



## Guidance

### Anonymous Case Histories – 1

Code Provisions: [CFP® Code of Ethics, Principles 1 & 6 and Rules 103 & 608](#)

Issue: Whether the CERTIFIED FINANCIAL PLANNER® professional violated the Code of Ethics (“Code”) Principles 1 (Integrity) and 6 (Professionalism) and Rules 103 and 608 by creating and distributing an advertisement for a free seminar targeting clients of well-known investment firms.

Background: The CFP professional ran an advertisement for a free seminar in a number of local newspapers, which appeared to be directed towards clients of well-known financial investment and advisory firms. The advertisements were worded in such a manner as to cause concern regarding the fees clients were paying at the other firms.

Position of Director upon Investigation:

The wording employed in the advertisement was arguably sensational and inflammatory. The firm’s competition had been explicitly named and the statement regarding cost was not necessarily supported by the level of statistical or evidentiary proof required to substantiate such a claim. The CFP Professional’s conduct may have contravened the spirit of Rules 103 and 608.

### Anonymous Case Histories – 2

Code Provisions: [CFP® Code of Ethics, Rule 501 and Practice Standard 600B](#)

Issue: Whether the CFP professional violated Rule 501 of the Code of Ethics and Practice Standard 600B in failing to maintain regular contact with clients and by forwarding (albeit accidentally) personal financial information to former address where ex-spouse resided, during divorce proceedings.

Background: The CFP professional provided financial planning services to a husband and wife for several years. The wife had been a client first, subsequently introducing her husband to the CFP professional. In recent years, contact with the clients was infrequent. During this period, the couple experienced a rather acrimonious marital dispute and divorced; a development which the CFP professional was unaware of. Although the husband provided updated contact information, his e-mail was directed to the CFP professional’s junk mail. The CFP professional sent financial statements regarding the husband’s investments to his former e-mail address (one held jointly with his, now, ex-wife). The financial information was subsequently used in the divorce proceedings to the alleged prejudice of the husband.

#### Position of Director upon Investigation:

After careful consideration of the evidence in this matter, the Director resolved the complaint with a caution. This situation highlights the importance of maintaining frequent, regular contact with one's client(s) in accordance with Practice Standard 600B. Failure to engage in frequent, regular contact may put a client's confidentiality at risk.

Further, this case serves as a reminder to regularly check the junk mail folder of business e-mail accounts.

In reaching the decision to resolve the complaint by way of a caution, the following factors were viewed as mitigating factors:

1. The financial information disclosed to the ex-wife had previously been disclosed in other documentation filed in the divorce proceedings;
2. The CFP professional had no prior disciplinary history with FPSC;
3. The CFP professional was fully cooperative with FPSC in the investigation; and
4. Although there remains a responsibility to ensure regular contact with clients, the delivery of the husband's e-mail to junk mail was an unfortunate, though not uncommon, administrative error outside of the CFP professional's control.

### Anonymous Case Histories – 3

Code Provisions: CFP® Code of Ethics, Principle 3 & 6, Rules 101, 301 & 601

Issue: Whether the CFP® professional violated Principle 3 (Competence) and Principle 6 (Professionalism), and Rules 101, 301, and 601 of the Code of Ethics as a result of ineffective communication with clients which resulted in misunderstanding and financial loss.

Background: The events in this case arose 10 years prior to the filing of a formal complaint with FPSC. The complaint revealed a misunderstanding between the CFP professional and the clients as a result of ineffective communication by the CFP professional. In particular, the clients failed to appreciate that they were transferring legal title when they agreed to "transfer" property to another family member in order to qualify for GIS assistance benefits.

#### Position of Director upon Investigation:

FPSC's investigation was significantly constrained by the fact that the events occurred 10 years prior, greatly impacting the collection of evidence and the ability to conduct a thorough examination.

There was an apparent lack of communication between the CFP professional and the clients. This lack of communication resulted in a misunderstanding about the legal effect of the transfer. The CFP professional's conduct arguably failed to uphold the spirit of the Rules and Principles. All CFP professionals are required to engage in effective communication with their clients.

## Anonymous Case Histories – 4

Code Provisions: CFP® Code of Ethics, Principle 1, Rules 202, 607, & 702

Issue: Whether the CFP® professional violated Principle 1 (Integrity) and Rules 202, 607, and 702 of the Code of Ethics by failing to provide full details regarding the implications of certain investment recommendations, and by failing to document the details of advice and recommendations given.

Background: In making recommendations to clients, the CFP professional failed to advise the clients of the capital gains tax that would be triggered by the transfer of mutual funds to a Guaranteed Investment Fund (GIF). The CFP professional also failed to properly document the advice given to the clients. Further, the CFP professional failed to abide by company-prescribed transfer policies triggering a fee expense to the clients (subsequently reimbursed by the company).

Position of Director upon Investigation:

By failing to follow prescribed corporate transfer policies, the CFP professional did not comply with all applicable administrative policies. The CFP professional's actions resulted in financial expense to the clients (subsequently rectified by the company). A CFP professional is required to comply with all corporate rules and regulations which govern their practice. A CFP professional must remain current with respect to the administrative practices and policies governing their practice, as well as the requirements of the investment funds offered to clients. Vigilance is required when documenting advice given to clients.

## Anonymous Case Histories – 5

Code Provisions: CFP® Code of Ethics, Rules 101, 202, 401 (d), 402 & 702

Issue: Whether the CFP® professional violated Rules 101, 202, 401 (d), 402, and 702 of the Code of Ethics by acting as the Attorney under a Power of Attorney (POA) for the same client.

Background: The CFP professional was the client's Financial Planner at the time that he became the Attorney under a Personal Directive executed by the client. The client had children of her own, who could have acted in that capacity, one of whom was appointed under a competing power of attorney that was subsequently ruled ineffective by the Courts.

The CFP professional was both the Agent under this Personal Directive and the Attorney under the Enduring Powers of Attorney, and further acted under this authority to affect a sale of property, a transaction gravely concerning the family members who subsequently filed a complaint with FPSC. While acting as the Attorney, the CFP professional also had the client assessed for capacity.

The client was found to have suffered from intermittent mental incapacity, and as a result was moved by the CFP professional to a long term care facility. The CFP professional controlled and restricted access by the family members to the client in the care facility.

Although, the CFP® Code of Ethics does not explicitly prohibit a CFP professional from also acting as a client's Attorney pursuant to a Power of Attorney for Property and/or Personal Care, an inherent conflict of interest arises that, at a minimum, requires very clear and vigilant disclosure. All CFP professionals have an obligation to avoid conflicts of interest, and consequently, where one arises, they must ensure that they do not benefit from their position.

A financial planner who directs the investments of their client, benefits typically through commissions and fees. An attorney for property and personal care has the ability to direct the grantor's investments. When the Attorney is also the grantor's (client's) financial advisor, a conflict arises with the possibility of directly benefiting from acting in both capacities. This is over and above the possibility of receiving additional remuneration for services as the Attorney, who directed those investments.

The "checks and balances" for the actions of the Attorney that may be in place when the grantor is of sound mind, no longer exists when the mental capacity of that individual is compromised.

It is for these reasons that FPSC strongly discourages CFP professionals from acting as both the Attorney under a POA for property and/or personal care and as the client's financial and investment advisor.

While it is recognized that there may be instances in which there is no other individual who can act as the client's Attorney or executor, in those instances, FPSC strongly discourages CFP professionals from being involved in the investment of the client's portfolio, and advises the discontinuance of involvement in the direction of that same client's investments.

#### Position of Director upon Investigation:

In reaching the decision to resolve the complaint by way of a caution, consideration was given to the following:

1. The Power of Attorney under which the CFP professional was acting, was found to be validated by the Court, and;
2. The CFP professional provided evidence that he did not accept or receive any financial remuneration in his role as Attorney, while he remained as client's CFP professional.