

THE  
ROSENBAUM  
LAW FIRM P.C.

## THE LAW FIRM REVIEW

A Publication for Plan Sponsors and Retirement Plan Professionals

### A Good Retirement Plan Doesn't Grow On Trees

It's not in the water either.



It doesn't grow on trees, it's not in the water, and it doesn't happen by accident. It didn't happen overnight, it didn't happen in a vacuum, and it certainly didn't come out of thin air. A good retirement plan takes a lot of work and it happens because there is continued vigilance by the plan sponsor. So this article is about what it takes to have a great retirement plan.

For the article, click [here](#).

### The Top 10 Wrong Ideas That Plan Sponsors Have About Their Retirement Plans.

Some plan sponsors have no idea.

People can get the wrong idea at times. I'll never understand what Fred Silverman was thinking when he made Jean Doumanian the successor to Lorne Michaels as Executive Producer of Saturday Night Live or when he imported Pink Lady, a Japanese singing group who spoke no English as the newest stars of a variety show. Fred got a lot of wrong ideas when he was in charge of NBC in 1980. Retirement plan sponsors can get the wrong idea and risk liability from unhappy plan participants and the federal government



(namely the Department of Labor (DOL) and the Internal Revenue Service (IRS)). While most employers try to do right by their employees with their retirement plans, the employer's lack of

expertise and sophistication in the nuances of retirement plans are often taken advantage of by unscrupulous financial advisors, attorneys, accountants, and third party administration (TPA) firms. Since employers delegate plan decisions to these unscrupulous professionals, employers rely on major misconceptions about retirement plans that unwittingly exposes them to potential liability. So this article is about the ten wrong ideas that plan sponsors have about retirement plans and the retirement plan business.

To read the article, please click [here](#).

## **Another 10 Wrong Ideas That Plan Sponsors Have About Their Retirement Plans.**

**Better than most sequels.**



Most of the time, sequels suck. Except for perhaps Terminator 2 and The Godfather Part II, most sequels are like such bombs as Caddyshack II and Beyond the Poseidon Adventure. Despite this dislike of sequels, giving Plan Sponsor advice they can understand is a pillar of my law firm. So this article is about another ten wrong ideas that plan sponsors may have about their retirement plans.

To read the article, please click [here](#).

## **When you get a call about your Plan, call an ERISA Attorney.**

**Better than calling Ghostbusters.**

It's unfortunate, but the facts are that most people don't respond to a complaint until there is a letter from an attorney. Service providers and companies hate correspondence from attorneys because that suggests litigation.

That is why it's paramount that when a plan sponsor gets correspondence from the Internal Revenue Service or the Department of Labor, that they contact an ERISA attorney. It may be the difference between getting something closed out quickly and something that may result in plan disqualification. Too often, damage happens because a plan sponsor and their plan providers are too slow to seek out the experience and the advice of an ERISA attorney who are trained in working with government auditors as well as proficient in answering auditor requests.



So if you are a plan sponsor or know of one being contacted by the government over their retirement plan, seeking ERISA counsel is one of the first calls you should make.

## **Make Sure You Check a Plan Provider's Credentials.**

**It's best you do.**



We've all made that mistake. We should know better, but when it comes to hiring people, we take their word for it instead of doing 5 minutes of detective work.

I have had a lot of work done to my house and my biggest mistake is not evaluating the service provider before they start their job. I hired a waterproofer that did a lousy job and was impossible to get a hold of. 5 minutes of detective work would

have shown that they had multiple complaints against them with the County Consumer Affairs Department and that the person who ran the place (his wife was the licensee) was a former podiatrist who lost his medical license for Medicare fraud (which explains why he couldn't be the licensee). There was the contractor who claimed to be a member of a highly respected home contracting association and it turns out they weren't.

Any time I neglected to check up on a contractor I hired to review if there were any complaints or whether they were who they claimed they were, it was on me and I got screwed.

When it comes to being a plan sponsor, you have to answer because you have a higher



responsibility than a homeowner because you are responsible for the retirement plan assets of your employees. The ERISA attorney you met? Make sure they're a member of the state bar. The third party administrator you know? Make sure they don't have many complaints and that their principals have clean reputations.

When you meet people in a social setting, there is nothing wrong with taking their word. As a plan sponsor, you can't afford to because of the liability that goes along.

## 5 Years in the Making.

Thank you everyone.

This April, will mark 5 years since I started my own law practice dedicated to retirement plans/ERISA.

5 years ago, I swore the days that I would be working for someone else were gone. I had enough; I wasn't going to let my career to be dependent on a decision maker who didn't understand the retirement plan business and/or didn't understand how I

would get clients. It's not a knock of the law firm managing editor that I have made fun of the past 5 years, but Lois wouldn't have gotten what I was trying to do no matter what type of law it was. Lois knew best and probably still does, but I knew that no matter the support, I would never make it at that law firm or any law firm for that matter. I had no choice but to go on my own.

There was a family member or two who thought I would fail on my own. Their reasoning was that since I couldn't draw business at that law firm, how could I draw business on my own? Despite my failing in getting any substantive business for that firm, I don't think I was given the necessary tools and support to draw a lot of business.

There was the law firm partner I worked for that claimed I would be a superstar on my own, but I don't know if he was just patronizing or not (still to this day). The point is that the only reason I was able to make a go of it was because I believed in myself and my ability to connect with an audience of clients and other retirement plan providers. I took a gamble and it's paid off somewhat, it's still a struggle after 5 years.

The point here isn't to say how great I am or how I was right, etc. The point here is that after 5 years of being on my own, I could not have done it without the support of my clients, referral partners, other retirement plan providers, and the folks who read my articles. You can have a great message and write great articles, but it means nothing if no one reads it.

So I thank you all for the first 5 years, and thank you in advance for the next 5.

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## Adding 'certainty' to the list of legal services

Flat-fee billing finds new popularity among recession-stretched clients

By AMBROSE CLANCY

When Ary Rosenbaum asked his old law firm to advertise flat-fee billing, he was turned down cold.

An expert in retirement plans, he was also stunned that his firm, one of the larger ones on Long Island, was charging \$600 for amendments to a plan when the fairer price was \$300.

Now at the helm of Garden City's The Rosenbaum Law Firm, he's billing all of his work at a flat fee, a trend that has found new life among recession-plagued business clients.

With businesses hit hard across the board, some attorneys are moving away from the time-honored method of billing hourly for their work to save clients from sticker shock over legal bills.

Rosenbaum believes when there is time certainty—drafting a will, closing on a house, drawing up contracts, to name a few—flat fee billing should be used.

"These days, small and medium-sized businesses want to be sure what things cost," Rosenbaum said.

Clients understandably prefer flat fee billing, he added. "People will even pay a premium for a flat fee than an hourly rate or get chided for copying, binding and messenger services," Rosenbaum said.

Even in litigation, where it's difficult to judge how long a case will take, new forms of billing are replacing straight hours. So-called "hybrid billing," in which a reduced hourly rate is combined with a contingency fee, is also on the rise, according to Jim Wicks, a partner at Unionsdale's Farrell Fritz.

Another addition: "Blended rates," in which a partner's time is billed at an associate's rate if they work together on



Ary Rosenbaum: Clients are willing to pay a premium for flat-fee billing.

a case, are also being employed by litigators.

"These ideas have been around for years to get away from hourly billing, but this time it has more traction because of the economy," said Allison Shields, chief executive of East Setauket's Legal Ease Consulting, a company

that works with law firms on management and business development.

Shields also noted that the Internet, especially sites such as LegalZoom, an online document preparation service, are driving attorneys to find innovative ways to bill.

"We're getting away from hourly billing because businesses are more results-oriented," Shields said. "They're looking at their budgets and thinking, 'We can't afford to get a bill bomb from our lawyer.'"

Florence Fass, senior partner at Garden City's Fass & Greenberg, said hourly billing is always a contentious issue between clients and lawyers, especially in matrimonial and family law.

"It's the source of most client complaints," said Fass, who has written extensively about billing. "The typical complaint will be that they went to court for three days and nothing happened. And it's typical that nothing does happen, but you have to be there."

Wicks said some litigators will use a "milestone system" to bill clients.

"For example, if I represent you for \$10,000 a month, you hold back one-third of that until a milestone is reached, such as the end of discovery or going to trial, when the \$3,000 is then released," Wicks said. "This motivates lawyers to get things done quickly and efficiently."

Straight hourly billing might one day be looked at as something hopelessly out-of-date. Shields pointed out that hourly billing only came into vogue in the late 1950s as a way to compare lawyers' work, figuring all lawyers have a 60-minute hour.

"But that's a fallacy since there's no way to compare if someone is spending too much time or not enough time," Shields said. "We got away from looking at what the results are of legal services and are just focused on hours."

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