Probate & Tax Section: Super Retirement Plans for Successful Attorneys

By **David J. Schiller, J.D.**

My friend, Alex, just turned 50. He's saved $20,000 to $60,000 each year in his 401-K and has built up around $800,000 for his retirement over the past twenty years of his practice. His lifestyle and ongoing financial needs dictate that he will require at least $15,000 per month throughout his retirement years to enjoy a non-extravagant lifestyle. Since he has contributed the maximum to Social Security over the years, he expects to receive about $4,000 per month, leaving a monthly shortfall of at least $11,000.

His financial advisor told him that he must save at least $3,000,000 to $4,000,000 to sustain his lifestyle. He was advised that he will outlive his assets unless he either dies early or saves more. Not surprisingly, the second plan seems more attractive. His goal is to use his relatively short 15 plus years of earnings in front of him to rapidly build wealth.

As a financially successful attorney, Alex earns $200,000 to $300,000 per year after expenses and believes he can now afford to put away between $100,000 and $225,000 for each of the coming years, but 401-K and profit-sharing plans do not allow such large contributions. The solution? A Cash Balance Plan.

What is a Cash Balance Plan? A Cash Balance Plan, which is a type of Defined Benefit Plan, will allow an attorney to contribute up to 100% of his net income each year into the plan. They work well for solo and small group law practices. Besides, who can't use a $100,000+ annual deduction? Who prefers to pay higher taxes each year? For this plan, it is best to make contributions when you are in a higher tax bracket during your working years and then withdraw funds throughout retirement when you will be in a lower tax bracket. The goal is to shelter income from taxes when it is earned and allow invested assets to compound over decades without taxes so that your wealth grows faster. You can then slowly start to take withdrawals at age 72 (unless needed sooner).

This age-based plan works well for middle-aged and older attorneys and the cost you pay for the staff is typically quite modest. Often 85% or more of the benefits are allotted for the attorneys. This type of plan can be used to supplement or act in lieu of a 401-K plan and allows you to best catch-up for lost time. Significant contributions allow you to put away enough to yield over $20,000 per month throughout retirement. However, don't forget the "cost" of future inflation. Ramen noodles are not part of any retirement planning.

The following numbers reflect the actual economics of a personal injury firm:

CENSUS	AGES	CASH BALANCE PLAN CONTRIBUTION
Attorney #1	62	$ 172,000
Attorney #2	48	Elected Zero
Staff #1	54	$ 2,029
Staff #2	48	$ 1,753
Staff #3	40	$ 1,369
Staff #4	27	$ 1,290
	TOTAL:	$ 176,441

Note the flexibility permitted by the Plan. One or more partners can be excluded if they cannot afford contributions and have current cash needs that will not allow them to contribute. They can later be included if their situation changes.

Additionally, a Cash Balance Plan is a wonderful retention strategy. Many attorneys are having difficulty attracting and retaining staff members. A retirement plan is expected by the staff and is offered by almost all larger firms and many smaller firms. Don't give people a reason to leave or not join your firm; the cost is small and the benefits are significant. Also, all retirement plan assets in a Cash Balance Plan are 100% protected from creditors. If you cannot pay a bank on a loan or a malpractice creditor with an excess verdict, they cannot take your retirement plan assets. OJ Simpson still enjoys his monthly NFL retirement plan checks, which cannot be grabbed by his creditors.

Is a Cash Balance Plan right for you and your firm? A Third Party Administrator will typically prepare a projection and the actuary does a design study to determine anticipated contributions if you decide to start a Cash Balance Plan. Typical fees are $4,000 per year to administer the Plan, including the annual tax return and actuarial certification. The Third Party Administrator makes sure that all non-discrimination laws are followed, as well as the Internal Revenue Code. A Cash Balance Plan is the largest legal tax deduction. To take advantage of tax-deferred compounding of assets, the best time to start a Plan is yesterday and the second-best time is today. ■