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Cheating clients, ethical dilemmas

What's an adviser to do when a client confesses to spending $50K on a mistress?

By Liz Skinner

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When a married client told financial adviser J.J. Burns that he had secretly spent $50,000 on his mistress, alarm bells went off.

“This is a major conflict of interest,” said Mr. Burns, head of an eponymous advisory firm. “We're not just hired by him; we're hired by the family.”

It was a moral and ethical dilemma: Tell the man's wife and he is violating the man's confidence. Withhold the information from the wife and he is violating her trust.

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Either way, there is a risk of losing the couple as clients.

Although it doesn't happen often, most advisers have firsthand knowledge or have heard stories about client couples in which one partner is hiding money or financial information from the other, or otherwise not acting in his or her best interests. In the absence of legal guidelines, advisers usually rely on professional ethics to navigate these sticky situations.

“If you are a high-caliber professional adviser, then your core ethics and moral values will lead you to the right decision,” said Dwight Mikulis, an adviser and chief financial officer of Pinnacle Advisory Group Inc.

The code of ethics from the Certified Financial Planner Board of Standards Inc.'s professional standards is the guide cited most often for advisers

confronting such situations. The ethics stress integrity, objectivity, fairness and confidentiality, among other standards.

Mr. Burns told the client with the mistress that he would give him some time but would terminate his professional relationship with the couple if the man didn't end the affair. The couple spent a few months apart, but got back together after seeing a marriage counselor.

“I don't think that it should be up to us to spill the beans,” Mr. Burns said.

“If they don't find their way, if they just can't do that, then we would have to end the professional relationship,” he said. “But we try to give them the time to get to the right answer themselves.”

Mr. Burns has used the same approach with several other male clients whom he has seen at restaurants, snuggling at tables with women who weren't their wives.

In another instance, a client refused to tell his partner, who had a terminal illness.

Mr. Mikulis said that in his experience, conflicts tend to arise when divorces are pending, or with marriages that might be heading toward divorce.

“When one of the spouses mentions something to one of our advisers that suggests a marriage is floundering, we immediately tell clients that we cannot be put in the middle,” he said.

Advisers let both clients know that any requests for financial information will be sent to each of them, Mr. Mikulis said.

It gets even trickier if the adviser began working with one of the spouses through a business engagement before working with them as a couple.

Adviser Paul LaViola said that his firm, RTD Financial Advisors Inc., has encountered predicaments that have included one spouse wanting to exclude the other from a will, leaving assets only to the children.

In such cases, advisers must secure statements from both spouses that they understand those decisions, while at the same time recommending that the second spouse reject such actions.

Another problem arises when a couple divorces and they both want to keep working with the same adviser. Faced with such issues, several advisers at Mr. LaViola's firm were able to sign separate contracts with each person.

“Such an arrangement is challenging at first and a little awkward for the first year or two,” Mr. LaViola said. “But it's pretty normal after that.”

Estate-planning attorney Bruce Stone of Goldman Felcoski & Stone PA, said that as a lawyer, he has strict guidelines to follow in instances of financial infidelity.

He must terminate a relationship with both clients if he knows that one of them is acting in a way that is harming the other's interests.

However, it is different if only half the couple is the client.

Mr. Stone once represented a man who had two families: a wife and children, and a girlfriend with his children.

Neither the wife nor the girlfriend were clients, and Mr. Stone made it clear to his client that the firm could never represent the wife in any transaction, including if the two bought a house together.

“Lawyers are subject to ethics rules, and we can have our license to practice law taken away for failing to follow them,” he said. “[But] I'm not aware of a regulatory system with regard to specific ethical situations for advisers.”

Mr. Stone, who has spoken about the different standards that bind advisers and lawyers when secrets are revealed to them, said he agrees that the CFP standards are useful in such situations.

They are voluntary, however, and even if the right to use the CFP mark is revoked, an adviser still can practice as a financial planner.

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