

The Don'ts Of Being A Retirement Plan Provider

By Ary Rosenbaum, Esq.

I've never been a fan of what other people think of me, but I do care how I present myself. I can only be responsible for myself and how I treat other people including plan providers. While I understand that my frank and honest views of the retirement plan business can offend others, I do try to treat other plan providers and my clients the way that I want to be treated. This article is all about what you shouldn't be doing as a plan provider to other plan providers and clients.

Don't show a lack of respect for other plan providers and clients

I try to treat people the way I want to be treated. I think it works out. There may be some plan providers that I've had an issue with, but I would never let how they treated me change me and how I deal with people. Your reputation in this business means everything and a lifetime of goodwill can be ruined by poor behavior. I always feel

that my goal is to never have any client or plan provider feel that I treated them poorly or cheated them. Excessive fees, poor service, and unprofessionalism can doom your reputation and while it's a national business, your reputation will be known far and wide. This business is a relationship-driven business and poor relationship building by you will hurt you long-term. One of the reasons I started my practice after my two-year stint at a certain semi-prestigious law firm (sorry Lois) is I felt that the law firm was more interested in billing

clients than actually serving them. I think if you treat plan providers and clients with respect, you will get paid back in respect.

Don't ask plan providers to do things that you wouldn't do yourself

I work on a multiple employer plan and one of the adopting employers incurred an excise tax for failure to meet the March 15th deadline for processing corrective distributions for failed actual deferred per-

ask a TPA to eat a fee or pay an excise tax for something that wasn't their fault. I wouldn't ask a plan provider to do something I wouldn't do myself in a similar situation where something wasn't my fault.

Don't take advantage of the goodwill of other plan providers

One of the pillars of my law firm was always trying to help other plan providers. Whether it was publishing articles they could use or answering their questions on the house, I thought that would be a linchpin in developing relationships with plan providers. I figured that providing free help would build such goodwill that I would get referrals when these providers or their clients needed ERISA help. I will say that over the past 11 years that I've had over the years, I think I could probably count on one hand the number of providers where I felt that my "free"

work was taken advantage of. You will find that there are so many plan providers that are willing to provide you with free support. It could be the third-party administrator (TPA) providing plan design proposals or a mutual fund company DCIO (Defined Contribution Investment Only) representative or an ERISA attorney who is a huge Mets fan. Whoever the plan provider is, don't take advantage of that goodwill. Don't waste their time by pretending you want a real relationship because any good relationship in the retirement plan industry



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centage (ADP) test. As you may know, the failure to meet that deadline will result in a 10% excise penalty for any refund amounts that were due to the Highly Compensated Employees. The advisor asked for my opinion on the excise tax and whether we should ask the TPA to pay for the excise tax. After talking to the TPA and realizing that they gave the adopting sponsor enough time and warning on the failure to process those distributions by March 15th, I told the advisor that the adopting employer was responsible for that error. I would never

is a two-way street.

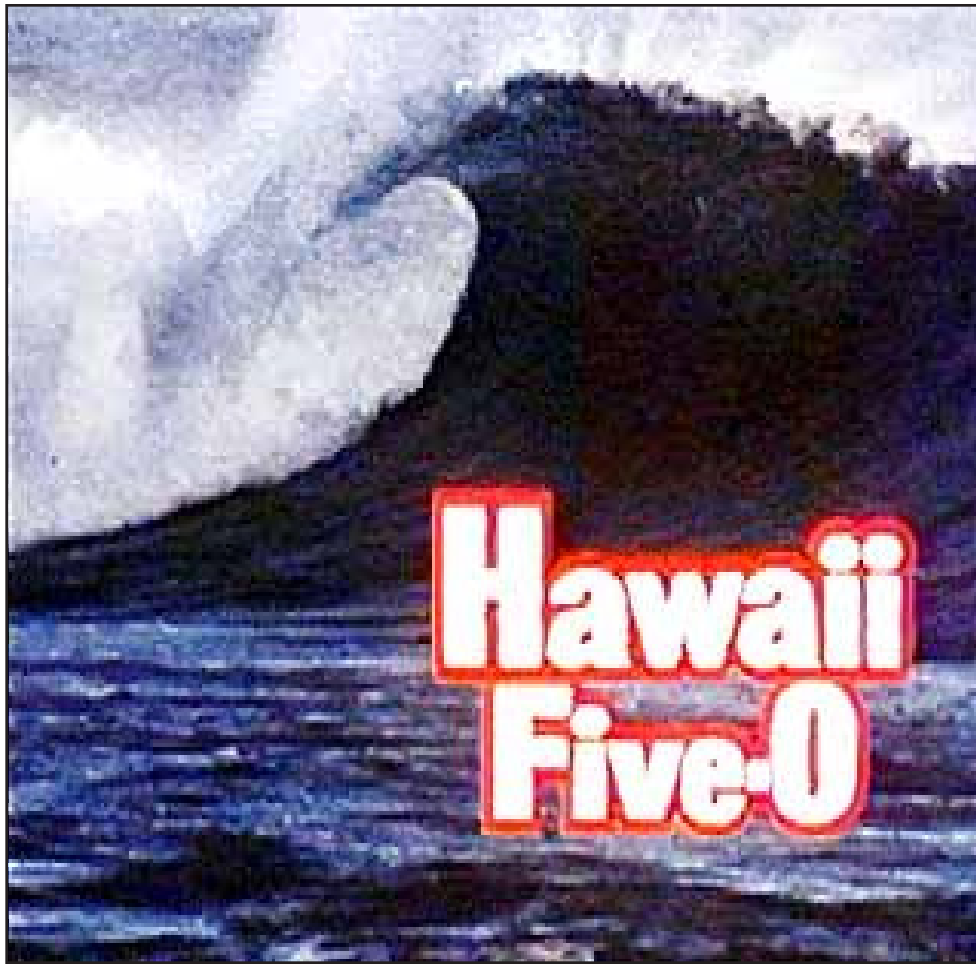
Don't blame others for your own mistake

There are two types of plan providers, those that admit mistakes and those that will blame anyone else, rather than admit the truth. I always say that most things aren't worth dying on a hill for, but I see plan providers that would rather die on a hill than just admit that they did anything wrong. Years ago, I worked on a law firm's 401(k) plan (not the firm I worked for and has been and after switching TPAs, they realized that the plan's Top-Heavy test from the previous TPA

was incorrect. The old TPA labeled one of the named partner's wife and daughters as Non-Key Employees. So the plan was Top Heavy and I was incredulous that the old TPA did it incorrectly because the last name of the named partner, daughter, and wife was the same, as well as part of the law firm's name. Where I come from, we call that a clue. Needless to say, the old TPA didn't identify that and so the plan sponsors were responsible for about \$8,000 in late Top-Heavy contributions. Rather than admit they were wrong, the old TPA was blaming everyone for the error, including the plan sponsor. I'm just lucky they didn't blame me. Then the next excuse was that even if the test was done correctly, my client would have owed the Top-Heavy contribution anyway. In the end, mistakes are a part of life and it is a test of character when you admit you did wrong. As Harvey Berman (the first boss I had) once said, the reason there is an error and omissions policy is for errors. Don't die on that hill, accept the blame for your own mistakes.

Don't speak badly of the competition

I don't speak ill of other ERISA attorneys. I don't see them as competition be-



cause my biggest competition is myself. Another reason that I would never speak badly about other ERISA attorneys is that it would make me look unprofessional. I don't know how many times I was turned off by a plan provider just because they were deriding either an individual or competitor in the marketplace. Even if I didn't even like the person or the plan provider, I'd still be taken aback by the negative comments. Speaking badly about the competition says more about you, than the people you're speaking badly about.

Don't cheat the clients

It's 2022. The days of hiding fees are long gone. Fee disclosure regulations require you to be transparent. If you're a TPA, make sure all fees are disclosed. If you charge a termination cost, make sure the contract reserves your right to charge one, as well as some indication as to how much it may be. If you're a financial advisor, remember you're a fiduciary and you can't make more money than you're contracted for (I knew an advisor who tried to get away with that), and watch out about those rollovers. I always say the days of wine and roses are over, the days where you can make a ton of money and do the minimal amount

of work are long gone. Your reputation in this business means everything, so being known for cheating clients isn't a good thing.

Don't think you know it all

I always say the beauty of this business is that you learn something new every day. You only learn something new if you're willing to learn and there are plenty of providers are there that aren't willing to do that. Arrogance blinds you and doesn't allow you to understand fundamental changes in the business as they come. I know way too many plan providers that had to exit the stage

when fee disclosure became a thing. Anyone who knew anything about retirement plans probably knew 2 years in advance that fee disclosure was inevitable. The providers that were too arrogant to see the change are no longer in this business. Be open to new ideas and changes in the retirement plan business, you don't know it all.

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