

A. DUTIES OWED TO CLIENTS, 13. DUTIES WHEN RECOMMENDING, ENGAGING, AND WORKING WITH ADDITIONAL PERSONS

2: DUTIES WHEN RECOMMENDING ANOTHER SERVICE PROVIDER

Maggie, a CFP® professional, provides Financial Advice to her Client, Ryan, a small business owner. Ryan asks Maggie to recommend an accountant to provide tax and accounting services for both Ryan's business and for him personally.

Maggie's Clients work with a variety of accountants, and Maggie has communicated with them about their services. Based upon that personal experience, Maggie develops a list of four certified public accountants (CPAs) she considers recommending. Maggie had a positive experience working with each of these individuals. Maggie talks to Clients about their experiences with those accountants and receives additional feedback about the kinds of services they offer and the quality of their services. Maggie also reviews a publicly available database that contains information about licensed CPAs in the United States to determine if any of the accountants on her list have been disciplined or have other negative information. Based on those conversations and her research, Maggie recommends one of the four accountants on her list to Ryan.

The accountant Maggie recommends to Ryan once recommended a Client to Maggie; however, Maggie and the accountant currently do not have, and never have had, an arrangement by which the accountant would recommend Clients to Maggie or by which Maggie would recommend Clients to the accountant.

QUESTION:

Did Maggie satisfy her duties when recommending the accountant?

RESPONSE OPTIONS:

- A. Maggie did not satisfy her duties when recommending the accountant because her due diligence was inadequate.
- B. Maggie did not satisfy her duties when recommending the accountant because she failed to inform Ryan that she previously received a Client recommendation from the accountant.
- C. Maggie has no duties when recommending other service providers.
- D. Maggie satisfied her duties when recommending the accountant to Ryan.

Best Response: Response D is the best response. This case study involves the Duty of Care (Standard A.1.b.) and the Duties When Recommending, Engaging, and Working With Additional Persons (Standard A.13.).

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. 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 the selection and retention of other persons to provide financial or Professional Services to the Client.

When recommending persons to provide Professional Services to a Client, a CFP professional must, in relevant part:

- i. Have a reasonable basis for the recommendation based on the person's reputation, experience, and qualifications; and
- ii. Disclose to the Client, at the time of the recommendation or prior to the Engagement, any arrangement by which someone who is not the Client will compensate or provide other material economic benefit to the CFP professional, the CFP® Professional's Firm, or a Related Party for the recommendation or Engagement.

Here, Maggie's due diligence with respect to the accountant she recommended was adequate to provide her with a reasonable basis for the recommendation, based on the accountant's reputation, experience and qualifications. Maggie had personal experience working with the accountant, she consulted with Clients of the accountant to determine whether they believed that the accountant provided quality services, and she researched the accountant in a publicly-available database maintained by the state's Board of Accountancy.

Response A is not the best response because, based upon the facts provided, Maggie's due diligence provided a reasonable basis for making the recommendation.

Response B is not the best response because there is no obligation to report prior Client recommendations when recommending another service provider. However, if there was an arrangement that provided a financial benefit to Maggie for the recommendation (for example, a mutual-referral agreement), then Maggie would have been required to disclose the arrangement, obtain the Client's informed consent, and properly manage the Conflict of Interest in the Client's best interests. Whether there is an "arrangement for a financial benefit" depends on the factual circumstances. However, the more recommendations that the CFP® professional and the other service provider make to each other, the more likely it is that there is an "arrangement for financial benefit." It is a best practice to disclose recommendations that subjectively may be viewed as being the result of an arrangement. In addition, a CFP® professional should comply with the CFP® Professional's Firm's policies and procedures regarding these matters.

Response C is not the best response because a CFP® professional has duties when recommending other persons to provide Professional Services to a Client.

Relevant Standards and Definitions: Duty of Care (Standard A.1.b.); Duties When Recommending, Engaging, and Working With Additional Persons (Standard A.13.).