September 28, 2023

As a former Disciplinary and Ethics Commission Member, and Chairman of the DEC in 2011, let me first state that I appreciate the work and effort in reviewing our Sanction Guidelines. However, I'm very dismayed at the outcome of this review. It is clear that this commission could have greatly benefitted from more former DEC members who have actual, and not theoretical, experience in hearing disciplinary cases.

Overall, its troubling to see practically every category moving up to Suspension and Revocation. These should not be the starting point for sanction guidelines. Especially for a body that can do little actual investigation and relies on other actual regulatory body's findings as their basis for adjudication.

The most troubling sanction guideline is Revocation for breach of fiduciary duty. With the expanded CFP Board definition that ALL financial advice (save for unsolicited stock trades) is considered fiduciary -- including the development of a financial plan, investment policies and strategies, management of financial assets and other financial matters, and selection of outside professionals to advise client in related manners – this brings into scope a whole host activities that would not warrant revocation as a starting point. And when Procedural Rule 7.2 Professional Discipline is incorporated, which states that any settlement agreement is essentially proof of guilt, many advisors would be put into jeopardy of revocation.

A common scenario would be: a CFP professional enters into a FINRA settlement agreement with a client for a dispute on the selection of an investment and its lack of performance. Under CFP rules this is breach of fiduciary duty, and by settling the CFP is admitting guilt. CFP Board runs their FINRA scan, picks up the settlement and then dutifully charges the CFP with breach of fiduciary duty of which guilt already assigned and the recommendation is revoke. Theoretically, there is opportunity for mitigating factors, but from personal experience of four years on the DEC, CFP counsel is in our ears strongly advocating to stay with the sanction guidelines and only rare exceptions should we deviate.

Client disputes that result in settlements are quite common in our industry. The fact that one settlement could very realistically lead to revocation, and the reputational and financial impact that would have on an advisor should put a serious question in every CFP professional's mind -- is holding this designation really worth it? More importantly is the public really well served and benefited from revoking CFPs for all the items that fall under the giving of financial advice?

CFP Board has already won the battle of being the designation of choice and most active quasi-regulator. Don't hamstring the DEC with artificially inflated guidelines that don't allow for thoughtful and nuanced outcomes.

Edward Mora, CFP
2011 DEC Chairman