

CFP® Board

November 1, 2023

Re: 2023 Revised Fitness Standards and 2023 Proposed Revised Sanction Guidelines

To Whom It May Concern,

Thank you for the opportunity to comment on the proposed 2023 Standards revisions. I am a CFP® professional in Winter Garden, Florida. I have been a CFP® professional for over 5 years with over 12 years as a financial advisor, a Masters Degree in Personal Financial Planning and my own RIA.

I would like to raise concerns regarding the proposed 2023 Revised Fitness Standards and the 2023 Proposed Revised Sanction Guidelines for the Certified Financial Planners Board of Standards.

COMMENT ON PROPOSED NEW STANDARDS AND GUIDELINE

I would like to bring to the Board's attention several factors that are highly relevant for the decision-making process regarding the proposed new aggravating factors for determinations by the Disciplinary and Ethics Commission.

These are factors that the Board should revisit in light of indications that the Board's new proposals may not achieve the outcomes they purport to advance.

1. The aggravating factors on page 8 regarding "emotional and psychological harm" are too subjective to be either determinative, enforceable or fair.
2. Particularly when applied to the discrimination categories on page 3, section 2, these aggravating factors become even more subjective, since many of those discrimination classification categories must be balanced against each other (such as religion and sex and gender, or various racial and ethnic considerations).
3. Because of the subjective methods that would need to be used to determine "emotional and psychological harm," the outcomes would be more indicative of the bias and discrimination of those making the determinations than would be reflective of any degree of actual harm to the client.

For example:

- Would a black CFP® professional be required to serve a KKK client?
- Would a Jewish CFP® professional be required to serve a Muslim Hamas supporter?
- Would a homosexual CFP® professional be required to serve a client who believed that marriage is only between one man and one woman?
- Would a CFP® professional who believed that marriage is only between one man and one woman be required to serve a Mormon polygamist client?
- Would a transgender CFP® professional be required to serve a client who only recognizes two biological and scientific genders?
- Would a transgender CFP® professional (or any other currently-identified cultural gender minority) be required to serve a client who refuses to use that Planner's preferred pronouns?

How could it be determined that the subjective emotional and psychological harm" to a client would outweigh the actual harm to those CFP® professionals who would be banned from continuing to practice as a CFP® professional?

FULL ANALYSIS

The key problem with the new Guidelines is the inclusion of subjective factors such as "emotional and psychological harm" which would be used in determining the ability of CFP® professionals to continue practicing as a CFP® professional —since certification with the Board is a requirement for a CFP®. Subjective factors such as "emotional or psychological harm" are impossible to determine objectively, and such determinations would merely reflect the bias and prejudice of those on the Disciplinary and Ethics Commission who would be weighing these subjective "harm" factors, as well as ongoing and ever-changing cultural factors.

Only those factors that can be objectively evaluated (such as fraud or other crimes, financial malfeasance, physical harm to a client, etc.) should be used to determine the ability of CFP®s to continue to practice using the CFP® certification.

It is significant that these new proposed subjective "aggravating factors" cannot be objectively outlined in section 8 along with the objective Conduct and Rule Violation factors. That is because there is no objective way to determine such subjective "harm."

CFP® professionals choose their clients, just as clients select their CFP® professional. Compatibility on a vast variety of levels can be taken into consideration by both the professional and the prospective client. Professionals are not required to serve everyone who asks and clients have a vast number of CFP® professionals to choose from.

No evidence has been presented by the CFP® Board to demonstrate that any particular classification of individuals has been unable to secure financial planning services. In fact, one classification listed on page 2, item 3 (homosexuals and lesbians) has been demonstrated to earn on average 10% more than other individuals, which would make them objectively more desirable clients for CFP® professionals. In addition, clients are adults with the ability to change CFP® professionals if they believe that working with their current CFP® professional is resulting in any emotional or psychological harm to them.

Guidelines for “punishment” of CFP® professionals should only relate to those objective factors relevant to the financial service being provided, not to a determination of subjective “harm” to a client. These new Guidelines would of necessity become a subjective balancing test between various categories of discrimination classifications, which could result in subjective discrimination by the Disciplinary and Ethics Commission members reviewing the “emotional and psychological harm” to a client and how would the Commission balance that subjective “harm” against the actual harm of CFP® professional being able to control their own practices.

There is no objective way to determine “emotional or psychological harm” to the client as there is with regard to actual financial or physical harm, which can be objectively measured. Such “emotional and psychological harm” determinations would be purely subjective and would be based on the individual beliefs and standards of those on the Disciplinary and Ethics Commissioners who would be making this determination.

This could result in actual discrimination against the professional. For instance, if a subjective decision were made regarding “emotional or psychological harm” to a client, the professional could be significantly impacted financially from engaging in his or her profession based upon a purely subjective analysis by potentially biased Commissioners. More particular and objective guidelines must be available to direct how these various analyses would be determined and balanced. Yet none have been articulated by the Board—and none are even possible outside an actual legal finding of harm by a court of law employing constitutional due process standards.

CONCLUSION

The only aggravating factors that should be considered in CFP® Guidelines for removing the ability of CFP® professionals to use CFP® professional marks are those that can be objectively determined.

Instead of giving more or less “weight” to such subjective factors as “emotional or psychological harm,” the Disciplinary and Ethics Commission should only give weight to objective factors that involve actual financial, physical or other crimes that have been legally determined in a courtroom by a judge or jury—following constitutional standards of Due Process. In any subjective circumstances of “emotional or psychological harm,” the adult client always retains the ability to choose another CFP® professional. The marketplace then would determine which CFP® professionals survive and which do not.

Please consider what this Comment implies regarding the effectiveness of the new proposed Guidelines in achieving their stated purpose.

Sincerely,

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