

Questions and Answers from
Breaking up is Hard to Do: Terminating Your Relationship with a Client
Thurs, Apr 25, 2019

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1. What is the danger/liability if you move to another company and by coincidence a client you formerly work with fires your former employer and moves to the company you yourself moved to?

This depends to some extent on what you do for a living. If you are a lawyer, it's a big issue. If you are a TPA and you were never a fiduciary, then it likely means nothing. I would advise your new company about your history with the client – favorable or unfavorable – and move forward.

2. On getting paid, can a TPA hold up the Form 5500 if they are owed money?

Please refer to the slides to see the ethical codes to which you are subject. But, generally you do not have to release items for which you have not been paid. The tougher question is whether you need to release other parts of the file if there is a bill outstanding, which is up to the law of the state in which you are present (and in which your service contract is based).

3. Please clarify - if a client requests an amendment and does not sign the required documentation does the amendment take affect or is it voided due to lack of signature?

The plan document will outline what is needed for an amendment, and most documents require an action by the Board of Directors of the company. Most Board resolutions will act to adopt the amendment and then authorize someone – the president or other officer – to be the one to sign the amendment. Whether the amendment is truly effective is based on what the plan document and the organizational documents for the company say.

Having said all that, if you cannot produce signed documents of some sort, the IRS is generally not going to respect the adoption of the amendment, nor will the courts.

So, yes, a failure to adopt an amendment per the plan document (and per the organization's rules) means that the amendment has not taken effect.

4. Can a conflict of interest exist if the plan is moving to another provider for possibly not the best interest of the plan since fiduciaries are required to ensure that they select a service provider within certain criteria to show they have done their due diligence?

If you are a fiduciary and you know of a breach from another fiduciary, you MUST take remedial action, or you can be held responsible for the breach being ongoing. So, there is a "conflict of interest" if you know that the reason for the move to the other provider is a breach of fiduciary duty.

If, on the other hand, this is just a difference of opinion and the final word on a decision belongs to the main plan fiduciary – no fiduciary breach involved – there is no conflict of interest.

5. You stated that if the new tpa is going to do the 5500 form that's fine, but if not can we hold the 5500 if not paid for. I might have missed the answer.

See outline and #2 above.

6. How would you handle the request from a client to give the new TPA all information he requires when you have already provided this information; and the client is too lazy to hand over the information in his files?

What does your service agreement say about (a) your responsibility to provide stuff to your successor; and (b) what you charge for that? If you are going to charge for things on termination of your contract, it must be disclosed per the Labor Regs in relation to 408(b)(2).

7. We had an instance where a plan left worked directly with the Vendor on the transfer. We were not notified by the Vendor or plan sponsor. So nothing in writing was provided to us. What is the best way to handle?

Resign in writing with an effective date and advising when you will destroy files. Also, you may want to make sure that your service agreement clearly addresses what is needed to terminate your services.

8. Can you write into your contract that 'signing of your 5500 indicates you will pay for preparation of your 5500?

Yes. You could also say that provision of that year's data constitutes acceptance of that year's fee schedule and a commitment to pay you for your services.

9. What about terminating relationships with ghastly clients?

Have a termination provision in your service contract and invoke it. In writing. With an effective date.