

December 3rd, 2023

To: CFP Board Commission on Sanctions and Fitness; Leo Rydzewski, Dan Moisand, CFP®, and Kevin Keller, CAE

Comments on Proposed Revised Sanction Guidelines

Thank you for the opportunity to comment on the proposed updates you put forth and let me also thank you for your service. You spend significant time away from your daily work and family, and I'm grateful to you for this. As a volunteer to CFP Board in several capacities, I fully understand the personal time you are spending. Again, thank you!

I'm passionate about these Guidelines because I've been a volunteer to CFP Board in each iteration (Chair of the Disciplinary & Ethics Commission (DEC) in 2012, Commissioner on the Commission on Standards in 2016-18, and serving as a DEC Commissioner again in the 2020-time frame). The DEC historically has walked the line of "the bad people get public discipline; the good people get a slap on the wrist and private censure or dismiss with caution". This updated work product is a shift to a more public, potentially harmful outcome to many CFP® Professionals – and plainly, I disagree with the decision to move to this more draconian stance.

Under the current 37 Sanction Guidelines there are 7 (19%) for Private Censure, 19 (51%) for Public Censure, 8 (22%) for Suspension and 3 (8%) for Revocation. Under the Proposed Sanction Guidelines there are a total of 51 with 2 (4%) for Private Censure, 13 (26%) for Public Censure, 25 (48%) for Suspension, and 11 (22%) for Revocation. **If these Sanction Guidelines are approved by CFP Board's Board of Directors, the Disciplinary Ethics Commission (DEC) will deal with life altering and reputational harm in about 70% of cases.** What do you believe will happen – that CFP Board litigators will encourage the DEC to depart from the Sanction Guidelines

on a downward basis? What if you were in the Respondent's place – how would you want the DEC to act?

Where will the opportunity be for mitigating factors to reach a Private Censure when you start from Suspension or Revocation? It will not serve the public to do irreparable harm to good CFP® Professionals caught in a bad fact pattern. There are gray area cases, and I've seen them occur – dozens of times, in dozens of cases – where our Commission had to decide whether it rose to public discipline. You are taking that decision largely out of the DEC's hands.

Proposed Revised Sanction Guidelines

Breach of Fiduciary Duty (Standard A.1) – The sanction of “revocation” is beyond punitive. Every cause of action from any regulator, self-regulatory organization, or plaintiff's attorney will begin with “breach of fiduciary duty”. Public Censure is a better place to start.

The Commission on Standards volunteers never intended for a Fiduciary Standard when providing financial advice to be a weapon against respondents. An example of this is when a violation of fiduciary duty charge is combined with CFP Board's Procedural Rule 7.2. I'm hopeful you have covered this during your Commission meetings, but please do re-read it. Procedural Rule 7.2 states that a settlement - which nearly every firm will push for - is not a presumption but a CONCLUSION of guilt, even though the settlement indicates no admission of guilt exists.

When 7.2 was put in place in the early 2010's, it was at a time when CFP Board attorneys did not advocate for outcomes in cases. Further, CFP Board did not have nearly the resources (that it does have now) to investigate cases independently.

Allegations are made, cases are settled by firms, and often the CFP® Professional will have no say-so over this. They likely won't know what's coming either.

A settlement – admitting no wrongdoing – will lead to the DEC being **forced** by the Procedural Rule to accept that the Respondent is guilty of a violation of fiduciary duty. The violation under the proposed Sanction Guidelines will lead to a Sanction of Revocation – and the Respondent won't have any recourse against CFP Board after the Camarda case outcome in Federal Court, where the Federal Court in essence said, "We won't interfere with a certifying body's rules."

Further, CFP Board prosecutors will use this updated Fiduciary Standard to claim a violation of Fiduciary Duty I'd wager in 85%+ of cases, because it's when providing financial advice that you've violated it. It will be all but impossible to depart from the sanction – because that's what PR 7.2 says. It's conclusive.

CFP Board prosecutors will use this to win public cases – that's their job, and what CFP Board pays them to do. Please think about that carefully.

In my opinion, this playing out as I've described would be unethical and either Breach of Fiduciary Duty must start from a much lower sanction, OR PR 7.2 must go away.

Many CFP® Professionals' careers and lives will be harmed – and you're giving them the authority to do it (with ultimate signoff from the Board of Directors – but it's in the hands of your Commission now). I'd ask, are you truly confident that more draconian outcomes would truly serve the public interest?

I'll touch on the other items I see briefly:

Lack of Integrity – same as above

Lack of Diligence – same as above

Failure to Disclose or Manage Conflicts of Interest – same as above

Failure to Exercise Sound and/or Objective Professional Judgement -this feels like a “piling on” conduct as it really is not fulfilling one’s obligation to act as a fiduciary and a lack of diligence.

Violations of Law, Rule or Regulation Governing Professional Services – I like the way this is phrased as the proposed sanction guideline. Maybe use this logic in more situations.

Unauthorized Outside Business Activity – when done intentionally, I have no issue with Public Censure, but often it is something simply overlooked. Generally, the regulator is going to slap one on the wrist, not create a Public Censure over it – should we?

Violation of Duty when Recommending, Engaging, and Working with Additional Persons – this should be a public censure.

Violation of Financial Planning Practice Standards – public sanction, not suspension – again this feels like it would occur in many situations that do not rise to the level of suspension.

Bankruptcy – One – this feels way too harsh. Yes, there are mitigating circumstances listed, but just feel it is too severe for the first time.

Inaccurate Submission of Request for Continuing Education Credit – should be public at most. Where is the harm to the client?

Misuse of CFP Board Marks – censure because I forgot a TM or registered mark? Please change this.

In short, the sanction guidelines are too strict in many situations. They are much more harsh than what a regulator would hand out in most situations. Maybe that is the intent, but if it is, I urge you to reconsider. It is easier for the DEC to aggravate up one or two sanctions, than it is for the DEC to mitigate down one or two sanctions. I can hear it now, “But the sanction guidelines say suspension/revocation, how can you step back down to a

lower sanction?" Revocation and suspension should be for the most egregious situations, not the standard.

Once again, thank you for your hard work and the opportunity to comment.

Respectfully,

Chris Beard, CFP[®], CPFA[™]