THE ROSENBAUM LAW FIRM P.C.

ADVISORS ADVANTAGE
A Publication for Retirement Plan Professionals

A Plan Provider's Guide On How Not To Die (Sorry Lois).

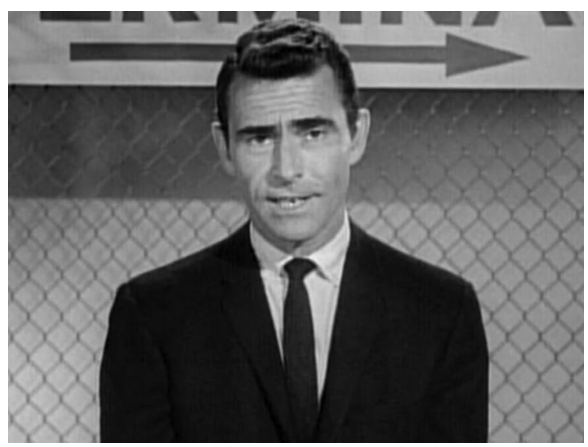
Get busy living or get busy dying.

I started my own practice about 9 years ago because I was involuntarily liberated from my position as an associate at a semi-prestigious Long Island law firm (sorry Lois). At the time, I predicted a very rough road for the firm because of some of the many questionable decisions and practices, especially by Lois, the managing attorney who mismanaged the firm. The firm is dying like I said it would, it's about a third smaller than when I left and it's a textbook case for retirement plan providers on how not to operate a business.

To read the article, please click here.

The theater of the absurd.

Like the Twilight Zone.



Chutzpah is nerve, shameless audacity. The best example of chutzpah is someone who kills their parents and asks the court for leniency because they're an orphan.

I've been in this business of ours for the past 20 plus years and I'm still shocked by some of the things that go on. The story I'm about to tell you is true and you'll think I made it up.

There is a 401(k) plan with an ERISA §3(38) Fiduciary and an ERISA §3(16) administrator. Eventually, the 3(16) administrator and the third party administrator are fired. In addition, the advisor on the plan leaves for another firm, so his new firm is the new §3(38), fiduciary. The advisor discovers (at least he claims) that his old firm, the old §3(38) fiduciary was paid 40 basis points per quarter instead of 40 basis points annually.

Instead of demanding that his old firm hand over the excess payments they received, he conspired with them to what I think was a hustle/shakedown of the ERISA §3(16) administrator. They demanded that the §3(16) administrator, pony up half of the excess payments of $13,500, which means that the old §3(38) fiduciary would still keep $13,500 of the excess. The §3(16) administrator wasn't born yesterday and suggested that the easiest solution was for the previous §3(38) fiduciary to hand over the entire excess payments because they were fiduciaries at the time and breached their duty by keeping a payments from the plan that they weren't entitled to, since it was quadruple what they contracted for and disclosed to the plan sponsor. The §3(16) administrator was flabbergasted by this hustle, especially when the third party administrator (TPA) had paid them an excess fee, which they turned over when the TPA discovered it. The other funny part is when the advisor said that the fiduciary liability policy for the old §3(38) fiduciary wouldn't cover the loss. Of course, they wouldn't since the previous §3(38) was holding on to the excess. It was rather suspicious that the advisor would cover for their previous employer, but the §3(16) administrator had a hunch that the advisor had made money from that excess payment.

A few months pass and the §3(16) administrator is contacted by the plan sponsor. The plan sponsor sends a letter, demanding the same hustle, suggesting that the previous §3(38) hands over half of the error and that the §3(16) administrator hands over half. The §3(16) administrator quickly replied that they wouldn't accept the proposal. The administrator pointed out that the previous §3(38) fiduciary breached their duty and committed a prohibited transaction by keeping a fee they weren't entitled to. The proposal proffered still meant that the previous §3(38) fiduciary would still pocket $13,500 they weren't entitled to. In addition, the current advisor was breaching his fiduciary duty by protecting his previous employer. The plan sponsor would also be breaching their fiduciary duty by allowing the previous §3(38) fiduciary keep a $13,500 payment that was in excess of the contracted amount and in excess of the fee disclosures, which would be a prohibited transaction. The §3(16) administrator demanded that the previous §3(38) fiduciary return the excess payment or the prohibited transaction would be reported to the Department of Labor.

The previous §3(38) fiduciary blinked and agreed to fork over the entire $27,000 payment. In addition, they tipped their hand and confirmed that the previous advisor would have to fork over payments he received for that excess payment.

The story is amazing because it is surprising that a registered advisory firm a registered advisor would think that it was OK to pocket a fee that was in excess of the contracted and disclosed amount. They took such a gamble to try to shake down the ERISA §3(16) administrator and convinced the plan sponsor to agree to a prohibited transaction. A fiduciary has a duty to do right by the plan instead of using plan assets for their own benefit. Like the Twilight Zone, the 401(k) business can be the theater of the absurd.

The 401(k) match-student loan program is becoming a big thing, at least marketing wise.

It's great marketing because student loans is a big thing.

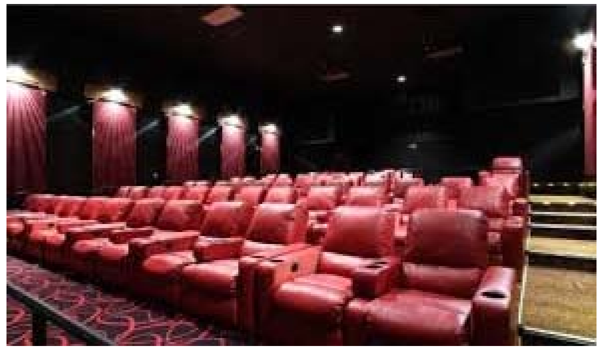
Ever since the Internal Revenue Service opined that one particular 401(k) plan could use matching contributions instead to help employees pay off your student loans. On paper, a great idea since I love options. As with any idea, everyone is trying to copy it.

Providers are now going to try to offer a student loan-match program and my only question is how popular will they actually be? Student loans are choking the finances of anyone who has to pay them off, especially those who just graduated I still have loans that my parents are paying and that was over 20 years since I graduated. In order for employees to get the match to pay off student loans in these programs, they're going to have to defer and if you have student loans to pay, deferring in a 401(k) plan might not be possible.

So these match student loan programs might be a great idea, there might not be enough of an audience that can afford to use them.

One way to treat clients right, make them comfortable.

Comfort is a big thing.



Going to the movies was never fun. The theaters were dirty and if you arrived late, then you'd end up in the front row plus the menu was limited to popcorn, candy, and hot dogs.

A funny thing happened: movie theaters realized that if they improved the overall experience, they can increase ticket sales even if they decide to pull out more seats to make way for reclining chairs. They also realized that if they add more items to their menu, they will sell more food.

Some location even added a bar. Ever since my local AMC theater was updated with recliner seats and reserved ticketing, I've yet to go back to the other theaters with the old style seats.

Improving the comfort level of theatergoers will increase the likelihood, that they will come back and buy more tickets. It's the same thing for your plan sponsor clients. Improving the experience where it's easier for them to work with you is going to help increase the experience and maintain the client. That experience improvement could be technology, it could be something as simple as offering help with completing the census file or adding a free plan review from a well known ERISA attorney (cough, cough). Whatever it is, realize that comfort and ease goes a long way to maintaining that client.

Don't let time take you out.

Time can be a bad thing.

Rocky Balboa explained to Adonis in the movie Creed, that he beat Apollo Creed for the heavyweight title because of time. Rocky said: "Time takes everybody out; time's undefeated." What does that mean? That means time will eventually take out anybody and anything. Sears was the nation's greatest and largest retailer, it was Amazon before Amazon. Yet time and complacency (as well as mismanagement) did Sears in and Sears saw the same thing happen to Montgomery Ward and apparently, didn't take any notes.

There were a whole bunch of plan providers that went out of business after the Tax Reform Act of 1986. There were plenty who left the business after fee disclosure regulations. Time gets the best of everyone, time eventually gets to everyone.

How can you prolong time not getting to you? Always be a couple of steps ahead, don't live in the past, and never be complacent.

Atlanta is this week, KC is soon.

Registration for Denver and Foxborough is also open.

That 401(k) Conference is the most fun 401(k) advisor out there with a price point that won't break your back.

$100 gets you 4 ho
urs of content to grow your advisory business, lunch, a stadiumtour and a meet and greet with a baseball legend.
These events are so fun, we have advisors from around the country to fly in. The cost and the experience can not be beat.

This week will be That 401(k) Conference in Atlanta on Friday, April 12, 2019. At this event at Sun Trust Bank, attendees get a free ticket to that Braves game vs. the Mets. To sign up for the event, please click here.

Next is That 401(k) Conference at Kaufmann Stadium in Kansass City on Friday, May 3, 2019 with a game outing the day before when the Royals take on the Tampa Bay Rays.

Information on sponsoring the Kansas City event can be found here. Sign up for the event here.

After that is That 401(k) Conference from Coors Field in Denver on Friday, June 14, 2019. There will be a game night outing that night against the Padres included.

Information on Denver sponsorship can be found here. To sign up for the event, please click here. Each attendee gets a Rockies game ticket for that night.

In September, we will be in Cleveland at Progressive Field on Friday, September 20th. Information on sponsorship can be found here.

In October, we will be having our first football themed That 401(k) Conference with an event at Gillette Stadium in Foxborough, MA, home of the Super Bowl Champion New England Patriots. Information on sponsorship can be found [here](#) . Tickets to the event can be purchased [here](#) .

To finish the year, we will be in Arlington Texas, home of the Dallas Cowboys. That event at AT&T Staidum will be on Friday, December 13th. Information on the event can be found [here](#).

For information on the events, as well as sponsorship opportunities, please email [me](#) .

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