

Avoiding A CFP Board Rule Violation

Live Webinar Presentation
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Moderator:

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Purpose of Today's Webinar

- ▶ To develop an understanding that the *Standards of Professional Conduct* apply to all CFP® professionals
- ▶ To explain how misunderstanding the *Standards* can result in ethical violations
- ▶ To introduce the new *Frequently Asked Questions* that the Business Model Working Group revised

What Is Financial Planning?

- ▶ The process of determining whether and how an individual can meet life goals through the proper management of financial resources. Financial planning integrates the financial planning process with the financial planning subject areas.
 - Terminology section, CFP Board's *Standards of Professional Conduct*

Material Elements of Financial Planning

- ▶ Two or more subject areas
- ▶ Clients' understanding and intent
- ▶ Comprehensiveness of data gathering
- ▶ Breadth and depth of recommendations

Activities Not Considered Material Elements of Financial Planning

- ▶ Opening an account/completing an application
- ▶ Fact finding to satisfy the “Know Your Customer” rule
- ▶ Solely providing brokerage and/or insurance products or services
- ▶ Completing a tax return
- ▶ Teaching

Example 1

- ▶ A prospective client asks “How much do I need to send my two year old daughter to Notre Dame in 16 years?”
 - Not Financial Planning
 - You merely provide a straight–line calculation to determine the amount to be saved
 - This is the only service you provided for this client
 - ▶ Financial Planning
 - You develop an Investment Planning module after thorough analysis and review.
 - You provide multiple funding options and asset allocations as alternatives.

When Is Needs Analysis Financial Planning?


- ▶ Data gathered from multiple aspects
- ▶ Data analyzed for more than one of the client's stated goals
- ▶ Wide-ranging recommendations

When Is Needs Analysis NOT Financial Planning?

- ▶ Needs analysis focused on a limited component of the client's financial situation
 - Client seeks advice solely on life insurance needs
 - Suitability review related to a transaction


When Is Providing Services in a Single Subject Area Financial Planning?

- ▶ Communications between client and CFP® professional cause client to believe it is financial planning
- ▶ Complexity
- ▶ Depth & Breadth



Avoid misunderstanding. Establish clear agreement of the services to be provided.

Implementing 3rd Party Recommendations



Avoid
misunderstanding.
Establish clear
agreement of the
services to be
provided.

- ▶ The more specific the recommendations
- ▶ The less likely implementation considered financial planning

Fiduciary Duty

- ▶ Required for CFP® professionals providing financial planning services
- ▶ CFP Board definition of “fiduciary”
 - One who acts in utmost good faith, in a manner he or she reasonably believes to be in the best interest of the client.

How Is “Best” Determined?


- ▶ Identify options
- ▶ Business or regulatory requirements may limit the type of products and/or services
 - Disclosure required
- ▶ Choose “best” based on client facts and circumstances
 - Reasonableness standard

Example 6

- ▶ Client reads financial columnist and complains to CFP Board about sale of variable annuity in IRA.
 - CFP® Professional uses variable annuity for specific client-related benefits.
 - CFP® Professional uses variable annuities whenever possible to maximize productivity.

Example 7

- ▶ CFP® professional uses variable annuities with senior clients.
 - ▶ Costs, lengthy surrender charges and lack of flexibility require extra consideration.
 - ▶ Client must understand the trade-offs involved.



Provide full disclosure

Document client understanding

What Must be Disclosed?

- ▶ Conflicts of interest
- ▶ Compensation structure
- ▶ Cost of products and services

Principal Trades and Proprietary Products

- ▶ Must comply with federal and state regulations, as well as CFP Board rules.
- ▶ Issues:
 - Do principal trades satisfy suitability requirements?
 - Can principal trades satisfy the fiduciary standard?
 - Client must be informed.

Disclosure of Compensation

- ▶ Regulatory environment governs
- ▶ CFP Board requires disclosure of:
 - “compensation arrangements”; and
 - “any other sources of compensation.”
- ▶ Examples:
 - term versus variable universal life
 - additional compensation, such as soft dollar

Example 8


- ▶ CFP® professional offers client choice of term insurance or VUL.
 - ▶ Some similarity in compensation structure
 - ▶ Very different economic result for agent



Focus on
relative benefit
to CFP®
professional &
key differences

Example 9

- ▶ CFP® professional receives computer terminals, software and administrative support allowance for custody accounts through clearing broker
 - ▶ Soft dollar arrangement
 - ▶ Economic benefits for CFP® professional




Be sure ADV contains required information about arrangements with 3rd parties

What Does CFP Board Mean By “Costs”?

- ▶ Expenses client will incur
 - Advisor or firm costs passed on to the client.
- ▶ Examples:
 - 12b-1
 - bonuses
 - trailing commissions

How are Disclosures Made?


- ▶ Depends on services being provided:
 - Defining the Relationship
 - Oral disclosures
 - Financial Planning Relationship
 - Written with discussion



Best Practice!
Always follow-up
verbal disclosures
with written
documentation

When Must Disclosures Be Made?

- ▶ Not specified in the *Rules of Conduct*
- ▶ Regulatory environment governs



Best Practice!
Before agreement
signed.
Before transaction
executed.

Written Agreement

- ▶ Required when providing financial planning services.
- ▶ Must include:
 - Parties
 - Date of agreement and duration
 - How to terminate the agreement
 - Description of services to be offered

State and Federal Regulations

- ▶ CFP® professionals must comply with all applicable regulatory requirements governing service or product
- ▶ CFP Board only enforces its own rules

Holding Out

- ▶ *Standards of Professional Conduct* apply whether or not “CFP®” appears on business card or letterhead

Terminating the Engagement

- ▶ After a financial planning relationship exists
 - Fiduciary duty applies to all future services provided to that client by that advisor
- ▶ Ending your financial planning relationship requires terminating the engagement and no longer serving the client

Limiting the Financial Planning Engagement

- ▶ Mutual understanding of the scope of the engagement
- ▶ Subsequent interactions with the client
- ▶ Facts and circumstances analysis

Revised FAQs

- ▶ Available on CFP Board website
 - www.CFP.net
- ▶ Organized in 12 topic areas
- ▶ Your feedback is important
- ▶ Send additional questions to
 - standards@CFPBoard.org

Q & A



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