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Advisers Can Stave Off Client Suits with Frequent Communication

By Joshua Horn - 4/14/2011

Now that you have secured a new client relationship after conducting adequate due diligence, the question that often arises for a financial adviser is how do I further protect myself from potential claims. Unfortunately, in our litigious society, there is no perfect way to protect yourself; some customers are simply predisposed to sue when there is an issue. Nevertheless, there are some simple guidelines to follow that will put the odds in your favor to avoid lawsuits.

The most important guideline is to have open, honest and frequent communication. The surest way to expose yourself to trouble is not being responsive to your clients. It is also somewhat self-evident that advisers who do not have frequent communications with their clients will be advisers with no clients.

When the markets are doing well, it is easy to speak with your clients. When markets are performing poorly, however, you should have more frequent communication to make sure your clients are being serviced adequately and, most important, are aware of the risks that they face in the markets. It is rather simple, when a client calls, take the call or return the call quickly and speak to your clients the way that you would want someone speaking to you. If you find yourself speaking in a manner that would upset you, in all likelihood you are upsetting your client.

The corollary to open, honest and frequent communication, is documentation of that communication. Documentation can take a number of forms. First, an adviser should keep contemporaneous internal notes of a telephone conversations/meetings with his/her clients. I have seen many instances where these notes go a long way to disproving a claim against an adviser.

Second, document all recommendations that you make to your clients. When you make an investment recommendation, follow-up that recommendation with a letter or email memorializing the recommendation. In this communication, the adviser should recap the recommendation and highlight the risks and rewards associated with the recommendation.

Third, and most important, document those instances where a client is not following your advice. For example, if you prepared a financial plan and the client deviates from that plan to such an extent that the plan becomes obsolete, the adviser should write to the client, point out that the client is not following the advice and warn the client of the downside risk for disregarding your advice. Should any of these clients initiate a lawsuit against you, think of how the client will react when the stack of letters/emails/texts are put in front of the client to rebut their version of the events.

Although there is no sure-fire way to prevent a client from bringing a claim against you, put the odds in your favor. Keep an open line of communication with your clients and you will find that most "problems" are not problems at all. Stick your head in the sand, and be a defendant in a lawsuit; the choice is yours to make.