

Pearls of “Wisdom” for 401(k) Plan Providers

By Ary Rosenbaum, Esq.

I am no genius and I’m sure all of you will agree. I have only been successful as an ERISA attorney because of my ambition and an uncanny ability to connect with my audience even though I’m still that shy kid from Canarsie, Brooklyn. What has made me a success has been that ambition and the ability to let my previous experiences as a lawyer to shape my opinions on this business. This article will just show some nuggets of advice that you can take with a grain of salt, but has helped me and helped the financial advisors and third party administrators (TPAs) that I work with or have talked to.

“You are not running a country club, you are running a business that is like any other”: I have had the unfortunate or fortunate (depending on how you look at it) experience of working people who were arrogant and took themselves too seriously. Whether it was operating a TPA or a law firm, they had this notion that their firm and/or their work was the greatest thing since sliced bread. They had what I call is a country club mentality, where they thought they knew best. My time at that law firm that

I always wrote about reminds me of the plot of Caddyshack. The Managing Attorney was Judge Elihu Smalls (even though she was a woman) and I was Al Czervik (I bought the Halloween costume last year). She looked down on me and like Brushwood Country Club; she thought that the law firm was not a place I should belong. She was right, because I had this crazy notion that a law firm or a TPA is no different than an electrical contractor or cobbler (like my grandfather Emil, who was one of my greatest influences) because it’s a service business. A service business is all about

servicing the client and making the clients happy. That’s it. It’s not about the fancy offices or the partners’ lunch. It’s all about doing a good job for the client and that client and their other plan providers knowing that because good referrals travel fast and wide.

“Your business is only as good as your worst employee”: I worked for one of the greatest salespeople in the retirement plan

business, your business of servicing your clients isn’t very good because you are only as good as your worst employee. Having bad employees isn’t about having people with not that much experience because I have worked with administrators who had 15 years of experience in this business that were terrible. Bad employees are a result of poor management and poor training. So that’s why making sure that your professionals have the requisite training and continued training (retirement plan laws and regulations change) is a necessary component of your business.

“Quality in presentation implies quality of content”:

My college friend and former California Lieutenant Governor candidate Ron Nehring coined this. It really means that good marketing materials will let prospective clients believe that your service as a retirement plan provider is just as good. Of course, you have to make that service as impressive because you want to meet client expectations. I’ve seen too many quality advisory firms and TPAs put out lousy marketing materials. People that say you should never judge a book by

its cover never went into real business because impressions and presentations mean a whole lot. That is why I meet clients and other providers in a suit rather than my normal wardrobe of Mitchell & Ness jerseys.

“The person who knows “everything” knows nothing”:

I know a thing or two about narcissists because I have had experiences with living with them and working with them. They think they know everything and that’s because of their arrogance. I am proud to say that I learn something new in the retirement plan business every



day and when I don't know something, I research it or I make a call to an actuary or plan administrator or financial advisor who knows something more about that topic. As a plan provider, you should have the humility to identify what you don't know and find out those who do know and ask for their counsel. From experience in the days before GPS, men like me never wanted to admit when they were lost and seek guidance from the attendant at a gas station. Don't be that man, know what you know and try to learn what you don't. Too often, plan providers put themselves and their clients in a bad position by tackling a subject area that they can't handle. I often see that with TPAs that handle matters with their client before the Internal Revenue Service and the Department of Labor when calling an outside ERISA attorney is probably the best idea.

have a quality service as a plan provider don't have to boast about being the TPA for Kim Kardashian or the financial advisor for Justin Bieber; their concentration is on providing a good service for their clients.

“Whoever boasts the most has the least”: I'm sure other have stated it, but my grandmother Rozalia always told me that one. Not much different than the previous quote, but when a provider had to boast the amount of clients they have, the relationships they have, sometimes it's boasting to hide insecurity. I remember landing in trouble with the managing attorney of my old law firm because of the way I was marketing to my former TPA clients. At the time, one of the partner's sons became Governor of New York and there were some issue because the father was a union lawyer so there was issues dealing with potential conflicts for the son and father. She was choked up with emotion by reciting how one partner's son was the Governor, another partner's son was County Executive, and how another partner was a former Deputy Chief of Staff in the White House. She was name-dropping and it was done to hide her insecurity of the firm being criticized because of this father and son conflict. People who



“Your business needs a hook and saying you're just cheaper isn't a hook”: Every business needs a hook, some marketing strategy that will get people interested in your business. When I started on my own, I realized that I had to stand out among other ERISA attorneys. So I marketed myself based on what I didn't like working for law firm, which is billable hours. With a low overhead, I was able to offer flat fee billing for 95% of my work so clients can have cost certainty. This has and continues to be a great marketing tool. Advertising myself as being cheaper wasn't going to attract many clients because people don't want just to hire someone because they were cheaper. Saying you're cheaper implies cheaper service. So as a plan provider, you should think more about being cost effective. That means advertising a service that is high quality, but low cost. For example, look at many good ERISA §3(38) fiduciaries. They can advertise how they assume discretionary control over the fiduciary process of a plan and the liability that goes with it, often at times that is less than what the current financial advisor may charge where the plan sponsor still exercises discretionary control. Marketing is all about story telling and most plan sponsors want

a little more than you saying how much cheaper you are than the incumbent plan provider. You need a story that is original and enticing, offer something that most of the competition won't.

“Some people want to help you by helping themselves to your money”: When it comes to trying to grow your business, there will be lots of people that will offer you their services or offer you opportunities for you

to advertise and the only help they are really offering is to help themselves to your money. I won't forget the search engine optimization companies that wanted me to hire them despite my insistence that an ERISA attorney is not something that a plan sponsor wills often Google for. There will be people trying to get your to advertise or sponsor a literature table at the event and there will be very limited marketing opportunities there that would justify the cost. Just because someone is willing to help with their services doesn't mean that they will be of any help to you.

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