A. DUTIES OWED TO CLIENTS, 1. FIDUCIARY DUTY:

3: 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).