

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

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).