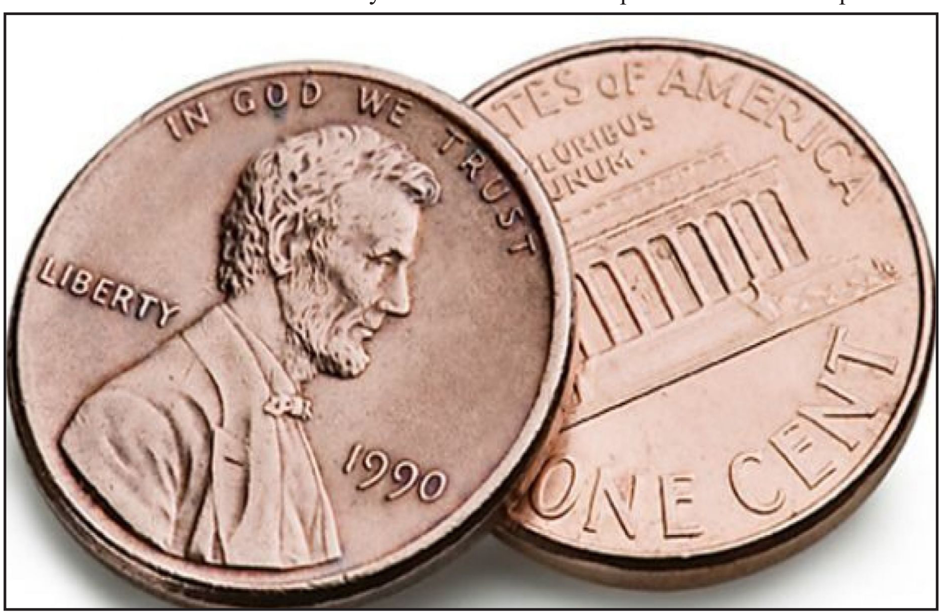
My Two Cents For Retirement Plan Providers

By Ary Rosenbaum, Esq.

I've been an ERISA attorney for 21 years, so like the J.K. Simmons character in the Farmers Insurance commercials, I know a thing or two because I've seen a thing or two. I've seen quite a few things including things that were something out of the theater of the absurd. As part of my practice, I always try to offer advice to other plan providers based on my experience. My "two cents" might be worth more than two cents, maybe to many it won't. However, my "two cents" is culled from three decades of work as an ERISA attorney.



What makes a provider bad is a lack of training

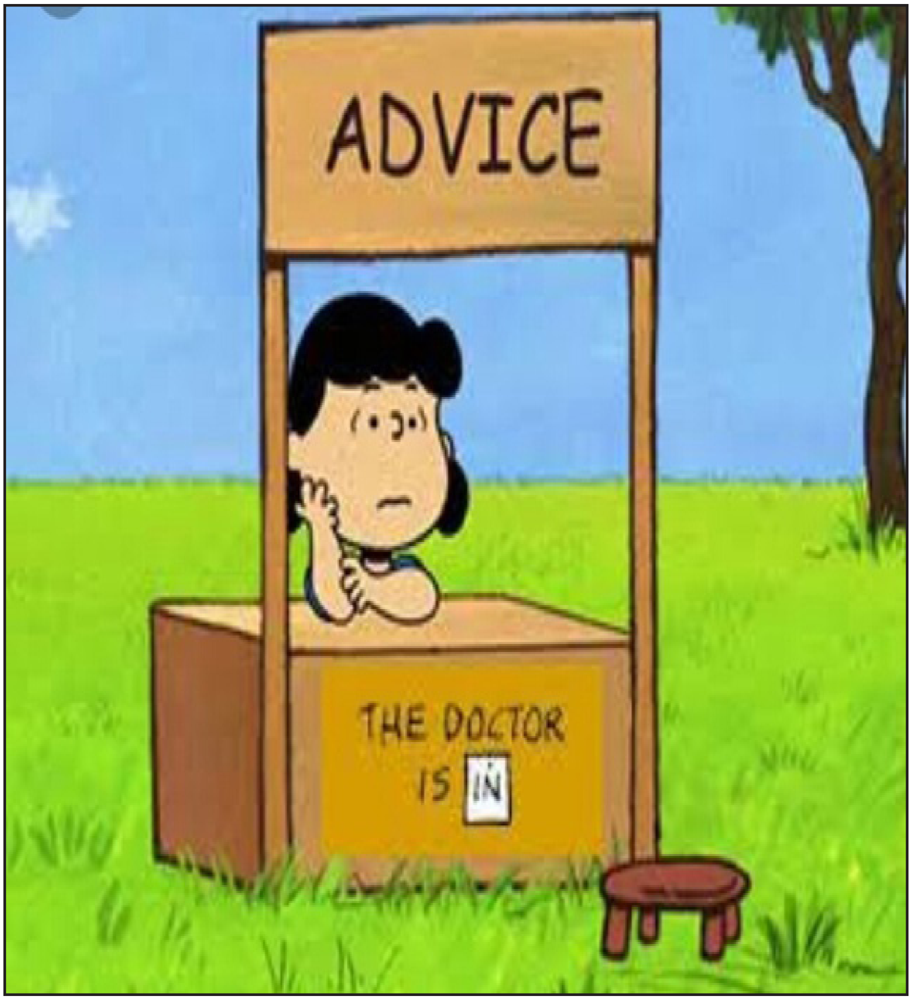
When I first started in the business as an ERISA attorney, I worked on-site for a third-party administrator (TPA) in Syosset. That TPA did a lot of recruiting at my old college, Stony Brook University. The problem with recruiting there was that after graduation, these new hires were given absolutely no training. The problem with staff getting no training in terms of plan administration is that almost all of that staff will never achieve a level of success because they never got the training they need. Training also doesn't mean something at the start of a career, it also includes continuing education because rules concerning retirement plans are constantly changing, I will never forget working for another TPA when a plan administrator in 2007 was telling me he was administering a plan's matching contributions on a 7 year vesting schedule, despite the fact that 7 year graded schedules were outlawed for matching contributions in 2002. It was clear that this experienced administrator didn't get the continuing education he needed to properly administer a plan. Good plan providers will provide the training for their employees that is necessary to offer a competent service to their clients.

Years of experience isn't the only measuring stick

I have 21 years of experience as an ERISA attorney, but that fact alone doesn't make me a better attorney than someone with fewer years in the retirement plan industry. Years of experience like anything else are just one factor on whether someone is a good retirement plan provider. I can assure you that I have seen many retirement plan providers with as much experience as I do who aren't very good. I always tell the horror story of a plan sponsor being sued for $3 million by the Department of Labor (DOL) because the actuary failed top properly document the benefits of the plan. That actuary had over 30 years of experience and lost his actuary designation because of incompetence. There are many reasons why you should hire a specific plan provider and just focus on years of experience is a big mistake because that fact alone doesn't determine a provider's competence.

Value is more important than cost

The fee disclosure regulations changed how the retirement plan industry operated. The days where plan sponsors had no idea what they were paying in plan expenses were over. It was an anomaly that while plan sponsors had the fiduciary duty to pay reasonable plan expenses, they had no idea how much they were paying for administrative expenses before fee disclosure. So many plan sponsors were told they were paying nothing in administrative expenses nor where they told if their TPA was pocketing any revenue sharing from the fund companies. The true cost of plan administration as a result of fee disclosure made the retirement plan industry more competitive and helped lower costs throughout the business. While we haven't had that race to zero in administrative costs, I think it has spurred way too many retirement plan providers to focus too much on costs. While plan sponsors are now more considerate of costs, I don't think they understand the concept of value. Many years ago, I tried to start my law practice by focusing on low costs legal services such as offering a will for $100. The law practice didn't do so well because many people weren't going to pick a lawyer on cost. Yet too many plan sponsors pick plan providers on cost. As a retirement plan provider who needs to make a living, I think you need to stress value more than stressing cost. If you don't stress value over



cost, then you lose the argument that there is no difference between providers and the plan sponsor should just focus on cost. As a plan provider, you need to stress the value you offer than just a provider focused on cost. You need to stress the value you can offer plan sponsors in helping minimize their fiduciary capacity in the role that you would be hired to assist them. There has been so much focus on cost in this business, choose to be different and focus on your clients and potential clients about value.

Think differently

Apple Computer staged a huge comeback with their Think Different ad campaign. I remember being in law school in the mid-1990s and the Dean wondering why the school bought Mac computers for the computer sinc site since, in his mind, no one uses Macs. When I started my practice almost 10 years ago, I looked at what other law firms did and I wanted to do something different. Law firms charged by the hour, I thought I should charge a flat fee. Other law firms got clients through networking, I was going to get clients through plan provider referrals by writing articles that could help plan providers get business. The way you can stand out in the marketplace is by looking at what the competition is doing and do something different. While every plan provider from coast to coast talk about fiduciary duty, I'd consider talking about how you can help the participant experience by boosting investment education and plan participation. While this industry has done a tremendous amount of work in educating plan sponsors about fiduciary responsibility, I don't believe that they have done enough when it comes to improving the participant experience.

Consolidation is opportunity

We can probably thank fee disclosure for the consolidation in the retirement plan business for the last 7 years. It seems every week that a TPA or RIA firm is being bought by another provider who wants to be a conglomerate. Consolidation was inevitable as fee disclosure intensified the competition and many plan providers saw this competition as a sign to cash in. Quite a few large insurance company providers took the fee disclosure regulations as a sign that it might be a good time to leave the retirement plan business. We can't control what other providers do, we can only control what we do. While many plan providers may see consolidation as some sort of existential threat to their business, I see opportunity. While some providers get larger, there is still enough room for plan providers who are quick and nimble. Compare the retirement plan business to the hamburger business. There is enough opportunity in the hamburger business for In 'N Out and Shake Shack for them not have to compete with McDonald's and Burger King. While other plan providers can stress size and offer a competitive fee, there is enough space for you to offer something unique and different that allows you to stand out among the larger competition.

Know your audience

I worked for an ERISA attorney once and she spoke ERISAese because she had the idea that if she sounded important, it would justify the fees she charged. I think one of the biggest mistakes that plan providers make is by talking over the head of their clients and prospective clients. You need to speak at a level that the people who pay your bills or you're hoping will pay your bills can understand. Communication is key to keeping your job as a plan provider.

Be ahead of the curve

One fascinating aspect of the retirement plan business is that it's always changing, thanks to changes in the law and thanks to technology. The key to surviving and thriving in the retirement plan business is to recognize change and adapt to it. Just look at the plan provided that thrived and those who died because of fee disclosure. You have to accept change and before you accept, you need to identify it. If you're ahead of the curve, you're ahead in business.

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