

the dana report

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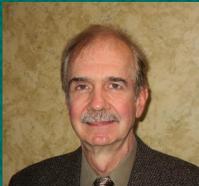
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ABOUT THE FIRMS



Dana Consulting Group, Ltd. and Jennings Law Firm, Ltd. were established to provide employers with a single source of comprehensive legal and consulting services relating to retirement plan and employee benefit matters.

If you know someone who would like to receive *the dana report*, click the link below.



8TH CIRCUIT RULES DIVORCE ASSETS NOT SHIELDED FROM BANKRUPTCY

Retirement plan assets are about as secure from creditor claims in bankruptcy as it gets, but a recent 8th Circuit Court of Appeals case has limited the protection (at least in the 8th Circuit). In the case, an individual received assets from his ex-wife's 401(k) account and rolled them into his personal IRA. He later filed for bankruptcy and the court ruled the account was subject to his creditors' claims. This ruling is similar to the outcome in an earlier case (Clark v Rameker) where the US Supreme Court held that assets held in an inherited IRA were not exempt from the IRA owner's creditor claims. The 8th Circuit Court case is Brian A. Lerbakken v. Sieloff and Associates.

Our Comment: This holding is limited to the 8th Circuit (which encompasses Arkansas, Iowa, Minnesota, Nebraska, and the two Dakotas). However, other circuits (like our 7th Circuit) look to other circuits for guidance when a similar case is before them. Financial advisors need to certainly take note of this case when planning for their clients who are becoming divorced. In the very least, a divorcing individual who is receiving retirement assets from an ex-spouse should NOT commingle the assets with any other retirement assets he/she has. The courts seem to be making a distinction between retirement assets that originated with the individual as opposed to those received either through inheritance or, in the present case, divorce.



401(K) RECORDKEEPERS LOOKING FOR NEW REVENUE

Recordkeepers of defined contribution plans, like 401(k) plans, are again seeking new revenue sources to offset the relentless fee compression that is squeezing their bottom line. Among the new revenue sources being looked at include proprietary funds, higher fees for existing services, sales incentives and pay-to-play arrangements. This is more than just trying to increase profitability. According to Philip Chao, CIO of Chao & Co, fee compression is killing the industry with many vendors fighting for survival. Examples are Empower, who administers appx \$570 billion in retirement plan assets and has a new product that requires mutual fund companies to pay for fund distribution. The dana report had an article earlier this year about a new fee imposed by Fidelity on any retirement plan assets invested in Vanguard Group funds. Some advisors expressed the view Fidelity's real motive with respect to the Vanguard fee is to drive money to its own

proprietary funds. Apparently 401(k) plans are moving away from proprietary funds. InvestmentNews, a publication tracking the retirement plan industry, particularly from the investment side, reports that several recordkeepers, such as Nationwide and Voya Financial, have begun offering incentive compensation to their advisors and sales people to get plan participants to move assets in their accounts to those fund company's proprietary funds.

Our Comment: It's easy to criticize these companies' efforts to make money but this is what you get when nobody wants to pay for anything. Retirement plans are complicated and expensive programs and plan sponsors need to recognize that nothing is for free.



401(K) VENDOR RATINGS

PlanSponsor magazine, a publication tracking the retirement plan industry from the investment side, released their annual survey rating companies servicing that service 401(k) plans. The payroll companies again have come in at the bottom of the service providers.

No payroll company rated in the top-10 in the following categories:

- Client service
- Fee structure
- Perceived value for fee paid

We invite our readers to an article on our website (www.danaconsulting.com) under the **Education Center** by Ari Rosenbaum who recommends never using your payroll company to manage your 401(k) plan. Ari is an attorney who specializes in legal matters relating to ERISA matters, particular retirement plan matters.

If you would like a copy of the PlanSponsor survey results, please give our office a call.



OLD MISTAKES OF OPEN MEPS

We write periodically about Multiple Employer Plans (MEPs) and how the US Govt wants to encourage small businesses to set up 401(k) plans and then hand over their plans to one of these MEPs. See, for example, our October newsletter for our most recent update. [Past issues of our newsletters can be accessed from our website under the **Education Center** tab.

We are reprinting on our website (www.danaconsulting.com), under the Education Center tab, an article by Ari Rosenbaum about his ongoing concerns with these MEPs. Mr. Rosenbaum is an attorney who specializes in advising clients on ERISA matters. He discussed the idea that MEPs are cheaper since lots of employers band together to achieve economies of

scale. He points out that a 2012 Labor Dept advisory opinion actually related to a MEP that charged extremely high fees. He also points out that if you don't know who is actually running the MEP, how do you know if MEP is being properly managed. Ari describes one MEP actually represented that fired the trustee for stealing plan assets. That trustee is apparently still in jail.



WEBSITE ADMINISTRATION FORMS UPDATE

On our website (www.danaconsulting.com) under the **Forms** tab are administrative forms we offer to our readers to expedite the administration of retirement plans they work with. We have updated the 401(k) contribution forms to reflect the 2019 dollar limits. We also invite our readers to download our popular worksheet summarizing the various dollar limits relating to retirement plans. The 2019 worksheet is under the **Education Center** tab.

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