

 ETHICS CE

 VIGNETTES

MATERIALS ARE BASED ON THE

CFP BOARD *CODE OF ETHICS AND STANDARDS OF CONDUCT*

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**Ethics CE Vignettes**

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# Maintaining Confidentiality (LO 1; Standard A.9.)

Leo’s Client, Linda, has several children, including, Adam, who is 21. Linda set up UTMA custodial accounts to which she gifted a significant amount of money. In the past, Leo has provided Linda with information regarding the accounts. Leo met with Adam and advised him on investing the account and set up online access so he could withdraw money. At a recent meeting, Linda asked Leo to provide weekly updates on Adam’s spending. Linda also asked Leo to provide her with notice of any large proposed account transfers so she can stop any actions with which she disagrees.

Which of the following statements accurately describes Leo’s obligations in this scenario?

**Response Options:**

1. Leo should provide the requested information to Linda after having her execute a confidentiality agreement.
2. Leo should decline to provide the requested information to Linda because it would be a breach of confidentiality. In order to provide this information to Linda, Leo would need to obtain Adam’s consent.
3. Leo should decline to provide any information that originated after Adam turned 21 and provide Linda with any information that originated prior to Adam turning 21.
4. Leo should provide the information to Linda because it would be in Adam’s best interest, as he is making poor financial choices. Leo is able to make this disclosure to Linda because it is necessary to provide Adam with good Financial Advice.

**Correct Response:** B is correct. Despite Linda’s prior involvement with the accounts, Adam is 21, owns his account, and is a separate and distinct Client. Under Standard A.9., information about his account activity is non-public personal information and there is no exception that would allow for disclosure of the requested information to Linda without Adam’s consent. While Leo may believe it would be beneficial to Adam for Linda to be involved in his account, the proposed disclosure to Linda is not “necessary to perform those services,” as set forth in Standard A.9.a.i.b. Linda is not part of Leo’s team nor is she involved in providing services to Adam. In addition, while Linda may have acted as a representative for Adam in the past, it is clear based on his age and Linda’s request that she no longer acts in that capacity. Therefore, Leo would not be permitted to make the disclosure to Linda. Leo would need to obtain Adam’s consent to provide the requested information to Linda. C is not correct because Adam became the owner of the account when he became 21. As Linda ceased to be an owner of the account, Leo should not provide any information regarding the account to Linda.

# Duties When Representing Fee-Only Compensation Method

# (LO 1; A.12.a.i.)

Diahann is a fee-only CFP® professional working for an RIA that uses an *Asset Under Management* (AUM) compensation model to assess fees. Recently, her firm, which is also a licensed insurance agency, decided to participate in an insurance sales incentive program through an insurance vendor who will compensate the firm with a portion of the commission the vendor earns on sales made by investment advisor representatives at Diahann’s firm. The incentive program was disclosed in the firm’s ADV Part 2A. Diahann will not participate in the program, but others at the firm will do so.

Which of the following statements accurately describes Diahann’s obligations in this scenario?

**Response Options:**

1. Diahann may use fee-only because she collects no Sales-Related Compensation from any source.
2. Diahann may use fee-only because the Sales-Related Compensation earned by Related Parties is not “in connection with” Diahann’s Professional Services.
3. Diahann may not use fee-only because the Sales-Related Compensation earned by Diahann’s firm is “in connection with” her Professional Services.
4. Diahann may not use fee-only because although she collects no Sales-Related Compensation from any source, her firm collects Sales-Related Compensation.

**Correct Response:** D is correct. Under Standard A.12.a.i., Diahann may not represent her compensation method as fee-only if she or her firm receives Sales-Related Compensation (or if a Related Party receives Sales-Related Compensation in connection with any Professional Services she or her firm provides to Clients). The compensation earned through the insurance sales incentive program would constitute Sales-Related Compensation as it provides the firm with an economic benefit for having Clients purchase a Financial Asset.

# Duties When Representing Fee-Based Compensation Model

# (LO1; Standard A.12.a.ii.)

Jeff, a CFP® professional, owns a firm that seeks to distinguish itself in the marketplace by advertising that it is a fee-based firm. The firm uses an *Asset Under Management* (AUM) compensation model to assess fees. The firm, which is also a licensed insurance agency, also sells insurance to some Clients. Jeff discloses to all Clients who consider purchasing an insurance product that he and his firm earn commissions.

Which of the following statements accurately describes Jeff’s obligations in this scenario?

**Response Options:**

1. Jeff has met his obligations under the Code and Standards because he accurately discloses to all Clients that are considering purchasing an insurance product that he earns commissions from the sale of the insurance product.
2. Jeff met his obligations under the Code and Standards because he did not advertise his personal compensation method as fee-based and he is not responsible for his firm’s statement that it is fee-based since CFP Board only certifies individuals.
3. Jeff has not met his obligation under the Code and Standards because he did not accompany his use of fee-based with a statement that he is commission and fee.
4. Jeff has not met his obligation under the Code and Standards because he must state to all Clients that he earns fees and commissions or that he is not fee-only.

**Correct Response:** D is correct. Standard A.12.a.ii imposes obligations on CFP® professionals who represent that their compensation method or the compensation method of their firm is fee-based or any other similar term that is not fee-only. If a CFP® professional does use fee-based or any other similar term that is not fee-only, he or she must: 1) not use the term in a manner that suggests the CFP® professional or the CFP® Professional’s Firm is fee-only; and 2) clearly state that either the CFP® professional or the CFP® Professional’s Firm earns fees and commissions, or that the CFP® professional or the CFP® Professional’s Firm are not fee-only. Here, Jeff, who owns the firm, is suggesting that the firm is fee-only when in fact it earns commissions. In addition, Jeff needs to inform all clients that the firm earns fees and commissions.

# Working With Others (LO 1; Standard A.13.)

Barb is a CFP® professional who is providing financial planning to Chris.  Because Chris does not want any of his assets to go to probate when he dies, Barb determines that Chris should establish a living trust for his assets.

Chris engages Matt, a prominent trusts and estates attorney referred to him by Barb, to establish the living trust. Barb does not disclose to Chris that she and Matt have a written agreement providing that, if Barb refers a client to Matt for legal advice, Matt must refer a client to Barb for financial advice. After the living trust is established by Matt, Barb assists Chris in re-registering the assets that she is managing for Chris in the name of the trust.

Sadly, Chris dies six months later and his family discovers that the assets Barb was not managing never were placed in the living trust.  Apparently, Matt and Barb each believed that the other would re-register the assets, but neither of them did so. As a result, Chris’s assets did not avoid probate.

Which of the following statements about this scenario are true?

**Response Options:**

1. Barb complied with the Duties When Recommending, Engaging, and Working with Additional Persons.
2. Barb was not required to disclose to Chris the mutual-referral agreement she had with Matt because Matt offers services at a below-market rate.
3. Barb failed to communicate with Matt and Chris about the scope of their respective services and the allocation of financial responsibility between them.
4. Barb failed to communicate with Matt about the scope of their respective services and the allocation of responsibility between them.

**Correct Response:**  D is correct.  Standard A.13 sets forth Duties When Recommending, Engaging, and Working with Additional Persons.  Barb had a reasonable basis for recommending Matt based on Matt’s reputation, experience, and qualifications.  However, Barb had a duty to disclose her mutual referral relationship to Chris, either prior to the Engagement or at the time of the recommendation, because Barb was receiving a material economic benefit from Matt in exchange for the recommendation.  In addition, as a CFP® professional, Barb was required to communicate with Matt about the scope of their respective services and the allocation of responsibility between them.  By failing to communicate with Matt about who was responsible for placing the assets that Barb was not managing into the living trust, neither of them re-registered the assets, causing the assets to be placed in probate upon Chris’s death. C is not correct because the Standard does not require Barb to discuss with Chris, her client, the allocation of responsibilities between Barb and Matt. Further, the rule requires the allocation of responsibilities, not the allocation of financial responsibility.

# Duty of Care (LO 2, Standard A.1.b.)

### Ray, a CFP® professional, asks his new Client Sue to complete his firm’s required account opening forms. Later, Ray notices that Sue completed the forms inconsistently with respect to her risk tolerance. Sue indicated on one form that she cannot tolerate losing 5% of her investment but stated on another form that she has an aggressive risk tolerance.

### Ray’s supervisor learns that Sue selected an aggressive risk tolerance and urges Ray to consider a private placement investment for Sue with potentially large returns but substantial risk. After analysis, Ray determines that the investment would match Sue’s stated risk tolerance. Ray explains the investment and Sue chooses to purchase the investment.

Which of the following statements about this scenario are true?

**Response Options:**

1. Ray met his duty of care because he solicited information about Sue‘s risk tolerance and recommended an investment to Sue that matched that risk tolerance.
2. Ray violated his duty of care because a prudent CFP® professional acting with diligence would have spoken with Sue about the inconsistent risk tolerance information prior to recommending the investment.
3. Ray violated his duty of care to Sue because the investment itself is not appropriate for Sue.
4. Ray violated his duty of care because a prudent CFP® professional would have assumed that with Sue’s fear of losing 5% of her investment she would want a conservative investment.

**Correct Response**: B is correct. Under Standard A.1.b., a prudent CFP® professional would have been more diligent in exploring the inconsistent information that Sue provided about her risk tolerance before recommending an investment that matched an aggressive risk tolerance. Ray is unable to determine whether the investment is in Sue’s best interests until he addresses the apparent inconsistency with Sue and develops a clear understanding of Sue’s risk tolerance. D is incorrect because Ray should have had a discussion with Sue about the inconsistency in responses and should not assume what she wants.

# Financial Advice (LO 2; Standard A.1.)

Allison is a CFP® professional whose Client, Peter, prefers to purchase individual stocks. Typically, Peter comes in to Allison’s office with a specific stock in mind that he wants to purchase and asks Allison to assist him with the transaction. Peter recently came to Allison with a specific stock and asked what she “thought” about the stock. Allison responds to Peter, stating that she thinks it is a good company and that the stock is undervalued at its current price. Peter directs Allison to purchase the stock.

Which of the following statements about the scenario are true?

**Response Options:**

1. Allison does not owe Peter a fiduciary duty because Peter selected the specific stock.
2. Allison owes Peter a fiduciary duty because she provided Financial Advice when she communicated with Peter regarding the advisability of purchasing the stock.
3. Allison does not owe Peter a fiduciary duty because Peter ultimately directed Allison to purchase the stock after Allison provided her opinion on the stock.
4. Allison owes Peter a fiduciary duty because she purchased the stock for Peter.

**Correct Response**: B is correct. Under Standard A.1. and the definition of Financial Advice located in the Glossary, when Allison provided Peter her opinion on the stock, that constituted a communication that reasonably would be viewed as a recommendation that Peter purchase the stock. Even though Peter first came to Allison with the idea of purchasing the stock, Allison offered Financial Advice when she recommended that Peter purchase the security. D is not the correct response because whether a CFP® professional owes a fiduciary duty depends on whether the CFP® professional provides Financial Advice. A CFP® professional may purchase a stock for a client without providing Financial Advice.

# Financial Advice that Requires Financial Planning (LO 3; Standard B.4.)

Bob is 50 years old. He has $200,000 in a savings account and $300,000 in a 401(k) plan. He begins working with Peggy, a CFP® professional, and asks Peggy to manage the $200,000 that is in the savings account, to manage his cash flow, and to help him get ready for retirement. Bob also mentions that he wants to focus on his long-term financial outlook. They agree that Peggy will develop recommendations for the savings account, make cash flow recommendations, and develop long-term planning scenarios, including retirement projections. Peggy and Bob enter into an investment advisory agreement.

Which of the following statements are true?

**Response Options:**

1. Peggy is not likely to be providing Bob with Financial Advice that requires Financial Planning because the recommendations will be limited to investment advice.
2. Peggy is likely to be providing Bob with Financial Advice that requires Financial Planning because Peggy is addressing several relevant elements of Bob’s personal and financial circumstances. Further, since Bob is looking at the long-term, and Peggy is managing a large portion and amount of his Financial Assets, it is likely that Peggy’s advice will have a long-term impact on Bob.
3. Peggy is likely to be providing Bob with material elements of Financial Planning because she likely will be collecting a lot of data from Bob.
4. Peggy is not required to provide Bob with Financial Planning because she did not enter into a specific agreement to provide Financial Planning.

**Correct Response:** B is correct. After a review of the integration factors that CFP Board will weigh in determining whether a CFP® professional has agreed to provide or did provide Financial Advice that requires Financial Planning, which is set forth in Standard B.4., it is likely that Peggy will be providing Bob with Financial Advice that requires Financial Planning. A is incorrect because Peggy is providing more than just investment advice. C is incorrect because it focuses on a concept in the prior version of the *Standards* that was relevant to determine whether Financial Planning is required, but no longer will be relevant under the revised *Code and Standards*. Finally, D is incorrect because the *Code and Standards* does not require a specific agreement to provide Financial Planning for Financial Planning to be required.

# No Client Agreement to Engage in Financial Planning (LO 3; Standard B.6.)

Susan leaves her investment manager because of fees and performance. She meets with Blaine, a CFP® professional, who reviews her information. Susan requests the following services: investment management, insurance planning, and retirement planning. Blaine tells Susan that these areas affect almost all her assets, and that he would need to provide Financial Planning to provide these services. Susan refuses to pay the extra costs or enter into a Financial Planning Engagement. Blaine concludes that he can avoid providing Financial Planning by limiting the Scope of Engagement to cover only investment management.

Which is the best course of action?

**Response Options:**

1. Blaine should do what Susan wants and provide investment management, insurance planning, and retirement planning.
2. Blaine should have Susan sign a waiver granting him permission to provide investment management, insurance planning, and retirement planning, but not Financial Planning, and then provide the three services.
3. Blaine should provide investment management, insurance planning, and retirement planning after informing Susan how Financial Planning would benefit Susan and how the decision not to engage Blaine to provide Financial Planning may limit Blaine’s Financial Advice.
4. Blaine should provide the investment management, insurance planning and retirement planning after informing Susan in writing how Financial Planning would benefit Susan and that Blaine will not be providing Susan with Financial Planning.

**Correct Response:** C is correct. Susan has the right to choose which services to receive from a CFP® professional. Standard B.6. of the revised *Code and Standards* provides a CFP® professional with options when a Client declines services a CFP® professional is required to provide. A CFP® professional must either:

(1) Not enter into the Engagement;

(2) Limit the Scope of Engagement to services that do not require application of the Practice Standards, and describe to the Client the services the Client requests that the CFP® professional will not be performing;

(3) Provide the requested services after informing the Client how Financial Planning would benefit the Client and how the decision not to engage the CFP® professional to provide Financial Planning may limit the CFP® professional’s Financial Advice, in which case the CFP® professional is not required to comply with the Practice Standards; or

(4) Terminate the Engagement.

C is the best choice because limiting the Scope of Engagement services that do not require application of the Practice Standards is an option that is available when the Client does not want Financial Planning but does want the CFP® professional to provide the specific services being requested. A is not correct because Blaine has additional requirements when Financial Planning is required, but Susan does not want Financial Planning. B is not correct because the waiver is inadequate. Blaine must inform Susan how Financial Planning would benefit her and how the decision not to engage him for Financial Planning may limit his Financial Advice. Alternatively, Blaine could have limited the engagement to investment planning and described to Susan the services that he would not be providing. D is not correct because the disclosure is not required to be in writing and Blaine must tell Susan how the decision not to engage Blaine to provide Financial Planning may limit Blaine’s Financial Advice.

# Practice Standards for the Financial Planning Process (LO 3; Standard C.)

Lance, a CFP® professional, has an initial meeting with a new prospect, Shelly. After agreeing to prepare a financial plan, Lance gathers information about her personal and financial goals, needs and priorities. Shelly provides some documentation, but says she’ll need more time to collect additional documents from home. Lance immediately begins reviewing the initial documents and developing recommendations and decides that Shelly’s goals are outdated. Several weeks later, Lance presents Shelly with a financial plan that makes several recommendations he believes are in Shelly’s best interest.

Which of the following statements about this scenario are true?

**Response Options:**

1. Lance complied with the first three steps of the Practice Standards by gathering Client data and developing recommendations.
2. Lance has not complied with the Practice Standards because he failed to: obtain information from Shelly; analyze the information to assess Shelly’s personal and financial circumstances; and work with Shelly to identify and select goals. Lance also failed to analyze Shelly’s current course of action prior to recommending an alternative course of action.
3. Lance has complied with the Practice Standards because he developed recommendations that he believes are in Shelly’s best interests.

**Correct Response:** B is correct. The revised Practice Standards for the Financial Planning Process are set forth in Section C of the revised *Code and Standards*. Under Standards C.1. and C.2., a CFP® professional must obtain information concerning the Client’s personal and financial circumstances needed to fulfill the Scope of Engagement, analyze the information to assess the Client’s personal and financial circumstances, and then help the Client identify and select goals. The purpose of this revised process is to understand the Client’s personal and financial circumstances before working collaboratively with the Client to identify and select goals. Standard C.3. also requires a CFP® professional to analyze a Client’s current course of action and then analyze potential alternative courses of action, which Lance did not do in this case. A is incorrect because it reflects the process that was in place under the prior version of the Practice Standards. C is incorrect because Lance’s belief that his recommendations are in the best interests of Shelly does not mean Lance complied with the Practice Standards.

###

# Provide Information to a Client (LO 4; Standard A.10.)

Carlos is a CFP® professional with no bankruptcy or disciplinary history. Jayla, a prospect, meets with Carlos and hires him for Financial Advice not requiring Financial Planning. Carlos orally discloses all Material Conflicts of Interest. Both sign a written Engagement describing the services and products to be provided, how Jayla pays for them, the additional types of costs Jayla may incur, and how Carlos, his firm, and Related Parties are compensated for providing the products and services. The agreement makes Jayla responsible for implementation, monitoring, and updating. Carlos provides another document describing his firm’s policies regarding the protection, handling, and sharing of Jayla’s non-public personal information.

Has Carlos provided the required information to Jayla?

**Response Options:**

1. Carlos has provided the required information set forth in the revised *Code and Standards*.
2. Carlos has not provided the required information to Jayla because he cannot say that a Client is responsible for implementation, monitoring, and updating.
3. Carlos has not provided the required information to Jayla because the agreement does not include a written disclosure of all Material Conflicts of Interest.
4. Carlos has not provided all required information to Jayla because she failed to provide her with the location of the webpages where any governmental authority, self-regulatory organization, or professional organization that may set forth any public disciplinary history or personal bankruptcy or business bankruptcy where the CFP® professional was a Control Person.

**Correct Response:** A is correct. The agreement includes the information that Standard A.10 of the revised *Code and Standards* requires. Because Carlos does not have any bankruptcy or disciplinary history, Carlos is not required to disclose the location of the webpages of all relevant public websites of any governmental authority, self-regulatory organization, or professional organization that sets forth his public disciplinary history or any personal or business bankruptcy with respect to which the CFP® professional was a Control Person. B is not correct because the *Code and Standards* states that a CFP® professional is responsible for implementing, monitoring or updating the Financial Planning recommendations unless those services are specifically excluded from the Scope of Engagement. C is not correct because the *Code and Standards* does not require Conflict of Interest disclosures to be provided in writing. D is not correct because Carlos only would have to provide that information if there is a disclosure set forth on the relevant webpage. Since Carlos does not have a bankruptcy or disciplinary history, he does not need to provide the location of the webpage(s).

# Sufficiently Specific Facts (LO 5; Standard A.5.)

Charlie, a CFP® professional, is the sole owner and employee of Charlie Company, a small investment adviser and broker-dealer that has several Clients. In an effort to increase revenue, Charlie Company enters into revenue sharing arrangements with several mutual fund companies. Charlie realizes that he will have to disclose these arrangements to his Clients and decides to include the following disclosure in his Client agreement: “Charlie Company may receive revenue sharing when providing you with services.”

Is Charlie’s Conflict of Interest disclosure adequate?

**Response Options**:

1. Yes. Charlie disclosed that he might receive revenue sharing, which is sufficiently specific information for a Client to give informed consent to the Conflict of Interest. A reasonable Client receiving the disclosure would understand the conflict and how it could affect the advice provided.
2. No. Charlie did not provide sufficiently specific information. Charlie should have explained revenue sharing, stated which products and services are involved in the revenue sharing arrangements, and informed his Clients that his receipt of revenue sharing payments presents a Conflict of Interest, so that his Clients would be able to understand the Conflict of Interest and how it could affect the advice provided.
3. Yes. Charlie disclosed that he might receive revenue sharing. Clients can ask for more information if they do not understand the conflict and how it could affect the advice provided.
4. No. Charlie failed to disclose to Clients in writing how he would manage the Conflict of Interest. As a result, no Client could give informed consent to the Conflict of Interest.

**Correct Response:** B is the correct response. Under Standard A.5.a., Charlie needs to provide sufficiently specific information so that his Clients are able to understand any Material Conflicts of Interest and the business practice that gives rise to the Material Conflicts of Interest. Charlie should have at least explained revenue sharing and how his receipt of revenue sharing payments presents a Material Conflict of Interest, given that he has an economic incentive to recommend products or services that will result in revenue sharing payments to his firm. While Charlie is required to manage Material Conflicts of Interest, Charlie is not required to provide a written disclosure to his Client explaining how he will do so. Therefore, D is not the correct response.

# Real Estate Sale (LO 5; Standard A.5.)

Cheryl is a CFP® professional who has become friends with a recent widower, Jack. Jack mentions that he has decided to sell his house because it is too big for him to handle alone. Cheryl says she and her husband would be interested in purchasing his home but she would have a Material Conflict of Interest if she were to act as Jack’s financial planner and buy the home. Cheryl follows up by providing Jack with a comprehensive written disclosure regarding the conflict. Jack acknowledges that Cheryl has a Material Conflict of Interest, but he wants to proceed with the sale anyway.

What is Cheryl’s best option for managing the Material Conflict of Interest?

**Response Options**:

1. Cheryl should ask Jack what price he wants for the home and meet that price.
2. Cheryl should decide what she thinks is a fair price and offer Jack no less than that price.
3. Cheryl should inform Jack that she cannot purchase the home from him unless he obtains independent advice with respect to the sale of the home.
4. Cheryl should terminate her relationship with Jack as his financial planner and then purchase the home.

### **Correct Response:** C is correct. The relevant Standard is A.5.b. To manage this Material Conflict of Interest appropriately, Cheryl should seek to make this an arms-length transaction. One way to do so would be for Cheryl to suggest that Jack engage an independent realtor who may give Jack independent advice on the value of the home. Another way might be to obtain an independent appraisal and pay the appraised amount. There may be other ways to manage this Material Conflict of Interest.

# CFP® Professional Volunteer (LO 5; Standard A.5.)

Aisha is a CFP® professional who wants to represent Ultra High Net Worth Clients and determines that one hallmark of these Clients is their propensity toward philanthropy. Aisha is a board member of a local community foundation, a large nonprofit hospital, and her church. Through her various philanthropic roles, Aisha meets several Clients who want her to provide them with financial planning, including assisting them with making choices regarding their philanthropic giving. Depending on the circumstances, Aisha may consider recommending that Clients give to an organization for which she serves as a board member.

Is there a Material Conflict of Interest? If yes, how could Aisha manage these conflicts?

**Response Options:**

1. Yes, there is a Material Conflict of Interest. Aisha should disclose her board membership, and notify her Clients of the Conflict of Interest that the membership presents to her when assisting Clients with their philanthropic giving. Aisha also should put into place business practices that will prevent her work with these organizations from compromising her ability to act in her Client’s best interests.
2. Yes, there is a Material Conflict of Interest. Aisha should decline to enter into an agreement with prospective Clients and terminate any agreements with existing Clients who intend to make philanthropic gifts.
3. No, there is not a Material Conflict of Interest because her board membership will add to the value of the advice Aisha provides to her Clients.

**Correct Response:** A is correct. Under Standard A.5.a., when providing Financial Advice, a CFP® professional must make full disclosure of all Material Conflicts of Interest. Advice regarding charitable giving is Financial Advice here because it is provided as part of the development or implementation of a financial plan. Aisha has a conflict because a reasonable client would view her board membership as affecting the objectivity of her recommendations and thus is important to the Client’s decision whether to accept the recommendation. Under Standard A.5.b., the CFP® professional must adopt and follow business practices reasonably designed to prevent Material Conflicts of Interest from compromising her ability to act in her Clients’ best interests.



CERTIFIED FINANCIAL PLANNER BO ARD OF STAND ARDS, INC.

1425 K St NW #800 Washington DC 20005

202-379-2221

CE@CFPBoard.org | CFP.net

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