




KITCES IAR ETHICS CE DAY

Navigating Ethical Obligations As A Financial Planner







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Presenter

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Welcome

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

By the conclusion of this training, participants will have improved their ability to:



Recognize what constitutes Financial Advice.



Apply the Fiduciary Duty.



Describe when Financial Advice requires Financial Planning (and the additional obligations that apply to CFP professionals)



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Learning Objectives (continued)

By the conclusion of this training, participants will have improved their ability to:



Identify duties when using or referring other service providers or technologies.



Describe the process the CFP Board follows to uphold the Code and Standards.



Determine what information must be provided to the Client and when to document the exchange of information.



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Code & Standards

Why is it important to have a Code of Ethics and Standards of Conduct?


What happens if CFP® professionals fail to comply with the Code and Standards?



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Learning Objective 1

Recognize what constitutes Financial Advice.



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Scenario: Financial Advice

Kevin, a prospect, met Priya, a CFP® professional, at a retirement planning community event.

He is planning to retire next year and is looking for information.



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Scenario: Financial Advice



Priya sends Kevin an article titled "What will my savings cover in retirement?"

Priya sends this same article to all her Clients and prospects who are close to retirement.



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Scenario: Financial Advice



What If?

Kevin scheduled a meeting with Priya. At the meeting, he asked what Priya "thought about" purchasing a particular income-based mutual fund.

Priya says. "I think it is a good mutual fund for retirees. I'd be happy to help you purchase that."



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Financial Advice

Definition

- 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 development or implementation of a Financial Plan;
 - The value of or the advisability of investing in, purchasing, holding, gifting, or selling Financial Assets;
 - Investment policies or strategies, portfolio composition, the management of Financial Assets, or other financial matters; or
 - The selection and retention of other persons to provide financial or Professional Services to the Client;
- Or, the exercise of **discretionary authority** over the Financial Assets of a Client.



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Financial Advice

Definition

- Financial Advice is NOT:
 - A communication that, based on its content, context, and presentation, would not reasonably be viewed as a recommendation;
 - Responses to directed orders; and
 - The following, if a reasonable CFP® professional would not view it as Financial Advice:
 - Marketing Materials;
 - General Financial Education; and
 - General Financial Communications.



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Code & Standards

Why does it matter if I know when I'm providing financial advice?



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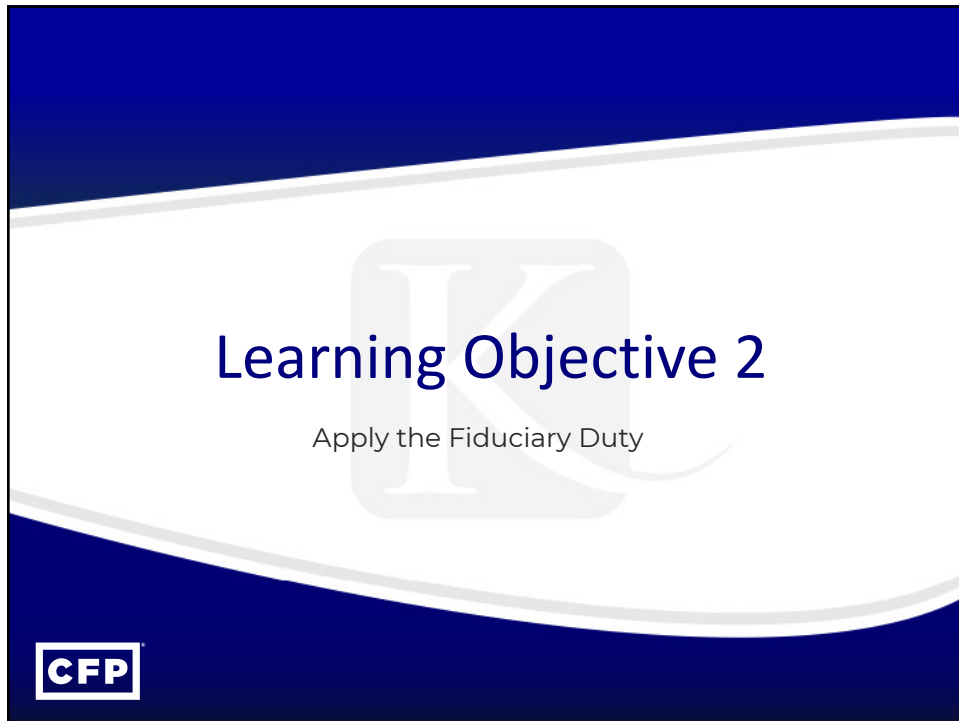
Knowledge Check – Financial Advice

True or False?

- 1** Fulfilling a directed order from a Client to buy a stock is Financial Advice.
- 2** In order for there to be Financial Advice, there must be compensation.
- 3** Providing marketing and general financial education materials is generally not providing Financial Advice.



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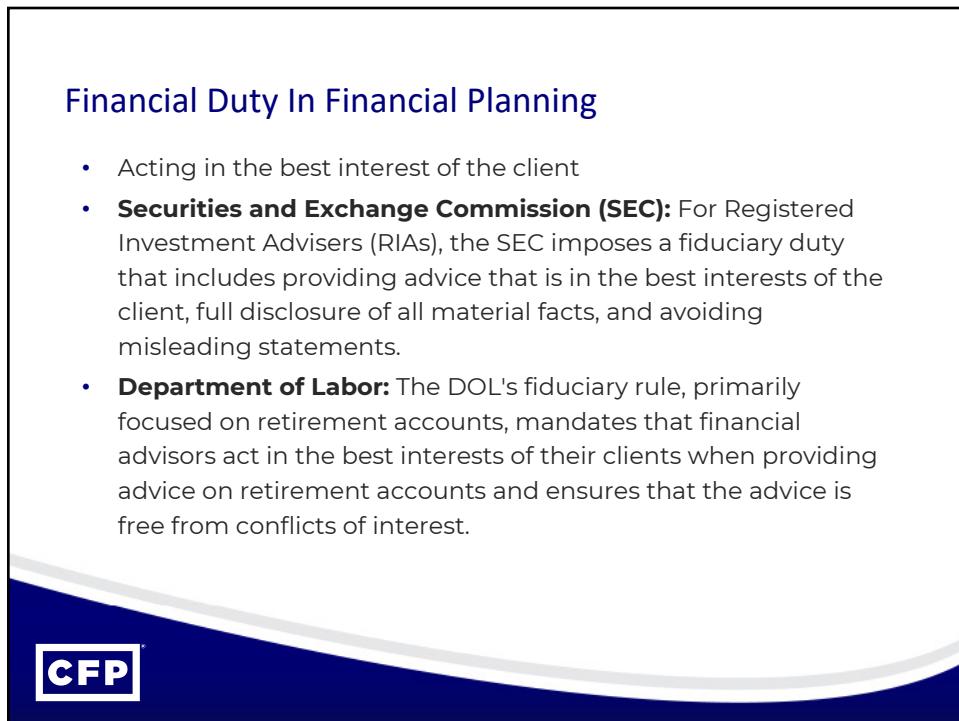
A slide with a dark blue background and a white curved banner. The banner contains the text "Learning Objective 2" in a large, dark blue font, with "Apply the Fiduciary Duty" in a smaller, dark blue font below it. A large, faint "IK" logo is visible in the background. In the bottom left corner, there is a small white box with the letters "CFP" in blue.

Learning Objective 2

Apply the Fiduciary Duty

CFP

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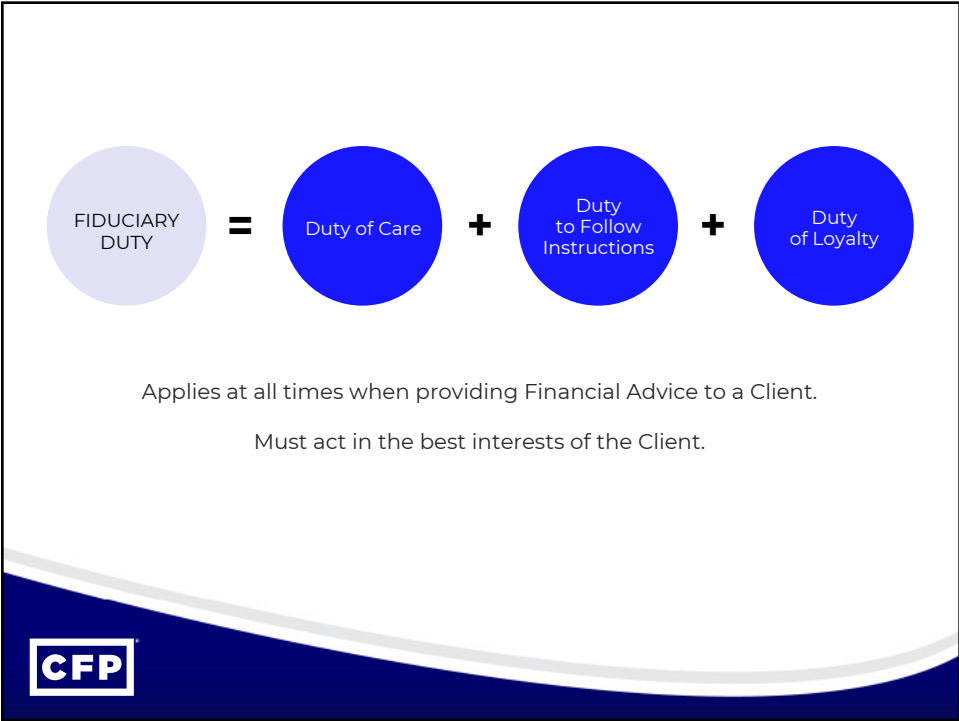
A slide with a white background and a dark blue footer. The footer contains a small white box with the letters "CFP" in blue. The main content area has a dark blue header and a list of bullet points.

Financial Duty In Financial Planning

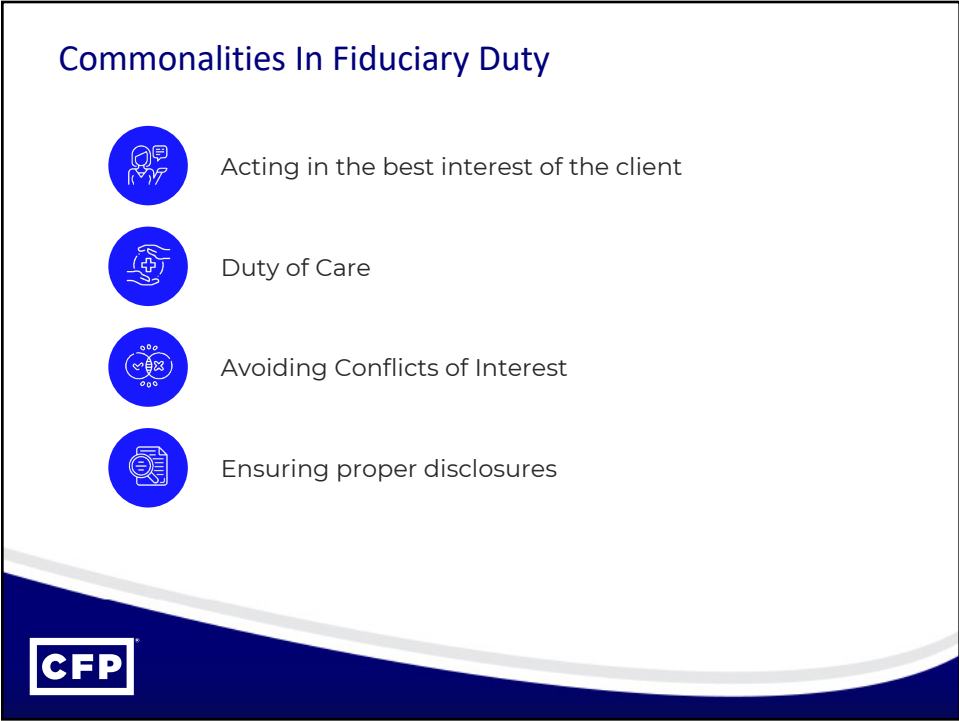
- Acting in the best interest of the client
- **Securities and Exchange Commission (SEC):** For Registered Investment Advisers (RIAs), the SEC imposes a fiduciary duty that includes providing advice that is in the best interests of the client, full disclosure of all material facts, and avoiding misleading statements.
- **Department of Labor:** The DOL's fiduciary rule, primarily focused on retirement accounts, mandates that financial advisors act in the best interests of their clients when providing advice on retirement accounts and ensures that the advice is free from conflicts of interest.

CFP

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Duty Of Care

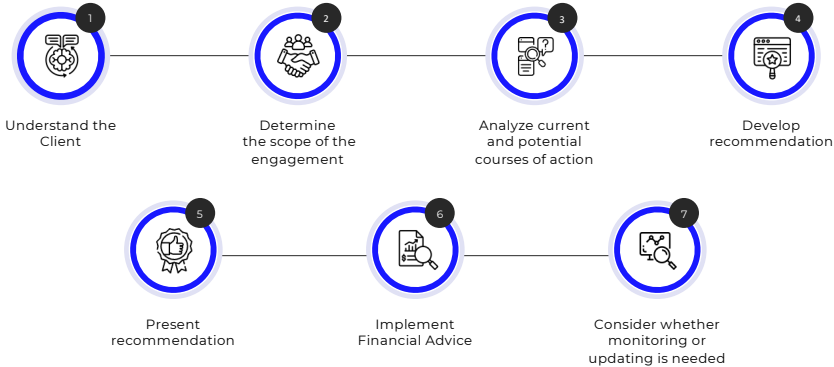
Definition

- Duty of Care is a component of the Fiduciary Duty.
- You 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
 - Financial and personal circumstances



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Process For Complying With The Duty Of Care



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Scenario:
Duty Of Care

Meet Jordan
Jordan is changing jobs and wants advice on what to do about her 401(k) plan.



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Scenario:
Duty Of Care

Meet Avery
Avery is a CFP® professional.




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Written Disclosure

True or False?
Recommending whether a Client should roll over an account from a 401(k) is Financial Advice and the Fiduciary Duty applies.



The image shows two people from the chest up, holding large circular signs on sticks. The person on the left is holding a sign with a green checkmark, and the person on the right is holding a sign with a red X. They are positioned in front of a light gray circular background.



The CFP logo is located in the bottom left corner of the slide, consisting of the letters 'CFP' in white inside a blue square.

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Scenario: Fulfilling The Duty of Care

Let's follow Avery as she fulfills her Duty of Care to Jordan



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graph LR; A((Understand the Client)) --- B((Analyze)); B --- C((Develop Recommendations))
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The flowchart consists of three light blue circles connected by horizontal lines. The first circle contains an icon of a document and the text 'Understand the Client'. The second circle contains a bar chart icon and the text 'Analyze'. The third circle contains a lightbulb icon and the text 'Develop Recommendations'.



The CFP logo is located in the bottom left corner of the slide, consisting of the letters 'CFP' in white inside a blue square.

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Recommendations: Duty of Care

Does Avery have to recommend that Jordan remain in the 401(k)?



Avery determines that

The 401(k) at Jordan's new job is suboptimal to the current 401(k) or an IRA.

The fees in the former employer's 401(k) are lower than rolling over to an IRA.



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Scenario: Client Instructions


Imagine you have a retired Client who instructs you to withdraw retirement funds to help their child start a business.

You do not believe this is in their best interests given their goals in retirement.

How would you proceed?



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Scenario Poll:
Client Instructions

Imagine you have a retired Client who instructs you to withdraw retirement funds to help their child start a business. You do not believe this is in their best interests given their goals in retirement.

How would you proceed?

- Withdraw the funds without discussion.
- Refuse to withdraw funds.
- Discuss why you think this is not in their best interest and withdraw the funds if they still want to proceed.
- Discuss why you think this is not in their best interest and terminate the engagement.

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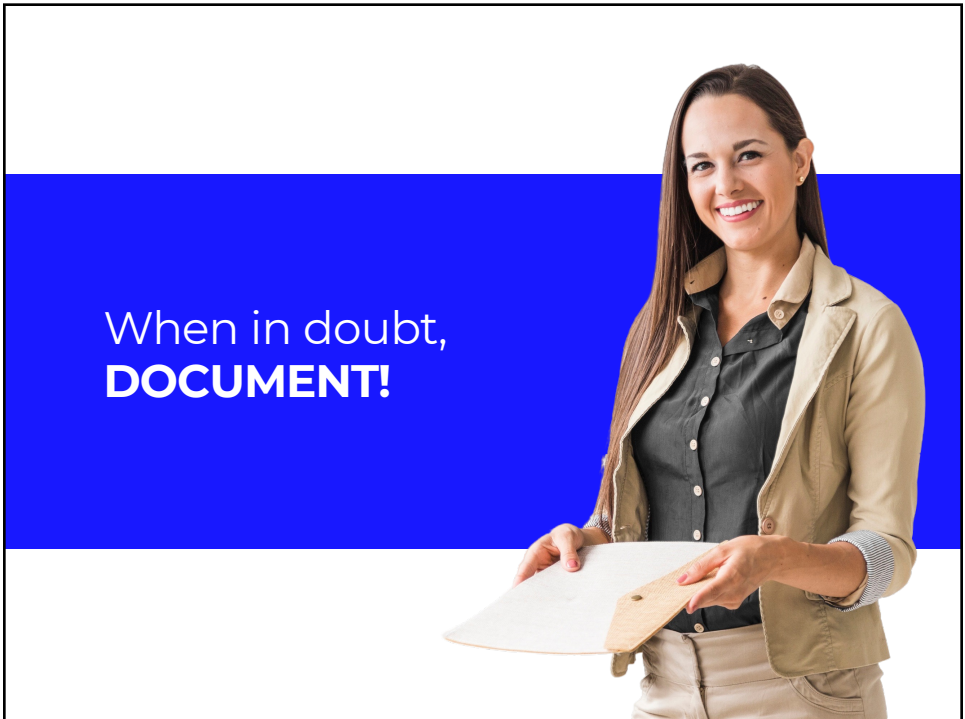


Poll: Client Instructions

How often do clients give you instructions that you believe are not in their best interests?

- NEVER
- RARELY
- SOMETIMES
- OFTEN

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Knowledge Check – Client Instructions

True or False?

- 1** You must resign the Engagement if you disagree with Client instructions.
- 2** You must follow Client instructions as long as they are reasonable and lawful or limit the engagement.
- 3** You must explain why you think the instructions are not in the Client's best interests and the potential consequences.

An illustration showing two people from the chest up. The person on the left is holding a sign with a green checkmark, and the person on the right is holding a sign with a red X. The signs are circular with a white background and a light blue border.The CFP logo, consisting of the letters 'CFP' in white inside a blue square.

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Duty Of Loyalty

Definition

- Place Client's interests first.
- Avoid Conflicts, or:
 - Fully Disclose.
 - Gain Client's Informed Consent.
 - Manage Conflict in the Client's best interest.



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Conflict of Interest

Definition

- Your interests (including the interests of your firm) are adverse to duties to a Client.
- You have duties to one Client that are adverse to another Client.

Having a Conflict ≠ Acting on a Conflict





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Scenario:
Duty Of Care

Meet Mei

Prospective client with 18 months worth of her expenses in a bank account.

- Wants to invest and is looking for someone to help manage the investments.
- Wants help developing a strategy for paying down her mortgage.



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Scenario:
Duty Of Loyalty

Meet Darren

CFP® professional compensated through a percentage of assets under management.



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Scenario:
Duty Of Loyalty

Darren's Firm

Darren's firm has an agreement with its clearing broker to receive payments when clients are invested in certain mutual funds.





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Scenario: Conflicts of Interest Language

Identify the problems with Darren's statement.

In explaining his services, Darren says that paying a fee for investment advice is "conflict-free."



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Scenario: Identify Conflicts of Interest

? What conflicts are present?



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Scenario: Managing Conflicts of Interest

Duty of Loyalty requires Darren to avoid the Conflicts of Interest, or:

- 1 Fully disclose Material Conflicts of Interest.
- 2 Obtain the Client's informed consent to the conflict.
- 3 Manage the conflict in Client's best interests.



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Scenario: Identify Conflicts of Interest

? Are these conflicts Material?

Information is Material when a reasonable Client or prospective Client would consider the information important in making a decision.



Full Disclosure & Informed Consent

What is "full" disclosure?

How do I know if I have informed consent?




Sufficiently Specific Facts

Definition

Enough so a reasonable Client can:

- Understand the Conflict
- Give informed consent to the Conflict, or
- Reject the Conflict




Must be provided before the Financial Advice.




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Full Disclosure

Types of Sufficiently Specific Facts:

-  The nature and extent of the conflict.
-  How the conflict affects or could affect the advice.
-  The sources and scale of compensation for the firm and/or financial professional.




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Informed Consent

<p>When can informed consent be implied?</p> <p>Informed consent can be implied with full disclosure.</p>	<p>When is consent less likely to be inferred?</p> <p>Magnitude of potential harm to the Client if Conflict acted upon</p> <p>Extent of deviation from business practices</p>
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Ambiguity will be interpreted in favor of the Client.



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Scenario: Full Disclosure

How-to

Darren's disclosures need help. Re-write his language so that he fully discloses his Material Conflicts of Interest.

A "I receive an AUM fee"


A better disclosure

The amount I earn from working with you depends on the amount of assets I manage for you. We have a financial incentive to recommend that you make financial decisions to increase the assets I manage.

B "My firm may have revenue sharing arrangements with mutual fund companies".

A better disclosure

My firm receives payments to make mutual funds and exchange-traded funds available to you. I have a financial incentive to recommend the services and products that make us more money.



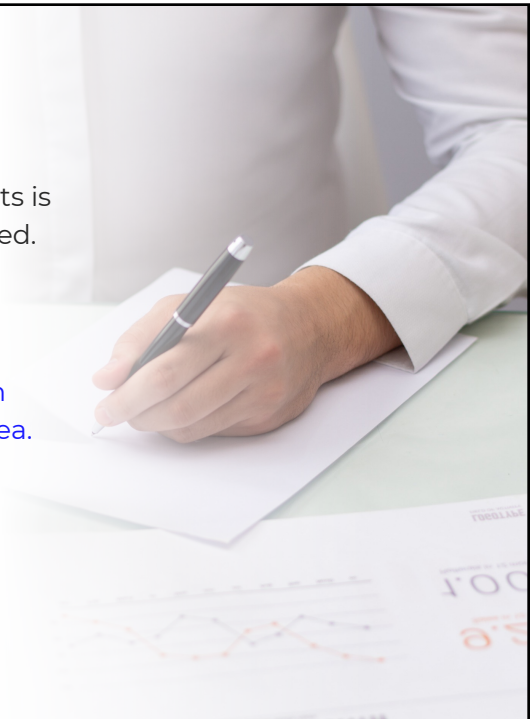
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Written Disclosure

Written disclosure of conflicts is not required – but it is advised.

Still must be documented.

Discuss reasons why written disclosure is always good idea.



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Managing Conflicts of Interest

Why?

To ensure the Client's interests come first.

What is required?

Reasonably designed business practices to prevent acting on the conflict.




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Scenario: Managing Conflicts of Interest

How-to

Darren wants to make sure he has a system in place to comply with the Duty of Loyalty.

Is there a process Darren can follow to provide advice in Mei's best interests?



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Managing Conflicts



Identify Material Conflicts of Interest

Develop (and periodically review and update) a comprehensive list of the Material Conflicts of Interest that may arise in a financial planning practice.



Review & Evaluate Existing Practices for Management of Conflicts

Review Firm conflict management or mitigation practices and any additional conflict management practices that the financial planner follows.

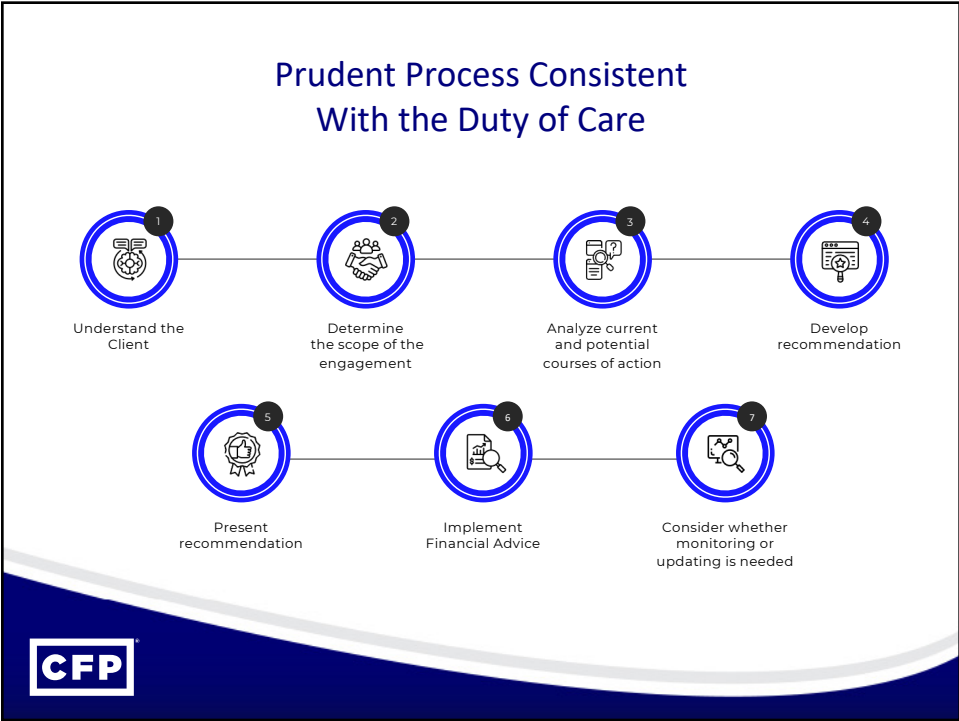


Implement Any Additional Conflict Management Practices

Consider any additional steps the financial planner needs to take to properly manage conflicts under the codes and standards that apply to them and implement any such practices.




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Learning Objective 3

Describe when Financial Advice requires Financial Planning (and the additional obligations that apply to CFP professionals).



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Financial Planning

Financial planning is a specific type of Financial Advice.

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.

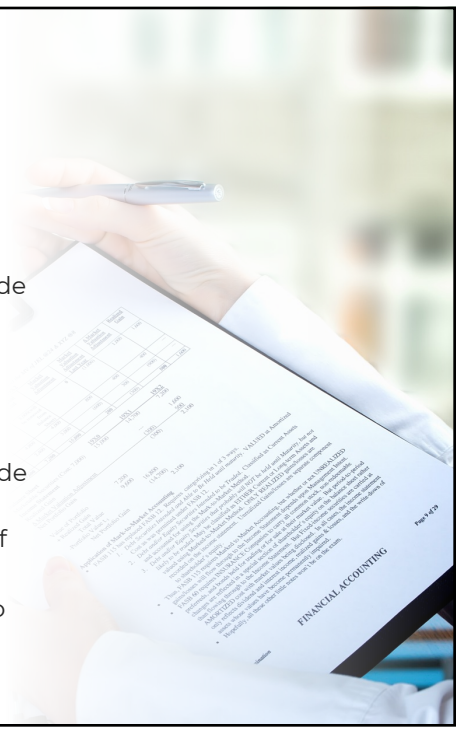


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Financial Planning

When does Financial Advice Require Financial Planning?

- CFP® professional agrees to provide Financial Planning; or
- Client has reasonable basis to believe Financial Planning is provided; or
- CFP® Professional agrees to provide Financial Advice that requires integration of relevant elements of the Client's personal and/or financial circumstances in order to act in the Client's best interests



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Relevant Personal & Financial Circumstances

- DEVELOP GOALS
- ASSETS and LIABILITIES
- CASH FLOW
- RISKS
- HEALTH CONSIDERATIONS
- EDUCATIONAL NEEDS
- FINANCIAL SECURITY
- PRESERVE or INCREASE WEALTH
- TAX CONSIDERATIONS
- RETIREMENT
- PHILANTHROPIC INTERESTS
- ESTATE and LEGACY MATTERS

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Integration Factors

- Number of relevant elements of Client circumstances
- Portion and amount of assets
- Length of time Client affected
- Effect on Client's exposure to risk
- Barriers to modification of advice

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Scenario: Integration Factors

Pedro is a CFP® professional.

Malik, 35, is Pedro's new Client who recently received a small inheritance.



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Applying the Integration Factors

Malik has no current plans for the inheritance, and he expresses that he just wants it invested in the market.

The Engagement Agreement is explicitly limited to portfolio management of the inheritance.

? Is Financial Planning Required?

- Number of relevant elements
- Portion and amount of assets
- Length of time
- Exposure to Risk
- Barriers to modification



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Applying Integration Factors



What If?

Several years later, Malik gets a much larger inheritance. He meets with Pedro and asks:

- Do I have enough to buy a larger home?
- Can I provide for my 2-year-old twins' college?
- Can I leave my current job and begin investing my inheritance in real estate? Can you help with that?



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The Financial Planning Process



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Scenario: Applying Integration Factors

? WHAT if

What if Malik didn't want to engage Pedro in financial planning?

What would you do?

- 1 Terminate the Engagement.
- 2 Limit the Scope of Engagement.
- 3 Provide the requested services but explain how a more comprehensive financial planning relationship could benefit Malik.



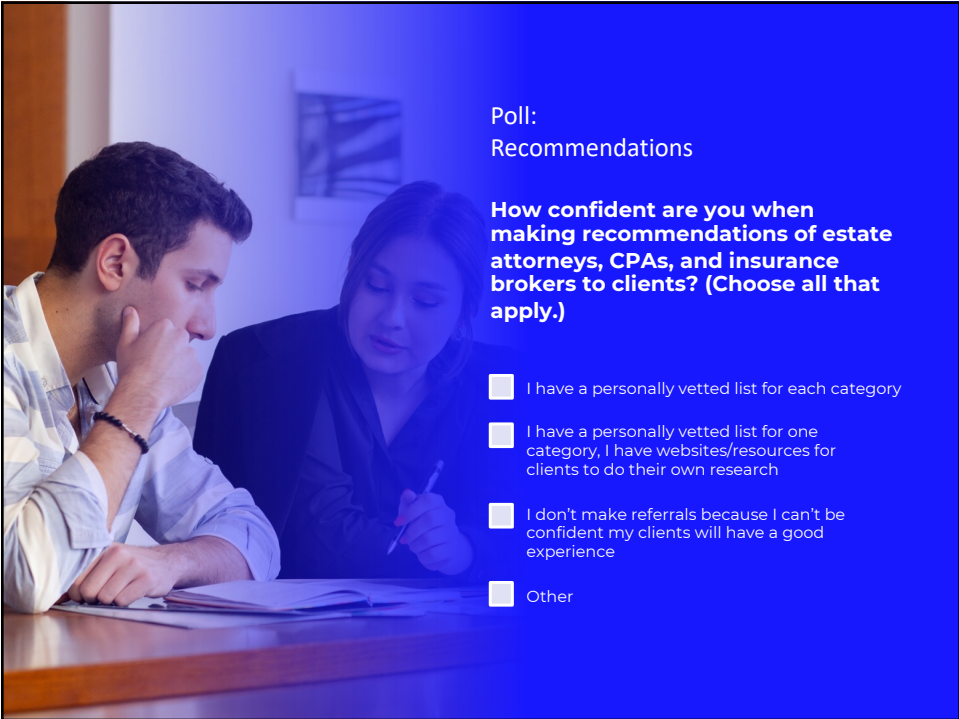
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Learning Objective 4

Identify duties when using or referring other service providers or technologies.



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Poll:
Recommendations

How confident are you when making recommendations of estate attorneys, CPAs, and insurance brokers to clients? (Choose all that apply.)

- I have a personally vetted list for each category
- I have a personally vetted list for one category, I have websites/resources for clients to do their own research
- I don't make referrals because I can't be confident my clients will have a good experience
- Other

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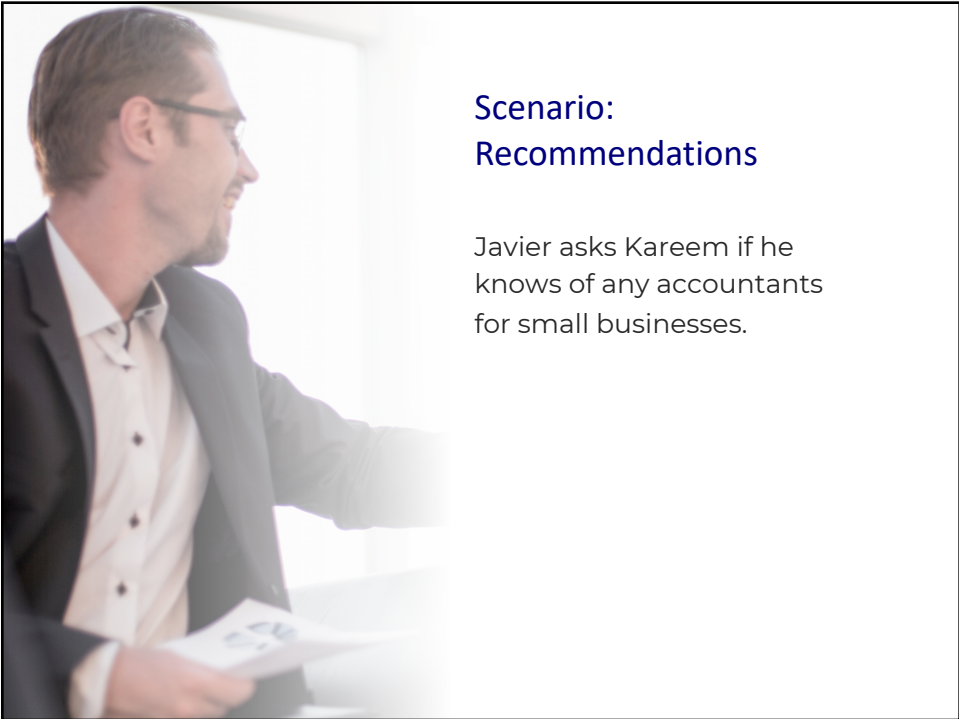


Scenario: Recommendations

Kareem, a CFP® professional, has a financial planning Client, Javier.

Javier has decided to start a business.




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Scenario: Recommendations

Recommending or Engaging Additional Persons to Provide Professional Services to a Client

-  Reasonable basis for the recommendation: Reputation | Experience | Qualifications
-  Disclosure of any compensation agreement for referring the provider
-  When engaging a person to provide services for a Client, exercise reasonable care to protect the Client's interests.

Practice Tip
 Consider recommending more than one person if you have a reasonable basis for each recommendation.

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Scenario: Tech Recommendations

? WHAT if

Javier asks for recommendations for small business accounting software?

Kareem is not familiar with those programs, but he wants to be helpful. Kareem knows a colleague liked CashFlow Finance Solutions.

Does Kareem have enough knowledge to make a recommendation?

Technology Standard

Reasonable care and judgment

Reasonable level of understanding

Reasonable basis for trusting the technology



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Knowledge Check – Technology Recommendation

Identify the appropriate communications to Javier given Kareem's level of knowledge.

- 1** I have no recommendation.
- 2** Cash Flow CareTaker is good.
- 3** My colleague told me they like Cash Flow CareTaker, but I do not have experience with it or other programs.



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Selecting & Using Technology

- Understand the Technology Platform.
- Monitor the Technology Platform.
- If selecting, conduct due diligence (can reasonably rely on your firm or custodian's due diligence).
- Gain necessary proficiency.
- Understand embedded assumptions.
- Gut check output.

Technology is a tool.

Technology does not replace expertise.

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Learning Objective 5

Describe the process the CFP Board follows to uphold the Code and Standards.



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Enforcement Process Overview

After watching the video, be prepared to answer these questions:

<p>Which sanctions are published on CFP® Board's website?</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Public censure <input checked="" type="checkbox"/> Suspension <input type="checkbox"/> Private censure <input checked="" type="checkbox"/> Revocation 	<p>Which statements about the Disciplinary and Ethics Commission (DEC) are TRUE?</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> The DEC is comprised of CFP® professionals and members of the public <input type="checkbox"/> The DEC investigates allegations <input checked="" type="checkbox"/> The DEC imposes sanctions
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Importance of the Duty to Report

The Sanction Guideline for violation of the Duty to Report is a **Public Censure** even if the reportable matter would not have ultimately resulted in a sanction.

You must self-report events within **30 days**.



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How to Report

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Reporting – General Categories

- Regulatory or SRO Investigations or actions
- License suspension or revocation
- Felonies and certain misdemeanors
- Customer complaints
- Termination for regulatory or firm policy violation
- Litigation or arbitration
- Bankruptcies and liens

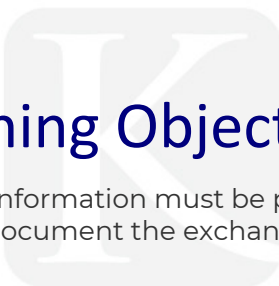
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Reporting – Common Mistakes


- Waiting until next renewal cycle to report
- Waiting to report a complaint until the firm has investigated
- Not reporting events unrelated to Professional Services
- Assuming your firm will handle reporting

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Learning Objective 6

Determine what information must be provided to the Client and when to document the exchange of information.



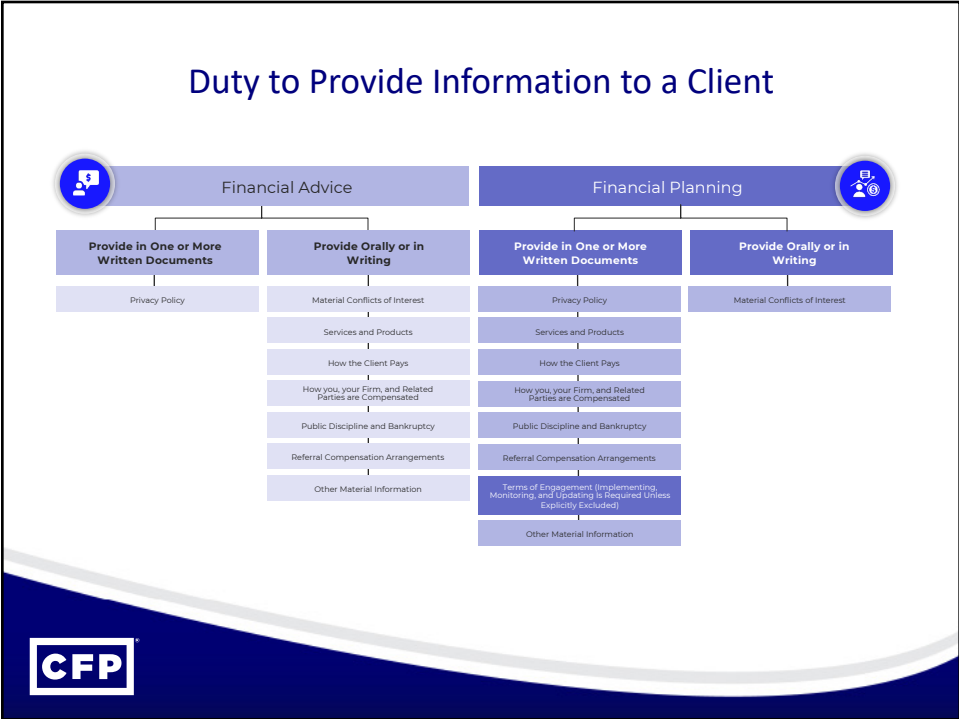
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Poll:
Providing Information

How do you document when you provide information (e.g., privacy policy, conflicts of interest) to clients?



- CRM
- Compliance software
- Custom firm document
- Email Sent Folder
- Pencil and Paper
- Memory Bank

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When To Provide Information

 Timing Prior to or at the time of engagement	 Updating Ongoing obligation Within 90 days for bankruptcy or public discipline
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CFP BOARD RESOURCES!

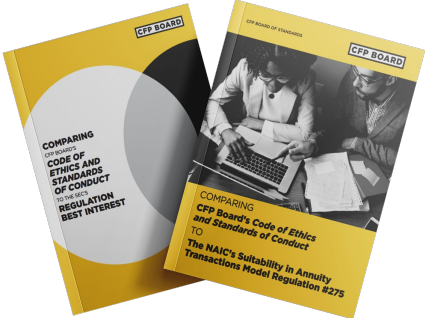
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Duties of a CFP® Professional


	To Clients	To Firms and Subordinates	To CFP Board
At All Times	Integrity Competence Diligence Sound and Objective Professional Judgement Professionalism Comply with the Law Confidentiality and Privacy Duties When Communicating with a Client Duties When Selecting, Using and Recommending Technology Refrain from Borrowing or Lending Money and Commingling Financial Assets	Use Reasonable Care When Supervising Comply with Lawful Objectives of CFP® Professional's Firm Provide Notice of Public Discipline	Refrain from Adverse Conduct Reporting Provide Narrative Statement Cooperation Compliance with Terms and Conditions of Certification and Trademark License
Financial Advice	The Duties That Apply At All Times (see above) Fiduciary Duty Disclose and Manage Conflicts of Interest Provide Information to a Client Duties When Recommending, Engaging and Working with Additional Persons	<p>A CFP® Professional Has Duties That Apply</p>	
Financial Planning	The Duties That Apply When Providing Financial Advice (see above) The Practice Standards for the Financial Planning Process Information to Client in Writing		

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CFP Board's Compliance Resource Library



- Over **35 case studies** with real-world scenarios
- **15 guides** including:
 - Comparison guides to Reg BI and NAIC Model Regulation
 - Managing Conflicts
 - Duty of Care
 - Financial Planning Process
 - Financial Advice Engagement Disclosure



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Technology Resources

Comprehensive guidance to assist CFP® professionals

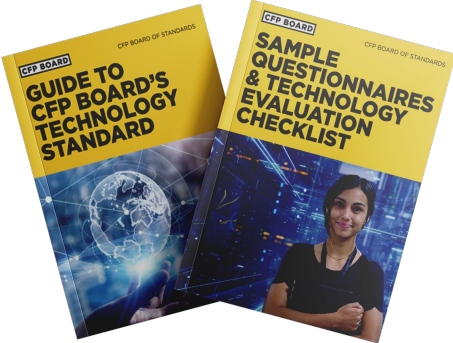


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CFP BOARD

ROADMAP

TO THE CODE OF ETHICS & STANDARDS OF CONDUCT

EFFECTIVE DATE: OCTOBER 1, 2019

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Want to connect with this presenter?

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