

CASE #6
BREAKING UP IS HARD TO DO

“Andy, I don’t see you much anymore. But, then, I guess you don’t have much time for small fry like me now that you’re a big shot.” Perry Sanders was shaking hands with Andy at a community fair and made his comment with a twinkle in his eye. But Andy knew Perry had a serious point, too.

Andy started his law practice many years ago, and he had relied on his community ties to build his practice. In those days, he was happy to help people like Perry who had moderate income and just a few assets to invest. Although he didn’t think of himself now as a “big shot,” Andy’s practice had prospered. This led him into more specialized estate planning -- working primarily with wealthy clients interested in multi-faceted and complex trust and wealth preservation strategies.

But there were many clients like Perry on the books at Andy’s small firm. These were people who helped him succeed at the beginning, and he had done so by promising and delivering personal service and regular contact. But as his client list grew bigger and shifted to more complex matters, he found less and less time to check in with earlier clients. Although people like Perry were unlikely to generate significant new fees, Andy knew that he should review their current portfolios and consider adjusting their asset allocations, especially because of recent changes in the financial markets and tax laws.

Andy wondered what he really owed to these clients. He clearly did not have the time to spend with them. Doing so would translate directly into less income since it would limit the time he could spend with wealthier clients and prospects.

“Give me a call sometime soon, Andy. I’ve got some questions about my daughter’s college fund,” Perry called as he walked away.

CONSIDER:

1. Should Andy give Perry a call?
2. How should Andy handle the earlier clients’ needs now? What options would you suggest?
3. What ethical obligations does Andy have to these clients?
4. Are there honorable, fair ways to discontinue his professional relationship with some clients?

CASE #6 Discussion Guide
BREAKING UP IS HARD TO DO

1. **SUMMARIZE THE CASE.** Briefly explain the case for the whole group if different small groups use different cases.
2. **SMALL GROUP REPORT.** Invite small group(s) to give a brief summary of their conclusions.
3. **ENCOURAGE DISCUSSION** of key points raised by the groups.
4. **FIVE QUESTIONS GUIDELINES.** Refer participants to the "Five Questions Guidelines" blank forms and recommend they use these forms as they assess their cases. They can then refer to the commentary as appropriate to reinforce key points made and/or to add considerations that were missed.

COMMENTS AND ANALYSIS:

- Andy rightly recognizes that he does have an obligation to early clients. He can not simply ignore them. Simple fairness and respect is essential to professional relationships.
- He should also be honest with his clients, explaining what he offers and what limits might arise given his overall practice. This would include honestly explaining to people like Perry what he can and can not do for them.
- Andy appears to be late in recognizing this problem in his practice. Diligence would suggest anticipating the problem and seeking advice from peers on an appropriate solution.
- Client relationships are not necessarily for a lifetime, but Andy needs to develop a plan if he wants to disengage honorably from some clients.

**CASE #6 Commentary for Discussion
BREAKING UP IS HARD TO DO**

<p>1. Why is this bothering me?</p>	<p>Andy is rightly bothered by his conversation with Perry. It would be cold-hearted and unprofessional to ignore him and similar clients. The dilemma is what to do about it.</p>
<p>2. Who else matters: Clients? Carriers? Professional colleagues? Employees? Regulators?</p>	<p>As always, the emphasis is first and foremost on client needs. In this case, the challenge is balancing the needs of multiple clients. Andy needs to think about each of their interests and how best to assist them. This might include shifting some of the accounts to another willing attorney, or adding staff in his agency to assist.</p>
<p>3. What is my responsibility?</p>	<p>Andy is clearly responsible to fulfill any promises he made to the early clients (as well as to avoid making promises he can not keep). He owes each client some level of diligence in providing ongoing client service. <i>(Encourage participants to share how they have handled similar challenges.)</i></p>
<p>4. What are the ethical concerns? What Principles of the Code apply?</p>	<p>The key considerations relevant to Andy's response are: Principle 2 - Objectivity. CFP Board Rule 1.4 requires that Andy act in the best interest of his client(s). Principle 1 - Integrity: Honesty and trust helped to build Andy's business relationships, and he must maintain that trust by honoring promises made and being honest about his limitations as well. Principles 7 & 6 - Diligence: Professional responsibility includes acting with timeliness and consistency to meet all client needs. CFP Board Rules 1.4 and 4.1 require diligence in the performance of professional duties.</p>
<p>5. Am I being true to myself? To the values of my profession?</p>	<p>Andy's personal and professional integrity is on the line with people he has known for many years. His solution to balancing multiple client needs must fit his sense of identity and personal relationships.</p>

CASE #7
MIND YOUR OWN BUSINESS?

“Betty, just make the change for me, will you? I’ve been at this a long time and I have my reasons.” George Lane, one of Betty’s long time clients for his personal affairs and a trustee for several large family investments, had called to ask her to take the cash surrender value from one of his life insurance policies and use it to invest in the IPO of start-up technology company.

Betty Garrett, CFP®, had expressed concern about the high risk level of the new investment and George’s hasty decision. On the face of it, it did not seem like an appropriate move for George to make. But he had reacted strongly and insisted that she comply with his request.

In recent months, Betty had noticed George seemed to have mental lapses during which he became confused or unexplainably irritable. He frequently seemed unable to concentrate, responded irrationally to routine inquiries, and had become noticeably forgetful. She was concerned that he might be making this investment decision during one of those times. And even if George had all his wits about him, this decision was a bad one in Betty’s professional opinion.

“Well, are you going to get this done for me, Betty?” George asked angrily.

CONSIDER:

1. Should Betty execute the change as George asks?
2. Should she explain her concerns in writing and ask George for written confirmation of his instructions?
3. Should she consider talking to other family members about her concerns for George?
4. What other options should Betty consider?

CASE #7 Discussion Guide
MIND YOUR OWN BUSINESS?

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COMMENTS AND ANALYSIS:

- Betty is right to express her concerns about George's decision. She can not simply comply with his instructions without making extra efforts to ensure that he understands the implications for his overall goals.
- Challenging George ó tactfully and with objective information ó risks alienating him. But that is a risk Betty should take to serve her client's interests.
- Betty should be careful about jumping to conclusions about George's mental state. On the other hand, the consequences of his decision-making could affect other family members, with whom she may have a fiduciary relationship. There may be a way to raise her concerns with the family in a careful and sensitive way.
- However she handles this request, Betty should anticipate such requests in the future and develop a plan for handling them effectively.

**CASE #7 Commentary for Discussion
MIND YOUR OWN BUSINESS?**

<p>1. Why is this bothering me?</p>	<p>Betty is rightly concerned about George. Serving her client means helping him make good decisions as well as respecting his decisions.</p>
<p>2. Who else matters: Clients? Carriers? Professional colleagues? Employees? Regulators?</p>	<p>Betty must think first about George órespecting his assessment of his investment needs but also ensuring that she gives him the best possible advice. She also needs to consider the impact on other family members who may be dependent, in part, on the investments George is making.</p>
<p>3. What is my responsibility?</p>	<p>Betty's responsibility at least includes making certain that George has the chance to review his decision and her professional concerns. Even if this risks his ire, she can not shirk her responsibility. How much further she should go ó e.g., talking to family members ó depends on her judgment about his capacity, her ability to raise the issue with family members without creating more problems, and her judgment about what might happen or who might step in if she does nothing further.</p>
<p>4. What are the ethical concerns? What Principles of the Code apply?</p>	<p>The key considerations relevant to Betty's response are: Principle 2 - Objectivity. CFP Board Rule 1.4 requires that Betty exercise reasonable and prudent judgment - as if a fiduciary - in providing professional services and that she is acting in the client's best interest. Principle 5 - Confidentiality: Betty can go to other family members only if she has established relationships that allow her to do so without violating her confidentiality obligations to George. CFP Board Rule 3.1 requires confidentiality and Rule 4.5 requires that practitioners implement only recommendations which are suitable for the client.</p>
<p>5. Am I being true to myself? To the values of my profession?</p>	<p>Betty's approach should reflect her own personal and professional values in how she treats her clients and fulfills her ongoing responsibilities faithfully.</p>

CASE #8
THE ROAD NOT TAKEN

“Look, Susan, I never realized there were all these surrender charges and penalties, to say nothing to the low interest rate. I think you owe me to get me out of this annuity without any penalties and make me whole for the ground I lost to the market these past 5 years.” Barry Sanders was talking to Susan Phillips, CFP®, who specializes in retirement planning.

Five years ago, after Susan was referred to Barry, he told her he realized the need to start planning for retirement now that he was in his early 40s. Most of his savings had been invested in CDs earning just over 3% when Susan helped him to analyze his options. Barry had been clear that his primary goal was long-term investing for a secure retirement, but he also said he needed a fair amount of liquidity in case of a financial emergency.

Following a careful review of Barry’s financial data, which included a profile indicating he had moderate tolerance to risk, Susan placed \$28,000 of Barry’s \$40,000 into a variable deferred annuity with a 60/40 equity/fixed allocation which had been growing an average 6 percent over the last 10 years. The balance was invested in two popular aggressive growth mutual funds. At the time, Susan had explained all this to Barry and felt she had met his needs.

But Susan had been busy in the meantime and Barry was hard to track down, so they had not spoken in depth since then. For whatever reason, Barry now suddenly took an interest in understanding his contracts and made an angry call to Susan.

“Do I need to get a lawyer here, Susan? Or maybe file a complaint with your professional society? Or can you do right by me?”

CONSIDER:

1. How should Susan respond to Barry’s telephone call?
2. How would you determine whether Susan’s initial investment placements were appropriate or not?
3. If Barry had signed the “Understanding Your Annuity” statement, how would this affect your assessment?
4. If Barry files a complaint with the CFP Board and you served on the investigating committee, how would you determine whether Susan has violated the organization’s Code?

CASE #8 Discussion Guide
THE ROAD NOT TAKEN

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COMMENTS AND ANALYSIS:

- Susan should make sure she handled the original financial assessment and recommendations properly, including ensuring that Barry understood all the implications of the investment decisions.
- If Susan failed in some way to meet Barry's goals and/or to explain the implications clearly, she may be obligated to help correct the problem now.
- In any case, Susan should try to work with Barry to make changes that meet his current understanding of his needs.
- Susan should also have made sure to stay in touch with Barry and keep current on his needs and investments at least annually.
- If Barry does file a complaint, Susan should cooperate fully to ensure a full and fair resolution.

**CASE #8 Commentary for Discussion
THE ROAD NOT TAKEN**

<p>1. Why is this bothering me?</p>	<p>Susan may be quite surprised at Barry's accusation, but she needs to take it seriously. She may feel defensive, but her first step is to think it through carefully to make her own judgment about how she handled his case.</p>
<p>2. Who else matters: Clients? Carriers? Professional colleagues? Employees? Regulators?</p>	<p>Barry is the client, and his goals are the starting point. Susan needs to review how she analyzed his goals and how well she communicated with him to ensure his understanding of the investment decisions. This affects not only Barry, but also how Susan ensures that she treats all clients appropriately.</p>
<p>3. What is my responsibility?</p>	<p>As a professional, Susan bears primary responsibility for ensuring that Barry understood the investments. Barry must also accept some responsibility for having agreed to the investments. However, since Susan has the greater expertise, she bears a greater burden to ensure that Barry understood what he was doing. Susan should try to help Barry make changes to meet his current goals. But she would only owe him financial assistance (absorbing penalties, for example) if she clearly failed to recommend suitable investments or to explain them fully in light of his goals.</p>
<p>4. What are the ethical concerns? What Principles of the Code apply?</p>	<p>The key considerations relevant to Susan's response are: Principle 4 - Fairness and Principle 1: These guidelines include inflicting no harm on others and making only recommendations that are appropriate for the client. Barry is suggesting that the low interest rate and lack of liquidity in the annuity harmed him. See also CFP Board Rule 1.4 which requires a financial planning practitioner to act in the best interest of the client. Principle 7 - Diligence: Susan must ensure that she acted competently and thoroughly in developing the original recommendations, as well as in staying current with Barry's goals. CFP Board Rule 4.5 requires Susan to make and/or implement only recommendations that are suitable for the client. See also CFP Board Rule 3.3 requiring obtaining sufficient information necessary to fulfill his or her obligations and Rule 4.1 requiring integrity and objectivity. Principle 6 - Professionalism: As a CFP Board designee, Susan has a duty to know and abide by the rules of ethical conduct of the organization. If Barry files a complaint, she should cooperate fully in the investigation.</p>
<p>5. Am I being true to myself? To the values of my profession?</p>	<p>Susan's response should reflect her own personal and professional values in how she treats her clients and fulfills her ongoing responsibilities faithfully.</p>

CASE #9
BE CAREFUL WHAT YOU SAY

“Kelly, how could you do that to me? The Crandalls are *my* clients. That replacement was completely unprofessional.” Kelly Francis was completely taken aback by this accusation from Nancy Drake.

Kelly, a well-respected CFP certificant with many years experience, had been asked by the Crandalls to review their comprehensive financial plan. Another long-term client had referred the Crandalls to Kelly. Although Nancy Drake had sold the Crandalls a whole life policy a few years earlier, she had no ongoing relationship with them. In fact, they hadn’t heard from her since the policy was delivered.

Kelly, after a thorough review of the family’s financial situation and goals, determined that the Crandalls would do better with a competitive policy from Kelly’s company. Following all the normal rules and procedures, Kelly completed the replacement with the client’s full consent. Notice of the replacement prompted Nancy’s angry telephone call to Kelly.

Over the next few weeks, Kelly noticed some odd behavior toward him from professional colleagues at monthly meetings. He learned that Nancy and her general agent had been complaining to various colleagues that Kelly had acted unprofessionally. The Crandalls also mentioned to him that Nancy had called to tell them it was a mistake to work with Kelly.

Kelly wondered whether to confront Nancy and her general agent and whether to file an ethics action against them.

CONSIDER:

1. Should Kelly have contacted Nancy prior to executing the replacement?
2. What should Kelly do now about the criticisms from Nancy and her general agent?
3. If she does file an ethics complaint, how would you determine whether there has been any violation?

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BE CAREFUL WHAT YOU SAY

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COMMENTS AND ANALYSIS:

- Kelly should be certain the replacement was appropriate for the Crandalls, and it would have been courteous to notify Nancy about the change.
- Nancy and her general agent should refrain from criticizing Kelly to others. If they have concerns, they should raise them with Kelly and/or in a formal process within the structure of their professional organizations.
- If Kelly can not resolve the issue informally with Nancy, it is certainly appropriate to file a formal complaint. The investigation must assess objectively both how Kelly handled the replacement and what Nancy and her general agent have said to others.

CASE #9 Commentary for Discussion
BE CAREFUL WHAT YOU SAY

<p>1. Why is this bothering me?</p>	<p>Kelly is rightly offended by the attacks on her professional credibility, but she needs to think through her response carefully to avoid over reacting.</p>
<p>2. Who else matters: Clients? Carriers? Professional colleagues? Employees? Regulators?</p>	<p>First, Kelly must be sure she did the right thing for the Crandalls. Assuming the replacement made sense, it would have been courteous to notify Nancy of the change. Both Kelly and Nancy should also consider the impact of anything they say to fellow professionals that might undermine professional respect and credibility.</p>
<p>3. What is my responsibility?</p>	<p>Kelly seems to have fulfilled her basic responsibilities in arranging the replacement. Nancy had a responsibility to work more closely with the clients that she failed to fulfill. Nancy is also responsible for treating Kelly and other professionals with respect, which means not making veiled accusations either to other members or to the client. Kelly rightly wants to seek redress whether he can accomplish this informally or needs to use the formal ethics procedures depends on the details of the situation.</p>
<p>4. What are the ethical concerns? What Principles of the Code apply?</p>	<p>The key considerations relevant here are: Principle 2 - Objectivity: CFP Board Rule 1.4 says a financial planning practitioner must act in the best interest of the client. Principle 6 - Professionalism: CFP Board Rule 6.5 requires respect for other financial planning professionals by engaging in fair and honorable competitive practices. Has Kelly acted honorably? Has Nancy?</p>
<p>5. Am I being true to myself?</p>	<p>Kelly's concern is rooted in his own sense of personal and professional integrity. Whispered accusations can damage his professional image in ways that are not true to his real behavior.</p>

CASE #10
WHERE DO I GO FROM HERE?

“Listen, Mary, why don’t you just butt out of my business. I can handle my own affairs.” Mary Miller, CFP®, covered the telephone speaker and gasped to herself at this defensive response from Ben Cooper, CFP®, a local attorney .

Mary worked with high net worth clients on their financial and estate planning issues. She had a very successful practice and over time had developed a close professional relationship with Ben. She referred all her clients to Ben for assistance with legal issues and drafting legal documents, such as wills, trusts, buy-sell agreements, etc. In exchange, Ben paid Mary a generous referral fee.

Mary's relationship with Ben had been quite successful until recently. In the past six months, Mary received three complaints from clients about Ben's failure to return phone calls, delays in completing documents as promised, even missing some court filing deadlines. And yesterday, when skimming the local legal newspaper, Mary noticed that Ben had failed to meet the continuing education requirements for attorneys in their state.

Regretfully, Mary decided she had no choice but to confront Ben with these problems and complaints. That led to her telephone call today and Ben’s strong response.

Mary put down the phone, wondering what her next step should be.

CONSIDER:

1. Is it okay for Mary to cease giving referrals to Ben and do nothing else?
2. Should she notify the local Society chapter about the problems she has experienced with Ben? If so, which problems are legitimate for her to raise?
3. Should Mary have told her clients about the referral fees from Ben?
4. Does Mary have any obligation to contact her clients to tell them she no longer recommends Ben?

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COMMENTS AND ANALYSIS:

- Mary has a clear obligation to inform her clients of the referral arrangement with Ben and, now that there are problems with Ben's services, to avoid making those referrals.
- Ben's action if the reports are accurate clearly violate several Principles of the Code regarding basic obligations for providing good client service and abiding by relevant regulations.
- Again, if the reports are accurate, Mary has an obligation under the Code to report what she knows on an unprivileged basis to CFP Board. It is not her responsibility to investigate the matter, nor should she "bad mouth" Ben.

**CASE #10 Commentary for Discussion
WHERE DO I GO FROM HERE?**

<p>1. Why is this bothering me?</p>	<p>Mary is right to be concerned about Ben's behavior, but she should be certain her information about his lapses is accurate.</p>
<p>2. Who else matters: Clients? Carriers? Professional colleagues? Employees? Regulators?</p>	<p>Mary's first obligation is to her clients (that is Ben's first obligation as well). Since Mary has recommended Ben, his subsequent actions impact her clients directly. She also needs to respect Ben by contacting him (as she did), and she must consider the impact of Ben's behavior on the profession's reputation as well.</p>
<p>3. What is my responsibility?</p>	<p>It is clearly Mary's responsibility to determine whether the information about Ben's behavior is accurate ó if it is, she not only needs to confront him, she also needs to refrain from recommending him to her clients. It may be necessary for her to contact clients to whom she has recommended Ben if his lapses are serious enough. As a fellow professional, she also has an obligation to report the concerns about Ben's behavior. All of the problems listed are relevant to Ben's obligations under the Code.</p>
<p>4. What are the ethical concerns? What Principles of the Code apply?</p>	<p>The key considerations relevant here are: Principle 4 - Fairness: CFP Board Rule 2.2 is relevant to disclosure to clients of information regarding a referral fee arrangement. Principle 3 - Competence: Ben is apparently disregarding CFP Board Rule 4.2 related to continuing education requirements. Principle 7 - Diligence: The client complaints to Mary about Ben suggest he is not fulfilling his client obligations ó CFP Board Rule 4.1. Principle 6 – Professionalism - Self Regulation: Assuming Mary is confident about the information received, she cannot condone Ben's actions ó CFP Board Rule 4.3 - , and she needs to report any unprivileged information (such as the newspaper account) for investigation.</p>
<p>5. Am I being true to myself? To the values of my profession?</p>	<p>Mary's concern is rooted in her own sense of personal and professional integrity. She needs to address the issue in a way consistent with her own conscience.</p>

For More Information:

Certified Financial Planner Board of Standards of Professional Conduct Booklet containing:

- Terminology
- Code of Ethics and Professional Responsibility
- Rules of Conduct
- Financial Planning Practice Standards
- Disciplinary Rules and Procedures
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