

THE
ROSENBAUM
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ADVISORS ADVANTAGE

A Publication for Retirement Plan Professionals

As A Plan Provider It Won't Matter If You Can't Fix This .

There are some things you need to take care of.

So much of my advice for retirement plan providers deal with marketing and other advice on how they can improve their business. The problem with that advice at times is that there are certain problems that a plan provider may experience that the advice can't cure. For example, you can't worry about marketing if you have persistent problems in your operation. As they say, putting lipstick on a pig isn't going to change the fact that you're dealing with a pig. This article is citing some of the problems that you may experience as a plan provider that you have to clean up before you can even think about marketing your services to potential clients.



To read the article, please click [here](#).

Don't let the best employees be low in the pecking order.

They'll find out somehow.



I'm a big fan of Survivor since day one. One of the more memorable seasons in the beginning was the fourth season on the island of Marquesas. Besides the first appearance of Boston Rob (who played his worst game), it was known for the first time were members of a dominating alliance defected to the other side and switched sides.

Two contestants named Paschal and Neleh realized in one of the immunity challenges what their place was in the dominating

alliances pecking order. They realized that they were at the bottom and made the decision to switch sides.

Speaking as someone who has made some moves in my life, most of the time I make a change is when I realize how low I'm in the pecking order. Once I was working for a third party administrator (TPA) and I was the only ERISA attorney on staff. There were a handful of salespeople, conversion staff, administrators, and financial advisors on staff. Based on my hard work and competency, one would think I'd be one of the most treasured employees, but I wasn't. We had someone in charge who was threatened by excellent employees and that person championed the mediocre. We called that person, the chief operating officer. When I realized I was low on the totem pole and the chief operating officer was trying to find ways to attack me, I decided it was my time to go.

When you have great employees, you need to realize that they have feelings and egos. People want to be appreciated for what they do, whether it's in salary or in commendations. You need to keep your best employees at the top of the pecking order because if they realize they're low, they'll go.

Own up to your mistakes.

Admit it, it's easier.

Years ago, I had to hire an out of town collection law firm to collect a debt from a client. The client didn't respond to my lawsuit and I was awarded a default judgment against them.



The problem with hiring this firm is that since it was an older debt, the law firm was charging me by the hour. There was an associate attorney at the firm who was very good at billing. He would bill 45 minutes, thinking about how to collect the judgment. He would spend hours drafting court filings that were based on sample forms. Without warning, a law firm partner took over the case.

When it came time to try to collect my judgment, I was able to get some banking information to try to attach against the client's bank account. I also provided the email address of a bank representative.

Rather than contacting the person I knew, the partner of the firm decided to get the information bank himself. He sent in the garnishment forms without consulting me. Of course, the name of the bank was incorrect as well as the address on the court approved garnishment forms. The law firm partners billed more than \$4,000 for the preparation of the garnishment forms.

When I protested this error and my unwillingness to pay for it, the law firm partner complained about how much work him and his paralegals did on the garnishment forms. Rather than just apologizing for the errors, he was indignant. I always joked that law firm partners are never wrong, but it's only a joke. I was ticked off that the law firm partner couldn't admit his error and apologize for not contacting the representative of the bank I found. As a plan provider, you're going to make mistakes. The better you are, the fewer mistakes you make. However, when you make mistakes, admit it and apologize and move on. It's plain and simple.

My opinion shouldn't threaten you.

It really shouldn't.

Social media is an interesting dynamic, both in the positive and the negative. Thanks to social media, I've gone from



an unknown associate attorney to a well-known national ERISA attorney.

One of the drawbacks I find in social media is the fact that many people just can't handle the opinions of people they

disagree with. A perfect example is my opinion regarding payroll provider third party administrators (TPAs). My opinion is that ADP and Paychex aren't very good because they see TPA work as ancillary work to payroll and don't have the attention to detail that any TPA needs.

It's my opinion, not fact. It's an opinion based on almost 20 years of experience. So it's funny when you see people who work for a payroll provider TPA who feel the need to engage me and debate me. One time a plan sponsor who used one of these TPAs was trying to engage me in some sort of debate about my article and I had no interest. He thought his payroll provider TPA was doing a great job and I didn't feel the need nor did I have the time to try to change his opinion.

My opinion is my opinion and it's not going to be changed by someone who is debating me, I'm a Taurus as well.

I'm very opinionated and always have been and I'm sure that my opinions ruffle some people. I know that with the national conferences that don't want to invite me. But I'm too old to change and I think not being opinionated would take away my readership, which has always been a great base for referrals.

I think people trying to debate people they don't agree with never works, especially when the opinions are based on reasonable facts. It's wasted energy and in social media debates, often one side says something they'll regret.

Is that 401(k) lawsuit streak going to end?

You can;t win forever.

The landscape for the retirement plan business has radically changed since when I first started in 1998. Normal courses of business such as revenue sharing and non-transparency of fees were the order of the day. No one cared when the stock market was rolling in he returns.

The stock market in 2000 and the dot.bomb mess, as well as the financial crisis in 2008, brought 401(k) fees to the forefront because when 401(k)

returns go south, issues regarding 401(k) plans go north. Thanks to fee disclosure regulations and litigation, the business landscape for retirement plans has radically changed.

The problem with 401(k) litigation is that we're going to come to a point where it's going to be overkill. Sometimes when I see some of the new cases propping up, I think we may already be there or close to there.



Cases like ABB and Edison International have been landmark cases when it comes to fiduciary responsibility; it's corrected some big mistakes that have cost 401(k) plan participants dearly in the past. The problem is that with anything, oversaturation of 401(k) litigation is going to lead to overkill where some providers who aren't necessarily doing anything wrong are going to get sued or already have been sued.

ERISA litigators have to eat too and I think they will eventually start cases on large to medium-sized plans where the arguments over plan fees are going to be over 3-5 basis points. Already we have one of the most noted value providers of index funds that have already been sued. Eventually, we are going to have litigation that is going to argue over pennies on the dollar that will eventually get tossed at the huge expense of ERISA litigators who took these cases on contingency.

Plan participants have been on a huge winning streak when it comes to litigation over the past 10 years. Like the golden age Celtics, Yankees, and Montreal Canadiens, all winning streaks come to an end. Thanks to fee disclosure and the narrowing 401(k) fees as well as those landmark 401(k) cases, big rip-offs of 401(k) participants are now fewer and far between. I think eventually providers and plan sponsor are going to go on a big winning streak when this overkill in litigation reaches critical mass. You can't get blood from a stone and ERISA litigators aren't going to get big wins from plan providers and plan sponsors over 3-5 basis points.

Next stop for That 401(k) Conference: Philly.

Friday, November 9th. Be There.



The date is Friday, November 9th. We'll be at Citizens Bank Park, the home of the only team I truly detest, the Philadelphia Phillies.

As always, 401(k) advisors get 4 hours of content, lunch, a Citizens Bank tour, and a meet and greet with former Phillie and current Phillie radio voice Larry Andersen, in addition to a guest appearance by a good friend of Tommy Lasorda, the renowned Phillie Phanatic.

I'm offering an early bird registration of \$75 for advisors who register before November 2nd. When you compare what other 401(k) conventions cost, we think this is the best bargain out there.

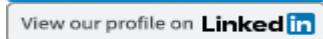
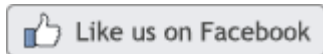
Scheduled are some great presentations from Brinker Capital, our good friends at PCS, Pentegra, GGA Retirement, Bright Worxx, and Kravitz. We're also have great supporting sponsors like TMI CPA, P.C., Oppenheimer Funds, Ameritas, Alerus, Charles Schwab, and others to be announced.

Sign up for the event and pay by credit card at this [link](#).

For information on the event, as well as sponsorship opportunities, please email [me](#).

A brochure on sponsorship opportunities for Philadelphia can be found [here](#).

If you can't make Philly, there will be other events in 2019. I'm currently working on Los Angeles, Atlanta, St. Petersburg, Boston, and Cleveland as potential sites. In addition, March will offer a unique event for plan sponsors. If you are interested in sponsoring those events or want That 401(k) Conference in your neck of the woods, please email [me](#).



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