

# Being A Better 401(k) Plan Provider Is Possible

By Ary Rosenbaum, Esq.

The older I get, the more I think I get in touch with human nature and dealing with previous trauma. Maybe I'm getting wiser, but I'm learning from my mistakes. Our lives are the sum of our choices and when I started my practice, 13 years ago, I wanted to break away from the practices of third-party administrators (TPAs) and law firms, that I worked for and wasn't crazy about. I'll never be as successful as I'd like to be, but I do well enough to make a decent living. While there are those plan providers that don't act the way they should, it doesn't mean you need to get in the gutter with them. Good guys and gals can achieve success as plan providers, it's mission possible.

## Treat people the way you want to be treated

I wear my heart on my sleeve and I can debate whether that's a good thing or bad. I have always felt the need to treat people the way I want to be treated. Even when treated poorly by bosses, law firm partners, and unscrupulous plan providers, I refuse to let the bad treatment of myself affect the way I want to treat people. I want to be treated with respect and that my business matters, so I'm certainly going to do the same for my clients. The same goes with other plan providers, I treat them the way I want to treat them. When I was working for that semi-prestigious law

firm and I got nowhere with my law firm partners in referring me business, I figured that financial advisors and TPAs were going to have to be my referral sources. Since I didn't have much business to refer to on my own, I thought that writing marketing articles that advisors and TPAs could use for their own marketing purposes, would create enough goodwill in the business. In

years earlier when they worked someplace else. There are plan providers out there who I might have helped out on something for free and don't derive any pecuniary benefit for 5 years, sometimes, never.

## Playing nicely with other plan providers

I once worked for a producing TPA and it certainly became an issue when we would

replace an advisor who brought us business after the client fired them. That became a problem when we were barred from the offices of certain brokerage firms. When I worked with Rich Laurita at a producing TPA, there were never any concerns that Rich would ever poach their business. I remember one time that when a client fired one of the advisors that brought us business, Rich had the client fired. People may think that's crazy, but Rich's loyalty to the people that brought him business is still talked about, until this day and Rich died 16 years ago.



13 years and about 650 articles later, that strategy has been successful. In addition, I usually answer questions for advisors and TPAs at usually no cost (unless they're a client with numerous questions). Helping out plan providers is like growing a garden, it doesn't immediately pay off. It takes time and I will have plan providers reach out to me and mention that I helped them out 10

You have to play nicely with plan providers, those that bring you business, and the competition. You'll never hear me say bad things about ERISA attorneys, it just would make people think less of me. I never see other ERISA attorneys as competition because my practice is unique and there are enough ERISA clients out there. As far as those bringing you business, you certainly

need to treat them with kid gloves and make sure their business isn't stolen, by you or by a competing provider you work with. Sometimes I fail in that aspect because if a plan provider refers me to a plan sponsor client for legal help, the plan sponsor is my client and gets my loyalty. I blew it once with a TPA that referred me to a 401(k) client with an audit issue and the TPA was a little too giddy in billing something, that was actually a mistake, that led me to get hired. I sided with my client and the owner of the TPA, someone who I knew since college and I remember him when he started his plan practice, was very annoyed at me. The problem is that this friend took things personally and cut me out of future referrals, but my client's needs are paramount when I'm an ERISA attorney. People will talk about your great work, but more people will talk if you develop a reputation that you can't work well with other plan providers, especially those that refer you, to business.

### **Be as transparent on fees as you can**

I worked for law firms for about 3 years and it wasn't for me. It was a business that focused less on doing great work and more on billing by the hour. When it came to the law firm's managing attorney, I either billed too little or billed too much. I always liked my role as an ERISA attorney working for TPA firms because that work was billed on a flat fee basis. Aside from doing Internal Revenue Service and Department of Labor (DOL) audits where I charge by the hour, my practice bills on a flat fee basis. Having been a client a couple of times if litigating attorneys, the billable hours can have the power to bankrupt. I hate surprises and those monthly billable hour bills, are always shocking and not in a good way. Thanks to fee disclosure regulations, plan sponsors no longer have to guess how much their plan providers are being directly and indirectly paid. My only knock against fee disclosure regulations is that the DOL never provided model fee disclosure forms, so there are still providers today that people would really need to hire a good forensic accountant to determine what the fees truly are. Despite what this ERISA attorney partner I once worked



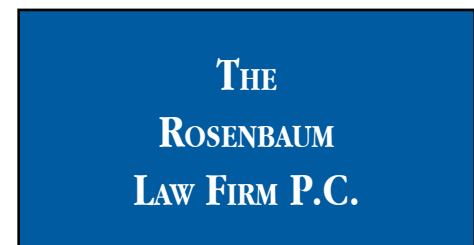
for at odd hours of the morning thinks, less is more, especially when it comes to disclosing fees. Fee disclosures in forms and contracts should be easy for any plan sponsor to understand. There are plan providers who love confusing plan sponsors, but I think that's a fool's game because a competing provider will pick up on that and show plan sponsors areas of possible deception on your part. If you have nothing to hide with your fees, then just spit them out.

### **Getting fired is part of the business**

You're always hired to be fired. Sometimes you get fired because you mess up. However, if you're a good provider, most of the time it could be for cost or something else that is completely out of your control. Whatever the reason, it's not personal, it's business as Michael Corleone would say. The way I think about getting fired is that sometimes, former clients can become clients again. When I was younger in school, any negative feeling from a classmate and I would burn that bridge. Some plan providers act the same way I did in college by creating such difficulty in creating separation between them and a client who fired them. Usually, that happens when a TPA getting fired, overcharges a former client for deconversion fees. I had that with a TPA on a multiple-employer plan I was working on. They took their firing personally and tried to gouge the plan participants with unreasonable deconversion fees that were never disclosed, as well as trying to charge us \$80,000 in valuation and Form 5500 costs they were already paid for, for annual work. Hard times show the measure of people. Getting fired and handling it professionally without gouging plan sponsors will make you look like a professional plan provider.

### **Good people make money**

Despite being a braggart and failing at any business not founded by his father, my uncle is a good and decent man. His fortune was made in the hat-manufacturing business started by his father, who was an absolute saint. My uncle was tired of that money-making business and decided to get into the indoor amusement park business, at first to support his then-brother-in-law, who needed a job. My uncle lost millions in the business and had to file for bankruptcy. My uncle claimed that only thieves made money in the indoor amusement park business. I'm sure there are some very good people in the indoor amusement park business, but my uncle partnered up with some strange business partners, namely a husband-and-wife team where the wife was having an affair with the husband's nephew. A large majority of plan providers are good and honest. Sure there are some schemers out there, that generate business, but I believe inevitably they get exposed. This is a small business, despite its national scope, and people talk behind the scenes. When I took on that TPA that tried to rip off my plan, I was approached by other providers who told me similar stories. A good person can't be a good con man, but they certainly can make it in the retirement plan business.



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