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

14: THE FIDUCIARY DUTY TO TAKE REASONABLE STEPS WHEN PROVIDING PROFESSIONAL SERVICES AS PART OF A TEAM WITHIN A FIRM

Larry, a CFP® professional, works at a small registered investment adviser where he provides Professional Services to Clients as part of a team. Larry's role on the team is to develop Financial Planning recommendations utilizing information that other members of the team have collected from Clients. Larry has no responsibility for implementing the Financial Planning recommendations, monitoring progress, or updating.

Richard, a non-CFP® professional, has collected information from a couple, Salma and Rina, who are Clients of Larry and Richard. Salma is a freelance writer whose income varies each month, with the result that her ability to save is sporadic.

After understanding Salma and Rina's financial and personal circumstances, identifying and selecting goals, and analyzing Salma and Rina's current course of action and potential alternatives, Larry recommends that the Clients take three actions, in the following order of priority: (1) establish an emergency fund, (2) reallocate their existing Roth IRAs to long-term growth investment vehicles, and (3) increase funding to their existing Roth IRAs. Salma and Rina were informed that Larry is responsible for developing the recommendations and Richard is responsible for working with the Clients on implementation, monitoring progress, and updating. At a meeting with Larry and Richard, Salma and Rina agree with Larry's recommendations and agree to work with Richard on implementing the recommendations.

One month later, Larry sees Richard at the firm's annual meeting and Richard tells Larry that Salma and Rina have increased funding to their Roth IRAs and rebalanced their Roth IRA investments. However, Salma and Rina have not implemented the recommendation to establish an emergency fund. Richard tells Larry that he did not recommend any actions, products, or services that are designed to implement the recommendation to establish an emergency fund. Instead, Richard tells Larry he recommended that the Clients purchase a variable life insurance policy, and that they currently are in underwriting for the policy. Larry's analysis had indicated that both Salma and Rina were adequately insured. Larry is concerned that Richard did not act in the Client's best interests in recommending life insurance rather than moving forward with Larry's recommendation that the Clients establish an emergency fund. Larry's firm does not have policies and procedures for handling this situation.

QUESTION 1:

What, if anything, should Larry do when he learns that Richard did not help the Clients implement the emergency fund and instead recommended the Clients purchase a variable life insurance policy?

RESPONSE OPTIONS:

A. **Larry is not required to take any action because his responsibilities ended when he delivered the Financial Planning recommendations.**

B. **Larry should escalate this matter to a supervisor.**

C. **Larry should contact the Clients and tell them that they should implement the recommendation to establish an emergency fund.**

D. **Larry should ask Richard why he did not recommend to the Clients any actions, products, or services that are designed to implement the recommendation to establish an emergency fund, and whether Richard plans to do so.**

Best Response: Response D is the best response. This case study involves the Fiduciary Duty (Standard A.1.) and Steps 6 and 7 of the Financial Planning Process: Implementing the Financial Planning Recommendation(s) (Standard C.5.) and Monitoring Progress and Updating (Standard C.6.).

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. The Fiduciary Duty includes the Duty of Loyalty, the Duty of Care, and the Duty to Follow Client Instructions. When providing Financial Planning, a CFP® professional is required to follow the Practice Standards for the Financial Planning Process. The sixth step in the process is Implementing the Financial Planning Recommendations. The seventh step in the process is Monitoring Progress and Updating.

The *Code and Standards* does not include a duty to monitor or supervise another person within a firm who is providing Professional Services to a Client as part of a team. However, when a CFP® professional is working as part of a team within a firm to provide Professional Services to a Client and the CFP® professional has actual knowledge that another member of the team may have failed to provide the Professional Services that were assigned to that team member, the Fiduciary Duty requires the CFP® professional to take reasonable steps to help ensure that the Professional Services provided to the Client are in the Client's best interests.

When a CFP® professional does not have responsibility for supervising the other team member, the CFP® professional should determine whether the CFP® Professional's Firm has policies and procedures, such as an escalation path or a hotline that may be used to communicate with appropriate personnel about concerns related to the delivery of Professional Services, and then follow those policies and procedures. In the absence of such policies and procedures, a CFP® professional should inform the other team member that the CFP® professional believes that the Professional Services were not performed in the Client's best interests, explain the basis for the CFP® professional's belief, and request that the other team member either demonstrate that the Professional Services were provided in the Client's best interests or take action to ensure that the Professional Services are provided in the best interests of the Client.

In this instance, Larry has actual knowledge of the Clients' agreement to implement Larry's recommendations and that Richard did not recommend to the Clients any actions, products, or services that are designed to implement the recommendation to establish an emergency fund. Since Larry's firm does not have policies and procedures for handling this situation, Larry should address his concern with Richard. Larry should ask Richard to explain his reasons for not recommending to the Clients any actions, products, or services that are designed to implement the recommendation to establish the emergency fund. Richard may have good reasons. For example, the Clients' circumstances may have changed, such that another recommendation should take priority over establishing an emergency fund. Alternatively, Richard might have simply forgotten to implement the recommendation to establish the emergency fund and may welcome the opportunity to rectify that oversight.

Response A is not the best response because when a CFP® professional knows that another team member is providing or has provided Professional Services to the Client that may not be in the Client's best interests, the Fiduciary Duty requires a CFP® professional to take action to ensure that the Professional Services are in the Client's best interests.

Responses B and C are not the best responses. While Larry is concerned that Richard has not recommended that the Clients implement the recommendation to establish an emergency fund, Larry does not have sufficient facts to know that Richard has failed to act in the Clients' best interests. Larry should not involve a supervisor or the Clients until he has had an opportunity to discuss his concern with Richard.

QUESTION 2:

What, if anything, should Larry do if Richard is not able to demonstrate either that he already acted in the Clients' best interests or that he will help the Clients implement the emergency fund and terminate the underwriting for a variable life insurance policy?

RESPONSE OPTIONS:

A. **Larry is not required to take any action because his responsibilities ended when he delivered the Financial Planning recommendations.**

B. **Larry should escalate the matter to a supervisor.**

C. **Larry should contact the Clients and tell them that they should implement the recommendation to establish an emergency fund.**

Best Response: Response B is the best response.

In this instance, Larry has actual knowledge that Richard recommended and selected for implementation a product that was contrary to Larry's recommendation, and the Client's agreement with Larry's recommendation, to establish an emergency fund. Since Larry's firm does not have policies and procedures for handling this situation, Larry should address his concern with Richard. Larry should ask Richard to explain his reasons for not assisting the Clients with establishing the emergency fund and instead recommending a variable life insurance policy. Richard may have good reasons. For example, the Clients' circumstances may have changed, such that establishing an emergency fund is no longer in the Clients' best interests.

However, if Richard is not able to demonstrate either that he already has acted in the Clients' best interests or that he will do so now, then Larry should request that Richard discuss the recommendation with the Clients. If Richard refuses to discuss the recommendation with the Clients, then after advising Richard of his intent to do so, Larry should inform his supervisor about his concerns, or escalate the matter to another appropriate person or channel within the firm. Larry can work with the firm and the Clients to make sure the actions taken are in the Clients' best interest.

A and C are not the best responses for the reasons provided above in response to question 1.

Relevant Standards and Definitions: Fiduciary Duty (Standard A.1.); Steps 6 and 7 of the Financial Planning Process: Implementing the Financial Planning Recommendation(s) (Standard C.5.) and Monitoring Progress and Updating (Standard C.6.).