

## PROCEDURAL RULES

CFP Board is accepting comments on the following proposed revisions to its *Procedural Rules* from November 11 through December 14, 2021. All comments submitted to CFP Board on or before December 14, 2021, will be posted on the CFP.net website with the name of the commenter and date submitted.

Submit a comment at [CFP.net/ProceduralRulesComment](https://www.cfp.net/ProceduralRulesComment)

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## PREAMBLE

CFP Board is a non-profit organization that has established high standards of competency and ethics for personal financial planners for the benefit of the public. CFP Board enforces its standards through a peer-review process set forth in these *Procedural Rules* that is credible to the public and fair to those whose conduct CFP Board is evaluating. The process includes written notice of the allegations and potential grounds for sanction, an opportunity to present documents, witnesses, and argument at a hearing, and a written order that sets forth the basis for the decision that may be appealed within CFP Board. ~~to a committee of the Board of Directors.~~ The parties to a proceeding also have the right to be represented by counsel of their choice.

CFP Board applies these *Procedural Rules* to any person who has agreed to CFP Board's *Terms and Conditions of Certification and Trademark License* or *Pathway to CFP® Certification Agreement*. CFP Board refers to such an individual as "Respondent" or, in the event of an appeal, as either "Appellant" or "Appellee," depending on who initiates the appeal.

CFP Board Counsel (a term, as used in the *Procedural Rules*, that includes CFP Board staff operating at the direction of CFP Board Counsel) has the authority to investigate and file a Complaint against a Respondent for alleged violations of (a) the *Code of Ethics and Standards of Conduct* or, where applicable, its predecessors, including the *Standards of Professional Conduct* ("*Code and Standards*"), or (b) the *Pathway to CFP® Certification Agreement*. CFP Board's Disciplinary and Ethics Commission (the "DEC"), which is composed of CFP® professionals and members of the public, has the authority to issue a final order that finds facts, determines whether a violation has occurred and, where appropriate, imposes discipline in the form of a sanction. Such a sanction may include, but is not limited to, a private censure, a public censure, a suspension or revocation of a CFP® professional's Certification and License to use the CFP® marks, or a temporary or permanent bar on Respondent's ability to obtain CFP® certification. In the event there is a public sanction, CFP Board will publish the decision in a press release and on CFP Board's website.

In certain circumstances, a Respondent who is subject to an order of suspension may file a Petition for Reinstatement, and a Respondent who is required to demonstrate fitness for CFP® Certification may file a Petition for Fitness Determination. In those circumstances, CFP Board Counsel has the authority to investigate and the DEC has the authority to issue a final DEC order that resolves the Petition.

Except where these *Procedural Rules* otherwise specify, CFP Board Counsel or Respondent may appeal a final DEC order to CFP Board's Appeals Commission. ~~Code and Standards Enforcement Committee of the Board of Directors.~~ The Appeals Commission ~~Code and Standards Enforcement Committee~~ is composed of CFP® professionals and members of the public and has the authority to issue CFP Board's final decision.

## ARTICLE 2: INTERIM SUSPENSIONS

An interim suspension is a suspension of a CFP® professional's Certification and Trademark License during the pendency of proceedings. An Order of Interim Suspension is a temporary sanction and does not preclude CFP Board from imposing a final sanction.

### 2.1 Grounds for Interim Suspensions

a. **Discretionary Interim Suspension**

1. CFP Board Counsel may deliver a Motion for Interim Suspension Order to Respondent, together with a proposed Order granting the Motion for Interim Suspension Order. The Motion for Interim Suspension Order must identify the current members of the DEC, request a hearing date, and request expedited pre-hearing deadlines. Respondent must file a response to the Motion for Interim Suspension within 14 calendar days of delivery of the Motion for Interim Suspension, or at such other time as the Chair of the DEC directs. CFP Board Counsel may file a reply to Respondent's response within 7 calendar days of delivery of the response, or at such other time as the Chair of the DEC directs.
2. A Hearing Panel will consider the Motion for Interim Suspension Order. The Chair of the DEC must determine whether to hold a hearing on the Motion for Interim Suspension. The Hearing Panel may hold a hearing in person, by telephone, or by video conference. If the Chair of the DEC decides to hold a hearing, then the Chair of the DEC must issue to Respondent and CFP Board Counsel a Notice of Hearing that provides the date, place, and time of the hearing. Respondent, Respondent's counsel, witnesses, and experts may appear in person or by telephone or video at any in person hearing, and by video or telephone at any video hearing. The Notice of Hearing also must set deadlines for filing the documents that the parties intend to introduce at the hearing, identifying witnesses, and submitting agreed-upon written stipulations of fact that will be binding on the parties to the stipulation. The Hearing Panel may proceed with the hearing if either Respondent or CFP Board Counsel fails to appear at the date, time, and place established for the hearing.
3. The Hearing Panel must grant the Motion and issue an Interim Suspension Order to Respondent and CFP Board Counsel if the Hearing Panel determines that CFP Board Counsel has demonstrated by a preponderance of the evidence that Respondent's conduct poses a significant threat to the public or significantly impinges upon the reputation of the profession or the CFP® certification marks. A preponderance of the evidence is a standard of review that means "more probable than not," *i.e.*, evidence which shows that, as a whole, the matter sought to be proved is more probable than not to have occurred.

b. **Automatic Interim Suspension:** CFP Board Counsel, without action by a Hearing Panel or the DEC, may deliver an Interim Suspension Order if Respondent:

1. Is the subject of a misdemeanor Criminal Conviction, or a felony Criminal Conviction, as defined in Article 7.1, for fraud, theft, misrepresentation, violence, or a crime of moral turpitude;
2. Is the subject of a Civil Finding, as defined in Article 7.3, that Respondent engaged in fraud, theft, misrepresentation, violence, or an act of moral turpitude;
3. Is the subject of Professional Discipline, as defined in Article 7.2, that resulted in a revocation, bar, or equivalent sanction;
4. Voluntarily terminates or surrenders a financial professional license or registration while Respondent is the subject of a Regulatory Investigation; or
5. Consents to the entry of an Interim Suspension Order.

c. **Delivery of Interim Suspension Order:** The DEC must issue the discretionary Interim Suspension Order to Respondent. CFP Board Counsel must deliver the automatic Interim

Suspension Order to Respondent.

- d. **Term of Interim Suspension Order:** An Interim Suspension Order will remain in place until the DEC or, if an appeal is filed, the ~~Appeals Commission Code and Standards Enforcement Committee~~ issues a final order.
- e. **No Appeals of Interim Suspensions:** An Interim Suspension Order and an Order deciding a Petition to Vacate an Interim Suspension Order are not subject to appeal under Article 15.

## ARTICLE 8: SETTLEMENT PROCEDURE

### 8.2 Required Content of Proposed Consent Order

- a. **Resolution of Investigations or Complaints.** The Settlement Offer must be in the form of a proposed Consent Order that contains and describes in reasonable detail:
  1. The findings of fact and grounds for sanctions to which Respondent consents;
  2. Any mitigating and/or aggravating factors relevant to the Settlement Offer;
  3. A statement identifying the form of sanction to be imposed;
  4. The content of the public notice, if the form of sanction is public;
  5. A statement that Respondent consents to the entry of the proposed Consent Order, and, if there is to be public notice, that Respondent consents to the issuance of a public notice;
  6. A statement that Respondent must not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in the Consent Order or create the impression that the Consent Order is without factual basis; and
  7. A waiver of all rights:
    - a) To a hearing;
    - b) Of appeal to CFP Board's ~~Appeals Commission Code and Standards Enforcement Committee~~; and
    - c) To challenge or contest any issue related to the Consent Order in any other contractual or judicial forum, including an arbitration, in an action or proceeding in which CFP Board is a party.
- b. **Resolution of Petitions for Fitness Determination.** The Settlement Offer must be in the form of a proposed Consent Order that contains the information required in Article 8.2.a.1-7. and describes in reasonable detail the facts and misconduct relevant to Respondent's fitness and the proposed determination.
- c. **Resolution of Petitions for Reinstatement Following Order of Suspension for More than One Year.** The Settlement Offer must be in the form of a proposed Consent Order that contains and describes in reasonable detail facts relevant to Respondent's rehabilitation, fitness, and compliance with the terms of the DEC Order, and the proposed determination.

## ARTICLE 10: HEARINGS

### 10.6 Evidence; Oath or Affirmation; Transcription

The Hearing Panel will determine, in its discretion, the conduct of the hearing, including the order of proof and allocation of time for argument and the presentation of evidence. The parties must have an opportunity to present documents and testimony, cross-examine witnesses called by another party to testify orally at the hearing, and present argument to the Hearing Panel. Relevant hearsay is admissible. The Hearing Panel may exclude evidence that is not relevant or that has not been provided in accordance with these *Procedural Rules*. The Hearing Panel may determine what weight to give any evidence. The Hearing Panel may consider, but is not bound by, federal or state evidentiary or procedural rules. The Chair of the Hearing Panel must administer oaths or affirmations to testifying witnesses. CFP Board must obtain a written transcript of the hearing and make it available to the ~~Appeals Commission Code and Standards Enforcement Committee and any Appeal Panel~~ upon appeal.

## ARTICLE 14: RESOLUTION OF PETITIONS FOR REINSTATEMENT FOLLOWING ORDER OF SUSPENSION OF MORE THAN ONE YEAR

### 14.1 Petition for Reinstatement

- a. CFP Board must not reinstate a Respondent whose Certification and License the DEC or ~~Appeals Commission Code and Standards Enforcement Committee~~ has suspended for a period longer than one year unless Respondent has filed a written Petition for Reinstatement and the DEC or ~~Appeals Commission Code and Standards Enforcement Committee~~ has granted the Petition. A Respondent must file a Petition no earlier than six months prior to the last day of the suspension and no later than five years after the first day of the suspension. A hearing on a Respondent's Petition may be scheduled in accordance with Article 10.1. The DEC shall not consider Respondent's Petition unless Respondent has:
  1. Completed the suspension;
  2. Provided a properly-completed CFP Board Ethics Disclosure Questionnaire;
  3. Provided a written certification that Respondent has read, understands, and will comply with, the *Code and Standards*;
  4. Paid the reinstatement fee and any outstanding costs owed to CFP Board, including any certification fees that accrued during the suspension; and
  5. Otherwise satisfied CFP Board's certification requirements, including any continuing education requirement that accrued during the suspension.
- b. If Respondent does not request reinstatement within five years of the first date of the suspension, then Respondent has relinquished CFP® certification permanently, with no opportunity for reinstatement.

## ARTICLE 15: APPEALS

### 15.1 Initiation of Appeal

Except where otherwise provided in these *Procedural Rules*, a Respondent or CFP Board Counsel may appeal any final order of the DEC or Administrative Order to the ~~Appeals Commission Code and Standards Enforcement Committee~~.

- a. **Time for filing appeal.** A party must deliver a Notice of Appeal within 30 calendar days from the issuance of the DEC's final order or the delivery of the Administrative Order. CFP Board will not consider or grant a request for more time to initiate an appeal. Failure timely to initiate an appeal waives the right to appeal. A party that did not file a Notice of Appeal may file a Notice of Cross Appeal within 14 calendar days of the service of the other party's Notice of Appeal.
- b. **Content of Notice of Appeal or Cross Appeal.** The Notice of Appeal and Notice of Cross Appeal must be set forth on a form that CFP Board provides, or a short one-page document that identifies the party initiating the appeal, designates the DEC's final order or the Administrative Order that is the subject of the appeal, and notes whether the party requests an appeal hearing.
- c. **Stay of the DEC's Final Order or the Administrative Order.** Upon the successful initiation of an appeal, the order or the Administrative Order is stayed pending a decision by the ~~Appeals Commission Code and Standards Enforcement Committee~~.
- d. **Costs and Fees for Appeal.** When a Respondent files a Notice of Appeal or Notice of Cross Appeal, CFP Board will assess the costs and fees that CFP Board has established for the appeal. Respondent must pay the costs and fees within 30 calendar days of delivery of the assessment, unless Respondent has obtained a waiver due to financial hardship pursuant to Article 17.4. The Chair of the ~~Appeals Commission Code and Standards Enforcement Committee~~ may dismiss an appeal for failure to pay the costs and fees.

## 15.2 ~~Appeals Commission Code and Standards Enforcement Committee and Appeal Panel~~

~~Code and Standards Enforcement Committee.~~—The ~~Appeals Commission Code and Standards Enforcement Committee of the Board of Directors~~ will review and decide all appeals. The ~~Appeals Commission Code and Standards Enforcement Committee~~ will be represented by counsel, including during any hearing.

- ~~a. Referrals to Appeal Panel. The Code and Standards Enforcement Committee may refer the appeal or any portion of the appeal to an Appeal Panel for a recommendation to the Code and Standards Enforcement Committee. An Appeal Panel will be represented by counsel, including during any hearing. An Appeal Panel must submit its recommendation to the Code and Standards Enforcement Committee for final review and decision in accordance with Articles 15.8 and 15.9.~~

## 15.3 Appellate Standard of Review

- a. **Appeals from DEC Orders Resolving Complaints.**
  1. **Factual Findings.** The ~~Appeals Commission Code and Standards Enforcement Committee~~ must accept the DEC's factual findings unless the factual findings are unsupported by substantial evidence under the applicable burden of proof. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The burden of proof for grounds for sanction is a preponderance of the evidence, which means "more probable than not," *i.e.*, evidence which shows that, as a whole, the matter sought to be proved is more probable than not to have occurred.

2. **Interpretation or Application.** The ~~Appeals Commission Code and Standards Enforcement Committee~~ must accept the DEC's interpretation or application of the *Code and Standards, Pathway to CFP® Certification Agreement*, and *Procedural Rules* unless that interpretation or application is unreasonable.
  3. **Sanctions.** The ~~Appeals Commission Code and Standards Enforcement Committee~~ must accept the DEC's imposition of a sanction unless the ~~Appeals Commission Code and Standards Enforcement Committee~~ determines that the imposition of a sanction is an abuse of discretion. An abuse of discretion is an error of judgment in issuing an order that is clearly unreasonable, erroneous, or arbitrary and not justified by the facts or the applicable standard.
- b. **Appeals from Administrative Orders and Orders Denying Petition for Reinstatement Following an Administrative Order.** The ~~Appeals Commission Code and Standards Enforcement Committee~~ must affirm an Administrative Order or an order denying a Petition for Reinstatement Following an Administrative Order unless Appellant establishes that the order is unsupported by substantial evidence or resulted from Appellant's "excusable neglect," which means that the failure to take proper steps at a proper time was not a consequence of carelessness but rather resulted from some unavoidable hindrance or occurrence. In determining whether excusable neglect exists, relevant considerations include:
1. The reason for the default, including whether it was within the Appellant's control;
  2. Whether the Appellant acted in good faith; and
  3. The potential prejudice to the public or CFP Board.
- c. **Appeals from DEC Orders Resolving Petitions.**
1. **Factual Findings.** The ~~Appeals Commission Code and Standards Enforcement Committee~~ must accept the DEC's factual findings unless the factual findings are unsupported by substantial evidence under the applicable burden of proof. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The burden of proof for a Respondent who filed a Petition for Reinstatement following an Order of Suspension is clear and convincing evidence. The burden of proof for a Respondent who filed a Petition for Fitness Determination is a preponderance of the evidence.
  2. **Interpretation or Application.** The ~~Appeals Commission Code and Standards Enforcement Committee~~ must accept the DEC's interpretation or application of the *Fitness Standards, Code and Standards, Pathway to CFP® Certification Agreement*, and *Procedural Rules* unless that interpretation or application is unreasonable.
  3. **Fitness or Rehabilitation.** The ~~Appeals Commission Code and Standards Enforcement Committee~~ must accept the DEC's determination of fitness or rehabilitation unless the ~~Appeals Commission Code and Standards Enforcement Committee~~ determines that the DEC's determination of fitness or rehabilitation is an abuse of discretion. An abuse of discretion is an error of judgment in issuing an order that is clearly unreasonable, erroneous, or arbitrary and not justified by the facts or the applicable standard.

#### 15.4 The Parties' Briefs



- a. **Appellant's Brief.** The party filing a Notice of Appeal and the party filing a Notice of Cross Appeal must deliver an Appellant's Brief no later than 45 calendar days after the DEC issues its final order. The content of the Appellant's Brief must be as follows:
1. **Appeal from Order issued by the DEC.** Appellant's Brief, which should be no longer than 30 double-spaced pages, must identify the final order at issue in the appeal and must state the grounds upon which the Appellant seeks a modification or reversal of the final order. Appellant's Brief must not include or refer to evidence not contained in the record from the proceeding that resulted in the final order. Appellant must not raise new claims but may raise new arguments about claims addressed by the final order.
  2. **Appeal from Administrative Order.** Appellant's Brief, which should be no longer than 30 double-spaced pages, must identify the final order at issue in the appeal and must state the grounds upon which the Appellant seeks a modification or reversal of the final order. Appellant must include as an appendix to the Brief any documents not already contained within the Record on Appeal relevant and necessary to considering whether the final order at issue in the appeal resulted from excusable neglect. Appellant must not raise arguments or submit evidence concerning the substantive allegations contained in the Notice of Investigation or Complaint in an appeal addressing the entry of the final order.
- b. **Appellee's Brief.** Appellee's Brief must be filed within 30 calendar days from delivery of Appellant's Brief. Appellee's Brief, which should be no longer than 30 double-spaced pages, must specify the party filing Appellee's Brief, respond to the issues raised in Appellant's Brief, and note whether Appellee requests an appeal hearing. Appellee's Brief must not include or refer to evidence not contained in the record of the proceeding that resulted in the final order. Appellee must not raise new claims but may raise new arguments about claims addressed by the final order.
- c. **Reply Brief.** An Appellant may file a Reply Brief within 14 calendar days of the delivery of Appellee's Brief that must not exceed 10 double-spaced pages. The content of the Reply Brief must be limited to responding to those issues raised in Appellee's Brief.
- d. **Motion for More Time.** A party may extend the time for filing any brief by obtaining the consent of the other party. If a party seeking more time is unable to obtain the other party's consent, the party may file a Motion for More Time prior to the deadline for filing the brief that provides good cause for the request. The Chair of the ~~Appeals Commission Code and Standards Enforcement Committee or Appeal Panel~~ must issue an order resolving the Motion for More Time.
- e. **Failure to Comply with Requirements for Content of Appellant's Brief.** If the Code and Standards Enforcement Committee determines that an Appellant failed to satisfy the requirements of Article 15.4.a., then the ~~Appeals Commission Code and Standards Enforcement Committee~~ may dismiss the appeal without a hearing.

## 15.5 Appellate Motions

An Appellant or Appellee may file a written motion not exceeding 10 double-spaced pages regarding non-dispositive matters. Except for good cause shown, pre-hearing motions must be filed no later than 45 calendar days prior to the appeal hearing. A party may file a written motion for leave to file a post-hearing motion no later than 14 days after the appeal hearing. An Appellant or Appellee may file a written response, which may not exceed 10 double-spaced pages, within 14 calendar days of any motion delivered by another party. An Appellant or Appellee may file a rebuttal of no more than 10 double-spaced pages within 5 calendar days of the delivery of any response.



~~If the Code and Standards Enforcement Committee has referred the appeal or any portion of the appeal to an Appeal Panel, then the Chair of the Appeal Panel must rule on all motions, objections, and other matters relevant to the appeal or portion of the appeal that the Code and Standards Enforcement Committee has referred to the Appeal Panel. If there has been no referral to an Appeal Panel, then~~ The Chair of the Appeals Commission ~~Code and Standards Enforcement Committee~~ must rule on all motions, objections, and other matters raised on appeal prior to or after the hearing.

The Chair of the Appeals Commission ~~Appeal Panel or Code and Standards Enforcement Committee~~ may, at his or her sole discretion, hold oral argument on a motion either in person, telephonically, or by video conference. The Chair must issue all orders to the parties.

## 15.6 The Record on Appeal

- a. **Appeal from Final Order Issued by the DEC.** The record on appeal will consist of the documents provided to the DEC; all motions, responses to motions and orders resolving motions; the transcript of any hearing before the Hearing Panel; the DEC's final order; the Notice of Appeal; and all Briefs filed by the parties on appeal.
- b. **Appeal from Administrative Order.** The record on appeal will consist of the Administrative Order; the Notice of Appeal; and all Briefs and appendices filed by the parties on appeal.
- c. **Preparation of Record.** CFP Board Counsel must prepare the record on appeal, submit it to the Appeals Commission ~~Code and Standards Enforcement Committee and to the Appeal Panel if it is referred any matters~~, and deliver a copy to the Appellee or Appellant.

## 15.7 Appeal Resolution

- a. **Authority to Hold a Hearing.** The Chair of the Appeals Commission ~~Code and Standards Enforcement Committee~~ must determine whether an appeal hearing will be held and whether the appeal hearing will be in person, by telephone, or by video conference, considering the following factors: whether a party has requested a hearing; the novelty and complexity of the issues; and whether the facts and legal arguments are adequately presented in the briefs and record, such that oral argument will not significantly aid the decision-making process.
- b. **Notice of Appeal Hearing.** Not less than 30 calendar days prior to the date set for an appeal hearing, the Chair of the Appeals Commission ~~Code and Standards Enforcement Committee~~ must issue written notice of such hearing that designates the date, time, place, and manner of the hearing. The parties and counsel may appear in person or by telephone or video at any in person hearing, and by video or telephone at any video hearing. The Notice of Appeal Hearing must also inform the parties ~~if the Code and Standards Enforcement Committee has referred the appeal to an Appeal Panel, and of~~ the name and employer of each member of the Appeals Commission ~~Code and Standards Enforcement Committee and each member of the Appeal Panel if the Code and Standards Enforcement Committee has made a referral~~. A party must file any motion for recusal in accordance with Article 17.3.b. ~~If the Code and Standards Enforcement Committee referred an appeal to an Appeal Panel, the Appeal Panel must conduct the hearing.~~
- c. **Presentations at Hearing.** At the hearing, both Appellant and Appellee may make affirmative presentations limited to 20 minutes each, and Appellant will be permitted an additional 5-minutes to present a rebuttal to Appellee's affirmative presentation. Affirmative presentations must address only those issues raised in the parties' Briefs. The rebuttal must address only those

issues raised during Appellee's affirmative presentation.

1. **Motion for More Time.** The Chair of the ~~Appeals Commission Code and Standards Enforcement Committee or the Appeal Panel~~ may consider motions from the Appellant or Appellee requesting additional time for affirmative presentations and may grant such motions upon a showing of good cause. A motion for more than 5 additional minutes of presentation time must be made in writing not less than 30 calendar days prior to the date set for an appeal hearing. A motion for 5 minutes or less of additional presentation time may be made at the appeal hearing.
  2. **Objections and Procedural Issues Arising During the Appeal Hearing.** The Chair of the ~~Appeals Commission Code and Standards Enforcement Committee or the Appeal Panel~~ will decide any objections or issues regarding procedural matters that arise during the appeal hearing.
  3. **Questioning.** Members of the ~~Appeals Commission Code and Standards Enforcement Committee or Appeal Panel~~ may ask questions at any time during or after the presentations. Subject to the right of Appellant or Appellee to move for more time, the time allotted for presentation shall not be extended solely because the ~~Appeals Commission Code and Standards Enforcement Committee or Appeals Panel~~ asked questions.
- d. **Transcript of Appeal Hearing.** CFP Board must obtain a written transcript of an appeal hearing.

#### ~~15.8—Appeal Panel Recommendations.~~

~~When the Code and Standards Enforcement Committee has referred a matter to an Appeal Panel, the Appeal Panel must prepare a written recommendation, which will be reviewed by the Code and Standards Enforcement Committee. The Code and Standards Enforcement Committee must review *de novo* the Appeal Panel recommendation and either (a) issue a final order, (b) conduct further proceedings, or (c) resubmit the matter to the Appeal Panel with instructions. Neither Appellant nor Appellee may appear during the Code and Standards Enforcement Committee's review of the Appeal Panel's recommendations. *De novo* means that the Code and Standards Enforcement Committee must consider the matter anew, as if the Appeal Panel had rendered no previous decision. The Code and Standards Enforcement Committee gives no deference to the Appeal Panel.~~

#### ~~15.89 Appeals Commission Code and Standards Enforcement Committee Orders.~~

~~The Appeals Commission Code and Standards Enforcement Committee must issue its final order in writing. Appeals Commission Code and Standards Enforcement Committee orders are not subject to further appeal or review.~~

### **ARTICLE 16: DELIVERING AND FILING DOCUMENTS, DETERMINING WHEN A DOCUMENT MUST BE DELIVERED, AND ISSUING NOTICES AND ORDERS**

These *Procedural Rules* set deadlines for a Respondent and CFP Board Counsel to deliver and file documents. This Article sets forth the requirements for delivering and filing documents, determining the date when a document is due, and issuing notices and orders.

#### **16.3 Orders Issued by the DEC and the Appeals Commission Code and Standards Enforcement Committee, and Notices and Orders Delivered by CFP Board Counsel**

An order may be issued and a notice may be delivered to Respondent through the email address

Respondent has provided to CFP Board either by attaching the document to the email or by providing in the email the information necessary for Respondent to access the documents by electronic means, or if no email address is available, by first class mail to the mailing address the Respondent has provided to CFP Board. An order may be issued to CFP Board Counsel by email or first class mail.

#### 16.4 Filing

- a. **Method of Filing.** A Respondent may file a document with CFP Board by attaching the document to an email to CFP Board Counsel through the email address CFP Counsel has provided to Respondent or by providing in the email the information necessary for CFP Board to access the documents by electronic means, or by first class mail addressed to CFP Board's mailing address. CFP Board Counsel may file a document by delivering the document to Respondent through the email address Respondent has provided to CFP Board either by attaching the document to the email or by providing in the email the information necessary for Respondent to access the documents by electronic means, or if no email address is available, then by first class mail to the mailing address Respondent has provided to CFP Board.
- b. **Availability of Filings.** CFP Board Counsel must make filings available to the Hearing Panel, DEC, Appeal Panel, or Appeals Commission~~Code and Standards Enforcement Committee~~, as appropriate.

### ARTICLE 17: GENERAL PROVISIONS

#### 17.1 Confidentiality

- a. Except as provided below, the existence of an investigation and adjudication by CFP Board and the information obtained pursuant to these *Procedural Rules* ("Confidential Information") will be confidential and will not be made public. Respondent must use such Confidential Information solely in connection with Respondent's defense of the investigation or Complaint, or any appeal thereof, except as provided below. Respondent, Respondent's counsel, experts, and witnesses must not record any examination or hearing.
- b. CFP Board or Respondent may disclose Confidential Information:
  1. To counsel designated by Respondent;
  2. To Respondents in a consolidated matter and their designated counsel;
  3. To a potential expert (an expert is a person retained by a party who is qualified to offer an opinion by knowledge, skill, experience, training, or education) as necessary to assist in proceedings conducted pursuant to these *Procedural Rules*, provided that the expert executes a written confidentiality agreement that prohibits the expert from disclosing the Confidential Information to third parties, and that the expert is required to return or destroy any copy of any document containing Confidential Information at the conclusion of the expert's engagement;
  4. To a potential witness (and counsel for the witness) as necessary to assist in proceedings conducted pursuant to these *Procedural Rules*, provided that the witness (and counsel for the witness) is not permitted to retain a copy of a document containing Confidential Information;
  5. To stenographers or video equipment operators who assist with the recordation of an oral

examination or a hearing;

6. As required to comply with federal, state, or local law;
  7. As required to comply with a properly authorized civil, criminal, or regulatory investigation or examination, or a subpoena or summons, by a governmental authority or self-regulatory organization; and
  8. As required to comply with a request from another party, or a subpoena issued, in a civil action or arbitration.
- c. CFP Board also may disclose Confidential Information:
1. In publication of a public sanction pursuant to Article 17.7;
  2. Within CFP Board and to third parties, but only as necessary to assess a Respondent's compliance with CFP Board's *Code and Standards*, including to:
    - a. Members of the DEC, Hearing Panels, and Settlement Review Panels;
    - b. Members of the ~~Appeals Commission Code and Standards Enforcement Committee or an Appeal Panel~~, if an Order is appealed under these *Procedural Rules*; and
    - c. CFP Board's staff and Board of Directors.
  3. To individuals who filed a complaint with CFP Board against a Respondent, but unless otherwise provided in this Article, only to notify the individual that their complaint remains under review or investigation, or that the review of their complaint is complete and that a public sanction has or has not been issued.
  4. To a governmental agency or industry self-regulatory organization having appropriate jurisdiction over Respondent; and
  5. If Respondent has waived confidentiality.
- d. Upon request, CFP Board also may disclose to an examinee who testified at an oral examination or hearing a copy of the transcript of the examinee's testimony and any exhibits that the examinee produced in the proceeding conducted pursuant to these *Procedural Rules*. The transcript may be redacted to exclude quotations from exhibits that are not produced to the examinee.
- e. If the disclosure is not otherwise prohibited, then Respondent also may disclose Confidential Information:
1. To Respondent's Firm, except for Confidential Information concerning a client who is not a client of Respondent's Firm;
  2. As necessary to defend against allegations of wrongdoing made by a governmental authority or self-regulatory organization having appropriate jurisdiction;
  3. As necessary to defend against a claim raised by a client or former client in a civil action or arbitration, provided that Respondent discloses to the client or former client all Confidential

Information in the proceeding conducted pursuant to these *Procedural Rules* that relate to the claim; and

4. As necessary to provide information to professional organizations that are assessing Respondent's compliance with professional standards.

## 17.2 Retention of Counsel

Respondent, Appellant, or Appellee may be represented by counsel during proceedings conducted pursuant to these *Procedural Rules*. Respondent's counsel, if any, must be identified to CFP Board prior to any scheduled on the record testimony or in Respondent's Answer to the Complaint, Petition for Consideration, or Petition for Reinstatement. Respondent must provide the counsel's contact information as well as whether the counsel will appear in person, via telephone, or by video conference (if CFP Board makes video conference available) for any oral examination, oral argument, or hearing conducted under these *Procedural Rules*. Respondent's counsel must be an active member in good standing of the bar of a state of the United States, the District of Columbia, or any jurisdiction, possession, territory or dependency of the United States. The DEC Chair and Appeals Commission Code and Standards Enforcement Committee Chair may prohibit the appearance of Respondent's counsel if either determines that Respondent's counsel has not complied with any guidelines or standards that CFP Board establishes for outside counsel. If CFP Board prohibits Respondent's counsel from appearing, Respondent may designate substitute counsel. Respondent must promptly inform CFP Board in the event Respondent's counsel withdraws or otherwise ceases to represent Respondent in the proceedings.

## 17.3 Recusal

- a. **Standard for Recusal.** A member of the DEC, a Hearing Panel, a Settlement Review Panel, or the Appeals Commission Code and Standards Enforcement Committee, or an Appeal Panel ("Member") must not participate in any proceeding in which the Member's impartiality might reasonably be questioned, including but not limited to the following circumstances:
  1. The Member has a personal bias or prejudice concerning a party or a party's counsel, or personal knowledge of facts that are in dispute in the proceeding.
  2. The Member knows, or reasonably should know, that the Member or a member of the Member's Family (as defined in the *Code and Standards*) is:
    - (a) A party or member of a party's Family;
    - (b) An officer, director, general partner, managing member, or employee of a business entity that the party or members of the party's Family Control (as defined in the *Code and Standards*);
    - (c) A person who has an economic interest in the proceeding or a business entity that a party or members of the Family of a party Control;
    - (d) A person who has any other interest that could be substantially affected by the outcome of the proceeding; or
    - (e) Likely to be a witness in the proceeding.
- b. **Process for Recusal.** CFP Board must provide Respondent or Appellant and Appellee with

notice of the name and employer of each member of the Hearing Panel, the DEC, the Settlement Review Panel, ~~and/or Appeals Commission Code and Standards Enforcement Committee and/or the Appeal Panel~~, as applicable. Respondent, Appellant or Appellee must file, within 7 calendar days of delivery of this notice, any motion requesting the recusal of a Member and state with particularity the grounds for the motion. Respondent's failure timely to file a motion for recusal will result in the waiver of an objection to the participation of the Member. The Chair of the DEC or the ~~Appeals Commission Code and Standards Enforcement Committee~~, as applicable, must rule upon any motion for recusal. No person who is the subject of a motion for recusal may participate in the consideration of the motion except to raise the issue.

### 17.5 Actions Required to be Taken by a Chair

Any action that these *Procedural Rules* require to be taken by a Chair of the Hearing Panel, DEC, ~~or Appeals Commission Appeal Panel, or Code and Standards Enforcement Committee~~ may be taken by another member designated by the Chair.

### 17.6 Sanction Guidelines and Anonymous Case Histories

- a. **Sanction Guidelines.** The *Sanction Guidelines* identifies specific categories of conduct that violate CFP Board's *Code and Standards*, the sanction guideline for that conduct, and policy notes for the DEC to consider when determining the appropriate sanction. The DEC and ~~Appeals Commission Code and Standards Enforcement Committee~~ are not bound by the *Sanction Guidelines*. When considering the appropriate sanction in a particular case, deviations from the *Sanction Guidelines* may occur if aggravating factors warrant a more severe sanction, mitigating factors warrant a less severe sanction, or the DEC or ~~Appeals Commission Code and Standards Enforcement Committee~~ determines there are other reasons for doing so.
- b. **Anonymous Case Histories.** *Anonymous Case Histories* are anonymized summaries of the DEC's final orders. CFP Board intends for the *Anonymous Case Histories* to provide guidance. The DEC and ~~Appeals Commission Code and Standards Enforcement Committee~~ are not bound by the *Anonymous Case Histories*.