

THE DISCIPLINARY AND ETHICS COMMISSION

IN THE MATTER OF

██████████, CFP®

Respondent.

CFP Board Case No. 2021-62732

August 8, 2023

Appearances

██████████, Esq. and ██████████, Esq. appeared in-person for Certified Financial Planner Board of Standards, Inc. (“CFP Board”).

██████████, Esq. of the firm Law Offices of ██████████, LLC appeared in-person for Respondent.

██████████, Esq., appeared in-person for CFP Board’s Disciplinary and Ethics Commission (“Commission” or “DEC”) and for a Hearing Panel of the Commission.

ORDER

I. Procedural History

Respondent became a CFP® professional on April 23, 1990, and has maintained his certification since that date. (DEC Book at 26.)**

On June 9, 2021, CFP Board Enforcement Counsel delivered to Respondent a Notice of Investigation (“NOI”) requesting certain information concerning: “2021 [W.] Complaint.” (*Id.* at 41-42.) On June 17, 2021, Respondent delivered his Response to the NOI providing certain documents and information. (*Id.* at 43-44.) On July 2, 2021, Respondent supplemented his Response to the NOI, including what Respondent described as a letter from the State-Z Department of Insurance (“ZDI”) closing the file on “the complaint filing on the non variable life case.” (*Id.* at 45-46.)

On February 15, 2022, Enforcement Counsel delivered to Respondent a Request for Additional Information (“First RFAI”) requesting additional documents and information. (*Id.* at 47-48.) On March 17, 2022, Respondent through counsel delivered his Response to the First RFAI providing the requested documents and information. (*Id.* at 50-51.)

On July 14, 2022, Enforcement Counsel delivered to Respondent a Notice of Oral Examination to be conducted on August 1, 2022. (*Id.* at 150-152.) On that date, Respondent and his counsel appeared via videoconference and Respondent provided oral testimony on the record. (*Id.* at 153-273.)

On August 10, 2022, to follow-up on Respondent’s oral testimony, Enforcement Counsel delivered to Respondent a Document Request (effectively, CFP Board’s “Second RFAI”). (*Id.* at 52.) On August 16, 2022, Respondent through counsel delivered his Response to the Second RFAI providing certain documents. (*Id.* at 53-54.)

**The DEC Book and any other exhibits to this Order are not published by CFP Board in accordance with Article 17 of CFP Board’s *Procedural Rules*.

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On October 11, 2022, Enforcement Counsel delivered a Complaint to Respondent in accordance with Article 3.1 of CFP Board's *Procedural Rules*, alleging that Respondent violated certain provisions of CFP Board's *Code of Ethics and Standards of Conduct* ("*Code of Standards*"). (*Id.* at 11-23.) On December 12, 2022, Respondent delivered his Answer to Enforcement Counsel's Complaint consistent with Article 3.2 of CFP Board's *Procedural Rules* and requested an in-person hearing before the Commission. (*Id.* at 327-484, 400.)

Within one week prior to the hearing, both Enforcement Counsel and Respondent each sought leave to enter demonstrative exhibits into the record that introduced no new information, and neither party objected to the other's request. (*See* Tr. at 3, 12-13; Exhibit A (Enforcement Counsel's demonstrative exhibits); Exhibit B (Respondent's demonstrative exhibits). The Hearing Panel added these documents to the record.

On February 16, 2023, a Hearing Panel of the Commission convened in-person at the CFP Board Headquarters in Washington, D.C. and held a hearing to review the above-described CFP Board Complaint. (Transcript of Hearing of [REDACTED], CFP®, February 16, 2023 ("Tr."))

During the hearing, as a preliminary matter, Enforcement Counsel moved the Hearing Panel Chair to enter two documents into the record that Enforcement Counsel stated it obtained two days before the hearing and had provided to Respondent and Respondent's counsel less than 24 hours before the hearing. (Tr. at 14.) Respondent through counsel objected to the documents being entered into the record. (*Id.* at 17-22.) The Hearing Panel Chair denied Enforcement Counsel's motion and did not enter the proposed documents into the record. (*Id.* at 24.) The Commission reviewed and accepted the Hearing Panel Chair's ruling.

On February 21, 2023, following the hearing, Respondent timely and properly filed a document that the Hearing Panel had requested during the hearing, which is described in further detail below. (Exhibit C.)

The Commission considered the Hearing Panel's recommendation and issued this final order on August 8, 2023.

II. Findings of Fact

A. Background

Respondent has passed the (a) Series 7 – General Securities Representative Examination (1984); (b) Series 63 – Uniform Securities Agent State Law Examination (1985); (c) Series 24 – General Securities Principal Examination (2000); and (d) SIE – Securities Industry Essentials Examination (2018). (DEC Book at 35.)

Respondent maintains an insurance license with the State-A Department of Insurance. (*Id.* at 40.)

Respondent is currently President and a registered representative of an insurance brokerage firm ("Firm-A" or Respondent's firm) and has been since 1997.¹ (*Id.* at 37-38.) Firm-A works with approximately 20

¹ Respondent is also currently employed as a registered representative and a broker with Firm-B and has been associated with that firm since 2017. (DEC Book at 32.)

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different insurance companies to provide life insurance, long-term care insurance, and disability insurance to clients, according to Respondent's Counsel. (*Id.* at 334.)

On June 4, 2021, Respondent self-reported to CFP Board via an Ethics Self-Reporting Form that a customer complaint had been filed against him. (*Id.* at 28–29.)

B. Respondent's Clients, S.W. and E.W. (the "Couple")

Respondent stated that he met "E.W." more than 30 years ago, as E.W. is the first or second cousin of Respondent's late wife. (*Id.* at 173, 329.) Respondent stated that he also met E.W.'s spouse, named "S.W.," around 30 years ago, when E.W. and S.W. married. (*Id.*) Respondent stated that he considered each E.W. and S.W. to be a friend and would meet socially with S.W. approximately once per month for lunch, swimming, and football games, and would meet socially with E.W. approximately once quarterly at family events. (Tr. at 222, 227, 358.)

E.W. and S.W. became Respondent's clients more than 20 years ago, when S.W. approached Respondent for life insurance coverage and Respondent helped S.W. and E.W. (together, the "Couple") to purchase a life insurance policy covering S.W.'s life in 2002, which was later replaced in 2019 with a policy from a large, widely known insurance company ("ABC-Insurance" and "ABC-Policy"). (*Id.* at 174; Tr. at 216-218.) E.W. specifically became Respondent's client in 2004 when Respondent recommended the Couple purchase a Universal Life Insurance Policy from another large, widely known insurance company, which named E.W. as the owner ("XYZ-Insurance" and "XYZ-Policy"). (DEC Book at 174.)

While Respondent considered E.W. and S.W. to each be his client, Respondent testified that he did not provide any Financial Planning services to either of them. (*Id.* at 249.) Respondent further testified that E.W. explained to Respondent at the outset of their engagement in 2004 that E.W. would undergo the initial physical examination required for XYZ-Insurance to sell the Couple the XYZ-Policy, but E.W. wanted no further involvement with the policy. (Tr. at 230-234.) Respondent credibly testified that E.W. specifically instructed Respondent not to communicate with her about the policy and directed Respondent to communicate with S.W.—and only S.W.—about the XYZ-Policy. (*Id.*) Respondent stated that he and his firm, in accordance with his firm's policy, thereafter directed all communication about the XYZ-Policy to S.W., for approximately 17 years. (*Id.*)

Respondent maintained regular social interactions with S.W. and E.W. for approximately 17 years after the date Respondent initially sold life insurance policies to them in 2002 and 2004, and again in 2019. (*Id.* at 222, 227, 358.) Few other relevant events transpired until February 23, 2021, when Respondent's wife died, which appeared to have prompted S.W. to inquire about the Couples' life insurance policies. (DEC Book 184-185.)

C. The Couple's Insurance Policies, S.W.'s ABC-Policy and E.W.'s XYZ-Policy

On February 23, 2021, Respondent's wife died from a seven-year battle with cancer. (*Id.* at 248–250; *see also* Tr. at 126-151: Respondent provided compelling testimony about his wife's disease, her treatments, his role as his wife's caretaker, and his wife's death.) The same date Respondent's wife died,

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in response to an inquiry from S.W., Respondent confirmed that S.W. was still insured under the ABC-Policy, and that the terms of the ABC-Policy included the following:

- 10-year Term Policy for \$850,000;
- Issued by ABC-Insurance on August 18, 2019; and
- Premium payments of \$843.42 per month. (DEC Book at 80, 330.)

S.W. followed up via email asking whether E.W.'s XYZ-Policy was still in effect, and Respondent told S.W. that he would have to check Firm's database. (*Id.* at 79.)

Four days later, on February 27, 2021, Respondent reached back out to S.W. via email informing him that the terms of the XYZ-Policy included the following:

- 20-year Universal Life Policy for \$500,000;
- Issued by XYZ-Insurance in August 2004;
- Premium payments of \$396.21 per month; and
- Coverage maintained until age 100. (*Id.* at 77.)

On March 2, 2021, Respondent again reached out to S.W. via email confirming that the XYZ-Policy was still in force and supplementing his earlier information about the policy as follows:

- 2007 increase in the death benefit option;
- 2010 increase in the death benefit option; and
- Current coverage of \$639,000. (*Id.* at 75–76.)

Respondent then provided S.W. with two separate scenarios for the payment and coverage of the XYZ-Policy. (*Id.*) First, Respondent provided a scenario wherein the premium payment on the XYZ-Policy remained \$396 per month for life. (*Id.* at 75.) Second, Respondent provided a scenario to reduce the coverage back to the original amount of \$500,000, which would only require the \$396 per month premium payment to continue for another 3.5 years but coverage would be maintained until age 100. (*Id.* at 76–77.)

D. S.W. States to Respondent the Couple “May” be Getting Divorced and E.W. Initiates Divorce Proceedings Against S.W.

Respondent stated that, on March 4, 2021, S.W. telephoned Respondent to give condolences and check on Respondent's wellbeing, and during a 10-to-15-minute conversation, S.W. at some point stated that “S.W. and E.W. ‘may’ be getting divorced.” (DEC Book at 141, 332; Tr. at 238–239.) (Emphasis added.) Respondent stated that over the course of approximately a decade preceding this telephone call, between 2011–2021, S.W. discussed his marriage to E.W. with Respondent approximately six times per year and in those conversations, S.W. would share with Respondent that S.W. was unhappy with his marriage and would “often” tell Respondent that divorce was possible. (DEC Book at 332; Tr. at 225.) During their conversations, S.W. also shared with Respondent that S.W. had a mistress he would visit when traveling away from home on business, which S.W. said, “made it easier to tolerate his marriage,” according to Respondent. (Tr. at 226.) As a result, Respondent stated

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he was unsure how much credence to give S.W.'s statement that the Couple "may" be getting divorced. (DEC Book at 332; Tr. at 240-241.) However, Respondent also stated that his knowledge of S.W.'s mistress and S.W.'s dishonesty with his wife probably should have come into his judgement of whether S.W. would lie to Respondent. (Tr. at 350: "I think in hindsight we found a few things that I should have had a red flag to.")

Although Respondent described that it was his practice to make the conflicts disclosures provided by the insurance company documents, he admitted that he provided no specific conflicts of interest disclosures to clients in the event conflicts emerge that were evidenced by his clients' divorce or potential divorce, and neither Respondent nor his firm had written policies or procedures established to disclose such conflicts. (DEC Book at 172.) In his Answer to the Complaint, Respondent stated that as of 2021, it was Firm's policy to manage on a "case-by-case basis" any conflicts arising from "clients' divorce proceedings," although his explanation of this policy does not address the issue of disclosing conflicts that become evident due to clients' *potential* divorce, where the clients had not yet initiated divorce proceedings or where Respondent or Firm are unaware whether the clients formally initiated divorce proceedings. (*Id.* at 334.) Respondent admitted that he did not specifically discuss with either S.W. or E.W. his conflicts that may arise in the event the Couple's divorce or potential divorce demonstrated the Couple's adverse interests. (*Id.*; *see also* Tr. at 31-32.)

After his March 4, 2021 telephone call with S.W., Respondent asserts that he "timely" called and advised XYZ-Insurance that the Couple may be getting a divorce,² and Respondent told an employee of Firm ("Ms. A") that XYZ-Insurance may require certain paperwork relating to the Couple's potential divorce. (DEC Book at 193, 195, 198, 333; Tr. at 263.)

On April 30, 2021, records of the Office of the County-Z District Clerk reflect that E.W. initiated a divorce action against S.W. by filing an Original Petition for Divorce along with a Proposed Temporary Restraining Order and other filings. (DEC Book at 141, 146-149, 335.) On May 5, 2021, the Presiding Judge to that divorce action issued a Temporary Restraining Order, which, according to Respondent's prior counsel, temporarily restrained the Couple from withdrawing or diverting funds from financial institutions. (*Id.* at 141, 146-149.) There is no evidence in the record that Respondent knew of the Temporary Restraining Order or that E.W. had filed the divorce action.

E. S.W. Represents to Respondent that S.W. is Afflicted with "Throat Cancer" and Requests that Respondent Make a \$55,000 Partial Distribution for "Throat Cancer Surgery"

On May 6, 2021, one day after S.W. stated to Respondent that S.W. and E.W. may be getting a divorce, S.W. emailed Respondent and represented to Respondent that S.W. had become afflicted with "throat cancer" and that S.W. was scheduled to undergo surgery for throat cancer six days later, on May 12, 2021. (*Id.* at 75, 338.) S.W. further represented that he was not capable of speaking because his neck was "all swollen" from throat cancer, so via email S.W. requested Respondent to make a "partial distribution of \$55,000" for S.W.'s upcoming throat cancer surgery in six days. (*Id.*) In the same email, S.W. requested

² However, as described further below, the Commission did not find credible Respondent's statements that he called XYZ-Insurance to report the Couple's divorce. (DEC Book at 193, 195, 198, 333.)

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that Respondent provide him all necessary paperwork “as I want the funds direct deposited into my new checking account.” (*Id.*) Finally, S.W. in his email stated: “Please keep me in your prayers.” (*Id.*) According to Respondent, this was the first time he was notified of S.W.’s cancer diagnosis and need for urgent surgery. (*Id.* at 201, 338.)

Respondent’s wife had just, two months prior, died from cancer so Respondent stated that he reasonably believed S.W.’s representations that he needed urgent surgery because, among other reasons, (i) Respondent had known S.W. for approximately 30 years; (ii) in those approximately three decades and to the best of Respondent’s knowledge, S.W. had never lied to Respondent; (iii) Respondent is related by marriage to S.W., maintained regular social interaction and believed they were friends; (iv) S.W. is a respected attorney who had been in private practice for about 50 years; and (v) in those roughly 50 years in private practice, to Respondent’s knowledge, S.W. had never been publicly disciplined, either by the State-Z Bar by the attorney disciplinary authorities of any other state. (*Id.* at 336-337; Tr. at 222-224, 227.)

Respondent stated that he further reasonably believed S.W.’s representation that S.W. required a distribution for throat cancer surgery, and reasonably believed that the surgery was scheduled for [REDACTED], 2021, only six days in advance, because (i) Respondent’s wife had died in February 2021 after a seven-year battle with cancer, and (ii) because, as Respondent stated in regard to his experience with his wife’s struggle with cancer: “Things move fast in the cancer world. And if [a cancer patient’s physicians] find cancer, they want to move quickly [through surgery.] You don’t have a lot of notice.” (Tr. at 203.)

F. Respondent Provides S.W. with Recommendations to Obtain \$55,000 from the ABC-Policy and the XYZ-Policy Without Contacting E.W.

On May 7, 2021, based on S.W.’s representations that he had throat cancer and needed \$55,000 for throat cancer surgery, Respondent emailed S.W. three recommendations for how to obtain those funds from the ABC-Policy, on which S.W. was the named owner, and from the XYZ-Policy, on which E.W. was the named owner. (DEC Book at 74.) Although E.W.—not S.W.—was the named owner on the XYZ-Policy, Respondent explained that he reasonably assumed S.W. wanted to take the distribution from the XYZ-Policy since, according to Respondent, that was the only policy with cash value in it. (*Id.* at 199–200; 339.)

First, Respondent recommended splitting the XYZ-Policy death benefit and cash values in half, then S.W. could surrender his half for the \$55,000 if the insurance company would allow this split, but a representative soon after advised that a policy split was not an available option for the XYZ-Policy. (*Id.* at 74, 81, 338-339.)

Second, Respondent recommended taking a loan of \$55,000 against the policy; he inquired with XYZ-Insurance what the policy and premiums would look like after a loan and requested paperwork from XYZ-Insurance for a \$55,000 loan against the policy. (*Id.*)

Third, Respondent emailed S.W. and stated, “Obviously you want to beat this horrible situation but at the same time you may qualify for an accelerated death benefit option,” and recommended S.W. consider the

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accelerated death benefit of the ABC-Policy—on which S.W. was the named owner. (*Id.* at 73.) According to Respondent, under the ABC-Policy, if a physician of the insured (S.W.) stated in writing that S.W.’s life expectancy is less than one year, then S.W. could access up to half of that policy’s death benefit, meaning up to \$400,000. (*Id.* at 201-202, 340.)

Respondent admitted he did not include E.W. in his discussions with S.W. about possible distributions from the XYZ-Policy, nor contact E.W. with his recommendations, even though E.W. was the named owner of the XYZ-Policy. (*Id.* at 201; Tr. at 263.) Respondent further admitted that prior to making recommendations to S.W. about various means of obtaining \$55,000 from the Couples’ insurance policies, Respondent did not follow up with either S.W. or E.W. about the status of their financial interests, nor discuss with either client Respondent’s potential conflicts if the Couple’s financial interests were to become adverse, after S.W. mentioned the Couples’ potential divorce. (DEC Book at 203; Tr. at 264.)

Respondent stated that he now understands and admitted that conflicts of interest arose when the interests of S.W. and E.W. became adverse to each other, and that providing financial advice to either or both clients without avoiding or disclosing and managing his conflicts of interest was wrong, ill-considered, grave, and serious. (DEC Book at 201, 203; Tr. at 230-234, 261-267.)

While reflecting on how he could prevent his mistakes from reoccurring, Respondent testified that he and his firm adopted a new policy when receiving information about two clients who may be getting a divorce, which is to “remove them as clients going forward.” (Tr. at 267.) Respondent acknowledged that he and his firm adopted this policy even though CFP Board’s *Code and Standards* does not require a CFP® professional to, essentially, ‘fire’ every client who may be getting a divorce, and Respondent stated: “how else can you avoid this kind of situation fully[?]” (*Id.*)

G. S.W. Attempts to Take a Distribution and Loan from E.W.’s XYZ-Policy Based on Respondent’s Recommendations

According to Respondent, S.W. ultimately determined to follow Respondent’s recommendation of taking out the cash value from the XYZ-Policy as a distribution and then making up any outstanding amount to meet the \$55,000 with a loan against the policy. (DEC Book at 210; Tr. at 270-271.) On May 7, 2021, XYZ-Insurance put together two policy illustrations demonstrating two different options for its continued payment of the XYZ-Policy following the partial surrender and loan. (DEC Book at 81, 101–112, 113–124.) In addition, XYZ-Insurance provided the form it needed before the funds could be transferred and stated in its email to Respondent that the “form needs to be signed only by the policy owner”—and Respondent admits E.W. was the policy owner. (*Id.* at 81.) To this point, XYZ-Insurance had populated E.W.’s information on the form as the owner of the policy. (*Id.* at 125.)

On May 10, 2021, S.W. signed and submitted the form back to Respondent’s firm, and subsequently XYZ-Insurance, with S.W.’s signature as the owner and a voided check associated with S.W.’s checking account with instructions that the funds be deposited there. (*Id.* at 141, 209-222.) On May 11, 2021, XYZ-Insurance emailed Ms. A, stating that to process the form, E.W., as owner of the policy, had to sign the form, and that any fund distributions had to be deposited into an account owned by E.W. (*Id.* at 94.) After

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being informed that E.W. had to sign the forms, Respondent's firm provided a second set of documents back to S.W. for E.W.'s signature. (*Id.* at 210, 214.)

On May 13, 2021, Ms. A submitted to XYZ-Insurance (i) a completed form, bearing what appeared to be E.W.'s signature; and (ii) a voided check for a bank account associated with E.W.'s name, both of which S.W. had transmitted by facsimile to Firm. (*Id.* at 93, 128–131, 215, 219–222, 343–344.) Respondent explained that his firm believed that the signature on the completed form was E.W.'s signature and did not know that S.W. had forged E.W.'s signature on the completed form, then faxed it to Firm, because at that time, he had no reason to believe otherwise. (*Id.* at 344.)

On May 18, 2021, Ms. A followed up with XYZ-Insurance to check on the status of this request, and an XYZ-Insurance representative replied that XYZ-Insurance's service team had been processing the loan/partial surrender request but noticed when auditing the file that Respondent mentioned a divorce in an e-mail. (*Id.* at 91.) Consequently, XYZ-Insurance needed to know whether a divorce had been filed or finalized, and if so, in which state.³ (*Id.* at 91–92.) Ms. A emailed Respondent asking whether she should contact S.W. for this information, and while there is no evidence reflecting Respondent provided any answer to her question, Ms. A replied to XYZ-Insurance approximately 20 minutes later, stating: "I am sure it was not finalized. [E.W.] signed the form. Why isn't that adequate authorization? [S.W.] has a severe medical issue and we need to get this processed asap." (*Id.* at 91, 96.)

That day, an XYZ-Insurance representative clarified in an email to Ms. A that XYZ-Insurance would not process a policy change that could potentially violate a court order or decree, so XYZ-Insurance still needed to verify certain information and have E.W. sign an "Affidavit and Release," which XYZ-Insurance attached to the email ("Affidavit"). (*Id.* at 90.) Ms. A forwarded the Affidavit to S.W., stating Respondent's firm was trying to get the Affidavit requirement waived but believed getting E.W.'s signature would expedite the transaction. (*Id.* at 90, 99.)

While presumably awaiting S.W.'s reply, Respondent emailed XYZ-Insurance stating that while he did not believe there was a divorce action, he would confirm that information. (*Id.* at 89.) He then pursued a different avenue of communicating with XYZ-Insurance by asking why E.W.'s signature would be necessary when State-Z is a "community property state," meaning half the value of the policy belonged to S.W., and E.W.'s signature would be irrelevant to S.W. accessing his half of the value of the policy, since E.W. does not have sole right to the Couple's community property assets. (*Id.*) XYZ-Insurance's representative responded that she confirmed with XYZ-Insurance's legal team that E.W. was the owner of the policy, and only the cash value of the policy is community property, therefore, E.W. must either

³ Specifically, XYZ-Insurance's service team stated:

If the divorce is final in a restricted state we will require decree and property settlement or if filed we will need a signed letter from the attorney or court document indicating that the requested change can be processed.

If the divorce is final or filed in a non-restricted state we require the divorce affidavit to process.

(DEC Book at 91.)

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sign the provided Affidavit, or XYZ-Insurance's legal team would have to draft a different affidavit that E.W. and S.W. would both have to sign and notarize. (*Id.* at 87.)

The next morning, on May 19, 2021, an XYZ-Insurance representative emailed Respondent, stating she had called E.W. to discuss the partial surrender and loan request and left E.W. a voicemail. (*Id.* at 85.) The representative explained that XYZ-Insurance would require E.W.'s signed Affidavit for future transactions but would move forward without the Affidavit in this instance if XYZ-Insurance could verbally confirm and discuss the transaction with E.W. (*Id.*)

Approximately two hours later, on May 19, 2021, the XYZ-Insurance representative emailed Respondent stating that she spoke with E.W. and E.W. did not authorize the requested transaction, E.W. had not completed any paperwork to facilitate the requested transaction, and E.W. had no knowledge of the requested transaction. (*Id.*) The representative informed Respondent that she asked XYZ-Insurance's service team to reverse the request for funds, and Respondent replied that he would inform S.W. of the news. (*Id.* at 84-85)

Only 43 minutes later, appearing to have not yet heard from Respondent that XYZ-Insurance was reversing the request for funds, S.W. emailed a copy of the previously requested paperwork to Ms. A, including an Affidavit in E.W.'s name, bearing what appeared to be E.W.'s signature, and dated May 19, 2021. (*Id.* at 99.)

Ms. A responded to S.W. informing him that XYZ-Insurance spoke with E.W. and stated E.W. had no knowledge of the requested transaction, adding: "Before I forward this [to XYZ-Insurance] I just want to make sure [E.W.] signed this because I don't want to get into any issues." (*Id.* at 98.) In reply, S.W. stated that E.W. had signed the paperwork, but E.W. suffers from dementia, and then asserted for the first time that part of the \$55,000 distribution was to pay for medications for E.W., in addition to S.W.'s surgery. (*Id.* at 98.)

Throughout the time the transaction was at issue, Respondent never reached out to E.W. to personally discuss the situation with her. (*Id.* at 238.)

In the end, Respondent did not submit the Affidavit to XYZ-Insurance, and S.W.'s request did not proceed. (*Id.* at 141.)

Respondent asserted that it was due to his own intervening actions that no withdrawal or borrowing against the cash value of XYZ-Policy ever took place, and that S.W. was unsuccessful in completing the requested transaction through lying and forgery, all because Respondent had timely called XYZ-Insurance on March 4, 2021 and advised that S.W. and E.W. may be getting a divorce. (*Id.* at 198, 347-348.) Because Respondent did so, XYZ-Insurance later noticed a potential divorce during its audit of the policy's files on May 18, 2021, prompting XYZ-Insurance to obtain further information and paperwork from E.W., and eventually calling and speaking with E.W., who denied approving S.W.'s requested transaction. (*See id.* at 91-92, 193, 195, 198, 333, 355-357, 364; *see also* Tr. at 263.) However, the Commission did not find Respondent to be credible with respect to this assertion. Most obviously, Respondent stated that he had advised XYZ-Insurance that S.W. and E.W. may be getting a divorce by calling XYZ-Insurance on the telephone, whereas XYZ-Insurance's representative stated XYZ-Insurance had noticed

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in its files that Respondent mentioned the Couple's potential divorce in an email—yet Respondent never claimed to have emailed XYZ-Insurance specifically concerning the Couple's potential divorce. (*Id.* at 91-92.)

H. E.W. Files a Complaint with the State-Z Department of Insurance (“ZDI”) Prompting the Regulator to Investigate Respondent but Closes its Investigations Without Further Action

On May 20, 2021, the day after XYZ-Insurance spoke to E.W., E.W. submitted a complaint to the State-Z Department of Insurance (“ZDI”). (*Id.* at 135-139.) In her complaint, E.W. stated that she had been financially abused by her husband since 1998, confirmed that her purported signature on the request for disbursement forms was a forgery, and expressed her doubts about S.W.'s cancer diagnosis. (*Id.* at 137-138.) Regarding Respondent, E.W. stated that, as an extended family member, they had spent “eighteen wonderful Thanksgivings together” and she thought Respondent was a friend, yet: “that [Respondent] has committed this fraud against me is beyond disappointing. His actions have offended me to my core.” (*Id.* at 138.)

ZDI sent E.W.'s complaint to Respondent on May 21, 2021 and requested Respondent provide a detailed written statement that described the facts surrounding the attempted transaction. (*Id.* at 134.) On June 3, 2021, Respondent provided his detailed written statement to ZDI. (*Id.* at 140.) On June 8, 2021, the Complaints Processing section of ZDI closed their complaint file against Respondent but informed him that it could still re-open the file and another section of ZDI could still review the matter. (*Id.* at 143.)

On December 14, 2021, the Enforcement Division of ZDI sent a follow up letter to Respondent with additional questions for him to answer. (*Id.* at 144.) On December 27, 2021, Respondent submitted his response to ZDI. (*Id.* at 144–145.) On January 11, 2022, an investigator from the Enforcement Division of ZDI sent a letter to Respondent, via Respondent's prior counsel, stating that the Enforcement Division had closed its investigation of the complaint E.W. filed against Respondent.⁴ (Exhibit C; *see also* Tr. at 376-379.) The letter continued to state: “Please do not consider this decision approval of his conduct or a conclusion that [Respondent] did not violate insurance laws. We will keep the information you provided and it will remain in [Respondent's] complaint history. Future complaints against him will be carefully reviewed.” (Exhibit C.)

⁴ During the hearing, upon cross-examination by CFP Board's Enforcement Counsel, Respondent stated that the ZDI Enforcement Division notified Respondent that the ZDI Enforcement Division had closed its investigation, but CFP Board's Enforcement Counsel stated that the letter had not been provided to Enforcement Counsel prior to the hearing, and it had not otherwise been provided to the Hearing Panel or the Commission. (Tr. at 376-379.) The Hearing Panel Chair requested Respondent provide any such letter within two weeks of Respondent's hearing date on this matter, or, by March 2, 2023. (*Id.*) On February 21, 2023, Respondent's Counsel timely filed and provided to the Hearing Panel and Enforcement Counsel the document enclosed as Exhibit C to this Order, which the Hearing Panel and the Commission added to the record without objection from Enforcement Counsel. (Exhibit C, which corroborates Respondent's testimony that the Enforcement Division of ZDI notified Respondent that the Enforcement Division had closed its investigation.)

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III. Discussion of Respondent's Misconduct

Under Article 12.3 of CFP Board's *Procedural Rules*, the Commission must determine whether Respondent violated CFP Board's *Code and Standards*, or a predecessor rule.

First Ground for Sanction

CFP Board's Complaint alleged that there are grounds to sanction Respondent for violating Standard A.1. of the *Code and Standards*, which states that, at all times when providing Financial Advice⁵ to a Client,⁶ a CFP® professional must act as a fiduciary, and therefore, act in the best interest of the Client.

The Fiduciary Duty, as set out in Standard A.1 of the *Code and Standards*, contains the following three duties:

- a) Duty of Loyalty, which provides that a CFP® professional must:
 - i. Place the interests of the Client above the interests of the CFP® professional and the CFP® professional's firm;
 - ii. Avoid Conflicts of Interest⁷, or fully disclose Material Conflicts of Interest to the Client, obtain the Client's informed consent, and properly manage the conflict; and
 - iii. Act without regard to the financial or other interests of the CFP® professional, the CFP® professional's firm, or any individual or entity other than the Client, which means that a CFP® professional acting under a Conflict of Interest continues to have a duty to act in the best interests of the Client and place the Client's interests above the CFP® professional's.
- b) Duty of Care, which provides that a CFP® professional must act with the care, skill, prudence, and diligence that a prudent professional would exercise in light of the Client's goals, risk tolerance, objectives, and financial and personal circumstances.

⁵ As defined in CFP Board's *Code and Standards*, "Financial Advice" is a communication that, based on its content, context, and presentation, would reasonably be viewed as a recommendation that the Client take or refrain from taking a particular course of action with respect to:

- a. The development or implementation of a financial plan;
- b. The value of or the advisability of investing in, purchasing, holding, gifting, or selling Financial Assets;
- c. Investment policies or strategies, portfolio composition, the management of Financial Assets, or other financial matters; or
- d. The selection and retention of other persons to provide financial or Professional Services to the Client.

⁶ As defined in CFP Board's *Code and Standards*, a "Client" is any person, including a natural person, business organization, or legal entity, to whom a CFP® professional provides or agrees to provide Professional Services pursuant to an Engagement. "Professional Services" is defined as Financial Advice and related activities and services that are offered or provided, including, but not limited to, Financial Planning, legal, accounting, or business planning services. An "Engagement" is an oral or written agreement, arrangement, or understanding.

⁷ According to the *Code and Standards*, a "Conflict of Interest" occurs a. When a CFP® professional's interests (including the interests of the CFP® Professional's Firm) are adverse to the CFP® professional's duties to a Client, or b. When a CFP® professional has duties to one Client that are adverse to another Client.

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- c) Duty to Follow Client Instructions, which provides that a CFP® professional must comply with all objectives, policies, restrictions, and other terms of the Engagement and all reasonable and lawful directions of the Client.

Information is “Material,” as defined in the *Code and Standards*, when a reasonable Client or prospective Client would consider the information important in making a decision.

Respondent was a CFP® professional at all times relevant to this alleged violation.

Discussion of Respondent’s Duty of Loyalty to S.W. and E.W.

CFP Board’s Complaint alleged that Respondent had three Clients: (1) S.W., (2) E.W., and (3) S.W. and E.W. as a couple, to each of whom Respondent owed a separate and distinct Duty of Loyalty. Respondent admitted that S.W. and E.W. were Respondent’s Clients. The Commission determined that the S.W. and E.W. as a “Couple” did not constitute a third Client to whom Respondent owed a third Duty of Loyalty distinct from S.W. and E.W. Therefore, Respondent had two Clients—S.W. and E.W.—to each of whom Respondent owed a separate and distinct Duty of Loyalty.

When S.W. stated to Respondent that he and E.W., both of whom were his Clients, “may” be getting divorced, Respondent was on notice that there existed a Conflict of Interest, because the financial advice Respondent may provide to one Client may be adverse to the financial advice provided to the other Client. This is a Conflict of Interest. Respondent’s Conflict of Interest is Material because a reasonable Client would consider the conflict important when making a Financial Advice decision. Under the *Code and Standards*, this constitutes a Material Conflict of Interest that must be avoided, or disclosed, consented to, and managed.

Respondent did not avoid his Conflict of Interest and admitted that he did not fully disclose, to either S.W. or E.W., his Material Conflict of Interest. Respondent also did not obtain the informed consent of either S.W. or E.W. to his Material Conflict of Interest and did not manage the Material Conflict of Interest. (DEC Book at 367.)

Therefore, Respondent breached his Duty of Loyalty to both S.W. and E.W. by failing to avoid, or fully disclose, obtain the informed consent and properly manage the Material Conflict of Interest identified.

Discussion of Respondent’s Duty of Care to E.W.

Respondent failed to act with the care, prudence, and diligence his Duty of Care required when he:

- a) Failed to contact E.W. to discuss the recommended partial distribution and loan to obtain her opinion or approval on changes to the XYZ-Policy; and
- b) Failed to contact E.W. when her signatures were needed on documents and discuss the transaction with her.

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However, the Commission did not find that Respondent failed to act with the care, prudence, and diligence his Duty of Care required, when he, as alleged in CFP Board's Complaint, did not confirm whether S.W. and E.W. had filed for divorce before attempting to process a transaction with their insurance policies. In this instance, S.W. informally stated that he and E.W. "may" be getting divorced in the context of S.W. making numerous similar statements over the course of Respondent's close personal relationship with S.W. that spanned approximately 30 years. Under such circumstances, a prudent professional might not always confirm whether a Client had filed divorce before attempting to process a transaction. The Commission notes, however, that Respondent would have obtained this information if he had acted with the care, prudence, and diligence his Duty of Care required, as set forth above in a) and b), by discussing the partial distribution and loan with E.W. or obtaining E.W.'s signature.

The Commission also did not find that Respondent failed to act with the care, prudence, and diligence his Duty of Care required when he, as alleged in the Complaint, did not verify the signatures on the documents submitted to him when the signer did not directly submit the documents to him, because the documents were delivered via facsimile and Respondent at that time had no reason to doubt the authenticity of E.W.'s purported signature on the documents.

Moreover, the Commission did not find that Respondent failed to act with the diligence his Duty of Care required by failing to identify certain of S.W.'s actions that should have warned Respondent that his Financial Advice required further due diligence, including, as alleged in CFP Board's Complaint:

- a) S.W.'s need for a large amount of cash quickly, because S.W. stated he required the funds for throat cancer surgery and Respondent's experience as caretaker to his late wife during her battle with cancer made S.W.'s request plausible;
- b) S.W.'s desire to remove the cash value from the XYZ-Policy in E.W.'s name and put the monies into his new personal bank account, because of the same reason as above; and
- c) S.W.'s lack of mention of his supposed surgery following the procedure, and Respondent's failure to follow up or ask S.W. about his condition, because Enforcement Counsel did not prove Respondent had a duty to ask about S.W.'s purported surgery or follow up with S.W. about his condition in the seven days after S.W.'s purported surgery and before XYZ-Insurance halted and reversed the requested distribution, when there had been no change to the distribution request.

Thus, Respondent breached his Duty of Care to E.W. in violation of Standard A.1.b. of the *Code and Standards*.

Due to his breaches of his Duty of Loyalty, a violation of Standard A.1.a., and his Duty of Care, a violation of Standard A.1.b., Respondent has breached his Fiduciary Duty. Therefore, there are grounds to sanction Respondent for a violation of Standard A.1 of the *Code and Standards*.

Second Ground for Sanction

CFP Board's Complaint alleged that there are grounds to sanction Respondent for a violation of Standard A.4 of the *Code and Standards*, which provides a CFP® professional must provide Professional Services, including responding to reasonable Client inquiries, in a timely and thorough manner.

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Respondent was a CFP® professional at all times relevant to this alleged violation.

The Commission did not find that Respondent failed to provide Professional Services in a timely and thorough manner when he engaged in the same first three conducts discussed in the First Ground for Sanction related Respondent's care, prudence, and diligence, as alleged in the Complaint, because E.W. had specifically communicated to Respondent on more than one occasion that she wanted Respondent to communicate with S.W. about the XYZ-Policy, and the Commission found Respondent's testimony to be credible in this regard. Respondent thus provided Professional Services in a timely and thorough manner to both Clients, each S.W. and E.W., when Respondent communicated with S.W. regarding both S.W.'s policy and E.W.'s policy. Respondent also responded to S.W.'s inquiries in a timely and thorough manner, including when Respondent provided S.W. with options for cash distributions from both S.W.'s policy and E.W.'s policy, and when Respondent pursued the \$55,000 partial distribution and loan from E.W.'s XYZ-Policy that Respondent had recommended to S.W.⁸

Therefore, Enforcement Counsel did not meet its burden to prove that Respondent failed to provide Professional Services in a timely and thorough manner. As a result, there are no grounds to sanction Respondent for a violation of Standard A.4 of the *Code and Standards*.

Third Ground for Sanction

CFP Board's Complaint alleged there are grounds to sanction Respondent for a violation of Standard A.5 of the *Code and Standards*, which provides that when providing Financial Advice, a CFP® professional must make full disclosure of all Material Conflicts of Interest with the CFP® professional's Client that could affect the professional relationship.

To meet this obligation, a CFP® professional must provide the Client with sufficiently specific facts so that a reasonable Client would be able to understand the CFP® professional's Material Conflicts of Interest and would be able to understand the business practices that give rise to the conflicts and would be able to give informed consent to such conflicts or reject them. (Standard A.5.a.)

In addition to disclosing Material Conflicts of Interest, a CFP® professional must adopt and follow business practices reasonably designed to prevent Material Conflicts of Interest from compromising the CFP® professional's ability to act in the Client's best interests. (Standard A.5.b.)

For the same reasons and analysis provided with respect to the First Ground for Sanction and Respondent's violation of his Duty of Loyalty, Respondent failed to make full disclosure of all Material Conflicts of Interest with E.W. and S.W. that could affect the professional relationship.

Respondent also failed to adopt and follow business practices reasonably designed to prevent Material Conflicts of Interest from compromising his ability to act in the best interests of the Client, including when he failed to articulate or implement any reasonable internal policies or procedures concerning

⁸ Quoting Enforcement Counsel's allegations as set forth both the First and Third Grounds for Sanction in the Complaint: "Respondent had a pattern and practice of communicating with S.W. about the value of or the advisability of investing, purchasing, holding, or selling the Financial Assets of [S.W. and E.W.], including the insurance policies at issue in this matter. Respondent provided advice to S.W. regarding E.W.'s insurance policy, which constitutes Financial Advice to both clients."

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Respondent's ability to act in the Clients' best interest when two Clients divorce or may divorce. While Respondent stated he would make certain conflicts disclosures provided by insurance companies' documents and managed conflicts on a "case-by-case basis," the Commission did not find Respondent credible. Furthermore, Respondent presented no compelling evidence that he or his firm had *adopted* such actions as business practices or that he and his firm *followed* such practices, if adopted. The Commission determined Respondent's and his firm's actions were not reasonably designed to prevent Material Conflicts of Interest from compromising Respondent's ability to act in the best interests of the Client—both generally, and specifically with respect to divorcing Clients.

Therefore, there are grounds to sanction Respondent for a violation of Standard A.5.a. and Standard A.5.b. of the *Code and Standards*.

Fourth Ground for Sanction

CFP Board's Complaint alleged that there are grounds to sanction Respondent for violating Standard A.6 of the *Code and Standards*, which provides a CFP® professional must exercise professional judgment on behalf of the Client that is not subordinated to the interest of the CFP® professional or others.

Respondent was a CFP® professional at all times relevant to this violation.

The Commission did not find that Respondent subordinated E.W.'s financial interests to S.W.'s interests when, as alleged in the Complaint, he:

- a) Provided S.W. with options about how to acquire cash value from the XYZ-Policy, which E.W. was the named owner of, while failing to contact E.W. to discuss the recommended partial distribution and loan to obtain her opinion or approval on changes to the XYZ-Policy;
- b) Failed to submit documents to E.W. that required her signature, and instead submitted the documents to S.W., who submitted the documents without E.W.'s involvement; and
- c) Pushed for the quick processing of the partial surrender and loan on behalf of S.W. while failing to confirm if either Client had filed a Petition for Divorce and without speaking to E.W. about the transaction.

Respondent explained that E.W. had specifically requested that Respondent communicate with S.W. about the insurance policies at issue in this matter. Respondent had complied with E.W.'s request and discussed the Couple's finances with S.W. for approximately 20 years, and Enforcement Counsel produced no evidence of any other incident or complaint from E.W. during that time. When S.W. asked Respondent to request a distribution for S.W.'s purported throat cancer surgery, Respondent had no reason to believe S.W. might be lying to Respondent. As a result of these circumstances, although Respondent breached his Duty of Care to E.W. as outlined in the First Ground for Sanction, Respondent's professional judgment was not unreasonable, and Respondent did not subordinate E.W.'s interests to the interests of E.W. by attempting to execute S.W.'s request for a distribution. In this instance, the distribution was to purportedly pay for a serious and potentially life-threatening cancer surgery, where S.W.'s and E.W.'s interests were aligned and were not adverse, because the Couple would have had a shared interest in S.W. surviving cancer.

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Therefore, Enforcement Counsel did not meet its burden to prove that Respondent failed to exercise professional judgment on behalf of the Client that is not subordinated to the interest of others. As a result, there are no grounds to sanction Respondent for a violation of Standard A.6 of the *Code and Standards*.

IV. Discussion Regarding Decision

Pursuant to Article 12.3 of CFP Board's *Procedural Rules*, the Commission's final order must impose a sanction if the Commission finds a violation that does warrant a sanction. The Commission has discretion to order a sanction among those applicable sanctions set forth in Article 11.1.

After carefully considering the evidence in Respondent's matter and the violations found, the Commission determined to order a **Private Censure** of Respondent and order **Remedial Education or Work** in the form of 60 additional credit hours of Continuing Education ("CE"), which Respondent must complete within two (2) years of the effective date of this decision. Furthermore, the Commission encourages Respondent to seek CE courses that focus on the importance of implementing policies and procedures to protect clients and operating a professional office in accordance with CFP Board's *Code and Standards*.

CFP Board issued its non-binding *Sanction Guidelines* to serve as guidance for determining the appropriate sanction. In arriving at its decision, the Commission considered the following conducts in the *Sanction Guidelines*:

- Conduct 5: Breach of Fiduciary Duty (Suspension for at Least One Year and One Day);
- Conduct 7: Conflict of Interest (Public Censure); and
- Conduct 13: Failure to Act in Client's Interest Outside of a Financial Planning Relationship (Public Censure).

The Policy Notes to Conduct 5 state: The following should be considered aggravating and mitigating factors:

- (1) What was the materiality of the breach?
- (2) Was it intentional or inadvertent?
- (3) What was the relative harm to the client?

The Policy Notes to Conduct 7 state:

The following should be considered additional aggravating or mitigating factors in determining the appropriate sanction:

- (1) Was it a foreseeable conflict?
- (2) Was there harm or potential harm to the client?
- (3) Was the CFP® professional reckless?
- (4) Was the CFP® professional negligent?
- (5) Was it an isolated incident?

The following should be considered additional aggravating or mitigating factors in determining the appropriate sanction when a conflict exists between two clients:

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- (1) Did the CFP® professional approach the conflicting parties in order to implement a solution that was agreeable to both parties?
- (2) Did the CFP® professional approach his or her compliance department for advice on dealing with the conflict?

The Policy Notes to Conduct 13 state: The following should be considered additional aggravating or mitigating factors in determining the appropriate sanction:

- (1) What was the harm to the client?
- (2) Was it an isolated instance?
- (3) Was the CFP® professional negligent?
- (4) Was the CFP® professional reckless?

The Commission then reviewed the aggravating and mitigating factors in this case to determine whether there were any material factors relevant to this matter, and, if so, what weight those factors may have in its decisions.

In aggravation, the Commission considered that:

1. Respondent made no attempt to disclose or manage his Material Conflict of Interest—he admitted that he did not disclose the conflict or approach S.W. or E.W. to determine how to handle it and did not have policies or procedures in place to responsibly manage the conflict;
2. Respondent's Material Conflict of Interest was foreseeable to Respondent, both (1) generally, because many marriages end in divorce and Respondent should have anticipated and planned for that contingency among his clients, and (2) specifically, because Respondent stated he had known for many years that S.W. had a mistress whom he had kept secret from E.W., which the Commission found disturbing, since Respondent's knowledge of S.W.'s dishonesty with his spouse in this instance could have prompted Respondent to question the legitimacy of S.W.'s request to initiate a partial surrender in an account that belonged to his spouse—and Respondent admitted it probably should have, in hindsight (Tr. at 350); and
3. Respondent's misconduct caused harm to his client, E.W., and although she ultimately suffered no financial harm, E.W. stated in her complaint to ZDI that Respondent's actions: "offended me to my core [and] caused me pain and suffering." (DEC Book at 138.)

In mitigation, the Commission considered that:

1. Respondent has no previous disciplinary history with CFP Board and there is no evidence of any other disciplinary history or client complaints in the 40 years that Respondent has held professional licenses and designations;
2. A state insurance regulator investigated Respondent's conduct after receiving a customer complaint from E.W., yet dismissed its investigations without taking any enforcement action against Respondent (Exhibit C);
3. Respondent's misconduct was at least partially inadvertent—Respondent's violations of the Duty of Care and Duty of Loyalty were, at least partially, the result of S.W.'s intentional misrepresentations to Respondent, including: (1) S.W. lied to Respondent soon after

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- Respondent's wife died, which would have been a vulnerable time for any individual, yet, S.W. specifically lied to Respondent about *having cancer* soon after Respondent's wife *died of cancer*, which the Commission found to be a clearly intentional and calculated attempt by S.W. to specifically take advantage of Respondent's vulnerability while mourning his profound loss; (2) S.W. forged E.W.'s signature on required paperwork to intentionally deceive Respondent; and (3) Respondent testified that, at the time, and throughout their 30-year relationship, Respondent believed S.W. was a good friend, yet S.W. abruptly became manipulative and took advantage of his decades-long personal and professional relationship with Respondent; and
4. Respondent appeared to the Commission to take responsibility for his actions—he admitted that S.W. and E.W. were clients, that he had provided them with financial advice, that he did not have proper policies and procedures concerning how to handle conflicts of interest with divorcing clients, and stated that he wished he could apologize to E.W. because: "I let her down." (Tr. at 346.)

The Commission then consulted various *Anonymous Case Histories* ("ACHs") to determine if any ACHs it reviewed contained precedent that warranted a deviation from the *Sanction Guidelines*. The Commission specifically considered ACH 42517, ACH 24706, and ACH 30577, although the Commission did not find ACH 30577 relevant to this matter due to its focus on tax issues.

In ACH 42517, the Commission found that a CFP® professional assisted Spouse B with advice and financial analysis while still being Spouse A's financial advisor, causing Spouse B to back out of two potential settlements to divorce proceedings. The CFP® professional admitted that he did not make any Conflicts of Interest disclosure to Spouse A or Spouse B (although he did at least reach out to both Spouse A and Spouse B and told them that "if they had any questions regarding their financial situation, what their overall financial plan could look like, how their divorce may impact their overall financial situation going forward, they should reach [out] so that we can go over those things"). The CFP® professional in ACH 42517 also held the Certified Divorce Financial Analysts ("CDFA®") certification from the Institute for Divorce Financial Analysts ("IDFA"), and, prior to the Commission's review of the matter, the IDFA had issued to him a Public Censure after finding that he had violated IDFA's standards of Integrity, Objectivity, and Professionalism.

The Commission in ACH 42517 found that the CFP® professional had (1) violated his Duty of Loyalty under Standard A.1.a.ii. of the *Code and Standards* to the husband, Spouse A, because he failed to make any disclosure of his Conflicts of Interest that arose when he became aware that his duties to the husband were adverse to his duties to the wife due to their impending divorce; (2) violated his Duty of Loyalty under Standard A.1.a.iii. of the *Code and Standards* to the husband, Spouse A, by providing advice to Spouse B (i.) regarding the couple's divorce using the information and knowledge regarding Spouse A's finances that Respondent obtained during his engagement with Spouse A, and (ii.) regarding how to split the couple's combined estate to benefit Spouse B, which was to the detriment of Spouse A; and (3) violated Rules 2.2(b) and 2.2(e) of CFP Board's former *Rules of Conduct* by admitting that he failed to make the required Conflicts of Interest disclosure in writing to each of the two clients. The Commission in ACH 42517 issued to that CFP® professional a Public Censure with Remedial Work.

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Respondent's conduct in the instant matter is distinguishable from the more egregious conduct of the CFP® professional in ACH 42517. Respondent had no special training in the event of divorce; he appeared to the Commission to be sincerely confused about how to approach a situation where two clients may be getting a divorce; and he has had no customer complaints or professional discipline over the nearly 40 years he has held professional financial designations and licenses; while the CFP® professional in ACH 42517 held the CDFA® designation from IDFA; was found to have violated IDFA's standards of Integrity, Objectivity, and Professionalism; and the IDFA determined to publicly sanction the CFP® professional. Although it is true that ZDI—a state insurance regulator—opened investigations into Respondent's conduct based on E.W. filing a customer complaint, ZDI dismissed its investigations without further action and Respondent was not sanctioned by any regulator. These salient differences were persuasive to the Commission in determining that a sanction equal to or lesser than a Public Censure may be appropriate in Respondent's matter.

In ACH 24706, the Commission issued a Public Censure with Remedial Work in the form of six (6) hours of CE credits (to be completed within 12 months of issuance of the order in CFP Board Principal Topic areas 76-78), after finding that a CFP® professional, while engaged in a financial planning relationship with Husband and Wife, failed to (1) communicate his Conflict of Interest in representing both clients after he became aware of their potential divorce; and (2) appropriately respond to Wife's inquiries and subsequent check processing by not informing her that Husband refused to consent to the sale of investments to cover a large check, thus favoring Husband's interests to Wife's detriment. The Commission in ACH 24706 determined that the CFP® professional violated CFP Board's former *Rules of Conduct*, including: (1) Rule 1.4 by failing to act in the best interest of Wife; (2) Rule 4.1 by failing to treat each client fairly and provide professional services with integrity and objectivity; and (3) Rule 4.4 by failing to exercise reasonable and prudent professional judgment in providing professional services to clients. The Commission in ACH 24706 considered as mitigating factors that: (1) the CFP® professional handled his client relationships appropriately prior to the divorce situation; (2) the CFP® professional had no prior disciplinary history; (3) the CFP® professional's behavior did not result in monetary damages to either client; and (4) the client incurred margin interest charges with knowledge and disclosure. The Commission considered as aggravating factors that the CFP® professional: (1) failed to document that he sought the advice or instruction of his broker-dealer's compliance department in a contentious dispute between two of his clients; and (2) did not handle the conflicts of interest that arose when his clients separated. The Commission in the instant matter notes at least one very important distinction between Respondent's case and ACH 24706—while the Commission in ACH 24706 found that the CFP® professional had failed to act in the best interest of Wife because the CFP® professional favored Husband in their business relationship to Wife's detriment, the Commission in the instant matter did not find that Respondent favored S.W.'s interests to the detriment of E.W.'s interests. While Respondent in the instant matter breached his Duty of Loyalty with respect to S.W. and E.W. and breached his Duty to Care with respect to E.W., CFP Board Enforcement Counsel did not prove Respondent subordinated E.W.'s interests to the interests of S.W.

The Commission in the instant matter acknowledges that Respondent's sanction of a Private Censure is at least two deviations downwards from the *Sanctions Guidelines*'s guidance of a baseline sanction of Suspension for at Least One Year and One Day, which is associated with Conduct 5: Breach of Fiduciary Duty. The materiality of Respondent's breach was highly relevant due to Respondent admitting and the Commission finding that Respondent did not fully disclose any conflict of interest to S.W. or E.W. and did

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not obtain their consent to any conflict of interest. Yet, the Commission found that Respondent's breach of his fiduciary duty was not intentional because he was acting on S.W.'s misrepresentations, and Respondent's breach was not reckless because Respondent could not have anticipated that S.W. might suddenly take such extreme measures to "scam" Respondent, when S.W. was family by marriage and the two had fostered a friendship spanning approximately 30 years. Therefore, the Commission found Respondent's breach of his fiduciary duty was at least partially inadvertent. From this foundation, the Commission found that the similarities and differences of the ACHs relevant to Respondent's case, along with the significant number of mitigating factors and the weight that the Commission ascribed to those factors, amply support the Commission's imposition of a Private Censure.

Furthermore, Respondent's misconduct in this matter was an isolated incident that was largely the result of a confluence of extremely unusual circumstances, including the recent death of Respondent's wife and Respondent's longtime client, friend, and family member suddenly lying and manipulating Respondent, the aggregation of which the Commission believes minimizes the risk of recidivism.

In light of the violations found, the relevant guidance in the *Sanction Guidelines*, the ACHs reviewed, and the number and weight of the aggravating and mitigating factors, the Commission issues to Respondent an **Order of Private Censure with Remedial Work** in the form of 60 additional credit hours of Continuing Education ("CE"), which Respondent must complete within two (2) years of the effective date of this Order.

The Disciplinary and Ethics Commission