



2023 Season

Dale A. Walters, CPA, PFS, President
Drake Qualls, CFP®, President Elect
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Director

Dale A. Walters, President
The Financial Planning Association of Greater Phoenix, Inc.

CFP Board of Standards
Commission on Sanctions and Fitness

December 2, 2023

Re: Narrative Comments on Proposed Revised Sanction Guidelines and Fitness Standards

Dear Commission Members:

The Financial Planning Association of Greater Phoenix, Inc. (FPAGP) appreciates the opportunity to submit these comments on the proposed revised *Sanction Guidelines* and appreciates your consideration of them.

We applaud the work done on identifying and explaining general aggravating and mitigating factors, and how they should be applied. We largely support the factors as proposed, but we are concerned with the definition of “Vulnerable Client” in factor 24 as “one who is older than 65.” Having supported bills addressing the financial abuse of vulnerable adults through the process of becoming Arizona law, we believe the standard should focus on the impairment(s) that create vulnerability and not presume that individuals over a certain age have or may have a limited ability to gather information, evaluate courses of action, communicate intent, or otherwise protect their own interests. The Arizona law we advocated, for example, defines vulnerable adults as any individual over 18 who fits certain criteria putting them at heightened risk of exploitation.

If the Commission and/or Board believes that client age can be an aggravating factor independent of cognitive or physical impairment, we suggest that it be carved out as a separate factor with its own explanation of why that age (i.e., over 65) is considered aggravating. Alternatively, we suggest the proposed factor be revised so the DEC has discretion whether to apply it when the client is over 65, avoiding situations where panels feel compelled to adjust discipline upward based on age despite having no indication that a client was impaired.

We also agree with most of the proposed sanction guidelines. A few give us some pause, however:

- **Lack of Diligence (Standard A.4)** is proposed to escalate from a private censure to a suspension up to one year, subject to aggravation or mitigation. The specific aggravating factor listed is that the Financial Advice provided “was not thorough,” and we question how that factor would ever

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not apply if diligence was lacking. It would be helpful if a policy note were added to clarify how this factor should be applied.

- **Failure to Exercise Sound and/or Objective Professional Judgment (Professional judgment that is not subordinated) (Standard A.6)** would see a revocation guideline where there was no guideline before. With any dramatic change to a guideline, but especially where revocation becomes the baseline, we believe policy notes are warranted to help guide the DEC. We also recommend setting the guideline at suspension of at least a year and a day (subject to aggravating/mitigating factors), which seems more consistent with other guidelines.¹

- **Conviction for a Felony or Relevant Misdemeanor (Standard E.2.a)** appears with a policy note that “[t]he DEC shall not consider whether the law that Respondent violated was different in another jurisdiction.” We understand that this issue comes up repeatedly in DUI cases, where treatment of the same offense in different states is addressed very differently under the law. While we don’t have a specific policy alternative to recommend, it seems to us that the same conduct should result in the same sanction for respondents regardless of location.²

- **Tax Liens or Judgment Liens (Standard E.2d & E.2.e)** refers to “remedial work” in its proposed sanction guideline, but it is unclear what that means or how it should be applied. The policy notes refer to Appendix 2 – are the things a respondent would be required to certify annually after suspension for a tax lien the “remedial work” referenced in the sanction guideline? If so, Appendix 2 refers to plans with the IRS, so a similar process for addressing the liens and judgments applicable to Standard E.2.e would be appropriate. Clarification on this point would be helpful.

Again, we appreciate your consideration of our input and invite you to reach out to us directly about any questions you may have about the above points.

Sincerely,

-s-

Dale A. Walters CPA, PFS
President, FPA of Greater Phoenix

¹ For example, the sanction guideline for **Failure to Disclose or Manage Conflicts of Interest (Standard A.5)** is suspension of at least a year and a day, with potential aggravation or mitigation.

² The policy can be viewed as uniform regardless of jurisdiction – i.e., the fact a respondent committed an offense that could subject them to a jail sentence or probation shows recklessness that’s inconsistent with using their CFP credential. In that sense, it does not matter that the same act would not be jailable (etc.) somewhere else. That view assumes a knowledge of the law that might not be reasonable, however, especially for a respondent who was outside their home state when the offense occurred.

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