

## A. DUTIES OWED TO CLIENTS, 1. FIDUCIARY DUTY:

# 7: THE FIDUCIARY DUTY DOES NOT APPLY WHEN PROVIDING GENERAL FINANCIAL EDUCATIONAL MATERIALS CONCERNING RETIREMENT PLANNING

Kevin, a prospect, met Priya, a CFP® professional, at a community event. Kevin mentioned to Priya that he was planning to retire next year. Priya asked Kevin if she may send him a document her firm prepared that provides an overview of issues to consider when engaging in retirement planning. Kevin agreed. 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 within five years of their intended retirement.

### QUESTION:

In this instance, does Priya have a Fiduciary Duty?

### RESPONSE OPTIONS:

- A. Priya does not have a Fiduciary Duty because she provided only general financial education materials.
- B. Priya has a Fiduciary Duty because she provided Financial Advice when she sent Kevin information regarding retirement planning.
- C. Priya has a Fiduciary Duty even though Kevin is a prospect, not a Client to whom Priya is delivering Financial Advice.
- D. Priya has a Fiduciary Duty because the article includes a section that describes comprehensive Financial Planning.

**Best Response:** Response A is the best response. This case study involves the Fiduciary Duty (Standard A.1.), the Duty of Integrity (Standard A.2.), and the definitions of Client, Engagement, and Financial Advice (Glossary). At all times when providing Financial Advice to a Client, a CFP® professional must act as a fiduciary, and therefore, act in the best interests of the Client. A Client is any person to whom the CFP® professional provides or agrees to provide Professional Services, including Financial Advice, pursuant to an Engagement. An Engagement is an oral or written agreement, arrangement, or understanding. Financial Advice includes a communication that, based on its content, context, and presentation, would reasonably be viewed as a recommendation that the Client take or refrain from taking a particular course of action with respect to, among other things, the value of or the advisability of investing in, purchasing, holding, gifting, or selling Financial Assets.

The determination of whether Financial Advice has been provided is an objective rather than subjective inquiry. The more individually tailored the communication is to the Client, the more likely the communication will be viewed as Financial Advice. The provision of services or the furnishing or making available of marketing materials, general financial education materials, or general financial communications that a reasonable CFP® professional would not view as Financial Advice, does not constitute Financial Advice.

In this case, Kevin has not entered into an Engagement with Priya. Therefore, Kevin is not a Client and Priya does not have a Fiduciary Duty to Kevin. In addition, the article that Priya delivered to Kevin, and other prospects, describes comprehensive Financial Planning and provides an overview of issues to consider when engaging in retirement planning. The article provides financial information that is generally applicable and reasonably would be viewed as general financial education materials. Therefore, Priya has not provided Financial Advice by sending the article to Kevin. However, to satisfy the Duty of Integrity, which applies whenever a CFP® professional is performing Professional Services, the material that Priya sent to Kevin, like all communications, must not be untrue or omit a material fact that is necessary to make the statements made not misleading.

Response C is not the best response because Kevin is not a Client and Priya has not provided Financial Advice. Kevin is not a Client because there was no agreement, arrangement, or understanding for Priya to provide Professional Services to Kevin, and thus, there was no Engagement.

Responses B and D are not the best responses because an article that merely describes Financial Planning and presents an overview of issues to consider when engaging in retirement planning contains general financial education material, which does not constitute Financial Advice.

**Relevant Standards and Definitions:** Fiduciary Duty (Standard A.1.); Duty of Integrity (Standard A.2.); definitions of Client, Engagement, and Financial Advice (Glossary).