

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

# 10: APPLYING THE FIDUCIARY DUTY TO CLIENT INSTRUCTIONS THAT CONFLICT WITH THE DUTY OF CARE

Holly, a CFP® professional, has an Engagement with Pat to provide Financial Advice addressing long-term investing for retirement and other needs later in life. Pat indicates that he is socially conscious and would be interested in investing in companies that are consistent with his views. Holly tells Pat that there are environmental, social, and corporate governance (“ESG”) mutual funds that are consistent with Pat’s goals. Pat responds that he would like to see what those look like.

Holly collects information about Pat’s goals, risk tolerance, objectives, and financial and personal circumstances. She then develops an appropriate asset allocation and begins reviewing ESG investments that would fill the allocations for the asset classes. As she does that work, Holly discovers that, in two of the asset classes, while ESG funds are available, the ESG funds for those asset classes are not funds that Holly, based on her analysis, believes are the best available options for Pat.

### QUESTION:

What should Holly do to fulfill her Fiduciary Duty?

### RESPONSE OPTIONS:

- A. Recommend ESG funds for those two asset classes because Pat had indicated that he was interested in ESG funds.
- B. Review her conclusions with Pat, explain the reasons why she would not recommend the funds, and ask Pat whether he would be interested in considering non-ESG investments.
- C. Inform Pat that she cannot proceed with the Engagement because the only ESG funds that are available in the relevant asset classes are ESG funds that she normally would not recommend.

**Best Response:** Response B is the best response. This case study involves the Fiduciary Duty (Standards A.1.) including the Duty of Care (Standard A.1.b.) and the Duty to Follow Client Instructions (A.1.c.).

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. Under 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. Under the Duty to Follow Client Instructions, a CFP® professional must comply with all objectives, policies, restrictions, and other terms of the Engagement and all reasonable and lawful directions of the Client.

When a CFP® professional realizes that the Client’s suggested course of action is not, in the CFP® professional’s judgment, in the Client’s best interests, the CFP® professional must fulfill the Duty of Care and the Duty to Follow Client Instructions by informing the Client of that conclusion, the CFP® professional’s reasons therefore, and the possible consequences of taking the course of action. If the Client specifically directs the CFP® professional to follow instructions that are reasonable and lawful, then the CFP® professional is obligated to follow those instructions. When a CFP® professional cannot identify prudent recommendations due to Client restrictions, the CFP® professional must exercise due care in selecting from among the pool of investments that comply with the Client direction.

In this case, Pat merely has indicated an interest in ESG funds and has not specifically directed Holly to invest exclusively in ESG funds. Holly should review her conclusions with Pat, explain the reasons why she normally would not recommend ESG funds in this circumstance, and ask Pat whether he would prefer to invest in the ESG funds or consider non-ESG investments. If Pat directs that only ESG funds be used for his account, then Holly should follow those instructions and select the ESG funds in these categories that she reasonably believes are the best available options.

Response A is not the best response because an indication of interest is not a clear direction only to recommend ESG funds. Once Holly informs Pat that she could not identify ESG funds in certain categories that satisfy her Duty of Care, and why, Pat may provide clear and explicit instructions.

Response C is not the best response because a CFP® professional must follow a Client’s reasonable and lawful directions, even if those directions might appear to require recommendations that the CFP® professional otherwise would not make. Accordingly, under these facts, a CFP® professional would not be required to resign from the Engagement.

**Relevant Standards and Definitions:** Fiduciary Duty (Standard A.1.); Duty of Care (Standard A.1.b.); Duty to Follow Client