Professional Ethics For Financial Professionals

2012 FSP Atlanta/EPCNGA Joint Symposium
Today’s Agenda

- Focus on CFP Board’s Learning Objectives
- CFP Board’s Anonymous Case Histories
The Learning Objectives

- What is Financial Planning?
- The Definition
- The Process (6 Steps)
- The Subject Areas
Learning Elements

- The Material Elements of Financial Planning
- The Written Agreement
- The Disclosure Requirements
- The Fiduciary Standard
The Standards

- CFP Board’s Standards of Professional Conduct is the document by which Financial Planning, Rules of Conduct, Disclosure requirements and Disciplinary actions are defined.

- The Standards were last updated on July 1, 2008 with an enforcement date of January 1, 2009.
What is *Financial Planning*?

Financial planning is the process of determining whether and how an individual can meet life goals through the proper management of their financial resources. Financial planning integrates the financial planning process with the financial planning subject areas.

Life goals can include buying a home, saving for your child’s education or planning for retirement.
What is **Financial Planning**?

The [financial planning process](#) consists of six steps that help your clients take a "big picture" look at where they are financially. Using these six steps, you can work out where they are now, what they may need in the future and what they must do to reach their goals.
6 Steps of the *Financial Planning* Process

1) Establishing and defining the client–planner relationship

2) Gathering client data – including goals

3) Analyzing and evaluating the clients' financial status
6 Steps of the *Financial Planning* Process (cont’d)

4) Developing and presenting financial planning recommendations and/or alternatives

5) Implementing the financial planning recommendations

6) Monitoring the financial planning recommendations
Question

Q: Will CFP Board consider an engagement to be financial planning solely because the CFP® Professional used the 6 step process?
No, CFP Board recognizes that the six steps are not unique to the financial planning process and may occur in connection with other activities such as brokerage, investment advisory and/or insurance products or services.

Examples include gathering client info as part of a suitability analysis, making recommendations of various brokerage, investment advisory or insurance products or services, and implementing the recommendations.
The Benefits of Financial Planning

Financial planning provides direction and meaning to financial decisions. It allows your clients to understand how each financial decision affects other areas of their finances.

For example, buying a particular investment product might help pay off a mortgage faster or it might delay retirement significantly.
The Benefits of Financial Planning (cont’d)

By viewing each financial decision as part of a whole, you can consider its short and long-term effects on their life goals. Your clients can also adapt more easily to life changes and feel more secure that their goals are on track.
Financial Planning *Subject Areas*

- Financial Statement Preparation and Analysis; including Budgeting and/or Cash Flow Analysis
- Insurance Planning and Risk Management
- Employee Benefits Planning
Financial Planning *Subject Areas* (cont’d)

- Investment Planning
- Income Tax Planning
- Retirement Planning
- Estate Planning
Sometimes CFP® Certificants provide service to clients in a single subject area. Scenario SS1 describes an estate planning engagement that does not involve financial planning or material elements of financial planning.

http://www.cfp.net/certificants/ScenarioSS1.asp
Scenario SS 1
Understanding the definition of financial planning and material elements of financial planning:
Advice in a Single Subject Area
The *Material Elements* of Financial Planning

Activities that CFP Board would likely consider to be material elements of financial planning include: to

1) Conducting detailed data-gathering regarding multiple aspects of a client’s financial situation

2) Analyzing a client’s data and making recommendations across multiple financial planning subject areas

3) Providing investment advisory services as defined by the applicable State or Federal regulators
Material Elements of Financial Planning (cont’d)

- These examples should not be considered an all-inclusive list

- These guidelines are designed to be helpful to CFP® Professionals in reviewing their activities and determining whether they provide material elements of financial planning. CFP Board, also, relies on these guidelines when reviewing allegations of misconduct by CFP® professionals.
Not Considered *Material Elements* of Financial Planning

- Opening an account or completing an application
- Fact-finding to meet regulatory requirements for suitability such as the “Know Your Customer” rules
- Solely providing brokerage and / or insurance products or services
- Engaging in activity solely related to the sale of a specific product
Not Considered *Material Elements* of Financial Planning

- Acting as a mortgage broker without providing any other financial services
- Completing tax returns without providing any other financial services
- Teaching a financial class or continuing education program
Sometimes CFP® Certificants provide service as a resource to help clients in a single subject area. Scenario SS3 describes an employee benefits situation that does not involve financial planning or material elements of financial planning.

http://www.cfp.net/certificants/ScenarioSS3.asp
Scenario SS 3
Understanding the definition of financial planning and material elements of financial planning:
Advice in a Single Subject Area
Financial Planning or Not?

- Under CFP Board’s definition of “financial planning,” as found in the *Standards*, CFP® professionals are able to determine when they are providing services using the material elements of financial planning by considering, among other things, the degree to which multiple financial planning subject areas are involved.

- While it is more likely for financial planning to exist when multiple subject areas are involved, in some circumstances a financial planning engagement may exist even when a single subject area is involved.
Financial Planning or Not? (cont’d)

- When determining whether a financial planning engagement exists, the entirety of a client relationship should be examined. These questions may guide that determination:
  - Is the CFP® professional involving the steps of the financial planning process in the services provided?
  - How many financial planning subject areas are involved to meet the client’s goals?
  - With respect to the services provided, what did the CFP® professional communicate to the client?
CFP® professionals should consider whether the client’s understanding and intent in engaging the CFP® professional would give the client reason to believe the services provided are financial planning.

CFP® professionals should also consider the comprehensiveness of their data gathering with a client and the breadth and depth of their recommendations to a client.
Question

Q: Does CFP Board require CFP® professionals to address a certain number of subject areas for the engagement to be considered financial planning?
No, CFP Board does not identify a minimum number of subject areas for an engagement to be considered financial planning. For example, a financial planning engagement may exist when a client requests a comprehensive retirement plan or requires a complex estate plan.

In determining whether a financial planning engagement exists, CFP Board considers the circumstances involved and, in particular, the following factors:
Answer (cont’d)

1) The client’s understanding and intent in engaging the CFP® Professional

2) The degree to which multiple financial planning

3) The comprehensiveness of data gathering

4) The breadth and depth of the recommendations
Financial planning often does not occur in neat boxes but is a process that progresses and evolves over the course of a financial planner’s relationship with a client.

For example, answering a question of a specific nature – such as “How much money do I need to set aside each month to send my two-year-old to Princeton, in sixteen years?” – would probably not be considered financial planning. However, answering a broader question that involves multiple aspects of a client’s situation – such as “How much do I need to save so I’ll have a secure retirement?” – would likely rise to the level of financial planning because of the expansiveness of the financial considerations involved.
The Client’s Best Interest

- What should a CFP® professional do if they are unsure whether a specific service or activity rises to the level of financial planning?

- The question of whether a client relationship involves financial planning is one that CFP Board determines on a case-by case basis. CFP Board encourages CFP® professionals who are unsure if a particular service or client relationship rises to the level of financial planning to embrace CFP Board’s fiduciary standard and provide services in ways they believe are in the best interest of the client.
The *Written Agreement*

- This written agreement requirement may be satisfied through multiple documents, and it is CFP Board's belief that most CFP® certificants or their employers currently provide clients with written documents that cover the requirements of Rule 1.3.

- The written agreement requirement was designed to help ensure that CFP® certificants and their clients define clearly the services involved in a specific business relationship and help reduce disputes based on misunderstandings of those services.
The *Written* Agreement

Rule 1.3 of the Rules of Conduct states that if a CFP® professional agrees to provide a client or prospective client with services that include financial planning or material elements of the financial planning process, the services shall be accompanied by a written agreement (“Agreement”) that includes the following information:
The Written Agreement

1) The parties to the agreement
2) The date of the agreement and its duration
3) The procedure and terms for terminating the agreement
4) A description of the services to be provided as part of the agreement
Much of the information shared between a CFP® professional and client in the early stages of the financial planning process is likely to take place through conversation, but it is important to memorialize vital pieces of that information in writing. Written documentation helps ensure that both client and planner have a similar understanding of key aspects of the client engagement.
Written Agreement Necessary? (cont’d)

CFP Board’s ethical standards have long required that certain disclosures be made to financial planning clients in writing, and CFP Board’s revised *Standards of Professional Conduct*, which became effective July 1, 2008, added a new requirement that a written agreement accompany any financial planning services or services that include material elements of the financial planning process.
Disclosures Required?

Q: What disclosures do the updated Standards require for client engagements that may or may not involve financial planning or material elements of the financial planning process?

A: Rule 2.2 sets forth the disclosures required of all CFP® certificants when dealing with clients and prospective clients. These disclosures include the following general areas:
Important *Disclosures*

1) Any compensation that may be related to the client engagement,

2) Any conflicts of interest that may affect the client engagement,

3) Any relevant information about the certificant or the certificant’s employer,

4) Contact information for the certificant and, if applicable, the certificant’s employer.
Ongoing *Disclosure* Needed?

The updated Standards also acknowledge that disclosure is not always a *one-time event*. As a client engagement evolves over time, perhaps with added or re-structured services, ongoing disclosure is also important. Rule 2.2 says that: “The certificant shall timely disclose to the client any material changes to the above information.”

Rather than follow a periodic annual or semi-annual schedule for repeated disclosures, this provision of Rule 2.2 requires that disclosures be updated on an ongoing basis, allowing a client to make informed decisions based on the most current information.
Disclosures

Q: What disclosures do the updated *Standards* require for client engagements that do involve financial planning or material elements of the financial planning process?
The ADV

CFP® certificants involved in client engagements that do involve financial planning or material elements of the financial planning process must make all of the disclosures listed in Rule 2.2, and they must also make those disclosures in writing. The written disclosures need not be a single newly-created document; the written disclosures may be made through multiple documents or through existing disclosure documents, such as Form ADV, that are used to make disclosures in compliance with state or federal laws, or the rules or requirements of any applicable self-regulatory organization.
Disclosures (cont’d)

Rule 1.2 also notes that if the information above is disclosed in writing, the certificant must encourage the client or prospective client to review the information and offer to answer any questions that the client or prospective client may have.
Do the Marks Matter?

Q: Do the updated *Standards* apply to those who hold CFP® designation but who do not display the CFP® marks or hold themselves out as financial planners?

A: Yes. The updated *Standards*, as do the current *Standards*, require a baseline duty of care for all client relationships that involve an individual who is a CFP® certificant. When CFP Board applies its *Standards* to an individual who is a CFP® certificant, the CFP Board’s focus is on the conduct of the certificant, not only the titles used to describe the certificant’s roles or services.
A CFP® certificant is obligated to abide by CFP Board’s *Standards of Professional Conduct*, irrespective of whether the “marks” appear on the certificant’s business cards or stationery. Removal of the marks from one’s business cards or stationery does not relieve a CFP® certificant of the obligation to follow the Standards.
Two Types of Investment Professionals

There are two distinct types of Financial Professionals in the investment profession:

1) Registered Investment Advisors (RIA)

2) Broker/Dealers
Different Standards?

- Registered Investment Advisors are bound to the “Fiduciary” Standard.

- Broker/Dealers are regulated by the Financial Industry Regulatory Authority and are bound to a “Suitability” Standard.
The *Fiduciary Standard*

CFP Board, takes the responsibility to protect American savers and investors very seriously. It is why they insist that CERTIFIED FINANCIAL PLANNER™ professionals adhere to a "fiduciary" standard of care, which requires them to put the interests of the client first. It is also why they uphold the CFP® designation as the standard of excellence for personal financial planning.
The Client Wins

Given the more stringent stipulations for investment fiduciaries, there is little question that the fiduciary standard better protects individual and institutional investors, than the suitability standard. Federal securities laws consider investment advisors “fiduciaries,” but this does not apply to broker–dealers across the board. Overall, it is best for individuals to find an advisor who will place his or her interests below that of the client.
Case Studies

- CFP Board’s Anonymous Case Histories
- Break up into small groups to review the case histories
- Take 10 minutes to review and discuss your case and prepare to share your case and observations with the group
#1 – “Taking Care of the Elderly”
CFP ACH #16836

Issues Presented: 1) Prudent Judgment
2) Diligence

The CFP® professional implemented an aggressive investment strategy and an aggressive systematic withdraw for an elderly client and did not inform the client of the consequences...Yikes!
#2 – “Association Mayhem”  
**CFP ACH # 24084**

Issues Presented:  
1) Customer Complaints  
2) Employer Policy Violation  
3) Unauthorized Transaction

CFP® Professional applied funds of a homeowner’s assoc, which he had oversight, without proper assoc authorization, which led the State Dept of Insurance to assess monetary penalties against the agent and his firm to terminate his employment.
#3 – “Disclosure Diligence”  
CFP ACH #21547

Issues Presented: 1) Professional Conduct  
2) Disclosure/Client’s best interest  
3) Conflict of Interest

CFP® Professional invested the majority of a client’s investment funds in a long-term contract when one of the client’s goals was liquidity

Representative failed to also disclose fees, charges, commissions and a federal tax benefit that would allow for liquidity.
#4 – “Holy Forgery, Batman#@!”
CFP ACH # 21894

Issues Presented:  
1) Outside Business Activity  
2) Employer Policy Violation  
3) Unauthorized Transaction  
4) Arbitration

Formal customer complaint that the respondent purchased several annuity policies without full explanation of the terms of the contracts to the client.

Representative signed the client’s name to the applications and contracts without the client’s permission or power of attorney.
#5 – “Lapsing Life Insurance”
CFP ACH # 21848

Issues Presented: 1) Client Dissatisfaction
2) Suitability
3) Diligence

CFP® professional failed to inform a husband and wife, who were his investment advisory clients, of a impending lapse of life insurance policies he had sold them while acting as their insurance broker.
#6 – “The ‘Cut and Paste’ Caper”
CFP ACH # 22505

Issues Presented:
1) Forgery
2) Disclosed client information
3) Violated a non-compete agreement
4) Misrepresentation
#7 – “Advertising Architecture”
CFP ACH #24499

Issues Presented:
1) Misleading advertising; lack of integrity; improper disclosures
2) Seminar Advertising a guaranteed 6% return – among other false claims
#8 – “Cocktail Party Chaos”

CFP ACH #24019

Issues Presented: Violation of CFP Board’s Standards of Professional Conduct:

1) failed to file the required documentation regarding brief public remarks at a cocktail party

2) failed to disclose to his firm and a state regulator that he conducted the presentation.
Any Questions??

If you have any questions about any of the *Standards of Professional Conduct* you may email CFP Board directly at:

[standards@CFPBoard.org](mailto:standards@CFPBoard.org)