efforts to resolve the dispute, the CFP Board insisted on proceeding forward to a full hearing on the complaint.

D. The CFP Board Hearing and Utter Lack of Evidence of Rules Violations

20. During the hearing, it was patently obvious that the CFP Board did not conduct a proper and diligent investigation of the baseless "complaint" against Kim Camarda and me, and did not intend to. Worse, the CFP Board failed to present or even consider any evidence as to whether Camarda Advisors and Camarda Consultants were, in fact, separate entities and whether any clients of Camarda Advisors or Camarda Consultants had actually been misled.

21. In fact, during the disciplinary hearing, the CFP Board conceded that it never spoke to any of the clients of Camarda Advisors or Camarda Consultants in conducting its investigation of the allegations. Moreover, the CFP Board failed to present any evidence that:

- a. any of the clients of Camarda Consultants or Camarda Advisors had been misled;
- b. there was any revenue sharing between Camarda Advisors and Camarda Consultants which would support the CFP Board's claim that they were one entity;
- c. Camarda Advisors ever provided services in any manner other than "fee-only";
- d. demonstrated that Camarda Consultants ever advertised itself as a "fee-only" entity;
- e. any current or former clients of Camarda Advisors misunderstood that Camarda Advisors was a separate and distinct entity from Camarda Consultants and that Camarda Advisors provided "fee-only" services; or
- f. either Kim Camarda or I ever received any direct or indirect compensation for non- "fee-only investment management" services as would be required

per the CFP Board's own Rules for their "fee-only" definition to not be met.

22. In further disregard of our due process rights to a fair hearing, none of the members of the Board's hearing panel exhibited any shred of competent knowledge or a proper understanding of the applicable Code of Ethics and the Rules promulgated by the CFP Board to even begin to apply them fairly and justly to Kim Camarda, me, and our business.

23. Although the CFP Board's own Rules in Section 2.2 of the Rules of Conduct explain the express disclosures to clients required by the CFP Board to satisfy Section 2.1 (prohibiting misleading disclosures), the CFP Board utterly ignored all of Section 2.2 in its entirety and clear evidence that we presented demonstrating Kim Camarda and I were fully compliant with each of the specific disclosure requirements of Section 2.2. In fact, we provided detailed information establishing that the Camarda Companies provided disclosures and details of their structure, operations, and relationship going well beyond Section 2.2 or common CFP industry practice for that matter – all of which the CFP Board ignored.

24. Further, the Board's "prosecutor" for the hearing misstated the applicable rules and other material facts, and the panel relied on him as their sole guiding authority despite his clear adversarial status in the proceeding. (It has apparently been the CFP Board's practice since 2008 when a new CEO took over that its prosecutorial agents attend meetings of its Disciplinary Commissioners and advise them as they "find fact" and determine disciplinary action).

25. The CFP Board further ignored other applicable rules demonstrating our compliance with the CFP Board's ethical standards and which explained and interpreted the meaning of the supposed rules we were accused of violating. For example, they ignored Rules 1.2, 1.3, 2.22, 2.2, and 4.3, as well as the CFP Board's January 2007 pronouncement that its "fee-only" definition specifically excludes "related parties" (such as the Camarda Companies). Rather, the CFP Board ignored their own governing rules, fashioned their own definition of

terms in reliance on outdated and superseded rules, and applied them to us without regard to and in direct contravention of its own newly defined terms.

26. At no time during the hearing did the CFP Board or hearing panel use or follow specific procedures identified in the Rules to analyze the facts of the case to reach a fair, logical, and procedurally consistent conclusion of any sort. Despite the lack of evidence of any wrongdoing or violation of any of the ethics rules, on March 30, 2012, the Board issued an Order finding that I and Kim Camarda had violated Rule 2.1 and 6.5 of the CFP Board's Code of Ethics. The sole basis for this finding was supposedly based upon the CFP Board's "conclusion" that Camarda Advisors and Camarda Consultants were functionally one "practice" (despite their clear and careful bifurcation and separation in order to avoid any such misunderstanding) pursuant to the "fee-only" definition established by the Rules of Professional Conduct for a CFP mark holder. Therefore, the CFP Board held that Camarda Advisors cannot represent itself as providing fee-only services when Camarda Consultants also receives insurance commissions.

27. Yet, the CFP Board presented no evidence (and could not) to establish I or Kim Camarda ever received any "non-fee" compensation, a critical element of the fee-only definition. In addition, the term "practice," although used extensively in the Rules, was defined and applied for the first time in the context of the disciplinary hearing against us and, worse, then given retroactive effect by the CFP Board as applied to us. This manufactured and extremely broad new definition of what may constitute the "practice" of "financial planning" is a hopelessly vague and unsupported interpretation of the Rules and any such definition lends itself to unfair manipulation of and inconsistent application to us as well as CFP® mark holders. Application of the newly-defined term "practice" to us as a basis for sanctions is further inherently unfair as we were not given notice of this new definition and provided an opportunity to correct any alleged non-compliant behavior.

28. The CFP Board further failed to recognize conflicts of interest among its own hearing officers and governing Directors. Evidence was presented during the extensive proceedings which demonstrated at least two of the hearing officers had done the same thing as we had that served as the basis for the Board's accusations against us, but they were neither disqualified from acting as decision as members of the hearing panel or sanctioned as we ultimately were by the CFP Board's so-called "decision."

29. In connection with its decision, the CFP Board has stated it intends to issue a Public Letter of Admonition which would allege we violated certain of the Rules ("Public Letter"). It also states that it will publish this Public Letter on the CFP Board website as well as in a press release to local and perhaps other newspapers and publications.

E. The Appellate Board's "Rubber Stamp" of the So-Called "Violations"

30. Once we received the CFP Board's decision concerning the Public Letter, Kim Camarda and I timely appealed to the CFP Board Appeals Committee as permitted by the Rules. On January 3, 2013, however, the CFP Appellate Panel "rubber stamped" the decision of the CFP Board by concluding – without offering any explanation or reasoning for doing so – that the disciplinary panel below had made no errors in enforcing or interpreting the applicable code of the CFP Board. In affirming the decision, the Appellate Panel improperly accepted the definition of terms, including the term "practice," which were used to prosecute us and which had not been defined prior to the date on which we were charged with violating the CFP Board's Code of Ethics.

31. In addition, the Appellate Panel improperly confirmed the decision of the Disciplinary Panel despite the absence of proof demonstrating either actual confusion by clients or the potential for confusion, or the receipt of non-fee compensation, and in the absence of precedent to support the level of discipline levied by the disciplinary panel. (In the past, the Board typically would contact a certificant and instruct them to stop using the term "fee-only" before conducting an investigation or disciplinary proceeding). Worse, evidence was presented

to the CEO of the CFP Board at the appeals hearing demonstrating commissioners of the CFP Board had engaged in the same conduct purportedly constituting Rules violations; this evidence was entirely ignored.

32. The severe sanction evidenced by the Public Letter was further inappropriate and unorthodox because my wife and I do not have a previous disciplinary record with the CFP Board, nor had we suffered a professional suspension by any other regulatory authority. The unorthodox sanction is further unwarranted as the alleged "offending" conduct the sanction is intended to address was previously unilaterally and voluntarily addressed by us at the beginning of the complaint process by removing the phrase "fee-only investment management" from marketing materials. Nothing further is gained by publication of the Public Letter.

33. The CFP Board has indicated its intention to publish the Public Letter on the Internet and in local newspapers on or about January 22, 2013. Any such publication of the Public Letter will have an immediate, severe, and permanent adverse impact on the good reputation and revenue of the Camarda Companies, Kim Camarda, and me.

F. The Camarda Companies's Valuable Business Reputation

34. The key to any successful investment or financial business is trust and a good reputation. This is especially true for referral business because referral clients are extremely sensitive to their own reputational risk and they will not refer their clients to another person or company if they are concerned that the reputation of the individual referring to them might reflect adversely on their own. This is all the more critical so for professional referrers such as attorneys and CPAs, with whom we have established an excellent reputation.

35. Approximately 80% of my business relies on referrals from other certified public accountants, attorneys, and TD Ameritrade representatives.

36. Indeed, after extensive and annual reputational and competency investigations, Camarda Advisors has been designated as an "Elite Advisor" by TD Ameritrade. As a result of such designation, TD advisors in 20 offices across 5 states refer clients to Camarda Advisors.

37. As with referral clients, our ability to service our existing clients is based on trust and a good reputation. Our existing clients trust that we are providing them quality services and they rely on our reputation in choosing and staying with our company for their financial and other needs. Our ability to gain new or prospective clients is also based on our good reputation. Prospective clients will generally search the Internet to determine our reputation and what other customers have said about our business operations before deciding whether to use our services.

38. My wife and I have spent over 20 years building a good reputation and trust with my clients and referral contacts. As a result of our good reputation, Camarda Advisors is a Paladin Honor Roll "5-Star Advisor," has obtained an "A+ Accredited Business" rating from the Better Business Bureau, and has been designated as a Premier Advisor by the National Association of Board Certified Advisory Practices, as well as passing TD's rigorous quality screen for inclusion in its multi-state referral program. We have been repeatedly named as one of America's top advisors by several magazines, and I was personally named as one of the nation's "Top 250" advisors by WORTH magazine the last time they conducted an objective survey.

G. Severe and Immediate Harm to Business Reputation and Revenue

39. The CFP Board's Public Letter, if published, will severely impact the Camarda Companies's and our good professional reputations by misrepresenting that we did not comply with certain ethical standards of conduct. If the Public Letter is published on the Internet and in print media, the harm to our business and reputation will be immediate, severe, and permanent as it suggests that we violated ethical standards of conduct.

40. As the proper management of clients and their investments as well as adhering to high ethical conduct are cornerstones to the reputation and success of an investment business, any suggestion that I, Kim Camarda, or our companies have allegedly failed to adhere to such standards will result in an irreversible impact on our reputation and revenue. Such a

reputational impact caused by the Public Letter will put our "5-Star Advisor," "A+ Accredited Business," "Premier Advisor," and other ratings in jeopardy.

41. In addition, as a result of such reputational impact, TD Ameritrade advisors and other referral clients will likely cease referring clients to us and Camarda Advisors as they will not want to risk their reputation by being connected with us or another entity that has been admonished for alleged ethical violations. As this referral aspect of our business comprises 80% of our client base, the impact on our revenues will be immediate and severe.

42. Our relationships with existing clients are also likely to be severely and immediately impacted with the publication of the Public Letter. If the Public Letter is published, our local competitors, including the one who initiated the complaint, perhaps with this in mind, who are always trying to lure our clients to their firms, will use the Public Letter and its associated reputational impact to convince our clients to leave our company and use our competitors' services.

43. Furthermore, our ability to gain prospective clients is likely to be severely, immediately, and permanently impacted with the publication of the Public Letter on the Internet. Once something is published on the Internet, it exists and can be found forever. It is almost impossible to remove something from the Internet once it is published.

44. We have spent at least \$800,000 investing in marketing leads across the southeast United States. Prospective clients gained through this marketing effort typically check the Internet for information about our company and business before accepting or scheduling a meeting with our advisors. A damaging press release by the CFP Board on the Internet suggesting we have violated certain ethical standards will materially compromise the value of our marketing efforts and significantly affect the income of our marketing and sales representatives and the ability to obtain new clients.

45. The loss of any or all of our existing, referral, and prospective clients will cause an immeasurable decrease in revenue and goodwill and, as a result, will not only derail our

expansion and related business plans, but may cause workplace disruption at our businesses, which employ at least 15 individuals from the local community. Put simply, the negative impact the Public Letter will cause irreparable damage to our business reputation, goodwill, and revenue stream.

H. Harm to Other Financial Certifications and Designations

46. In addition to holding the designation for a Certified Financial Planner (CFP), I and Kim Camarda also hold other financial services designations. Specifically, I have earned designations as a Chartered Financial Consultant (ChFC), Chartered Life Underwriter (CLU), Chartered Financial Analyst (CFA), and Certified Fund Specialist (CFS). Kim Camarda has earned the designations of CFP, ChFC, and CFS.

47. I am a licensed Real Estate Agent and Licensed Insurance Broker and am a Real Estate Broker candidate sitting for exam in a few weeks. Kim Camarda does not hold any insurance or real estate licenses.

48. I and Kim Camarda are also Board Certified in Mutual Funds (BCM).

49. I am also an Enrolled Agent (EA) and a member of the National Ethics Bureau, and the National Association of Enrolled Agents.

50. In addition, I am currently a candidate for a Master of Science in Financial Services (MSFS) and Kim Camarda is a candidate for the Chartered Market Technician (CMT) designation and IACCP (Investment Adviser Certified Compliance Professional) designations.

51. Each of the above designations required extensive examinations and capital outlay for education courses. These designations also have strict ethical and conduct standards that must be adhered to by certificants and designees.

52. If the CFP Board's Public Letter is permitted to be published on the Internet and in print media, my and Kim Camarda's other financial services designations will be placed in immediate jeopardy as any disciplinary action taken by the CFP Board, regardless of merit, will trigger immediate investigations by each of the boards for the above designations.

53. Moreover, any disciplinary action by one financial services designation board, such as the CFP Board, can disqualify me from other financial, insurance, or banking designations that are or may be necessary in my chosen field of business, as well as possibly requiring regulatory filings (including to SEC) that may be adverse to our business.

54. Furthermore, any disciplinary action by one financial services designation board, such as the CFP Board, can also disqualify me from participation in certain business groups and committees that are crucial to establishing reputational good will, a client base, and a referral base.

55. For example, I am currently a member of the Jacksonville Estate Planning Council which is comprised of attorneys, certified public accountants, and financial planners who practice in estate planning. Publication of the CFP Board's sanction will likely bar me from effective participation in this Estate Planning Council.

56. In a few months, I will also qualify for designation as Accredited Estate Planner (AEP) based on my experience and continuing graduate education in estate planning. Publication of the CFP Board's sanction will disqualify me as a candidate for the AEP designation for five (5) years.

57. In addition, I am active in a variety of non-profit activities that may be impeded by damage to my reputation. I am the founding Chairman of Junior Achievement of Clay County, sit on Committees for St. Vincent's Hospital Foundation, the North Florida Council of the Boy Scouts of America, and other organizations, and am a current nominee for the Boy Scout Board and the Clay County Economical Development Council. Besides damage to my business, unjust action by CFP Board will damage my ability to serve the community as well.

FURTHER AFFIANT SAYETH NOT

JEFFREY M. CAMARDA

Sworn to and subscribed before me
this 14th day of January, 2013

Martha Lucia Smith
Notary Public, State of Florida

[print name] Martha Lucia Smith

My Commission Expires: 03/15/2015

Commission No.: EE071791

☒ Personally known

☐ Produced identification

Type of identification produced: _____

(NOTARIAL SEAL)



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EXHIBIT A



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 as defined in the DEC Charter.

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, 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.