ETHICS CE: CFP BOARD'S REVISED *CODE AND STANDARDS*

ELEVATING THE PROFESSION
Financial Planning Association
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Disclaimer

The content of this program is based on CFP Board's *Code of Ethics and Standards of Conduct* (*Code and Standards*), which is effective on October 1, 2019.

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Learning Objectives

1. Identify the structure and content of the revised *Code and Standards*, including significant changes and how the changes affect CFP® professionals.
2. Act in accordance with CFP Board's fiduciary duty.
3. Apply the Practice Standards when providing Financial Planning.
4. Recognize situations when specific information must be provided to a Client.
5. Recognize and avoid, or fully disclose and manage, Material Conflicts of Interest.

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STRUCTURE, CONTENT AND SIGNIFICANT CHANGES

LEARNING OBJECTIVE 1

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The Revised *Code And Standards*

- Significant Changes to Content
- The New Structure and Organization
- Duties to:
    - Clients
    - Firms and Subordinates
    - CFP Board

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Most Significant Changes To Content

- Expanded Application of Fiduciary Duty
- Updated Duties to Clients
- Revised Definition of Financial Planning
- Modernized Practice Standards
- New Process for Bankruptcy
- Enhanced Requirements for Reporting

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The Structure Has Changed

Current Standards (Effective Until September 30, 2019)	Revised Standards (Effective October 1, 2019)
Introduction	Preamble
Code of Ethics and Professional Responsibility	Code of Ethics
Rules of Conduct	Standards of Conduct
Financial Planning Practice Standards	Practice Standards for the Financial Planning Process
Terminology	Glossary

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Code Of Ethics

A CFP® professional must:

1. Act with honesty, integrity, competence, and diligence.
2. Act in the client's best interests.
3. Exercise due care.
4. Avoid or disclose and manage conflicts of interest.
5. Maintain the confidentiality and protect the privacy of client information.
6. Act in a manner that reflects positively on the financial planning profession and CFP® certification.

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Standards Of Conduct

Six Sections:

1. Duties Owed to Clients
2. Financial Planning and Application of Practice Standards
3. Practice Standards
4. Circumvention
5. Duties Owed to Firms and Subordinates
6. Duties Owed to CFP Board

Integrity, Competence, Diligence

Integrity

- Honesty and candor that is not subordinated to personal gain or advantage
- Standard anti-fraud language

Competence

- Relevant knowledge and skill
- Gain competence, obtain assistance, limit or terminate engagement, and/or refer the Client

Diligence

- Timely and thorough

Objectivity, Professionalism, Communications

Sound and Objective Professional Judgment

- Exercise professional judgment that is not subordinated.
- Avoid considerations that could compromise objectivity.

Professionalism

- Treat Clients and others with dignity, courtesy, and respect.

Client Communications

- Provide accurate information in an understandable manner and format.

Comply With the Law

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Confidentiality/Privacy & Technology

Confidentiality/Privacy

- Applies to non-public personal information (NPPI)
- Exceptions for ordinary business (four) and legal/enforcement (seven)
- Can't benefit from NPPI
- Must protect security and adopt, implement, and share written policies
- Safe Harbor for Reg S-P (or equivalent)

Technology

- Use reasonable care in selecting, using and recommending
- Have a reasonable understanding of assumptions and outcomes
- Have a reasonable basis for believing outcomes will be reliable, objective, and appropriate

Refrain from Borrowing, Lending, and Commingling Financial Assets

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Representation of Compensation Method

Key Terms and Concepts:

- Duties Owed to Clients
- Sales-Related Compensation
- Related Party Compensation
- Representations by a CFP® Professional's Firm

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Fee-Only Application

1. Earning Sales-Related Compensation?
2. How about your Firm?
3. Any "Related Party" earning Sales-Related Compensation?
4. If so, is the Related Party compensation "in connection with"?

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Working With Additional Persons

Duties When Engaging or Recommending

- Develop reasonable basis
- Disclose compensation arrangements

Duties When Engaging

- Exercise reasonable care

Duties When Working With

- Communicate about services and responsibilities
- Inform client if the other provider did not perform or uphold responsibilities

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Duties Owed to Firms & Subordinates

- Use Reasonable Care When Supervising
- Comply with Lawful Objectives of Firm
- Provide Notice of Public Discipline

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Duties Owed to CFP Board

- Avoid Adverse Conduct
- Report Incidents of Apparent Adverse Conduct Within Thirty Days
- Provide a Narrative Statement
- Cooperate with CFP Board
- Comply with the *Terms and Conditions of Certification and License*

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Quick Review

✓ New **Structure** and **Organization**

✓ Duties to:

- ➢ **Clients**
- ➢ **Firms and Subordinates**
- ➢ **CFP Board**

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Real Life Scenario

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Meet Chris	Meet Barb	Meet Matt
• Does not want any of his assets to go to probate when he dies • Working with Barb	• CFP® professional • Chris is her client • Suggests Chris establish a living trust for his assets and refers Chris to Matt	• Prominent Trusts and Estates Attorney • Has a written agreement with Barb that if she refers a client to him, he must refer a client to her

SITUATION: Chris dies six months later and his family discovers that the assets Barb was not managing never were placed in the living trust. Neither Barb or Matt re-registered the assets. As a result Chris' assets did not avoid probate.

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Real Life Scenario

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Discussion: Which of the following statements about this situation are true?

A. Barb complied with the Duties When Recommending, Engaging, and Working with Additional Persons.

B. Barb was not required to disclose to Sally the mutual-referral agreement she had with Matt because Matt offers services at a below-market rate.

C. Barb failed to communicate with Matt and Chris about the scope of their respective services and the allocation of financial responsibility between them.

D. Barb failed to communicate with Matt about the scope of their respective services and the allocation of responsibility between them.

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Test Your Knowledge

True or False:

The Code and Standards contains new Duties to Clients when Selecting, Using, and Recommending Technology, and when Recommending, Engaging, and Working With Additional Persons.

A CFP® Professional may use the term "fee-based" to describe his or her compensation method only if the CFP® Professional satisfies the standard for being "fee-only."

There has been no change in the reporting that a CFP® Professional must make to CFP Board concerning events that may reflect a violation of the Code and Standards.

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CFP BOARD'S FIDUCIARY DUTY

LEARNING OBJECTIVE 2

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The Fiduciary Duty

- Includes a Duty of Loyalty, a Duty of Care, and a Duty to Follow Client Instructions
- Applies to all Financial Advice to a Client
- Defines Financial Advice Broadly

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Act in the Client's Best Interests

Duty of Loyalty

- Place Client's interests ahead of your own
- Conflicts: avoid or fully disclose, obtain consent, and properly manage
- Act without regard to interests of others

Duty of Care

- Act with care, skill, prudence, and diligence
- Consider Client's goals, risk tolerance, objectives, and circumstances

Duty to Follow Client's Instructions

- Comply with Terms of Engagement
- Follow Client's reasonable and lawful directions

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Applies to All Financial Advice

Application

- "At all times when providing Financial Advice to a Client"
- More expansive than when providing Financial Planning

Who is a "Client"?

- Any person, including a natural person, business organization or legal entity
- To whom the CFP® professional provides or agrees to provide "Professional Services"
- Pursuant to an "Engagement"

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Financial Advice Broadly Defined

Financial Advice:

A. A communication that, based on its content, context, and presentation, would reasonably be viewed as a recommendation that the Client take a particular course of action with respect to:
   1. The development or implementation of a financial plan
   2. The value of or the advisability of investing in, purchasing, holding, or selling Financial Assets
   3. Investment policies or strategies, portfolio composition, or asset management
   4. The selection and retention of other persons to provide financial or Professional Services to the Client, or

B. The exercise of discretionary authority over Financial Assets.

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Quick Review

- ✓ Duty of **Loyalty**
- ✓ Duty of **Care**
- ✓ Duty to **Follow Client Instructions**
- ✓ Fiduciary Duty Applies to **All** Financial Advice
- ✓ Financial Advice **Broadly** Defined

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Real Life Scenario

Meet Allison	Meet Peter
• CFP® professional	• Allison's client who prefers to purchase individual stocks

SITUATION: 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.

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Real Life Scenario

Discussion: Which of the following statements about this situation are true?

A. Allison does not owe Peter a fiduciary duty because Peter selected the specific stock.

B. Allison owes Peter a fiduciary duty because she provided Financial Advice when she communicated with Peter regarding the advisability of purchasing the stock.

C. 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.

D. Allison owes Peter a fiduciary duty because she purchased the stock for Peter.

Test Your Knowledge

True or False:

Under the Code and Standards, whether a CFP® Professional has a fiduciary duty depends on whether the CFP® Professional is providing "Financial Planning." A CFP® Professional may provide Financial Advice without owing a Fiduciary Duty.

In order for there to be Financial Advice, there must be compensation.

A CFP® Professional who provides marketing materials and general financial education materials is "Providing Financial Advice."

The Duty to Follow Client Instructions is absolute. There are no exceptions.

APPLYING THE PRACTICE STANDARDS

LEARNING OBJECTIVE 3

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Updated Practice Standards

- Updated Financial Planning Definition
- A Revised Standard for Determining Whether the Practice Standards Apply
- Options When Required to Comply with the Practice Standards but the Client Does Not Want Financial Planning
- Documentation
- Updates to Steps in the Financial Planning Process

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An Updated Financial Planning Definition

Current Standards (Effective Until September 30, 2019)	Revised Standards (Effective October 1, 2019)
"Personal financial planning" or "financial planning" denotes the process of determining whether and how an individual can meet life goals through the proper management of financial resources. Financial planning integrates the financial planning process with the financial planning subject areas.	Financial Planning is a collaborative process that helps maximize a Client's potential for meeting life goals through Financial Advice that integrates relevant elements of the Client's personal and financial circumstances.

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Application of the Practice Standards

The Practice Standards Apply When:

- The CFP® professional agrees to provide or provides Financial Planning
- The CFP® professional agrees to provide or provides Financial Advice that requires integration of relevant elements to act in Client's best interests
- The Client has a reasonable basis to believe the CFP® professional will provide or has provided Financial Planning

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When Integration Is Required

The Integration Factors:

- Number of relevant elements
- Portion and amount of the Client's assets affected
- Length of time the Client's circumstances may be affected
- Effect on exposure to risk
- Barriers to modification of Financial Advice

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- If CFP Board alleges a Practice Standards violation
- And the CFP® professional denies the allegations
- Then the CFP® professional has the burden of demonstrating that Financial Planning was not required

Clients Who Do Not Want Financial Planning

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If a CFP® professional otherwise must comply with the Practice Standards, but the Client does not agree to engage for Financial Planning, a CFP® professional must either:

- Not enter into the Engagement
- Limit the scope to services that do not require Financial Planning
- Provide the requested service but explain the benefits of Financial Planning and limitations on services
- Terminate the Engagement

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Documentation Requirement

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If required to comply with the Practice Standards, a CFP® professional must act prudently in documenting information, taking into account:

- The significance of the information
- The need to preserve the information in writing
- The obligation to act in the Client's best interests and
- The CFP® Professional's Firm's policies and procedures

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Current Practice Standards (Effective Until September 30, 2019)	**New Practice Standards** (Effective October 1, 2019)
1. Establishing and Defining the Relationship with the Client	Moved to Section A.10: Provide Information to a Client
2. Gathering Client Data	1. Understanding the Client's Personal and Financial Circumstances
	2. Identifying and Selecting Goals
3. Analyzing and Evaluating the Client's Financial Status	3. Analyzing the Client's Current Course of Action and Potential Alternative Course(s) of Action
4. Developing and Presenting the Financial Planning Recommendations (Identifying and Evaluating Alternatives)	
4. Developing and Presenting Financial Planning Recommendations (Developing Recommendations)	4. Developing the Financial Planning Recommendation(s)
4. Developing and Presenting Financial Planning Recommendations (Presenting Recommendations)	5. Presenting the Financial Planning Recommendation(s)
5. Implementing the Financial Planning Recommendations	6. Implementing the Financial Planning Recommendation(s)
6. Monitoring	7. Monitoring Progress and Updating

Circumstances, Goals, Options

Step 1: Understanding Personal and Financial Circumstances

- Obtaining Qualitative and Quantitative Information
- Analyzing Information
- Addressing Incomplete Information

Step 2: Identifying and Selecting Goals

- Identifying Potential Goals
- Selecting and Prioritizing Goals

Step 3: Analyzing the Client's Current and Potential Alternative Course(s) of Action

- Analyzing Current Course of Action
- Analyzing Potential Alternative Course(s) of Action

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Developing and Presenting

Step 4: Developing the Financial Planning Recommendation(s)

- Select recommendation(s) to maximize Client potential for meeting goals
- For each recommendation, consider:
  - Assumptions and Estimates
  - Basis for Recommendation
  - Timing/Priority
  - Interdependency of Recommendation

Step 5: Presenting the Financial Planning Recommendation(s)

- Present recommendations
- Present information considered in developing the recommendation(s)

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Implementing and Monitoring

Step 6: Implementing the Financial Planning Recommendation(s)

- Address implementation responsibilities
- Identify, analyze and select actions, products and services
- Recommend actions, products, and services for implementation
- Select and implement

Step 7: Monitoring Progress and Updating

- Monitoring and updating responsibilities
- Monitor the Client's progress
- Obtain current qualitative and quantitative information
- Update goals, recommendations or implementation decisions

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Quick Review

- ✓ **Updated Definition** - Financial Planning
- ✓ **Revised Standard** - Determining Whether the Practice Standards Apply
- ✓ **Updated Steps** - Financial Planning Process

Real Life Scenario

Meet Susan	Meet Blaine
• Leaves her investment manager because of fees and performance	• A CFP® professional, who reviews her information

SITUATION:

- 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.

Real Life Scenario

Which is the best course of action?

A. Blaine should do what Susan wants and provide investment management, insurance planning, and retirement planning.

B. 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.

C. 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.

D. 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.

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Test Your Knowledge

True or False:

A CFP® professional providing Financial Planning must document all communications with the Client.

There are seven steps in the Financial Planning process.

If a Client does not want to enter into a Financial Planning Engagement, but a CFP® professional believes that the scope of the work requested requires the CFP® professional to comply with the Practice Standards, the CFP® professional may limit the scope of the Engagement to services that do not require application of the Practice Standards.

The effect of the Financial Advice on the Client's exposure to risk is what determines whether a CFP® professional is required to provide Financial Planning.

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INFORMATION THAT MUST BE PROVIDED TO THE CLIENT

LEARNING OBJECTIVE 4

Providing Information to a Client

- Timing, delivery, and updating requirements
- Eight categories of information must be provided
- Additional requirements when providing Financial Planning

Timing, Delivery, and Updating

Timing:

- Prior to or at the time of the Engagement

Delivery:

- Financial Advice: No written requirement, but must document
- Financial Planning: Provide in one or more written documents
- Conflicts of Interest: Not required to be provided in writing, but evidence of oral disclosure will be given such weight

Updating:

- Ongoing duty to provide Client with a Material change or update
- Updates to disciplinary history or bankruptcies within 90 days

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The Information That Must Be Provided

A description of the services and products to be provided
How the Client pays for the products and services, and a description of the additional types of costs the Client may incur
How the CFP® professional, the CFP® Professional's Firm, and any Related Party are compensated for providing the products and services
Relevant websites that have information about disciplinary actions and bankruptcies
Other information that is Material to a Client's decision to engage or continue to engage
Full disclosure of all Material Conflicts of Interest
Policies regarding the protection, handling, and sharing of non-public personal information
Information required under the Engagement and in response to reasonable Client requests

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Terms of Engagement

When Providing Financial Planning

The Terms of the Engagement include:

a) the Scope of the Engagement and any limitations,
b) when the services will be provided, and
c) the Client's Responsibilities

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Quick Review

✓ Information provided to Clients
✓ **Timing**, **Delivery**, and **Updating**

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Real Life Scenario

Meet Carlos	Meet Jayla
• Is a CFP® professional with no bankruptcy or disciplinary history	• A prospect, meets with Carlos and hires him for Financial Advice not requiring Financial Planning.

SITUATION:

- 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.

Real Life Scenario

Has Carlos provided the required information to Jayla?

A. Carlos has provided the required information set forth in the revised *Code and Standards*.

B. Carlos has not provided the required information to Jayla because he cannot say that a Client is responsible for implementation, monitoring, and updating.

C. Carlos has not provided the required information to Jayla because the agreement does not include a written disclosure of all Material Conflicts of Interest.

D. 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.

RECOGNIZE AND AVOID OR DISCLOSE AND MANAGE CONFLICTS

LEARNING OBJECTIVE 5

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Conflict of Interest Obligations

Material Conflict of Interest

- **Avoid Material Conflicts of Interest**
- **For Material Conflicts that are not avoided:**
  - Provide Full Disclosure
  - Obtain Informed Consent
  - Manage the Conflict in the Client's Best Interests

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Duty to Fully Disclose Material Conflicts

Material Conflict of Interest → Disclose

Disclosure Obligation:

- Fully disclose all Material Conflicts of Interest that could affect the professional relationship

Conflict of Interest Defined:

- When interests of CFP® professional (and firm) are adverse to the CFP® professional's duties to the Client,

or

- When CFP® professional has duties to one Client that are adverse to another Client

Material:

- When a reasonable Client or prospective Client would consider the Conflict of Interest important in making a decision

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Full Disclosure and Informed Consent

Material Conflict of Interest → Disclose → Informed Consent

Disclose "Sufficiently Specific Facts"

- Would a reasonable Client understand the conflict and how it could affect the advice?
- Ambiguity interpreted in favor of the Client

Delivery:

- Written disclosure is not required
- Oral disclosure weighed as CFP Board deems appropriate

Obtain Informed Consent

- Written consent is not required
- When will consent be inferred?

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Must Also Manage Conflicts

Material Conflict of Interest → Disclose → Informed Consent → Manage

Management of Conflicts

- Must adopt and follow business practices reasonably designed to prevent Material Conflicts from compromising the CFP® professional's ability to act in the Client's best interests

Quick Review

✓ **Disclose** Material Conflicts of Interest
✓ **Obtain** Informed Consent
✓ **Manage** the Conflicts

Real Life Scenario

Meet Aisha

- 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.

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Real Life Scenario

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

A. 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.

B. 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.

C. 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.

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Test Your Knowledge

True or False:

A Conflict of Interest is present when the interests of the CFP® professional and the interests of the Client are adverse.

Ambiguity in a Conflict of Interest disclosure provided to a Client will be interpreted in favor of the Client.

A sincere belief by a CFP® professional with a Material Conflict of Interest that he or she is acting in the best interests of the Client is sufficient to excuse the CFP® professional's failure to make full disclosure of the Material Conflict of Interest.

Recommended Resources

- **www.CFP.net**
  - Full version new *Code and Standards*
  - Commentary on the new *Code and Standards*

THANK YOU

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