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The Don'ts Of Being A Retirement Plan Provider

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.

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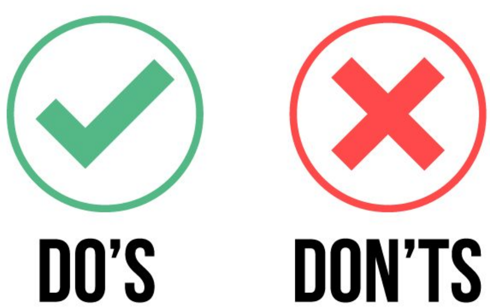

You can still lose by winning

The news comes trickling in for 401(k) plan providers and plan sponsors beating back class action lawsuits.
Many plan providers win their case as defendants because the plan participants fail to convince a judge that the provider serves in a fiduciary capacity. Plan sponsors often win, just because the plan

participants showed that a certain decision like using revenue sharing funds was a clear breach of the sponsor's fiduciary duty.

While plan providers and plan sponsors win their case, they have still lost. The news about them winning is far less public than the news about them getting sued in the first place. In addition, the cost of litigation is burdensome even if the providers and sponsors have fiduciary liability insurance.

There is no champagne celebration for winning a case on summary judgment because of the huge cost in publicity, time, and cost. Even if the plan provider and plan sponsor did nothing wrong, something they did suggest that there was impropriety that an ERISA litigator was good enough in order to commence litigation.
So if a plan provider and plan sponsor have won their case, they've really won a hollow victory.

Don't forget your clients and the fees they pay

I first started paying for my own vehicle when I got my first job as an ERISA attorney, It was a brand new 1998 Toyota Camry. I was looking for car insurance and the best rate was through an insurance company that my father's business partner used for the business.

I've used the same car insurance company since then, 6 different cars. They were great at paying claims, namely, the two vehicles totaled during Hurricane Sandy. Over the past few years, I've seen my rates go up while my cars got older. I never got a call from the agent about the increase in rates or what I can do to lower them. So I shopped around and found insurance that will cost me $150 less a month. That's good money.

The point here is that when you have clients, you just can't sit around and ignore the fees that they're paying. I'm not saying you should lower your fees, I'm saying that you should always have a discussion with clients about fees and when assets can lower the percentage of assets that pay fees. You just can't stand pat and do nothing, further incentivizing plan sponsors to look elsewhere. In every relationship I've ever handed that ended, the blame always rests on a lack of communication. People and clients like to know that they are appreciated and that their continued loyalty isn't taken for granted. The best way to show they are not being taken advantage of is by not ignoring the fees they pay.

PEPs are already niche, do we need niche PEPs?

Pooled Employer Plans (PEPs) are in my mind, a nice product. For most of the time, it's not the right fit. So I don't understand why anyone would create a PEP for a niche purpose, such as a commitment to ESG investments. Do we really need to further differentiate PEPs by investment style?

I understand there is a desire for people who like ESG investments (I like gambling stocks actually) but is there a marketplace for companies interested so much in these investments, that they will join a PEP for that? Time will tell.

Context is king

I had a great time on Joshua Itzoe's podcast and one point, he brought up was that I was a proponent and defender of third-party administration (TPA) firms. If you followed me on LinkedIn when I started my practice 11 years ago, you might think otherwise.

11 years ago, there was no fee disclosure and I had a chip on my shoulder about the TPAs I had worked for and the issues I had with them, regarding the. pocketing of revenue sharing and the lack of fee transparency. I was labeled by some as a TPA critic, but I think it's due to the sensitivity of some in the business. It wasn't that long ago that David Wray was a spokesperson for the industry and he'd try to beat back anything he saw as criticism to the industry. I think the issue is that we can be critical of this business and still be a defender of it.

Miami registration is open for June.

On Friday, June 24, 2022, we will have a live event at loanDepot Park in Miami.

The sign up page for registration is here.

We will have game tickets that night as the Miami Marlins take on the New York Mets.

For information on sponsorship, which starts as little as $500, please click here.

Phoenix registration open for April.

We will be live at Chase Field for a great 401(k) advisor event. For just $100, get 5 hours of content, lunch, and a meet and great with a Diamondbacks great.

Tickets available for the game that night.

The sponsorship brochure for Phoenix can be found here.

To sign up, please click here.

Feel free to contact me with questions.

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