

When It's Time To Fire Your 401(k)'s Financial Advisor

By Ary Rosenbaum, Esq.

In business, there are times when you have to say goodbye. It can be for a variety of reasons such as a business partner who no longer fits the needs of a company or finding someone else who can do a better job at a better price. When it comes to the financial advisor working on a retirement plan, there are certain instances where a plan sponsor would be wise to retire their retirement plan advisor because an advisor who no longer fits the needs of their plan increases their potential liability as a fiduciary. It's very tough to say goodbye, but it beats putting the plan and company at risk to continue that relationship.

The Financial Advisor Is Missing In Action

It is hard to believe that there are so many retirement plans without a financial advisor. I am still shocked to this day that my old law firm's \$25 million 401(k) plan didn't have a financial advisor until I told them it was necessary to minimize their liability. Just as bad as having no financial advisor is having one that is a "milk carton advisor." I call these types of financial advisors "milk carton advisors" because the plan sponsor has not seen them in such a long time that their face should be placed on a milk carton like a missing person. This may be as a result of the original advisor leaving the firm where the plan is "orphaned", meaning it has become a ward of the financial firm without another advisor being assigned to service it

or a financial advisor who finds that he or she is too busy to actually service clients. Regardless of the reason, the job of a retirement plan financial advisor is not some political no-show job. An advisor missing in action is a potential liability pitfall for plan sponsors as they need the financial advisor to assist in managing the fiduciary process.

of suitable investments, and if the plan is a participant-directed plan, education to plan participants. If the financial advisor is not assisting in the fiduciary process, they need to be replaced because they are not performing an integral part of their job. The fact is that plan sponsors aren't held liable for lawsuits from plan participants simply because they lost money in their retirement accounts. Plan sponsors are held liable because they breached their fiduciary duty in managing the fiduciary process. ERISA cares less about the rate of return and more about the entire fiduciary process. As a plan sponsor, you don't need to hire a financial advisor who is the second coming of Warren Buffett, but someone who understands the way retirement plan sponsors need to manage the fiduciary process. If the financial advisor is not assisting the plan sponsor with the fiduciary process, they increase the likelihood that the plan sponsor and trustees will be liable if they were ever sued by plan participants for losses in their retirement plan account.



The use of a financial advisor is to mitigate the risk of a plan sponsor, not increase it.

The Financial Advisor Is Not Managing The Fiduciary Process

The role of a financial advisor for a retirement plan is to assist the plan sponsor and trustees in managing the fiduciary process. The fiduciary process involves the development of an investment policy statement (IPS), the selection and monitoring

The Financial Advisor Has No Knowledge About Retirement Plans Or Is Not Supported By Those Who Do

A financial advisor who has no retirement plan background or surrounds themselves with professionals who do will be at a great

disadvantage with the changing times in the retirement plan industry. Thanks to many changes that have taken place including 401(k) fee disclosure, more and more financial advisors have developed more expertise or partnered themselves with those who have that expertise. I have found that retirement plan advisors with more retirement plan knowledge or supporting resources do a much better job for their clients than those who don't. For example, I know of a

financial advisor who was puzzled when I told him that mutual funds offered by insurance company 401(k) platforms were layered with wrap fees. For all these years, he thought his clients were paying no load on these funds and that the insurance company was charging almost nothing for administration. This type of financial advisor has certainly been putting his clients at risk and/or possibly paying more in administration fees than they should have. A financial advisor does not have to become an ERISA expert. If a broker or advisor wants to look at retirement plan smart, that broker or advisor needs to surround themselves with smart retirement plan people such as supporting TPAs and ERISA attorneys. Picking out a menu of funds and developing an investment policy statement are important roles of a retirement plan advisor, but a retirement plan advisor will need to have the background or those that support him or her to understand plan design, costs, and proper plan administration.

The Financial Advisor Puts Your Needs Second

When it comes to working with plan sponsors, a financial advisor should always put the needs of that client first. There are too many financial advisors out there that don't do that. They put their needs or the needs of some of their business friends first. Plan sponsors should consider replacing a financial advisor who is continuing to push their own branded investment products (if that advisor is a broker), instead of picking



out the performing investments. Plan sponsors should also consider replacing what I call the "wedded advisor." The wedded advisor is one that only wants to work with one specific platform or one specific third-party administration (TPA) or Fund Company. What may be good for the broker or financial advisor may not be good for the client. Working in the TPA world, I remember how advisors would come to us with all their plans, regardless of type or size. That's a mistake because in a TPA world like any business, they serve a specific segment of the market. A platform and TPA that works for a \$100,000 401(k) plan probably won't work well for a \$100 million plan

A Financial Advisor Is A Relative To One of The Owners of Participants

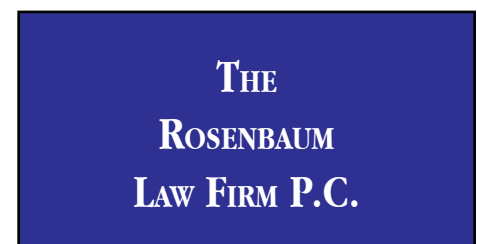
I have come across so many financial advisors who bemoan to me that they couldn't get a new retirement plan client because the current broker/advisor is someone's relative. Since when did running a 401(k) plan all of a sudden become someone's patronage mill for family members? Seriously, being a plan sponsor or a plan trustee is a tremendous responsibility and you must act in a prudent manner. Financial advisors must be screened carefully through a process involving the interview of other competing advisors. Simply handing the role of a financial advisor to someone who is related to one of the plan's decision makers or a participant may be a breach of the fiduciary's duty of prudence in selecting a plan advisor. It also doesn't pass the smell test and when there is smoke, the Depart-

ment of Labor and/or the Internal Revenue Service may think there is fire. Being a plan fiduciary bears a tremendous amount of responsibility. It requires the retention of responsible plan advisors, monitoring those advisors, monitoring plan fees, shopping the Plan to determine whether plan fees are reasonable, working on an investment policy statement, review of plan investments, and ensuring participant education. So why should a plan sponsor and/or plan

fiduciary hire a financial advisor because that person is someone's cousin? There are quite a few hundred thousand financial advisors not related to anyone who will work for the plan sponsor, so I would recommend hiring someone who is not related to anyone connected with the plan sponsor.

Say Goodbye when you have to

Breaking up is hard to do. However, breaking up with the retirement plan's financial advisor will help you better manage the fiduciary process and minimize fiduciary liability it's an easy choice to "retire" your retirement plan advisor.



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