

**CFP BOARD**

**CASE STUDIES**  
**APPLYING THE**  
***CODE OF ETHICS***  
***AND STANDARDS***  
***OF CONDUCT***

# PURPOSE AND TABLE OF CONTENTS

CFP Board developed these case studies to provide practical guidance to CFP® professionals and their firms on the new *Code of Ethics and Standards of Conduct*, which becomes effective on October 1, 2019. Each case study presents a hypothetical factual circumstance and then asks a question about a CFP® professional's duty in that circumstance under the *Code and Standards*. The case study presents the response options, identifies the best response, and then discusses the rationale for why that response is the best and why the other response options are not the best. CFP Board intends for these and other case studies to guide CFP® professionals in their application of the *Code and Standards* to their own practice. CFP Board encourages all CFP® professionals to read the *Code and Standards* prior to its effective date.

<b>CASE STUDY</b>	<b>PAGE NUMBER</b>
<b>1</b> The Fiduciary Duty Applies to a Rollover Recommendation.....	3
<b>2</b> The Duty to Disclose Material Conflicts of Interest When Making A Rollover Recommendation.....	4
<b>3</b> The Fiduciary Duty Applies to An Opinion About a Financial Asset.....	6
<b>4</b> The Duty to Disclose Material Conflicts of Interest When Responding to a Client's Investment Inquiry .....	7
<b>5</b> The Duty to Disclose Material Conflicts of Interest When Recommending a Product Issued by an Affiliate.....	8
<b>6</b> The Duty to Follow a Client's Instruction to Use a Specific Firm for Execution .....	9
<b>7</b> The Duty to Communicate Team Member Responsibilities.....	11
<b>8</b> The Fiduciary Duty to Obtain Factual Information When Working on a Team .....	12
<b>9</b> Financial Advice That Requires Financial Planning.....	14
<b>10</b> When a Client Has a Reasonable Basis to Believe a CFP® Professional Will Provide Financial Planning .....	16
<b>11</b> The Fiduciary Duty Does Not Apply When Providing General Financial Educational Materials Concerning Education Planning.....	18
<b>12</b> The Fiduciary Duty Does Not Apply When Providing General Financial Educational Materials Concerning Retirement Planning.....	19

# CASE STUDY 1: THE FIDUCIARY DUTY APPLIES TO A ROLLOVER RECOMMENDATION

Sarah, a CFP® professional, is engaged by Betty, who is retiring soon, to provide Financial Advice. Betty has most of her retirement funds invested in her employer's 401(k) plan. Sarah does not obtain any information about the 401(k) plan because she assumes that there are more investment options available in an individual retirement account ("IRA") than in Betty's 401(k) plan. Based on this, Sarah believes Betty's portfolio would be better off in an IRA. Sarah properly discloses her Material Conflicts of Interest to Betty. Sarah then recommends that Betty take a distribution from her 401(k) plan and roll the assets into an IRA, which Sarah would manage. Sarah intends to analyze and recommend an investment strategy for the IRA after the funds have been distributed to the IRA.

## QUESTION:

Did Sarah satisfy her Fiduciary Duty?

## RESPONSE OPTIONS:

- A. Sarah satisfied her Fiduciary Duty in recommending the distribution and rollover.
- B. Sarah did not satisfy her Fiduciary Duty in recommending the distribution and rollover.

**Best Response:** Response B is the best response. This case involves the Fiduciary Duty (Standard A.1.) and the definitions of Client and Financial Advice (Glossary).

At all times when providing Financial Advice to a Client, a CFP® professional must act as a fiduciary, and therefore, act in the best interests of the Client. A Client is any person to whom a CFP® professional provides or agrees to provide Professional Services pursuant to an Engagement. Financial Advice includes communications that, based on their content, context, and presentation, would reasonably be viewed as a recommendation to take or refrain from taking a particular course of action with respect to the advisability of investing in, purchasing, holding, gifting, or selling Financial Assets. The Fiduciary Duty includes a Duty of Loyalty, a Duty of Care, and a Duty to Follow Client Instructions.

This case study focuses on the Duty of Care, which requires a CFP® professional to 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.

In this case, Sarah has an Engagement with Betty, and has recommended that Betty take a distribution from her 401(k) plan and roll the assets into an IRA. Therefore, Sarah has provided Financial Advice to a Client and is subject to the Fiduciary Duty, including the Duty of Care.

To satisfy the Duty of Care, Sarah should act in light of Betty's goals, risk tolerance, objectives, and financial and personal circumstances. Sarah should compare the features of the 401(k) plan and the potential IRA when making her recommendation to Betty. Sarah should apply the factors that a prudent CFP® professional would determine are relevant, including the relative features and options of the 401(k) plan compared to a rollover IRA, and determine which choice is best for Betty given her goals, risk tolerance, objectives, and financial and personal circumstances. FINRA has identified a non-exhaustive list of factors that are relevant to this analysis, such as the fees and expenses, investment options, services, availability of penalty-free withdrawals, protection from creditors and legal judgments, required minimum distributions, and issues related to investments in employer stock.

Sarah did not act with the care, skill, prudence and diligence that the Duty of Care requires because she recommended the distribution and rollover without analyzing how the features and options of the 401(k) plan compare to the potential IRA. Sarah also should have consulted her firm's policies and procedures, which may specifically address potential rollovers of 401(k) plan assets.

Response A is not the best response because Sarah did not satisfy her Fiduciary Duty (more particularly, her Duty of Care) in recommending the distribution and rollover.

**Relevant Standards and Definitions:** Fiduciary Duty (Standard A.1.); definitions of Client and Financial Advice (Glossary).

## **CASE STUDY 2: THE DUTY TO DISCLOSE MATERIAL CONFLICTS OF INTEREST WHEN MAKING A ROLLOVER RECOMMENDATION**

Bruce, a CFP® professional, is a representative of XYZ Advisors, Inc., a registered investment adviser. XYZ does not permit its investment adviser representatives to charge a fee for managing assets in a 401(k) plan. Bruce is engaged by Heather, who is retiring, to provide Financial Planning. After obtaining information about and understanding Heather's personal and financial circumstances, Bruce helps Heather develop a goal of having adequate income during her retirement. Bruce analyzes Heather's existing account in the 401(k) plan and the plan's investment options, fees and expenses, services, and other features. Bruce concludes that the management fees Heather will pay if she rolls over the assets into an individual retirement account ("IRA") will be higher than if she leaves the assets in her account in the 401(k) plan. Nevertheless, based on his review of Heather's circumstances and analysis of the relevant factors, Bruce determines that such a rollover is in Heather's best interest. Bruce presents that recommendation to Heather and tells Heather that he would receive an ongoing fee for managing the assets in the IRA. Bruce does not tell Heather that she would not have to pay Bruce a fee if she continues to invest her assets in the account in the 401(k) plan, as he would not be advising on those assets.

### **QUESTION:**

With respect to Bruce's Duty to Disclose Conflicts of Interest, which of the following is the best response?

### **RESPONSE OPTIONS:**

- A. Bruce has no Material Conflict of Interest because Heather understands that Bruce will be paid for his services.
- B. Bruce satisfied his disclosure obligation when he disclosed his fee for managing the IRA.
- C. Bruce did not fully disclose to Heather the Material Conflict of Interest that his recommendation presented.
- D. Since Bruce sincerely believed that his recommendation was in Heather's best interest, he was excused from making full disclosure to Heather.

**Best Response:** Response C is the best response. This case involves the Duty to Disclose Conflicts of Interest (Standard A.5.a.) and the definitions of Conflict of Interest and Material (Glossary).

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. 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 the business practices that give rise to the conflicts, and give informed consent to such conflicts or reject them. One way that a Conflict of Interest occurs is 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. Information is Material when a reasonable Client or prospective Client would consider the information important in making a decision. A CFP® professional must make full disclosure and obtain the informed consent of the Client before providing any Financial Advice regarding which the CFP® professional has a Material Conflict of Interest.

In this case, Bruce has a Material Conflict of Interest that could affect his professional relationship with Heather because of how he is compensated for his services. To provide sufficiently specific facts for Heather to understand this Material Conflict of Interest, Bruce must explain to Heather that he will receive an ongoing fee for managing Heather's assets only if she accepts the recommendation and the assets are invested in an IRA; Bruce will receive no compensation if Heather keeps the assets in the account in the 401(k) plan because he will not be providing Financial Advice on those assets. A reasonable Client, like Heather, would consider that information important in making a decision whether to follow or reject Bruce's Financial Advice. Because Bruce did not fully disclose that information to Heather, he did not satisfy his Duty to Disclose Material Conflicts of Interest.

Response A is not the best response because Bruce has a Material Conflict of Interest.

Response B is not the best response because the Duty to Disclose Conflicts of Interest requires Bruce to do more than disclose that he would receive a fee for managing the assets in the IRA. Bruce also is required to explain to Heather that he will receive a fee only if she accepts his recommendation.

Response D is not the best response because a sincere belief by a CFP® professional that he or she is acting in the Client's best interests is insufficient to excuse a failure to make full disclosure of a Material Conflict of Interest.

While the Duty to Disclose Conflicts of Interest does not require disclosure of Material Conflicts of Interest in writing, evidence of oral disclosure of a conflict will be given such weight as CFP Board in its judgment deems appropriate. As a best practice, CFP Board recommends that a CFP® professional disclose the Conflict of Interest in writing before or when providing the Financial Advice.

**Relevant Standards and Definitions:** Disclose and Manage Conflicts of Interest (Standard A.5); definitions of Conflict of Interest and Material (Glossary).

## CASE STUDY 3: THE FIDUCIARY DUTY APPLIES TO AN OPINION ABOUT A FINANCIAL ASSET

Allison is a CFP® professional who is a registered representative of a broker-dealer. Allison has provided brokerage services to her Client, Mateo, several times over the past three years. Typically, Mateo wants to purchase a specific stock and asks Allison for her opinion before purchasing the stock. Mateo recently asked Allison what she “thought” about Mateo buying a specific stock he intended to purchase. Allison told Mateo that she has looked into the company and that she likes the stock and believes it is undervalued. Mateo then directed Allison to purchase the stock.

### QUESTION:

Does Allison have a Fiduciary Duty?

### RESPONSE OPTIONS:

- A. Allison does not have a Fiduciary Duty because Mateo identified the specific stock at issue.
- B. Allison has a Fiduciary Duty because she provided Financial Advice when she communicated with Mateo regarding the advisability of purchasing the stock.
- C. Allison does not have a Fiduciary Duty because Mateo ultimately directed Allison to buy the stock after Allison communicated with Mateo regarding the advisability of the purchase.
- D. Allison has a Fiduciary Duty because she effected the stock transaction for Mateo.

**Best Response:** Response B is the best response. This case study involves the Fiduciary Duty (Standard A.1.) and the definitions of Client, Financial Advice, and Financial Assets (Glossary).

At all times when providing Financial Advice to a Client, a CFP® professional must act as a fiduciary, and therefore, act in the best interests of the Client. A Client is any person to whom the CFP® professional provides or agrees to provide Professional Services pursuant to an Engagement. Financial Advice includes 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, among other things, the value of or the advisability of investing in, purchasing, holding, gifting, or selling Financial Assets. Financial Assets include securities, insurance products, real estate, bank instruments, commodities contracts, derivative contracts, collectibles, or other financial products.

Mateo asked Allison about a specific stock before making a decision whether to purchase the stock. The content, context, and presentation of this communication makes clear that Mateo was asking for Allison’s recommendation with respect to the advisability of purchasing the stock. When Allison responded to Mateo’s question by saying that she likes the stock and that the stock is undervalued, she made a communication that reasonably would be viewed as a recommendation that Mateo purchase the stock. A stock is an equity security, which is a Financial Asset. Mateo is a Client because Allison provided Financial Advice and related services to Mateo pursuant to an Engagement. Therefore, because Allison made a recommendation to a Client about a Financial Asset, she has provided Financial Advice. Since a Fiduciary Duty arises when a CFP® professional provides Financial Advice to a Client, Allison has a Fiduciary Duty, and was required to act as a fiduciary, and therefore, in Mateo’s best interests, when providing the Financial Advice.

Response A is not the best response. Allison has a Fiduciary Duty because she provided Financial Advice to Mateo, her Client. A CFP® professional who provides Financial Advice to a Client concerning a specific Financial Asset has a Fiduciary Duty even if it was the Client who asked for information about that Financial Asset.

Response C is not the best response because Allison’s obligation to satisfy the Fiduciary Duty does not depend upon whether Mateo directed the transaction. Allison must act as a fiduciary when providing Financial Advice. Allison provided Financial Advice to Mateo because Mateo is a Client and Allison made a recommendation to Mateo about a Financial Asset.

Response D is not the best response. Allison has a Fiduciary Duty because she provided Mateo with Financial Advice. Under other circumstances (such as a Client-directed purchase), a CFP® professional may purchase a stock for a Client without providing Financial Advice. In that case, the CFP® professional does not have a Fiduciary Duty.

**Relevant Standards and Definitions:** Fiduciary Duty (Standard A.1.); definitions of Client, Financial Advice, and Financial Assets (Glossary).

## CASE STUDY 4: THE DUTY TO DISCLOSE MATERIAL CONFLICTS OF INTEREST WHEN RESPONDING TO A CLIENT'S INVESTMENT INQUIRY

Emma, a CFP® professional, receives a call from her Client, David, who is approaching retirement age. David asks Emma whether he should invest in a real estate investment trust (REIT) to fund his retirement income. To invest in the REIT, David would need to liquidate a portion of the assets held in his investment account, which Emma manages, and purchase the REIT through another account. Emma conducts her analysis and concludes that investing in the REIT is a bad idea because, among other reasons, the account she is managing likely will achieve better returns than an investment in the REIT. Emma analyzes David's investment time horizon and concludes that the commission she would receive on the purchase of a REIT investment would be less than the management fee she would earn if the assets remained in David's investment account. The account that would hold the REIT would not pay Emma a management fee.

### QUESTION:

What should Emma do?

### RESPONSE OPTIONS:

- A. Explain to David that, in her professional judgment, he should not invest in the REIT.
- B. Fully disclose to David her Material Conflict of Interest, obtain informed consent to the conflict, and provide David with her advice.
- C. Explain to David that she must decline to provide David the advice he is seeking. Emma has a Material Conflict of Interest because she will earn more compensation if David keeps the assets in the investment account than if David invests in the REIT, and Emma cannot provide disinterested Financial Advice.

**Best Response:** B is the best response. This case involves the Duty to Disclose Conflicts of Interest (Standard A.5.a.) and the definitions of Conflict of Interest and Material (Glossary).

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. The Duty to Disclose Conflicts of Interest requires the CFP® professional to 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 the business practices that give rise to the conflicts, and to either give informed consent to such conflicts or reject them. One way in which a Conflict of Interest occurs is 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. Information is Material when a reasonable Client or prospective Client would consider the information important in making a decision. A CFP® professional must make full disclosure and obtain the consent of the Client before providing any Financial Advice regarding which the CFP® professional has a Material Conflict of Interest.

In this case, Emma has a Material Conflict of Interest because she will earn more compensation if David accepts her recommendation. The fee that Emma would receive if she continued to manage David's investment account will be greater than the commission she would receive if he purchased the REIT. Emma must make full disclosure to David of the compensation conflict before or when making the recommendation and obtain David's informed consent to the conflict.

While the Duty to Disclose Conflicts does not require written disclosure, evidence of oral disclosure of a conflict will be given such weight as CFP Board in its judgment deems appropriate. As a best practice, CFP Board recommends that a CFP® professional disclose the Conflict of Interest in writing before or when providing the Financial Advice.

Response C is not the best response because the Fiduciary Duty that Emma, as a CFP® professional, has when providing Financial Advice does not require her to decline to provide the Financial Advice because she has a conflict. Emma may provide full disclosure of the Material Conflict of Interest, obtain David's consent, and properly manage the Material Conflict of Interest by adopting and following business practices reasonably designed to prevent the Material Conflict of Interest from compromising her ability to act in David's best interests.

Response A is not the best response because it does not address Emma's Material Conflict of Interest.

**Relevant Standards and Definitions:** Disclose and Manage Conflicts of Interest (Standard A.5.); definitions of Conflict of Interest and Material (Glossary).

## **CAST STUDY 5: THE DUTY TO DISCLOSE MATERIAL CONFLICTS OF INTEREST WHEN RECOMMENDING A PRODUCT ISSUED BY AN AFFILIATE**

Olivia, a CFP® professional, identifies three single premium annuities that will best meet the needs of her Client, Michael. One of the three annuities Olivia identified is issued by a life insurance company (DEF Mutual, Inc.) that is affiliated with Olivia's firm (DEF Advisers, Inc.). While Olivia will receive the same compensation if Michael purchases any of the three annuities, her firm and her firm's affiliate will receive an additional economic benefit if Michael purchases the DEF Mutual annuity.

### **QUESTION:**

How should Olivia proceed?

### **RESPONSE OPTIONS:**

- A. Olivia should disclose to Michael that one of the insurance companies is affiliated with her firm and that if Michael purchases an annuity from that insurance company, Olivia's firm and an affiliate of Olivia's firm will receive an additional economic benefit on that transaction.
- B. Olivia should assume that, because the insurance company and Olivia's firm have the same name, Michael recognizes that they are affiliated and that Olivia's firm or the affiliate will receive an additional economic benefit, with the result that no further disclosure is required.
- C. Olivia should avoid recommending annuity contracts that are issued by the affiliated company.

**Best Response:** Response A is the best response. This case involves the Duty to Disclose and Manage Conflicts of Interest (Standard A.5.) and the definitions of Conflict of Interest and Material (Glossary).

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. The Duty to Disclose a Conflict of Interest requires the CFP® professional to 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 the business practices that give rise to the conflicts, and either give informed consent to such conflicts or reject them. One way in which a Conflict of Interest occurs is 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. Information is Material when a reasonable Client or prospective Client would consider the information important in making a decision.

In this case, the affiliation between Olivia's firm and the insurance company that issued the annuity, and the fact that Olivia's firm and an affiliate of Olivia's firm will receive an additional economic benefit if Michael purchases an annuity from that insurance company, are Material Conflicts of Interest. As a result, Olivia must make full disclosure of the potential additional economic benefit that will result if Michael purchases the annuity from the affiliate and obtain Michael's informed consent to the Material Conflict of Interest before or when recommending the annuity issued by the affiliate.

Response B is not the best response because it is not reasonable to assume that Michael understands the conflict solely from the fact that the names of the firm and the affiliate are similar.

Response C is not the best response because if DEF Advisers' affiliation with DEF Mutual, and the additional economic benefit, are fully disclosed and informed consent is obtained, Olivia may manage the conflict through business practices reasonably designed to prevent the Material Conflict of Interest from compromising her ability to act in the Client's best interests. Here, for example, Olivia has analyzed the annuities that are available to Michael, and she may recommend the annuity issued by DEF Mutual if she concludes that the annuity is in Michael's best interests.

**Relevant Standards and Definitions:** Disclose and Manage Conflicts of Interest (Standard A.5.); definitions of Conflict of Interest and Material (Glossary).



## CASE STUDY 6: THE DUTY TO FOLLOW A CLIENT'S INSTRUCTION TO USE A SPECIFIC FIRM FOR EXECUTION

Urwa is a CFP® professional who provides asset management services to several Clients. Urwa manages assets in accordance with a standard investment management agreement that she tailors to meet each Client's investment needs. The agreement gives Urwa discretionary authority to buy or sell securities and to select broker-dealers to execute transactions. Urwa's firm charges each Client an advisory fee based on the average value of assets held in the account each quarter.

Urwa receives a call from one of her Clients, Joe, who is a novice investor. Joe tells Urwa that he wants to help advance his sister Susan's career, and he asks Urwa to begin using Susan's firm to execute trades for his non-qualified investment account. Urwa investigates and has concerns that Susan's firm may not provide Joe with best execution because the cost of execution using Susan's firm is higher than other firms where Urwa typically executes trades, and Urwa does not identify an off-setting benefit from using Susan's firm that would justify the higher fee.

### QUESTION:

How should Urwa proceed?

### RESPONSE OPTIONS:

- A. Tell Joe that she cannot use Susan's firm to execute trades because it would violate Urwa's Fiduciary Duty to Joe, which requires Urwa to seek the best execution of Joe's transactions.
- B. Agree to Joe's reasonable and lawful direction, which Urwa has an obligation to follow.
- C. Inform Joe that using Susan's firm to execute transactions may increase transaction costs or otherwise not be advantageous, and thus adversely affect Joe's investment returns. However, if after receiving this information Joe still wants to make the change, Urwa should begin to direct transactions for his account to Susan's firm.

**Best Response:** Response C is the best response. This case involves the Fiduciary Duty (Standard A.1.), including the Duty of Care and the Duty to Follow Client Instructions, and the definition of Financial Advice (Glossary).

At all times when providing Financial Advice to a Client, a CFP® professional must act as a fiduciary, and therefore, act in the best interests of the Client. Financial Advice includes the exercise of discretionary authority over the Financial Assets of a Client. The Fiduciary Duty includes a Duty of Loyalty, a Duty of Care, and a Duty to Follow Client Instructions. The Duty of Care requires a CFP® professional to 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. The Duty to Follow Client Instructions requires a CFP® professional to comply with all objectives, policies, restrictions, and other terms of the Engagement and all reasonable and lawful directions of the Client.

In this case, Urwa's Engagement with Joe gives Urwa discretionary authority over Joe's Financial Assets. Therefore, Urwa is providing Financial Advice to a Client and must satisfy the Fiduciary Duty. To satisfy the Duty of Care, Urwa must seek best execution of Joe's account transactions. Urwa has learned that if she uses Susan's firm, she may not be able to obtain best execution for his transactions. However, Urwa also must satisfy the Duty to Follow Client Instructions. Joe has instructed Urwa to use Susan's firm for execution because he wants to advance Susan's career.

Urwa should review her firm's policies and procedures concerning execution services to determine, for example, whether she is authorized to execute the transaction with Susan's firm. If there are no firm policies that prevent Urwa from using Susan's firm to execute the transaction, then Urwa should inform Joe that if she uses Susan's firm, he may not receive best execution, which could affect Joe's return on the account or otherwise not be advantageous. If, after being informed of these consequences, Joe still wants Urwa to use Susan's firm for execution, then Urwa should do so.

Response A is not the best response because Joe's instruction to execute trades through his sister's firm reflects his view that using a family member to execute transactions is in his best interests as he understands them. In other words, Joe may be willing to forgo some return on his account to help his sister's career. However, Urwa is required to inform Joe of the consequences of that instruction.

Response B is not the best response because, under these circumstances, Urwa's Fiduciary Duty obliges her to inform Joe of the consequences of his instruction, unless Urwa reasonably believes that Joe already knows those consequences. Since Joe is a novice investor, he likely does not have such an understanding. For that reason, Urwa should explain the issues and consequences so that Joe may make an informed decision. If, after this discussion, Joe still wants to use his sister's firm to execute the transactions, then Urwa is obligated to do so. If the basis for Joe's instruction changes, as would be the case if Urwa learns that Susan has left the firm, then Urwa's Duty of Care would require her to inform Joe of the change in facts and ask Joe to reconsider his instruction.

**Relevant Standards and Definitions:** Fiduciary Duty (Standard A.1.); definition of Financial Advice (Glossary).

## CASE STUDY 7: THE DUTY TO COMMUNICATE TEAM MEMBER RESPONSIBILITIES

Darnell, a CFP® professional, and Robert, a relationship manager who is not a CFP® professional, work as members of a team at ABC Financial Services Company. A Client has engaged ABC to provide Financial Advice. Darnell and Robert will be working together to formulate and deliver the Financial Advice. ABC does not have policies that identify the respective roles and responsibilities of the various team members.

### QUESTION:

As a member of a team, what is Darnell required to do when providing Professional Services to a Client?

### RESPONSE OPTIONS:

- A. Darnell's only responsibility is to follow the Financial Advice Engagement, because the Scope of Engagement is the only source of a CFP® professional's responsibilities.
- B. Darnell must communicate with Robert about how the responsibilities will be allocated between them and determine the scope of services that each person will provide to the Client.
- C. Darnell should tell Robert that as the relationship manager, Robert should modify the Financial Advice recommendations if he believes that the Client may want to pursue another course of action.

**Best Response:** Response B is the best response. This case study involves the Fiduciary Duty (Standard A.1.).

At all times when providing Financial Advice to a Client, a CFP® professional must act as a fiduciary, and therefore, act in the best interests of the Client. The Fiduciary Duty includes the Duty of Loyalty, the Duty of Care, and the Duty to Follow Client Instructions. To fulfill the Duty of Care, 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.

When a CFP® professional is working as part of a team to provide Financial Advice to a Client, the Duty of Care requires the CFP® professional to communicate with the other members of the team about the scope of their respective services and the allocation of responsibility between them. This might be satisfied by a firm policy or protocol that identifies their respective responsibilities with respect to the services to be provided. In this case, Darnell, Robert, and any other members of the ABC team who may provide services to the Client will need to decide who will perform each of the services the Engagement requires. The duty that arises in this case is analogous to the Duty When Working With Additional Persons, set forth in (Standard A.13.b.i.) that applies to persons outside the firm who are providing Professional Services to the Client.

Response A is not the best response because a CFP® professional's responsibilities extend beyond those that are set forth in the Scope of the Engagement. A CFP® professional also must comply with the requirements set forth in the *Code and Standards*.

Response C is not the best response because the decision to modify a recommendation should not be based upon a "belief" that a Client "may want" to pursue another course of action. Mere speculation is not a proper basis for modifying a recommendation.

**Relevant Standards and Definitions:** Fiduciary Duty (Standard A.1.).

## CASE STUDY 8: THE FIDUCIARY DUTY TO OBTAIN FACTUAL INFORMATION WHEN WORKING ON A TEAM

Trinh, a CFP® professional, works in her firm's home office, developing Financial Planning recommendations based upon the information that other individuals within her firm collect from Clients. Trinh is developing recommendations for Steven's Clients, Cindy and Terry. Steven obtains from Cindy and Terry their responses to the firm's Financial Planning questionnaire and some documents that Steven requested. Steven sends the documents and questionnaire responses to Trinh and asks Trinh to provide her Financial Planning recommendation(s). Trinh reviews the information and notices that Cindy and Terry have two investment accounts at another firm that constitute a significant portion of their net worth. However, the account statements are two years old and thus are outdated. Trinh's firm does not have policies and procedures for handling this situation.

### QUESTION:

What should Trinh do?

### RESPONSE OPTIONS:

- A. Use the asset values from the statement Steven obtained from his Clients to develop the Financial Planning recommendation(s).
- B. Inform a supervisor that Steven failed to explain to his Clients how to properly fill out the questionnaire and gather documents.
- C. Inform Steven that the statements he obtained are outdated and ask him to obtain current information about the two accounts.
- D. Use the asset values from the statements and tell Steven to disclose to the Client that the Financial Planning recommendation(s) are based upon the information that the Client provided.

**Best Response:** Response C is the best response. This case study involves the Fiduciary Duty (Standard A.1.) and Step 1 of the Financial Planning Process: Understanding the Client's Personal and Financial Circumstances, Obtaining Qualitative and Quantitative Information (Standard C.1.a.).

At all times when providing Financial Advice to a Client, a CFP® professional must act as a fiduciary, and therefore, act in the best interests of the Client. The Fiduciary Duty includes the Duty of Care, which requires a CFP® professional to 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. When providing Financial Planning, a CFP® professional also is required to follow the Practice Standards for the Financial Planning Process. The first step in the process is Understanding the Client's Personal and Financial Circumstances, which includes Obtaining Qualitative and Quantitative Information. A CFP® professional must describe to the Client the qualitative and quantitative information concerning the Client's personal and financial circumstances needed to fulfill the Scope of Engagement and collaborate with the Client to obtain the information.

In this instance, Trinh is developing Financial Planning recommendation(s) based upon the information that other individuals in the firm have obtained from the Clients. Therefore, Trinh's ability to fulfill the Scope of Engagement, and to act in the Client's best interests in accordance with her Fiduciary Duty, depends on the work of her colleagues. When a CFP® professional is working with other individuals within a firm as part of a team that is providing services to a Client, the Fiduciary Duty requires the CFP® professional to take reasonable steps to ensure that the Client is receiving Financial Planning that is in the Client's best interests.

In this instance, the CFP® professional first should determine whether the CFP® Professional's Firm has policies and procedures that apply to the situation. In the absence of such policies and procedures, a CFP® professional should inform the other individual within the firm who is providing services to the Client that the CFP® professional believes that updated financial information may be needed for the CFP® professional to provide Financial Advice that is in the Client's best interest and explain the basis for the CFP® professional's belief. The CFP® professional should discuss with the other individual how the services may be provided in the best interests of the Client.

Here, Trinh's firm does not have policies and procedures for handling this situation. Therefore, Trinh should communicate with Steven to resolve the situation. Trinh should explain to Steven that she does not believe she can develop the Financial Planning recommendation(s) until she has reasonably current information about the two accounts, and recommend that Steven obtain more current information. She also should give Steven the opportunity to explain why it would be reasonable to use outdated statements for the services. If updated information cannot be obtained, and the Client reasonably has directed the firm to proceed with the services based on the information provided, then Trinh may proceed to do so.

Response A is not the best response because the information is outdated and the firm may be able to obtain current information. It is unclear from the fact pattern whether Trinh may provide the recommendation(s) without obtaining current information. If the information is of a type that is currently available, and this information is necessary to provide the Financial Planning recommendation(s) in accordance with the Fiduciary Duty, then Trinh must obtain reasonably current information to do so, unless the Client reasonably has instructed the firm to proceed with the information provided.

Response B is not the best response because Trinh does not know whether Steven's instructions to the Clients were improper, Trinh may ask Steven to obtain the information from the Clients or another service provider, and it is premature for Trinh to involve a supervisor.

Response D is not the best response because disclosure does not eliminate Trinh's Fiduciary Duty. To act in the best interests of the Client, Trinh must act with the care, skill, prudence, and diligence a prudent CFP® professional would exercise in these circumstances. That requires obtaining reasonably current asset values before developing the Financial Planning recommendation(s) or determining whether the existing information may be used. If Trinh is able to provide the Financial Planning recommendation(s) in accordance with the Fiduciary Duty without obtaining reasonably current values for the two accounts, then before or when providing the recommendation(s), Trinh should inform Steven that she is relying upon the information that has been provided and that the lack of current information about the value of the two accounts may limit the Financial Planning Recommendation(s).

**Relevant Standards and Definitions:** Fiduciary Duty (Standard A.1.); Step 1 of the Financial Planning Process: Understanding the Client's Personal and Financial Circumstances, Obtaining Qualitative and Quantitative Information (Standard C.1.a.).

## CASE STUDY 9: FINANCIAL ADVICE THAT REQUIRES FINANCIAL PLANNING

Bob is 50 years old. He is divorced with no children and rents his home. His only significant assets are \$300,000 invested in a bank savings account and \$200,000 that has accumulated in his firm's 401(k) plan. He asks Gina, a CFP® professional, to manage the assets currently held in his bank savings account, manage his cash flow, and plan for his retirement. Bob also tells Gina that he wants to focus on his long-term financial outlook. They agree that Gina will develop recommendations for the assets currently invested in the bank savings account, make cash flow recommendations, and develop long-term planning scenarios that include retirement projections. Gina and Bob enter into an investment advisory agreement so that Gina can manage the assets currently invested in Bob's bank savings account.

### QUESTION 1:

Is Gina providing Financial Advice that requires Financial Planning?

### RESPONSE OPTIONS:

- A. Yes, Gina is providing Financial Advice that Requires Financial Planning.
- B. No, Gina is not providing Financial Advice that Requires Financial Planning.

**Best Response:** Response A is the best response. Gina is providing Financial Advice that Requires Financial Planning. This case study involves the Application of the Practice Standards (Standard B.3.) and the Integration Factors (Standard B.4.). A CFP® professional must comply with the Practice Standards for the Financial Planning Process, and therefore, provide Financial Planning, when:

- a. The CFP® professional agrees to provide or provides:
  - i. Financial Planning; or
  - ii. Financial Advice that requires integration of relevant elements of the Client's personal and/or financial circumstances in order to act in the Client's best interests ("Financial Advice that Requires Financial Planning");  
or
- b. The Client has a reasonable basis to believe the CFP® professional will provide or has provided Financial Planning.

In this case, there are insufficient facts to conclude that the written Engagement contains language requiring Gina to provide Financial Planning, or that Bob has a reasonable basis to believe that Gina will provide Financial Planning. Therefore, whether Gina must comply with the Practice Standards for Financial Planning Process depends on whether Gina's Financial Advice requires integration of relevant elements of Bob's personal and/or financial circumstances.

CFP Board has established the following Integration Factors that CFP Board will weigh in determining whether a CFP® professional has agreed to provide or provided Financial Advice that Requires Financial Planning:

- a. The number of relevant elements of the Client's personal and financial circumstances that the Financial Advice may affect;
- b. The portion and amount of the Client's Financial Assets that the Financial Advice may affect;
- c. The length of time the Client's personal and financial circumstances may be affected by the Financial Advice;
- d. The effect on the Client's overall exposure to risk if the Client implements the Financial Advice; and
- e. The barriers to modifying the actions taken to implement the Financial Advice.

CFP Board would weigh the Integration Factors in this case as follows:

- Gina is addressing Bob's need for or desire to develop goals, manage assets and liabilities, manage cash flow, achieve financial security, preserve or increase wealth, and prepare for retirement. Therefore, Gina's Financial Advice may affect several relevant elements of Bob's personal and financial circumstances.
- Gina will be managing the funds currently invested in Bob's bank savings account, which has a higher value than any of Bob's other assets. Therefore, Gina's advice will affect a significant portion and amount of Bob's assets.
- Bob has asked Gina to focus on his long-term financial outlook, and to prepare long-term planning scenarios. Therefore, Gina's Financial Advice likely will affect Bob's personal and financial circumstances for a long time.
- Gina will recommend that Bob reallocate the assets currently held in the bank savings account, thereby altering the risk return profile of his holdings and exposing Bob to increased risk.
- Based upon the facts provided, it is unclear what barriers to modifying the actions taken to implement the Financial Advice may exist.

Based upon a weighing of the Integration Factors, Gina will be providing Bob with Financial Advice that Requires Financial Planning. Gina's Financial Advice (a) will affect a significant portion of Bob's Financial Assets, (b) will affect Bob's personal and financial circumstances for a long time, and (c) may affect several relevant elements of Bob's personal and financial circumstances. Because Gina is providing Bob with Financial Advice that Requires Financial Planning, she must follow the Practice Standards for the Financial Planning Process. In addition, since Gina is required to provide Financial Planning to Bob, some of the information that she may have provided to Bob orally when providing Financial Advice now must be delivered to Bob in writing.

The *Code and Standards* does not require an explicit agreement to provide Financial Planning for Financial Planning to be required. Where, as here, a CFP® professional provides or agrees to provide Financial Advice that requires integration of relevant elements of the Client's personal and/or financial circumstances to act in the Client's best interests, the CFP® professional is required to provide Financial Planning.

## **QUESTION 2:**

Is Gina required to comply with the Practice Standards for the Financial Planning Process if Bob does not agree to engage her for Financial Planning?

## **RESPONSE OPTIONS:**

- A. Yes, Gina is required to comply with the Practice Standards for the Financial Planning Process.
- B. No, Gina is not required to comply with the Practice Standards for the Financial Planning Process.

**Best Response:** Response B is the best response. If a CFP® professional otherwise must comply with the Practice Standards, but the Client does not agree to engage the CFP® professional to provide Financial Planning, the CFP® Professional must either:

- a. Not enter into the Engagement;
- b. Limit the Scope of Engagement to services that do not require application of the Practice Standards, and describe to the Client the services the Client requests that the CFP® professional will not be performing;
- c. Provide the requested services after informing the Client how Financial Planning would benefit the Client and how the decision not to engage the CFP® professional to provide Financial Planning may limit the CFP® professional's Financial Advice, in which case the CFP® professional is not required to comply with the Practice Standards; or
- d. Terminate the Engagement.

If Bob decides that he does not want to engage Gina for Financial Planning, Gina may provide Bob with the requested Financial Advice after informing Bob how Financial Planning would benefit him and how the decision not to engage her to provide Financial Planning may limit her Financial Advice.

**Relevant Standards and Definitions:** Application of Practice Standards (Standard B.3.); Integration Factors (Standard B.4.); No Client Agreement to Engage for Financial Planning (Standard B.6.).

## CASE STUDY 10: WHEN A CLIENT HAS A REASONABLE BASIS TO BELIEVE A CFP® PROFESSIONAL WILL PROVIDE FINANCIAL PLANNING

Kimani, a CFP® professional, distributes a flyer inviting prospects to attend a Financial Planning Seminar. At the event, Kimani places a sign at the entrance that states: “What Financial Planning Can Do For You.” Daniel, a prospect, attends the event. At an in-person meeting the following week, Daniel tells Kimani that he wants to be a Financial Planning Client, with a specific focus on retirement planning. Kimani asks Daniel to complete an investment risk profile questionnaire. Kimani does not clearly inform Daniel that she would not be providing Financial Planning. Kimani reviews Daniel’s answers and, rather than providing Financial Planning, Kimani solely makes an investment recommendation.

### QUESTION:

Is Kimani required to comply with the Practice Standards for the Financial Planning Process, and therefore, provide Financial Planning?

### RESPONSE OPTIONS:

- A. Kimani is not required to comply with the Practice Standards for the Financial Planning Process because Kimani only provided investment planning to Daniel.
- B. Kimani is required to comply with the Practice Standards for the Financial Planning Process because Kimani provided Financial Advice to Daniel when she conducted investment planning.
- C. Kimani is required to comply with the Practice Standards for the Financial Planning Process because Daniel has a reasonable basis to believe that Kimani will provide or has provided Financial Planning.
- D. Kimani is not required to comply with the Practice Standards for the Financial Planning Process because Kimani only engaged in a brokerage transaction.

**Best Response:** Response C is the best response. This case study involves the Application of Practice Standards (Standard B.3.). A CFP® professional must comply with the Practice Standards for the Financial Planning Process, and therefore, provide Financial Planning, when:

- a. The CFP® professional agrees to provide or provides:
  - i. Financial Planning; or
  - ii. Financial Advice that requires integration of relevant elements of the Client’s personal and/or financial circumstances in order to act in the Client’s best interests (“Financial Advice that Requires Financial Planning”); or
- b. The Client has a reasonable basis to believe the CFP® professional will provide or has provided Financial Planning.

Although Daniel’s Engagement does not specify that Kimani will provide Financial Planning, Daniel has a reasonable basis to believe that Kimani will provide or has provided Financial Planning: Kimani invited Daniel to a Financial Planning seminar; Daniel told Kimani that he wanted Financial Planning; Kimani advised Daniel how to invest; and Kimani did not clearly inform Daniel that she would not be providing Financial Planning. Under other facts or circumstances, the application of the Practice Standards for the Financial Planning Process may produce a different result. In addition, since Kimani is required to provide Financial Planning to Daniel, some of the information that she may have provided to Daniel orally when providing Financial Advice now must be delivered to Daniel in writing.

Response A is not the best response because Daniel had a reasonable basis to believe that Kimani would be providing Financial Planning, and thus Kimani was required to provide Financial Planning. Where Financial Planning is required, the Practice Standards for the Financial Planning Process apply even if the CFP® professional does not actually provide Financial Planning.

Response B is not the best response. The reason that the Practice Standards for the Financial Planning Process apply is not because Kimani provided Financial Advice to Daniel when she conducted investment planning. Not all Financial Advice requires Financial Planning, and the facts here are insufficient to determine whether Kimani has provided Financial Advice that requires Financial Planning. The reason that the Practice Standards for the Financial Planning Process apply is because based on the facts, Daniel has a reasonable basis to believe that Kimani will provide or has provided Financial Planning.



Response D is not the best response. The standard for determining whether the Practice Standards for the Financial Planning Process apply is not whether the Client engaged in a brokerage transaction. Where there is no explicit agreement regarding Financial Planning, the Practice Standards for the Financial Planning Process apply if the Client has a reasonable basis to believe the CFP® professional will provide Financial Planning, or if the CFP® professional provides or agrees to provide Financial Advice that Requires Financial Planning.

**Relevant Standards and Definitions:** Application of Practice Standards (Standard B.3.).

## **CASE STUDY 11: THE FIDUCIARY DUTY DOES NOT APPLY WHEN PROVIDING GENERAL FINANCIAL EDUCATIONAL MATERIALS CONCERNING EDUCATION PLANNING**

Imani is expecting her first child and wants to know more about 529 savings plans. Imani decides to share her news with Jeff, the CFP® professional whom she had previously engaged solely to provide investment management. During a 30-minute meeting, Jeff provides an overview of how 529 savings plans work, addresses some of Imani's general questions about 529 savings plans, and provides a document titled "529 Plans and Other College Savings Options." Imani thanks Jeff for his time and says she will follow up with him in the next few weeks.

### **QUESTION:**

Did Jeff provide Financial Advice when he met with Imani and gave her the 529 savings plan document?

### **RESPONSE OPTIONS:**

- A. Yes, because he made a recommendation.
- B. No, because Imani did not pay Jeff for the communication.
- C. No, because Jeff provided Imani only general financial education materials.
- D. Yes, because a 529 savings plan is an important part of the education planning process.

**Best Response:** Response C is the best response. This case study involves the definition of Financial Advice (Glossary).

Financial Advice includes 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, among other things, the value of or the advisability of investing in, purchasing, holding, gifting, or selling Financial Assets. The determination of whether Financial Advice has been provided is an objective rather than subjective inquiry. The more individually tailored the communication is to the Client, the more likely the communication will be viewed as Financial Advice. The provision of services or the furnishing or making available of marketing materials, general financial education materials, or general financial communications that a reasonable CFP® professional would not view as Financial Advice, does not constitute Financial Advice.

Here, a reasonable CFP® professional would conclude that when Jeff provided Imani with an overview of how 529 savings plans work, addressed her general questions about 529 savings plans, and provided an educational document on 529 savings plans, Jeff was providing general financial education and not Financial Advice.

Response B is not the best response because whether Jeff provided Financial Advice does not depend upon whether he receives compensation.

Responses A and D are not the best responses because a reasonable CFP® professional would not view Jeff's communications, which were general in nature and not individually tailored to Imani, as Financial Advice. While a 529 savings plan is an important part of the education planning process, that fact does not turn Jeff's communications to Imani into Financial Advice.

**Relevant Standards and Definitions:** Definition of Financial Advice (Glossary).

## **CASE STUDY 12: THE FIDUCIARY DUTY DOES NOT APPLY WHEN PROVIDING GENERAL FINANCIAL EDUCATIONAL MATERIALS CONCERNING RETIREMENT PLANNING**

Kevin, a prospect, met Priya, a CFP® professional, at a community event. Kevin mentioned to Priya that he was planning to retire next year. Priya asked Kevin if she may send him a document her firm prepared that provides an overview of issues to consider when engaging in retirement planning. Kevin agreed. Priya sends Kevin an article titled “What will my savings cover in retirement?” Priya sends this same article to all her Clients and prospects who are within five years of their intended retirement.

### **QUESTION:**

In this instance, does Priya have a Fiduciary Duty?

### **RESPONSE OPTIONS:**

- A. Priya does not have a Fiduciary Duty because she provided only general financial education materials.
- B. Priya has a Fiduciary Duty because she provided Financial Advice when she sent Kevin information regarding retirement planning.
- C. Priya has a Fiduciary Duty even though Kevin is a prospect, not a Client to whom Priya is delivering Financial Advice.
- D. Priya has a Fiduciary Duty because the article includes a section that describes comprehensive Financial Planning.

**Best Response:** Response A is the best response. This case study involves the Fiduciary Duty (Standard A.1.), the Duty of Integrity (Standard A.2.), and the definitions of Client, Engagement, and Financial Advice (Glossary). At all times when providing Financial Advice to a Client, a CFP® professional must act as a fiduciary, and therefore, act in the best interests of the Client. A Client is any person to whom the CFP® professional provides or agrees to provide Professional Services, including Financial Advice, pursuant to an Engagement. An Engagement is an oral or written agreement, arrangement, or understanding. Financial Advice includes 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, among other things, the value of or the advisability of investing in, purchasing, holding, gifting, or selling Financial Assets.

The determination of whether Financial Advice has been provided is an objective rather than subjective inquiry. The more individually tailored the communication is to the Client, the more likely the communication will be viewed as Financial Advice. The provision of services or the furnishing or making available of marketing materials, general financial education materials, or general financial communications that a reasonable CFP® professional would not view as Financial Advice, does not constitute Financial Advice.

In this case, Kevin has not entered into an Engagement with Priya. Therefore, Kevin is not a Client and Priya does not have a Fiduciary Duty to Kevin. In addition, the article that Priya delivered to Kevin, and other prospects, describes comprehensive Financial Planning and provides an overview of issues to consider when engaging in retirement planning. The article provides financial information that is generally applicable and reasonably would be viewed as general financial education materials. Therefore, Priya has not provided Financial Advice by sending the article to Kevin. However, to satisfy the Duty of Integrity, which applies whenever a CFP® professional is performing Professional Services, the material that Priya sent to Kevin, like all communications, must not be untrue or omit a material fact that is necessary to make the statements made not misleading.

Response C is not the best response because Kevin is not a Client and Priya has not provided Financial Advice. Kevin is not a Client because there was no agreement, arrangement, or understanding for Priya to provide Professional Services to Kevin, and thus, there was no Engagement.

Responses B and D are not the best responses because an article that merely describes Financial Planning and presents an overview of issues to consider when engaging in retirement planning contains general financial education material, which does not constitute Financial Advice.

**Relevant Standards and Definitions:** Fiduciary Duty (Standard A.1.); Duty of Integrity (Standard A.2.); definitions of Client, Engagement, and Financial Advice (Glossary).

CFP Board is committed to providing resources that will help CFP® professionals understand and comply with the new *Code and Standards*. Initial resources, including FAQs, are available on CFP Board's website ([CFP.net/Code](https://www.cfp.net/code)).

As a CFP® professional, you play an important role in this process. CFP Board has assembled a team of professionals — the Standards Resource Commission — that will be developing additional guidance materials to educate and inform CFP® professionals about the *Code and Standards*. If there are resources that you believe would be valuable to you, your firm, or your clients, please email your suggestions to [SRC@CFPBoard.org](mailto:SRC@CFPBoard.org). The Standards Resource Commission will carefully consider your feedback as it develops future guidance materials. Additional resources will be posted to CFP Board's website at the link above as they become available.



CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

1425 K St NW #800 Washington DC 20005

p 800-487-1497 | f 202-379-2299

[mail@CFPBoard.org](mailto:mail@CFPBoard.org) | [CFP.net](https://www.cfp.net)