

# WHY WE RESIGNED

by

Harv Ames, MBA, CFP<sup>®</sup>, AIFA<sup>®</sup>, ChFC, CLU, former Co-Chair, DEC  
Diana Simpson, MBA, CFP<sup>®</sup>, former Co-Chair, DEC  
Barry L. Kohler, JD, CFP<sup>®</sup>, CLU, former Chair-Elect, DEC  
Grace Worley, MBA, CFP<sup>®</sup>, former Commissioner, DEC  
James F. Williams, CPA, MSBA, CFP<sup>®</sup>, former Commissioner, DEC

April 3, 2008

On Saturday, March 8, 2008, we—constituting a majority (and the leadership) of the Disciplinary and Ethics Commission (DEC) of the CFP Board of Standards—resigned from the Commission.<sup>1</sup>

This “white paper” is our statement of the factors and events that led us reluctantly, but unanimously, to conclude that mass resignation was the *only* avenue available to us to express in the strongest possible terms our disagreement and grave concerns with recent decisions made by the Board of Directors of the CFP Board of Standards. We would have much preferred thoughtful dialog with the Board of Directors had they sought our input *prior* to making their decisions or had there been meaningful discussion *after* their actions came to light.<sup>2</sup>

With a \$15 Million annual budget (virtually all of which comes from certificants)<sup>3</sup> and an entire department devoted to “public relations,” the CFP Board has aggressively publicized their “explanation” of these events. Nonetheless, prior to the issuance of this white paper, we have largely refrained from public comment or discussion, hoping that the Board of Directors—even belatedly—would recognize the wisdom and importance of working *with* the DEC and obtaining wide input from stakeholders, rather than persisting in decisions made with little or no consultation from stakeholders, certificants, the subsidiary boards of the CFP Board, or the public.

---

<sup>1</sup> A copy of the resignation communication is attached as Appendix 1.

<sup>2</sup> The nomenclature is confusing. As a part of its governance changes, the Board of Directors changed the names of components of the organization. The key changes are that the former Board of Governors is now the Board of Directors, the former Board of Professional Review (BOPR) is now the Disciplinary and Ethics Commission (DEC or “Commission”), and the former Board of Examinations is now the Council on Examinations. For readability, only the current names are used throughout, even though this usage is not, strictly speaking, accurate.

<sup>3</sup> See IRS Form 990 (2006) for CFP Board of Standards, available for at no charge (registration required) at <http://www.guidestar.org>.

We have two distinct areas of concern:

- I. The **process** by which the Board of Directors *reached* the decisions stated in the January Resolution.
- II. The substantive **decisions** of the Board of Directors, as reflected in a Resolution passed by the Board of Directors at their January 18 - 19, 2008 Meeting [the “January Resolution”]. The full text of the January Resolution is in Appendix 2.

Each point will be addressed separately<sup>4</sup>.

**A CALL FOR ACTION.** Until the CFP Board acts in conformity with true “best practices” and in compliance with its own procedural rules, we call for CFP Board to take the following actions:

1. Immediately suspend implementation of the January Resolution.
2. Meet for a full and meaningful discussion with the DEC as it was constituted on March 6, 2008 to address any concerns which the Board of Directors may have.
3. After considering input from the DEC, publicly propose for comment those changes the Board of Directors is considering for the DEC and for the certificant disciplinary process.
4. Schedule a full and open public debate at a venue likely to be attended by a large number of certificants, such as FPA Retreat or FPA Boston.
5. Based on input from the public hearing and further comment from the DEC, adopt any resolutions affecting the certificant disciplinary process and DEC.

## **I. PROCESS USED BY CFP BOARD.**

The DEC learned for the first time at the Business Meeting of the Commission on March 6, 2008 about the January Resolution which so dramatically attempts to change the past practices of the CFP® certificant disciplinary process. **This procedural action by the Board of Directors—adoption of the January Resolution—violates the CFP Board’s own Disciplinary Rules and Procedures (DRP), adopted on May 31, 2007.**<sup>5</sup>

---

<sup>4</sup> Because many readers may lack a complete understanding of the context in which these actions of the CFP Board occurred, Appendix 3 provides a full statement about how the disciplinary system which governs CFP® certificants has worked in the past. Appendix 4 discusses the “cultural changes” at CFP Board which preceded the adoption of the January Resolution.

<sup>5</sup> On May 31, 2007, the Board of Directors of CFP Board announced the adoption of an updated Standards of Professional Conduct, which sets forth the ethical standards for CFP® professionals. The Standards include the Code of Ethics and Professional Responsibility, the Rules of Conduct, Financial Planning Prac-

Article 1 of the Disciplinary Rules and Procedures (DRP), adopted by the Board of Directors only eight (8) months earlier, states in the second sentence:

The Code of Ethics, Rules of Conduct and Practice Standards may be amended from time to time, **with revisions submitted to the public for comment before final adoption by CFP Board** (emphasis added). [The full text of DRP Articles I and II is annexed at Appendix 5.]<sup>6</sup>

We note that the Board of Directors promulgated the initial Exposure Draft of the new Standards in July 2006 without first obtaining public input. Due to the reactions to the draft and the lack of opportunity for input by many stakeholders, the Board of Directors subsequently took a step back and released for public comment in March 2007 a Second Exposure Draft *prior to adoption*. After a reasonable period for public comment, the new Standards were adopted by the Board of Directors at its business meeting on May 24, 2007.<sup>7</sup>

In light of this recent experience, it is simply incomprehensible that the Board of Directors could have imagined—at a non-public meeting, without stakeholder input—that they could adopt dramatic changes to past practice.<sup>8</sup> Not only was there no public comment, the Board of Directors did not even seek comment from the DEC about the changes they were implementing.<sup>9,10</sup>

---

tice Standards, Disciplinary Rules and Procedures, and Candidate Fitness Standards. The full text of the Standards can be found at <http://www.cfp.net/Downloads/2008Standards.pdf>.

<sup>6</sup> Proceeding with implementation of the January Resolution without following the procedure set forth and required by Article 1 of the DRP could give every Respondent an absolute right to challenge legally any DEC decision made after March 8, 2008. Any new DEC or panel formed by the CEO (per the January Resolution) would be constituted as a result of actions in violation of the DRP, and therefore, the purported action of the DEC or hearing panel would be void *ab initio* and without any legitimate force or effect whatsoever. If the intent of the Board of Directors was to reduce the likelihood of successful litigation against CFP Board arising out of the disciplinary process, they have instead accomplished just the opposite.

<sup>7</sup> One would also think that with the memory of the “CFP<sup>®</sup> Lite” fiasco burned so deeply into the institutional memory of CFP Board, obtaining public comment *prior* to attempting any significant change of direction would by now be routine.

<sup>8</sup> Our understanding is that at its January 2007 business meeting, the Board of Directors adopted a resolution closing its meeting to all but Directors and the CEO. For *years* prior to that action, in an effort to promote communication between the Board of Directors and its subsidiary boards, the Chair of the DEC regularly attended the meetings of the Board of Directors.

The decision by the Board of Directors to close its meetings and “un-invite” the DEC Chair came as a complete surprise to the DEC. We learned of this change only after the DEC election of new officers at the November 2007 DEC Business Meeting. At that meeting, we specifically elected co-Chairs: one to serve as liaison to the Board of Directors, the other to serve as chair for internal DEC hearings and meetings.

<sup>9</sup> The Board of Directors notes that two of their Directors are past Chairs of the DEC, and joined in the unanimous adoption of the January Resolution. If this is intended as a justification for not needing to seek

Moreover, the substantive changes established by the January Resolution, violate other provisions of Article 2 of the DRP, as discussed more fully below.<sup>11</sup>

## **II. THE JANUARY RESOLUTION SUBSTANTIVE CHANGES.**

The January Resolution delegates to staff oversight of the certificant disciplinary process, including the power to appoint the members of the DEC, the volunteers, and the Chair.

To be clear, we believe the current certificant disciplinary process can be improved. Indeed, at virtually every Business Meeting following hearings, the DEC considers changes to the DRP or other changes which will improve the process. *Had the Board of Directors stated the specific objectives and goals it was trying to achieve, we are confident that working together, the DEC and the Board of Directors could have arrived at a mutually acceptable—even optimal—set of changes about which public input should then have been sought, and those changes implemented in a considered and deliberate manner.*

The CFP Board’s description of the changes made by the January Resolution seem now to consist of a five point program. This was most recently expressed by CFP Board Chair David G. Strege, CFP<sup>®</sup>,CFA<sup>®</sup> in the FPA This Week email communication dated March 24, 2008. The full text of this “message” is attached at Appendix 6. In summary, the five changes are:

1. Appointment of the DEC Chair, members and volunteers.
2. Appointment of “public” representatives to the DEC.
3. Autonomy of the Hearing Panels.

---

input from *anyone* outside the closed circle of the Board of Directors—particularly from the DEC—it is simply not credible.

Moreover, *every* communication which any of us have received from past Chairs of the DEC (other than the two currently serving on the Board of Directors), prior members of the DEC, or certificants, has supported our decision to resign and expressed dismay over the changes made by the January Resolution.

<sup>10</sup> Even the manner in which the January Resolution was communicated to the DEC is telling. The substance of the January Resolution was not communicated to the DEC prior to the March hearings. Indeed, at a prehearing breakfast with the Chair and Chair-Elect of the Board of Directors and the CEO with the Co-Chairs and Chair-Elect of the DEC, there was no mention of these changes to be announced minutes later at the full business meeting . These actions were taken by the Board of Directors despite the discussion at breakfast in which the CFP Board Chair and Chair-Elect both stressed the need for improved communication with the DEC.

<sup>11</sup> In our view, the decision of any certificant, especially any former Commissioner of the DEC (or former member of the BOPR) to (re)join the DEC or serve on a hearing panel constituted by the CEO under the January Resolution would amount to acquiescence to the procedurally illegitimate action by the CFP Board—that is, the transfer of oversight of the certificant disciplinary process from the Board to staff without the public comment required by Article 1 of the DRP. Again, as stated in footnote 6, proceeding in this fashion could subject the CFP Board to legal challenge from any certificant as to the validity of those disciplinary hearings.

4. Staff participation in the ratification process.
5. The Appeals Process.

1. Appointment of the DEC Chair, members and volunteers. Because this change so fundamentally undercuts the independence and freedom from political pressures essential for a fair judicial or quasi-judicial process—which has been the hallmark of DEC proceedings—it merits a full discussion. To do this, we need to examine the significant statements in this portion of the Message by CFP Board Chair:

***“The previous process was that the Commission made appointments without input from anyone outside their circle. The process was not well documented nor was it accountable.”***

It is noteworthy that this, of course, is exactly how the Board of Directors makes its own appointments and elects its own Chair and Chair-Elect. They are now an entirely self-perpetuating body with no oversight, checks, or balances.<sup>12</sup> The same concerns voiced by the CFP Board about the DEC’s lack of documentation and accountability should be of even greater concern about the Board of Directors. At least with the DEC, many of our actions and processes are conducted in public. The Board of Directors, by contrast, do not even make the Minutes of their regular meetings available to the public or to certificants.

Oversight of the DEC in the past has been by fellow certificants (the Board of Directors), and this has been accomplished both formally and informally. The formal mechanisms were stated in Article 2 of the DRP, specifically, Article 2.2 subsections (b) and (c), which provide *“The Commission shall be authorized and empowered to:*

*(b) Periodically report to CFP Board’s Board of Directors on the operation of the Commission;*

*(c) Adopt amendments to these Disciplinary Rules and Procedures, subject to review and approval of CFP Board’s Board of Directors; . . . .”*

Informal accountability (prior to 2006 at least) came from the past practice of open communications with the DEC, having the DEC Chair attend regular board meetings of the Board of Directors, and occasional joint meetings or social functions.

Prospective Commissioners of the DEC were nominated by the DEC and vetted by staff. These decisions have always been subject to “approval” by the Board of Directors. To date, as far as anyone can remember (or has even heard), approval by the Board of Directors of Commissioners nominated to the DEC was routinely granted and the internal operations of the DEC were respected by the Directors.

---

<sup>12</sup> It deserves note that about four years ago, CFP Board *discontinued* the practice of having its members elected by certificants.

Moreover, the changes embodied in the January Resolution violate DRP Article 2.2(d), which authorizes the Commission to “[a]dopt such other rules or procedures as may be necessary or appropriate to govern the internal operations of the Commission.” Changes such as those stated in the January Resolution simply cannot be made without the public hearing required by DRP Article 1.

***“By assigning the responsibility to the CEO to implement a transparent process for selecting Commission members and volunteers, we have made the selection decisions more accountable.”***

Perhaps the most pernicious change wrought by the January Resolution is the attempt to transfer oversight of the DEC from the Directors to staff. This opens the door to the worst kind of political and financial pressures on what has been honored since its creation as an impartial *peer-review* process.<sup>13</sup> The process to appoint inherently contains the process to remove. The potential for a CEO “to stack” the Commission with members whose views are most politically opportune at any particular time is just plain wrong.

***“Going forward, CFP Board will appoint Commissioners with an eye toward the geographical diversity of our certificant population and the variety of business models our certificants represent.”***

The DEC has *always* had as a goal diversity of Commissioners. Even a cursory look at the composition of the current Commission (that is, the Commission prior to our resignations) or past Commissions shows diversity along lines of:

- Geography
- Firm size (small firms, big firms)
- Business model (national securities firm or bank, independent practitioner, etc.)
- Compensation (commission, fee, combination)
- Gender
- Professional education/licenses (JD, CPA, Masters in Taxation, etc.)
- Length of practice as a CFP® practitioner
- Prior service to the profession
- Prior service to CFP Board

Diversity has always played a major role in DEC decisions about the selection of volunteers and nomination of Commission members. For the Board of Directors to imply that it has been otherwise is untrue, and worse, offensive.

---

<sup>13</sup> The vast majority of funding for CFP Board operations comes from certificants. At this point, 43% of certificants are members of only 50 firms. The financial contributions of these 50 firms means that a decision by them to pull away from the CFP® mark would have significant economic impact on the budget and hence, the operations of the CFP Board. Even the threat of discouraging their employees from obtaining the mark could influence decisions of the Board of Directors and staff. The pressure from these 50 firms to revise the new Code to allow their employee/certificants to “opt-out” from application of the fiduciary standard and other provisions that make it acceptable to them is an illustration of this power.

2. Appointment of “public” representatives to the Commission. This is a major departure from past practice. However, because it implicates a wide array of public policy considerations, this change also warranted great public debate and exposure before adoption.

Here are some of the issues that occur to us:

- How does having public members of the DEC square with the long-standing tradition that certificant discipline is a *peer-review* process?
- Who is the “public”? Does this mean non-certificant financial professionals or does it mean consumers who may have only a lay person’s understanding of the issues, regulatory environment, the technical aspects of the financial planning process, the products used in implementing financial planning recommendations, and the fitness of a practitioner to use the marks?
- How should CFP Board balance its obligations to certificants with its obligations to the public?<sup>14</sup> Is the move from a peer-review model to a regulatory (SEC/NASD/FINRA) model desirable and appropriate?

The DEC as a body, and each of us individually, are not opposed to increased public understanding (and participation in) the certificant disciplinary process. What we do oppose is a rash decision that has not been discussed openly and with deliberation.

3. Autonomy of the Hearing Panels. Again, it would have been helpful had the Board of Directors explicitly stated what problem they were trying to fix by announcing future hearing panels would now include a public member. There is an array of possible solutions for incorporating public members into the disciplinary process *and at the same time* maintaining the essential peer-review character of this process. We would have welcomed an opportunity for a full and open discussion of this important issue.

4. Staff participation in the ratification process. “*Staff counsel will attend the Ratification Meeting at which the proposed decisions of the hearing panels are ratified by the entire Commission.*”

---

<sup>14</sup> This really is the issue about what the role of CFP Board is and should be. Historically, as a 501(c)(3) organization, CFP Board protected the public by assuring the education and ethical conduct of certificants met high standards. However, as the Board of Directors now apparently jockeys to position CFP Board for a bid to become the regulatory body overseeing financial planning, the balance has tipped too far: concern for the interests of “the public” now outweigh the historic commitment of CFP Board to certificants and the marks. We find it troubling that this change has occurred without input from the body of certificants who fund the operation of the organization. It is this body of certificants who not only constitute the only reason for the existence of the organization, but who are also virtually the sole source of funding its operations.

This is another radical departure from past practice and one which threatens the integrity and independence of the certificant disciplinary process. Ratification is not a post-decision administrative process. Rather, **it is the last step in the decision-making process by which the conduct of certificants is judged.**

The decision of the three-person hearing panel is only *advisory* until it is discussed by a majority of the Commission, which must then **approve the findings and sanctions recommended by the hearing panel.**<sup>15</sup> It is not uncommon in the Ratification Meeting for the hearing panel decision to be sent back to the panel that heard the case for further consideration and/or revision of its findings and/or sanctions.

Having staff counsel, an employee of the CEO, *in the meeting* during ratification deliberations opens the door to the very same kind of political influences as having the CEO select the members and officers of the DEC. Past practice worked perfectly well: staff counsel was available **outside** the room in which ratification deliberations were being conducted. She (or he) was thus readily available to “*provide technical assistance and guidance and to provide interpretation of the Standards of Professional Conduct*” should that be needed or requested.

Telling is the second paragraph on this point in message by the CFP Board Chair:

*“CFP Board's staff attorneys both joined CFP Board after positions with FINRA, where they gained experience interpreting rules and regulations. Additionally, one of the staff attorneys has a firm understanding of securities laws, having worked for the securities administrators in Maryland and the District of Columbia. Their understanding of the financial services industry and its regulatory aspects is impressive. They work with CFP Board's ethical standards on a daily basis, and they are intimately familiar with the content of those standards and the way those standards have been applied to specific cases.”*

This language reinforces the view that indeed the Board of Directors has decided (while never publicly stating its goals or intentions) to change the disciplinary process from a peer-review model to a regulatory model. The difference is this: in the regulatory model, people who have never practiced financial planning, and who are not even credentialed in the field, make judgments about the conduct of professionals practicing their profession. While a majority of certificants might welcome CFP Board changing from guardians of the marks to becoming the regulatory body for financial planners, this itself is a decision which merits full and open discussion.

---

<sup>15</sup> Again in an effort to continue to refine and improve the certificant disciplinary process, recent practice has been to require the presence of a super-majority of Commissioners before ratification hearings could be commenced.



The fifth point of Chair Strege’s five point program addresses the Appeals Process. This has never been within the purview of the DEC and we take no position on the substance of this change.

### **III. CONCLUSIONS.**

Had there been any genuine desire on the part of the Board of Directors to engage in an open discussion, our resignations could have been avoided or rescinded.<sup>16</sup> Indeed, as soon as the DEC learned of the January Resolution, our immediate reaction was to request the Board of Directors table its implementation until after July, when the Board of Directors and DEC were scheduled to have overlapping meetings. There would have been an opportunity then—already on the calendars of both organizations—for a full and open exchange. Had the Board of Directors desired, there could have been a genuine attempt to reach a meeting of the minds and find mutually acceptable resolutions to issues and concerns never previously voiced publicly, openly discussed with the DEC, or even explicitly stated. But the response of the Directors to even this modest request was that suspending implementation of the January Resolution was not an option and this decision of the Board of Directors would not be reconsidered.

Thus, there was no will on the part of the Directors to engage in meaningful discussion. Their press release was the first attempt by the Board of Directors to spin these events in a light favorable to them, followed by the CFP Report which thanked each of us for our service. Subsequently, we each received a pro-forma call and letter thanking us for our service, but no indication of any desire to discuss in a meaningful fashion the politicization of the CFP Board disciplinary process.

At its heart, we see the January Resolution as an abdication by the Board of Directors of their fiduciary responsibilities to the profession, to the public, and to the certificants. By over-reliance on the Carver model<sup>17</sup> and excessive delegation to staff, they have—in a stroke—transformed a true peer-review process with the required autonomy and independence into a political process subject to influences of the worst kind.

One wonders why—“if the process ain’t broke”—the Board of Directors decided to tinker with it. Having expressed no concerns about fairness or outcomes, the only conclusion to be drawn is that the motivation is purely political. To our knowledge, there has *never* been legal action taken against CFP Board by a Respondent as a result of alleged flaws in the process or administration of the certificant disciplinary process by the DEC.

The consequences of the January Resolution on what has been a thoughtful, diligent, professional and fair peer-review process are not acceptable to us as Commissioners. Our

---

<sup>16</sup> Any inference by CFP Board or any Director to the effect that members of the DEC participated in any meaningful discussions is simply false.

<sup>17</sup> See Appendix 4 for an explanation of the Carver model and its impact on CFP Board decisions and actions.

decision to resign was made only with the greatest reluctance after seeing clearly that that there was no meaningful opportunity to discuss or to influence these profound changes.

The January Resolution should not be acceptable to the public nor to our fellow certificants, the vast and overwhelming majority of whom do the right thing by their clients because it is the right thing to do. All of us are committed to protecting and preserving the integrity of the CFP® mark. The January Resolution is a big step in the continuing march of the Board of Directors in a direction with which we disagree. We cannot—and will not—be party to it.

APPENDIX 1

**To:** Board of Directors, CFP Board of Standards

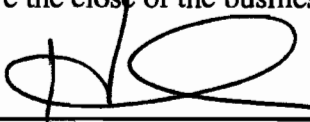
**Date:** March 8, 2008

At its January 17-18, 2008 meeting, the Directors of the CFP Board of Standards unanimously decided to delegate to the CEO the authority to "appoint the Chair, members and volunteers" of the DEC, and to "oversee the DEC." These decisions vest unfettered authority in the CEO to control the composition of the Commission, as well as the practices, processes and procedures the Commission employs in fulfilling its duties. These decisions run counter to entire history of autonomy and independence granted to the DEC and its predecessor, the Board of Professional Review (BOPR) as a *peer review* body.

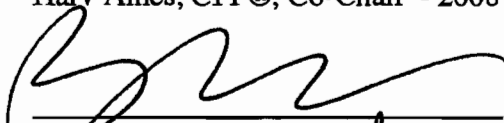
These decisions were announced for the first time to the DEC at the March 6-8, 2008 hearings. We feel strongly that these decisions have such great potential to undermine the independence of the DEC in the exercise of its judicial functions that we are unable to fulfill our responsibilities as Commission members. Delegating to staff the power to select, appoint and dismiss Commissioners eliminates peer control from what has been a true *peer review* process. This will inevitably distort the deliberative process and decision-making of the DEC. This is a profound structural change that will damage the peer review process of the DEC and thereby damage the CFP® mark and diminish the profession.

Our dedication and commitment to the integrity of the mark is unwavering. We welcome the opportunity to discuss these important issues with the Board of Directors.

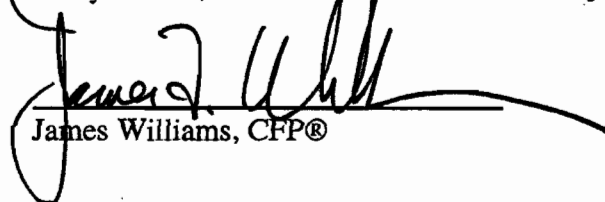
However, the undersigned are unwilling to continue to serve as Commissioners under these circumstances. Therefore we hereby resign as Commissioners from the DEC effective the close of the business meeting on March 8, 2008.

  
\_\_\_\_\_  
Harry Ames, CFP®, Co-Chair - 2008

  
\_\_\_\_\_  
Diana Simpson, CFP® Co-Chair - 2008

  
\_\_\_\_\_  
Barry Kohler, CFP® Chair Elect - 2009

  
\_\_\_\_\_  
Grace Worley, CFP®

  
\_\_\_\_\_  
James Williams, CFP®

## APPENDIX 2

Certified Financial Planner Board of Standards, Inc.  
Board of Directors Meeting  
January 17-18,2008 – MINUTES [*excerpt only*]

The Committee recommended that the Board delegate its authority over the Commission's activities to the CEO, and proposed the following resolution:

**The Board of Directors specifically delegates to the CEO the authority to: (a) appoint the Chair, members and volunteers of the Disciplinary and Ethics Commission ("DEC"), (b) oversee the DEC to insure it follows the established procedures required to provide a fair process to each certificant, and (c) insure that each DEC panel is composed of individuals who act in an impartial and objective manner and have no conflicts of interest with the complainant or certificant subject to the complaint. The CEO, consistent with his general reporting obligations, shall report to the Board of Directors the intended appointments to the DEC and the activities of the DEC.**

The Governance Committee also recommended that Mr. Herold serve as counsel to the Appeals Committee to provide legal advice on appeals of Commission decisions.

**Motion: Director Glovsky moved and Director Candura seconded approval of the above resolution, and approval of Arthur Herold as counsel to the Appeals Committee. The proposals were approved unanimously.**

Chair Strege stated that in accordance with Section 7.4 (Amendments) of the By-Laws, a telephonic Board meeting will be scheduled in late February 2008 to consider amending Section 3.14(c) (Councils, Committees, Task Forces and Other Bodies) by adding the following sentence:

**Commission chairs, members and volunteers shall be appointed by the CEO who shall oversee and supervise the Commission's activities.**

Chair Strege indicated that he, CEO Keller and Director Dimitroff would attend the March 6, 2008 Commission Meeting to present the new governance structure.

## APPENDIX 3

### HOW THE SYSTEM HAS WORKED

The DEC has functioned in relative obscurity for many years. The vast majority of certificants hope they never have a complaint against them alleging a violation the Code of Ethics and Professional Responsibility (“the Code”) or the Financial Planning Practice Standards. And if such a complaint is made, certificants generally scramble to find a copy of the Disciplinary Rules and Procedures to learn how the process works. [See Endnote 1 for a full explanation of the certificant disciplinary process.]\*

A critical part of the CFP Board disciplinary process is the absolute right of a certificant to choose to have a full, fair, and objective hearing—by telephone or in person—before a panel of peers: fellow certificants. A certificant who is alleged to have violated the Code or Practice Standards—called a “Respondent”—is entitled to be represented by legal counsel. Historically, about a third of Respondents choose to be assisted by legal counsel. The process is a *peer-review process*. While great efforts are made to assure fundamental fairness, it is not governed by the technical procedures or rules of evidence used in court proceedings.

In this peer-review process, it is a panel (historically comprised of three CFP® practitioners) that makes the findings in the first instance as to whether there has been a violation of the Code or the Practice Standards and if so, what level of discipline is appropriate.

Hearings have been held three times a year (March, July, and November), and four different volunteers attend each hearing session. This has allowed 12 certificants per year to participate in the disciplinary process, to see first hand how it works, and for each volunteer to determine if he or she would be interested in considering serving on the DEC. The Commissioners of the DEC serve staggered four year terms, with two or three leaving each year and the same number of new Commissioners joining. [See Endnote 2 for a full explanation of the volunteer selection process.] †

This process also allowed the Commissioners of the DEC to observe the conduct, technical expertise, and demeanor of each volunteer, for it is from the pool of past volunteers that future members of the DEC have been selected. Virtually since the beginning, *every* member of the DEC first served as a volunteer. Commissioners and volunteers have almost always been thoughtful, concerned, experienced, ethical financial planning practitioners.<sup>1</sup>

---

<sup>1</sup>Actually, there was an early period when there was an Associate Board of the Board of Professional Review. This group served a probable cause function, determining if allegations against a certificant warranted further proceedings. Volunteers served on the Associate Board, and it was Associate Board members who were promoted to members of the full BOPR as vacancies occurred. Once the CFP Board had a staff attorney, the Associate Board was disbanded and the probable cause function became a responsibility of CFP Board staff counsel.

At the business meeting following the November hearings, the DEC proposes to the CFP Board new members (selected by the outgoing Chair and the Chair-Elect) and elects a new Chair-Elect (who will succeed to the position of Chair in 13 months). These decisions have been “recommended for approval” to the Board of Directors. However, as far as anyone can remember (or has even heard), approval by the Board of Directors was routine and the internal operations of the DEC were respected by the Directors.

The three person hearing panels (the “hearing panels”) are comprised of two of the nine DEC Commissioners, plus one CFP® designee “Volunteer” serving with the DEC for that set of hearings. The volunteer serves as a full member of the hearing panel, having the opportunity to ask questions and to vote on the issues of violation and sanction.<sup>2</sup>

After the hearing panel reaches its decision, the decision is then presented to the Commission as a whole for ratification. Volunteers attend ratification deliberations and participate fully in the discussion of the case and the rationale for the decision of the hearing panel. However, only full Commission members are eligible to vote to ratify a hearing panel decision.

Hearing panel decisions must be approved (i.e., ratified) by a majority of the Commission. Past practice has evolved so that a supermajority of seven Commissioners is required before the ratification process can begin. During ratification deliberations, panel members are questioned about the facts of the case, their decision, and the sanction imposed (if any). It is not uncommon after complete exploration by the entire DEC for a decision *not* to be ratified, and the hearing panel asked to adjourn to reconsider its findings or recommendations. This revised decision of the hearing panel must again go through the full ratification process.

While on occasion the DEC has, with the consent of the Respondent allowed observers into the hearing panel process, ratification deliberations have always been only the DEC and (certificant) volunteers. Staff, including the attorney for CFP Board, have been available **outside** the deliberation room during ratifications should consultation be needed as to procedures or interpretation of the Code or Practice Standards.

If a Respondent is dissatisfied with the outcome of the disciplinary process at the DEC level, the Respondent may appeal the decision to the Appeals Committee of the Board of Directors. The appeal is heard by a subcommittee of three members of the Board of Directors. Usually at least one of the three is a past Chair of the DEC currently serving as a Director.

Throughout the evolution and development of this process, the DEC has been under the direction and control of CFP® practitioners. It has truly been a peer-review process.

---

<sup>2</sup> Traditionally, the pool of volunteers “self-selected” by indicating on the CFP Board website a willingness to serve. A few volunteers seek to serve only on the Council on Examinations or the DEC. Others are willing to accept a volunteer position of any kind. There was little or no screening of potential volunteers by staff. Rather the Chair and Chair-Elect reviewed the biographies of the potential volunteers and selected from among them. The names of the volunteers selected to serve would then be passed to staff who would contact each to confirm availability and willingness to serve.

Never has the DEC been deemed a support function to non-certificant staff—even staff counsel. Rather, CFP Board staff, primarily attorneys and paralegals, have operated in support of the DEC, aiding them in fulfilling their duties.

---

\*Endnote 1.

A Complaint may occur in one of the following ways (indicative, not inclusive)

1. A client may have a grievance against a CFP Certificant and has the right to file that grievance with the CFP Board. CFP Board staff reviews the grievance and, if it finds “probable cause,” investigates the case and sends the results of that investigation and all attendant materials forward to the DEC for a hearing.
2. On a CFP Certificant’s biannual CFP mark renewal, the Certificant must indicate if any actions (from SEC, FINRA, state regulatory agencies, civil courts, professional organizations, etc.) have been brought against the Certificant in the past . . . regardless of how long ago that/those actions might have been filed. If, through this “self-disclosure,” CFP Board staff finds probable cause to initiate an investigation and, subsequently, makes preliminary findings, the case will be brought forward to the DEC.
3. If a fellow CFP Certificant believes s/he has observed behavior that is contrary to the CFP Code of Ethics in another CFP Certificant, the initiating CFP Certificant can file a complaint with the CFP Board for investigation. Again, that complaint could result in an action being brought before the DEC.
4. The CFP Board staff regularly searches the internet, using the name of each CFP Certificant, for any potential actions that have occurred (again, NASD/FINRA, SEC, state regulatory agencies, civil courts, professional organizations, etc.) which could indicate probable cause to investigate potential action against a CFP Certificant for violation of the CFP Code of Ethics. After staff investigation, an action could be brought forward to the DEC.
5. A candidate for CFP Certification, yet to have declared his/her potential “ethical issues,” could have been discovered to have had such issue(s) and could be investigated for such breach, as a part of a past personal and/or professional history, and have an action brought forward to the DEC relating to the candidate’s “fitness” to hold the mark.

The CFP Board staff completes a full investigation of each potential violation of the Code of Ethics and Practice Standards and can:

1. Dismiss the potential violation without merit, in which case there is no further record against the CFP Certificant.
2. Find “Probable Cause” for disciplinary proceedings to go forward, in which case the CFP Certificant would be informed of such finding, additional information would be requested from the Certificant, and the Certificant would be offered one of four processes listed below:
  - a. Waiver –The Certificant “throws him/herself” on the “mercy” of the DEC, having submitted a documentary response to the CFP Board staff investigation. No penalty is proposed by the Certificant. The DEC considers the evidence before it and makes a determination as to violation of the Code and appropriate sanction.
  - b. Settlement Offer - If the Certificant believes that s/he did, indeed, violate the Code of Ethics and/or the Practice Standards (or, otherwise, wishes to “plead out”), that Certificant can review past, similar cases in the CFP Board/DEC database to see what “penalty” s/he believes would be appropriate for his/her offense. CFP Board staff instructs the Certificant to the effect that proposing a penalty lower than reflected in the prior case histories would likely result in a rejection of the proposed “Settlement Offer” and the subsequent requirement to exercise one of the following consideration paths, or accept a penalty the DEC might counter-offer to the Certificant, more likely than not more harsh than the Certificant had offered. If a

---

counter-offer is made by the DEC, the Respondent can either accept that counter-offer or request a personal or a telephonic appearance.

c. Telephonic Appearance – Should a Certificant wish to represent his/her case before the DEC, with or without legal counsel, and with or without witnesses, s/he may opt not to appear in person (cost and time historically being the primary considerations for such a decision) and instead avail him/herself of a telephonic appearance, which has the procedural due process as a personal appearance except that the Certificant is at a remote site, connected to the convened DEC Panel by phone. After considering the case, the DEC renders a judgment after ratifying the panel recommendation and the Certificant is informed. The Certificant can accept the decision or appeal that decision to the CFP Board Appeals Panel. The decision of the Appeals Panel is final.

d. Personal Appearance – Here, the Certificant has decided to “make his/her case” in person, with or without legal counsel, and with or without witnesses (who may appear in person or telephonically). This presentation proceeds exactly as a telephonic hearing, the DEC issues its decision after ratification, the Certificant is notified of the decision, and the Certificant can either accept the decision or appeal to the Appeals Panel.

3. Upon consideration by the DEC, if no findings are made of a violation of the Code or Practice Standards, the matter may be Dismissed or Dismissed with Caution. By contrast, once a finding(s) of violation(s) of the Code or Practice Standards are made, the possible outcomes are:

- a) Private Censure
- b) Public Admonition (published on the website but which may or may not be published in media local to the Certificant)
- c) Suspension of use of the Mark for a period less than a year (published)
- d) Suspension of use of the Mark for a period longer than a year, but, likely, not more than 5 years (published).
- e) Revocation of use of the Mark (published)

† Endnote 2.

Prospective volunteers are found as follows:

- A. CFP Certificants are encouraged to pursue volunteer positions under the auspices of the CFP Board. These opportunities are listed on the CFP Board site [[www.cfp.net](http://www.cfp.net)] under “Volunteers and Boards.” [Please see: <http://www.cfp.net/aboutus/volunteers.asp>]
- B. A certificant who wishes to volunteer would go to the “Volunteer Registration” form and indicate for which opportunities s/he wished to be considered. After completing and submitting the online form to CFP Board, Board staff would vet such submissions and forward the appropriate submissions to the various areas of “Volunteer Opportunities.” The DEC is one such opportunity.
- C. When the vetted resumes of those wishing to be considered for volunteer duty on the DEC are received by the current DEC Chair and Chair-Elect, those DEC officers evaluate the potential volunteers on the basis of: experience, length of time as a CFP certificant, geographic location of the potential volunteer, gender, professional designations/licenses, kind of practice, size of firm, prior volunteer and civic involvement and other indicators of potential successful service on the DEC. The Chair and Chair-Elect then rank the pool of potential volunteers and sends that ranking to CFP Board staff.
- D. Staff then begins the process of securing a commitment from the potential volunteers for the next hearing cycle . . . traditionally, the DEC requires four volunteers per cycle. Once “aboard,” volunteers receive training, following which they act as full members of the hearing panels on which they serve. Volunteers participate fully in the ratification discussions, but only Commissioners are eligible to vote after ratification deliberations.



## APPENDIX 4

### “CULTURAL” CHANGES AT CFP BOARD

The cultural changes at the CFP Board first appeared about four years ago, when the Board discontinued the practice of having certificants elect Directors. Since then, the Board of Directors have continuously and inexorably taken steps to isolate and insulate themselves resulting in even major decisions being made without input from others. *These changes concern us and should be of concern to every certificant.*

Even before the decision to move the headquarters of the CFP Board from Denver to Washington, D.C.—the rationale for which has never been satisfactorily explained to certificants—there were earlier warnings of the cultural changes: the CFP<sup>®</sup> Lite fiasco and the first revision of the Code of Professional Responsibility, to name two. The public and certificants thought CFP Board had learned the folly of its rose garden strategy. It seemed that the public retraction of the misguided CFP<sup>®</sup> Lite designation, and the embarrassing need to produce a Second Exposure draft of the revised Code of Professional Responsibility had enlightened the Board of Directors that it was unwise to make decisions in isolation. *We (certificants and the public) all believed CFP Board had learned this lesson.* Evidently not so.

Perhaps the two biggest changes in the culture have been (a) the use (overuse?) of the Carver Model, and (b) the move away from collegiality and collaboration toward secrecy and lack of accountability.

1. The Carver Model. Also called the “policy governance” model, the Carver model has for-profit and non-profit versions. It has been adopted—with variations—by a variety of organizations. The fundamental precept of the Carver model is that the Directors should:

- A. Set goals for the organization;
- B. Set any desired limits on the staff’s ability to accomplish those goals (i.e., determine what methods of accomplishing the goals are not acceptable), and then
- C. Get out of the way.

The theory is that the Board can focus only on “ends,” leaving “means” entirely up to the staff (the CEO). While extremely efficient for a Board of Directors (there is little for them to do), the danger with the Carver model *taken to an extreme* is that Directors fail to exercise oversight and control of the staff—again, principally the CEO. This excessive delegation results in the Board abdicating its fiduciary responsibilities by failing to assure that the methods *and* the methodology employed by staff are indeed appropriate.<sup>1</sup>

---

<sup>1</sup> The Board of Directors cannot evade their fiduciary responsibilities by closing their eyes to how staff is accomplishing the objectives set for them by the Board, and when inappropriate methods are employed by staff, claiming: “We hired a competent professional, so don’t blame us for his/her doing things we might not have approved of . . . if we had been paying attention.”

2. Secrecy in the Board Room. For many years, the prevailing atmosphere at CFP Board was one of openness and that we (staff and certificants) were all working together to enhance the CFP® mark—making certain that the educational requirements were rigorous but reasonable and the ethical standards to which certificants were held were high but consistent with actual best practices.

There was open communication between the Board of Directors and its subsidiary boards: the Board of Professional Review (the predecessor to the DEC) and the Board of Examinations (as it was then called—now the “Council on Examinations”). For a substantial period of time, the Chair of the DEC and the Chair of Council on Examinations were invited to regularly attend meetings of the Board of Directors. [Indeed, before the Board of Directors voted to reduce the size of their own body to 12, the Chairs of both subsidiary boards were *voting* members of the CFP Board of Directors.]

Such inclusion helped assure open communication *both ways*: to and from the “big board” and its subsidiary boards. Additionally, past practice was that about every two years, the outgoing Chair of the DEC was invited to apply for a position on the Board of Directors upon completion of his or her four year term as a DEC Commissioner.

Notwithstanding the earlier lessons, the decision to move from Denver to Washington, was made by the Board of Directors apparently in secret. As far as we know, no one from any subsidiary board was involved in the decision-making process or even consulted, and other than the then-Chair of the DEC getting a call the day or two before the move was announced publicly, certainly no information was shared with the DEC.

At about the time of the announcement of the move, in fairly rapid succession, as noted above, the Board of Directors reduced the size of its own body, closed its meetings to the public, and “dis-invited” the Chairs of the DEC and the Council on Examinations from attending any further meetings of the Board of Directors. The decision by the Board of Directors not to allow the DEC Chair to attend was made in January 2007, but not communicated to the DEC until *after* the November 2007 DEC Business Meeting.

The announcement of this Board action was made by a Director from CFP Board attending the DEC Business Meeting following the November 2007 hearings. The overwhelming concern of the DEC about being “shut out” by Board of Directors was communicated in no uncertain terms—unanimously by then entire DEC. Prior to taking their action in January 2007, the Board of Directors knew that in November 2006, the DEC had elected Co-Chairs with the specific intention that one would serve as liaison with the Board of Directors and attend all of their meetings.

These actions alone give rise to concerns about how such an organization can continue to act in secrecy, with no checks and balances, and without true accountability to anyone—public or certificants. It is also interesting to note that while the rest of the financial services community continues to move (or is pushed) towards increasing transparency, the

CFP Board, under the direction of its Board of Directors, has chosen to move in precisely the opposite direction.

We can only speculate that the Board of Directors has decided to position CFP Board to be the self-regulatory organization (SRO) for the financial planning profession. But—consistent with their recent approach—the Board of Directors has said nothing in this regard. Indeed, in response to a direct question, the Chair and Chair-Elect of CFP Board attending the March 2008 DEC hearings denied that any strategic decision had been made in this regard. We'll see.

It is questionable whether 501(c)(3) status ever made sense. It is clear, however, that 501(c)(3) has become the pretext for a major barrier to communications between the Board and the body of certificate holders. Each time the Board makes a change severing itself further from the population of certificants, a major cited reason is 501(c)(3). This is an organization that derives virtually none of its revenue from charitable contributions and virtually all of its revenue from “members.” But this is the subject of a different article addressing concerns about the CFP Board of Standards.

After the move to Washington was announced, over 90% of existing, experienced staff chose NOT to make the move. This required the CEO—newly hired himself—to hire virtually the entire staff for all departments. The only Denver employee from the Professional Review Department who chose to move to Washington was one who had been hired only three months prior to the move. Virtually one-hundred percent of the history, experience, and expertise of the staff that had supported critical DEC functions was lost—in one fell swoop!

In the place of these experienced CFP Board employees, the new hires for the two top staff supporting the DEC were both former NASD/FINRA employees. Given their professional background, it is not surprising that a new (bureaucratic) mindset has become evident—one that derives more from the culture of the regulation of securities dealers than from oversight of financial planners. Staff, in its few months aboard, in our experience, has shown themselves all-too-ready and willing to disregard the culture of the financial planning profession upon which our professional review—and the very culture of CFP Board—were founded. The organizational mindset now seems to be that financial professionals need to be *regulated*, and they are regulated best by those who are neither credentialed nor whom have practiced in the profession they are now regulating.

Another significant change was the disrespect shown to the DEC and its members. Commissioners spend between 20 – 40 hours preparing for each hearing session, and each hearing session requires four days (including travel) of time away from office or home, including one or two weekend days. Hearing days are full, generally beginning at 8:00 a.m. and lasting until 6:00 p.m. or later. Lunches are working lunches. Even at only 8 hours x 4 days, attendance at hearings alone requires a total of 32 hours. Preparation *and* attendance at hearings thus total a minimum of 50 hours—and all of this happens three times per year. In other words, each DEC Commissioner devotes 150 hours and 12 days per year away from home and office. Also note this does not include time devoted to tele-

phone hearings or other activities, such as attending CFP Board functions, for example, the financial planning clinics in Santa Monica and Boston.

Every member of the DEC is now, and has always been, at the top of our profession. The economic sacrifice made to serve as a Commissioner is far greater than that required of the Directors of CFP Board. While Commissioners have never been paid, traditionally they have been well-treated. By contrast, under the new regime at CFP Board, however, this changed. Rather than being treated as highly regarded professionals, whose experience and expertise was respected and valued, Commissioners have instead been treated more like unpaid staff—and staff that could be treated in a rather disrespectful fashion. The former atmosphere of collegiality between Commissioners and staff was significantly diminished.

The DEC and its individual members were more than willing to help during the transition from Denver to Washington. It was important to us to preserve as much of the culture as could be maintained despite the loss (in the Professional Review Department) as noted above of everyone with more than three months experience. Collectively, the members of the Commission have about 20 years of experience with the DEC and the disciplinary process of the CFP Board. The newly hired CEO *and staff* has less than *20 months of combined* total experience.

Nonetheless, staff showed little interest in learning how or why things had been done in the past. Individual members of the DEC offered to travel to Washington, even if that travel was to be at their own expense, to provide background and explain to new staff the certificant peer-review disciplinary process as it had evolved. The goal was to help the new staff transition more smoothly to its role of supporting the DEC. Such offers were not graciously declined; they were ignored. “Going through the motions” efforts occurred at meetings of the Commission before or after hearings, but Commissioners had the sense that the new NASD/FINRA trained staff had their own ideas of how things should run, and as had happened previously, offers of help from DEC Commissioners were simply dismissed.

This is not to say that the processes, procedures and indeed the Code and Practice Standards themselves were perfect. Prior to the move to D.C., each meeting of the DEC before or after hearings included intense and extensive discussions with staff about improvements that needed to be made, and/or discussions among the members of the Commission about how we could improve our processes and the clarity, transparency, and consistency of our decisions.

Despite all of these adverse changes in the culture, we would not have resigned but continued to serve had the Board of Directors not passed the January Resolution.

## APPENDIX 5

### FULL TEXT OF DRP ARTICLES I AND II

#### ARTICLE 1: INTRODUCTION

Certified Financial Planner Board of Standards Inc. (CFP Board) has adopted a *Code of Ethics and Professional Responsibility (Code of Ethics)*, *Rules of Conduct* and *Financial Planning Practice Standards (Practice Standards)*, which establish the expected level of professional conduct and practice for certificants and registrants. The *Code of Ethics*, *Rules of Conduct* and *Practice Standards* may be amended from time to time, with revisions submitted to the public for comment before final adoption by CFP Board. To promote and maintain the integrity of its , CFP® and CERTIFIED FINANCIAL PLANNER™ certification marks for the benefit of the clients and potential clients of certificants and registrants, CFP Board has the ability to enforce the provisions of the *Rules of Conduct* and *Practice Standards*. Adherence to the *Rules of Conduct* and compliance with the *Practice Standards* by certificants and registrants is required, with the potential for CFP Board sanctions against those who violate the regulations proscribed in these documents. CFP Board will follow the disciplinary rules and procedures set forth below when enforcing the *Rules of Conduct* and *Practice Standards*.

#### ARTICLE 2: DISCIPLINARY AND ETHICS COMMISSION

##### **2.1 Function and Jurisdiction of the Disciplinary and Ethics Commission**

CFP Board's Disciplinary and Ethics Commission (referred to herein as the "Commission"), formed pursuant to and governed by the bylaws of CFP Board, is charged with the duty of investigating, reviewing and taking appropriate action with respect to alleged violations of the *Rules of Conduct* and alleged non-compliance with the *Practice Standards* as promulgated by CFP Board and shall have original jurisdiction over all such disciplinary matters and procedures.

##### **2.2 Powers and Duties of the Commission**

The Commission shall be authorized and empowered to:

- (a) Enlist the assistance of CFP®certificants to assist with investigations, or serve temporarily on a Hearing Panel;
- (b) Periodically report to CFP Board's Board of Directors on the operation of the Commission;
- (c) Adopt amendments to these *Disciplinary Rules and Procedures*, subject to review and approval of CFP Board's Board of Directors; and
- (d) Adopt such other rules or procedures as may be necessary or appropriate to govern the internal operations of the Commission.

##### **2.3 Hearing Panel**

The Hearing Panel may consist of members of the Commission who have been designated Hearing Panel members, enlisted CFP®certificants and up to one individual who is not a CFP®certificant. A Panel shall consist of at least three persons. At least one member of every Hearing Panel shall be a member of the Commission and at least two members of every Hearing Panel shall be CFP®certificants. One member of each Hearing Panel shall serve as Chair of that hearing. The Chair shall rule on all motions, objections and other matters presented in the course of the hearing and must be a voting member of the Commission.

##### **2.4 Disqualification**

Commission members shall refrain from participating in any proceeding in which they, a member of their immediate family or a member of their firm have any interest or where such participation otherwise would involve a conflict of interest or the appearance of impropriety.

## **2.5 CFP Board Counsel**

CFP Board Counsel may be either full- or part-time employees of CFP Board or may be nonemployees who are attorneys. It will be the duty of CFP Board and CFP Board Counsel to maintain an office in such location as approved by CFP Board's Board of Directors to serve as a central office for the filing of requests for the investigation of certificant or registrant conduct, for the coordination of such investigations, for the administration of all disciplinary enforcement proceedings carried out pursuant to these *Procedures*, for the prosecution of charges of wrongdoing against certificants or registrants pursuant to these *Procedures* and for the performance of such other duties as are designated by the Commission or the Chief Executive Officer of CFP Board. CFP Board Counsel shall have ultimate responsibility to the Commission.

You are here: [FPA Net](#) > [FPA Member](#) > [Membership](#) > [FPA This Week](#) > mar\_24\_2008

[Return to normal view](#)

# FPA This Week

*The weekly newsletter for members of the Financial Planning Association*

## **Get the 2008 FPA Practice Management Scorecard at No Cost**

FPA and McLagan, producers of the 2008 FPA Practice Management Scorecard, are excited to announce an important offer allowing FPA members to participate in this year's program at no cost. Participating members will receive a Scorecard at no cost thanks to this special offer. Conditions apply so please visit <https://FPAScorecard.McLagan.com> for more information.

The FPA Scorecard itself is a unique benchmarking tool that allows financial planners to establish realistic financial goals and evaluate individual progress. Unlike benchmarking tools of the past, the Scorecard provides market-specific information that is relevant to a planner's specific situation and business model.

For this reason, the Scorecard is essential to planners hoping to not only learn where they are now in comparison to competition, but how they expand and improve their practice.

Registration is now open! Visit <https://FPAScorecard.McLagan.com> for more information.

***[Hear the introductory overview.](#)***

---

## **CFP Board Strengthens Its Ethics Enforcement Policy**

Message from CFP Board Chair David G. Strege, CFP®, CFA®

CFP Board recently announced important changes to the selection process for CFP Board's Disciplinary and Ethics Commission members and the role of staff in support of the work of the Commission. These changes are the culmination of governance discussions that began in 2005. They were announced after an extensive and thoughtful examination of best practices in governance and professional review processes inside and outside the financial services industry.

Here are the changes that were made and what they mean:

1. Appointment of the Commission Chair, members and volunteers: The previous process was that the Commission made appointments without input from anyone outside their circle. The process was not well documented nor was it accountable. By assigning the responsibility to the CEO to implement a transparent process for selecting Commission members and volunteers, we have made the selection decisions more accountable. Potential Commission members/volunteers will be vetted by the Board and the Commission's input will be sought. The ultimate goal is a hearing process that is fair to the certificant and credible to the public. Going forward, CFP Board will appoint Commissioners with an eye toward the geographical diversity of our certificant population and the variety of business models our certificants represent. It is important to note that neither the CEO nor any staff member will serve on the Commission.
2. Appointment of "public" representatives to the Commission: It is not uncommon for professional review processes to include public representatives. In fact, it is widely considered a best practice that increases transparency and accountability for a profession. And, it increases trust and credibility with the public. CFP Board's Bylaws provide that the Disciplinary and Ethics Commission "may be composed of CFP® certificants and members of the public." While the Bylaws do not specify the total number of Commissioners or the break-down of certificants and public members, it is CFP Board's intention that the Commission will always

consist of a majority of certificants. It is anticipated that one or two "public" representatives will be appointed to the nine-member Commission in 2009.

3. **Autonomy of the Hearing Panels:** The three-member panels will function autonomously, as they always have. In no circumstance will there be more than one "public" member on a panel. The hearing panels have been -- and will continue to be -- autonomous groups responsible for recommending disciplinary actions for the cases they hear.
4. **Staff participation in the ratification process:** Staff counsel will attend the Ratification Meeting at which the proposed decisions of the hearing panels are ratified by the entire Commission. Staff will be available to provide technical assistance and guidance and to provide interpretation of the Standards of Professional Conduct. The Ratification Meeting occurs following the hearings, which are conducted by the Commission's hearing panels in private. Additionally, staff counsel who attends the Ratification Meeting will not be the same individual who presents cases on behalf of CFP Board to the three-member hearing panels, further segregating duties and responsibilities.

CFP Board's staff attorneys both joined CFP Board after positions with FINRA, where they gained experience interpreting rules and regulations. Additionally, one of the staff attorneys has a firm understanding of securities laws, having worked for the securities administrators in Maryland and the District of Columbia. Their understanding of the financial services industry and its regulatory aspects is impressive. They work with CFP Board's ethical standards on a daily basis, and they are intimately familiar with the content of those standards and the way those standards have been applied to specific cases.

5. **The Appeals Process:** In the interest of ensuring continued independence of the appeals process, CFP Board has retained outside counsel to advise the Appeals Committee on the Standards of Professional Conduct and to ensure the integrity of the appeals process. The Appeals Committee will deliberate in private, without staff; outside counsel will be available to provide technical support, guidance and interpretation of the Standards.

These changes are a natural extension of CFP Board's revised Standards of Professional Conduct, which become effective July 1, 2008. We believe that the changes, which were unanimously approved by the Board of Directors, ensure a fair and consistent professional review process for certificants, increase the credibility of the CFP® marks in the eyes of the public, and reduce risk to CFP Board.

We regret that five Commission members chose to resign recently. They conducted the most recent hearings in a very professional manner and we appreciate their volunteer service to CFP Board.

**Top»**

#### **FPA to Provide Financial Education to National Groups**

FPA will present at the America in Aging conference hosted by the American Society on Aging and the National Council on Aging, March 26-30 in Washington, D.C.

In an educational seminar on March 27, FPA will explain how professionals in the aging field can help their clients with estate planning. The seminar will focus on the benefits of estate planning, how to start the conversation, estate planning processes and tools.

The conference is expected to attract more than 4,000 attendees. FPA President, Mark Johannessen, CFP®, will represent FPA at this event.

Through FPA's relationship with student loan provider, Sallie Mae, the following schools have invited FPA to present to students on real world financial planning:

- March 27: Charleston School of Law in Charleston, S.C.