

**QDRO'S: WHAT YOU NEED BEFORE YOU DO THE ORDER**

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## **I. INTRODUCTION**

This paper is not intended to provide forms or a "how to" in actually drafting a QDRO. There are a number of excellent articles in the Marriage Dissolution and Advanced Family Law Seminar materials over the past several years to guide you. This paper is intended to highlight the basic information and understanding that every family law attorney needs in every divorce case that deals with a retirement, pension, 401k, or similar deferred compensation plan (which I shall refer to in this paper as a "Plan"). Whether you draft the actual QDRO yourself, or contract it out, the divorce lawyer must gather certain information early in the process or risk having major problems develop that can negatively affect your client and your malpractice premiums.

## **II. OBTAIN INFORMATION EARLY**

Most clients, whether they are the Plan participant or the alternate payee, will be able to tell you, when you are first hired for the divorce, whether or not a pension, retirement, 401k or similar plan exists. They may not know much about the Plan, but most are aware of its existence. Unless the parties have already agreed to not divide such plans, or each have plans that are similar in value, the attorney should, from the beginning of the case, gather basic information about the existence and nature of any deferred compensation plans.

Your client is going to ask, at some point, what he or she can expect to receive from the spouse's Plan upon divorce. In order to answer, you must be somewhat familiar with the Plan. Further, you can't proceed to mediate or negotiate a settlement without a basic understanding of the value, type and workings of the Plan. It is not that rare that a settlement is made involving a Plan, only to discover, after the case is finalized, that the division will not work as planned or can't be done at all. Judges will normally be relying on you for adequate information on the Plan at trial in order to make a fair and valid division. Making a error as to the division of a Plan, especially when it is a major asset of the community estate, can be devastating to your client and is preventable.

The various formal discovery methods that can be used to gather information are beyond the

scope of this paper, however the following informal methods can routinely be used.

### **A. Client Information**

When you initially review the assets of the estate and your client's expectations of its division, find out if a deferred compensation plan does or could exist. Always, always be cautious about the information you receive. Participants may not know much or may purposefully fail to mention one of the plans, while identifying others. Spouses may have little information, be unaware of recent, significant Plan changes, or not be aware of all the Plans the participant is in. Client information is only a start.

### **B. Plan Summaries and Booklets**

Almost all Plans will provide the participant with a summary of the Plan. A copy of the actual Plan document can be obtained, but it is too complicated and not really necessary. A Plan summary packet or booklet will usually identify all the Plans in which an employee may participate, the proper Plan names, Administrator name, phone and address, type of Plan and a simplified summary of the terms of the Plan. Most Plan summaries also contain a section on QDROs and Alternate Payees and may provide some important information on this aspect.

If you can't obtain a Plan summary from your client or the opposing party directly, contact the Plan or employer. Many will provide you or your client with a summary, although some will refuse without a signed release from the participant or a subpoena. The attitude and cooperative nature of the Plans vary widely. The Office of Personnel Management (OPM) supplies excellent booklets and sample language for the unique features of the federal Civil Service Retirement System, Federal Retirement System and Thrift Savings Plans, although they are not casual reading.

### **C. Direct Contact With Plan or Employer**

Whether or not you have a Plan summary, the next step is usually to phone the Plan Administrator or the Employer and ask some basic questions. Again, the Plan may or may not be cooperative, but it never hurts to ask. Generally, if you phrase your questions as

hypothetical, or only seek general Plan information, most will help you. Specific information about a particular participant will almost always require a signed release, but again, it never hurts to ask. Some Plans will not give you specific information on the account, such as a current balance or benefit, but may tell you whether or not the employee participates in certain Plans. This is helpful if you have reason to believe there are some unidentified Plans in the case.

If you prepare QDROs routinely, you will come across small Plans that have never had to deal with a QDRO, even though QDROs have existed for more than 16 years. Find out now, not after the divorce is concluded, since there can be a long learning period for the Plan, which can delay the approval of a QDRO.

The specific, basic information you need to obtain from the Plan or Employer is more fully discussed below. The point being made is that the attorney should contact the Plan early in the process, not a week after the prove-up or final trial.

### **III. WHY DO I NEED A QDRO?**

For simplicity, I will use the term "QDRO" in a generic sense, meaning any Order that divides a Plan benefit, whether a private ERISA-qualified plan, a federal plan, state plan, church plan or military plan. Technically, however, a QDRO is only applicable to private plans covered by ERISA. ERISA specifically exempts government (federal, state, local, and military) and church Plans from its provisions. Also, there can be private Plans that are not qualified and therefore not subject to ERISA. Watch out, since these Plans usually cannot be divided in any manner.

ERISA states that the benefits of a Plan cannot be assigned to anyone, except to a limited class of people by use of a Qualified Domestic Relations Order (QDRO). ERISA provides a few, simple requirements for a QDRO, and provides that it can be used in a divorce situation to give all or part of the Plan benefits to a spouse. Note that there are other uses (child support) and other people that can be awarded a portion (children). Unfortunately, the vast majority of Plans has greatly added to what is required in a QDRO, and have made the preparation of such orders inconsistent,

unnecessarily complicated and downright stupid. I have decided that a requirement for being an ERISA attorney is to routinely smoke crack. Add to that the fact that most Plan lawyers sport New Jersey or New York addresses and you know you're in for an interesting time! Men may be from Mars, and women from Venus, but most ERISA lawyers are from Uranus.

Although government and church Plans are exempt from ERISA, almost all have provisions or statutory language that accepts an order dividing the benefit. There are a few state and local defined contribution Plans, however, that cannot be divided. The QDRO preparer would normally not want to entitle a dividing order for a non-ERISA Plan as a "Qualified Domestic Relations Order". In fact, if you call an order dividing a federal Civil Service Retirement System benefit a Q.D.R.O., that alone will cause the order to be rejected. On the other hand, most Texas state Plans accept the use of the title "Qualified Domestic Relations Order".

One reason it is important to understand the basics of the Plan is because the QDRO can't change the Plan terms. You may not like the Plan options, but you can't change them to fit your client's needs.

### **IV. TYPES OF PLANS**

In order to properly advise your client, negotiate a settlement, try your case, or prepare a QDRO, the attorney must know the Plan type. Don't guess or assume, check it out! There are two Plan types: Defined Benefit Plans (DBP) and Defined Contribution Plans (DCP). Improper identification is the prime source of problems for attorneys and Courts.

#### **A. Defined Benefit Plan (DBP)**

##### 1. Definition

A defined benefit plan is one in which the benefit paid to the participant at retirement is a predetermined periodic payment, usually monthly. It is commonly referred to as a pension or annuity. The benefit paid is usually based upon a formula that considers the length of participation in the Plan, age of the participant and income at the time of retirement. A benefit statement is usually sent out by the Plan annually that provides the accrued monthly benefit as of normal retirement age. If benefits are taken prior to normal retirement age (early

retirement), the monthly benefit will usually be actuarially reduced. It is important to note that defined benefit Plans generally do not keep separate accounts for each participant, and most DBP's don't require the participant to contribute to the Plan. There are notable exceptions, though, which can lead to great confusion to the unsuspecting.

## 2. Examples

A defined benefit plan usually has the term "pension", "retirement" or "benefit" in its name, and will not generally have terms such as "savings", "stock", "investment", "thrift", "profit sharing" or "contribution". This is only a starting point, however, and a general rule. The following actual Plans are common examples of defined benefit plans:

- a. Civil Service Retirement System (CSRS)
- b. Federal Employers Retirement System (FERS)
- c. Teacher Retirement System of Texas
- d. American Airlines Pilot Retirement Benefit Plan
- e. Texas County and District Retirement System
- f. General Motors Hourly Rate Employees Pension Plan
- g. IBM Retirement Plan
- h. Lockheed Retirement Plan for Certain Hourly or Salaried Employees
- i. SABRE Group Retirement Plan
- j. All military retirement, whether active or reserves.

## 3. No Lump sum or Cash-outs

The vast majority of defined benefit plans require the alternate payee/spouse to wait until the participant is eligible to retire before payment of the awarded benefit can begin. Further, DBP's rarely allow the alternate payee/spouse to cash-out of a plan in a lump sum. A few plans will allow lump sum if the present value of the benefit awarded is small (less than \$2500). Read the Plan summary or contact the Plan to see if immediate payment or lump sums are allowed, but until you find out different, assume they are not. It is important that the alternate payee/spouse client understand he/she will not be getting any money until early

retirement age, and then it will be monthly payments, not a lump sum.

## 4. Amount of Award

A QDRO requires a clear statement of what is awarded to the alternate payee/spouse. It is usually a percentage of the accrued benefit as of the date of divorce (the *Berry* formula), but the award can also be a specific dollar amount out of each monthly benefit payment, or some other agreed formula.

## 5. Benefit Payment Type

Most DBP's allow an alternate payee/spouse to choose the benefit type, or manner in which it is paid, when the benefits begin. Some Plans require that such election be made in the QDRO. Generally, the alternate payee/spouse can choose to receive his/her share of the monthly benefits a) for the participant's lifetime, b) for the alternate payee's lifetime or c) for a term certain, such as 120 monthly payments, regardless of anyone's death. The election made can change the amount of the benefit received, so let the client make the choice after consulting with a financial planner or tax advisor. Not all Plans have all these options, some have additional options, and most allow no option at all if the participant has already retired when the QDRO is submitted. This is a very complicated area and varies greatly from Plan to Plan.

## 6. Warning - Defined Benefit Plans That Look Like Defined Contribution Plans

One of the most common traps for lawyers and Judges is the handful of defined benefit plans that, upon casual inspection, look to be defined contribution plans. As further explained below, a defined contribution plan maintains an actual account in the participant's name with actual dollars in the account, such as a 401k. Almost all of the government plans and a few private ERISA plans maintain accounts or an accounting of the amount of contributions to the Plan made by the participant. Remember that most defined benefit plans are funded entirely by the employer and do not accept contributions from employees. However, the following Plans are examples that do require or accept employee contributions and send out annual statements reflecting the amount of these contributions:

- a. Teacher Retirement System of Texas
- b. Civil Service Retirement System
- c. Federal Employees Retirement System
- d. Texas County and District Retirement System
- e. American Airlines, Inc. Pilot Retirement Benefit Program

The danger is two-fold. First, taking the Teacher Retirement System as an example (see Appendix A for an example of its Statement of Account), if the attorney or Judge casually reviews the annual Statement of Account, an assumption could be made that this is a defined contribution plan with a specific dollar amount in the account, and that the dollar amount is the actual value of the plan. Wrong! This is a defined benefit plan because the benefits upon retirement would be paid monthly according to a formula (2% times years of creditable service times average of best 3 years of annual salary). Although a Participant could choose a lumpsum cash-out of his/her contributions upon termination in lieu of monthly payments, one would be foolish to do so unless the amounts were small. If the attorney values the Plan using the amount of the contribution account, the value is going to be low.

Second, if one assumes this is a defined contribution account with the amount of contributions as the value, one could also assume that the portion awarded to alternate payee/spouse could be a dollar amount that can be cashed-out. Wrong again! If the balance in the contribution account is \$9,000, and you award the alternate payee/spouse \$4,500, there is no way to prepare a QDRO to accomplish that, unless the participant chooses a lump sum upon termination or retirement, which he is not obliged to do. The client is expecting \$4,500 cash when the divorce is done. That's not going to happen. There will be no receipt of money until retirement, and then there will be no lump sum unless participant chooses it, which is unlikely. Alternate payee/spouse can only receive a portion of each monthly annuity payment, and the above award gives no clue as to how that is to be done. This example is not just a hypothetical, it actually happened and the Judge and lawyers had to scramble to fix it once I gave them the bad news.

## **B. Defined Contribution Plan (DCP)**

### **1. Definition**

A defined contribution plan is one in which contributions are made directly from an employee's paycheck to an individual account maintained by the Plan for that employee. The amount of the contribution can vary, and sometimes the employer will also contribute. All money in the account is invested in some manner and earns interest or fluctuates according to the investment. Such an account can actually lose value over time, if it is directly tied to investments that lose money. The funds from a defined contribution plan account can usually only be withdrawn upon termination of employment (with a penalty and tax), attainment of at least age 59 1/2 or a hardship as defined by the Plan. When withdrawn, the funds can usually be taken in a lump sum, rolled into another qualifying account such as an I.R.A., or used to purchase an annuity that would make monthly payment like a defined benefit plan would do. Many defined contribution plans allow the participant to borrow against the balance, at a very favorable interest rate. Although defined contribution plans are not as complex as defined benefit plans, there are still major variations between plans, so unverified assumptions can still get one into trouble.

### **2. Examples**

A defined contribution plan usually has the term "401k", "savings", "investment", "stock", "thrift", "profit sharing", "contribution", "bonus", "money purchase" or "stock option" in its name. This is only a starting point, and the attorney should check the Plan summary or contact the Plan Administrator if there is a question as to the Plan type. The following actual Plans are common examples of defined contribution plans:

- a. Thrift Savings Plan
- b. American Airlines Super Saver
- c. Burlington Northern Sante Fee 401k Retirement Savings Plan
- d. Lockheed Hourly Employees Investment Plan Plus
- e. General Motors Savings Plan
- f. Coca-Cola Matched Employee Savings and Investment Plan
- g. IBM Tax Deferred Savings Plan (DSP)

### 3. Lump sum or Cash-out

Most defined contribution plans will allow an alternate payee/spouse to receive a lump-sum distribution upon divorce, once the QDRO is approved. A few will not, so always check with the Plan. A distribution that is a divorce property division no longer incurs a penalty for withdrawal prior to age 59 1/2, however federal income taxes will have to be paid unless the funds remain in the Plan or are "rolled over" to another qualifying 401k or I.R.A. account belonging to the alternate payee/spouse. Some Plans will allow an alternate payee/spouse to set up his or her own separate account and keep the money there, but most won't. A few require the alternate payee/spouse remain in the Plan until age 59 1/2, and won't allow early withdrawal or "roll over" to another account. Check on it.

### 4. Amount of Award

As with a defined benefit plan, a QDRO for a defined contribution plan must clearly state what is awarded to the alternate payee/spouse. This can be a percentage of the account balance as of a certain date, or a specific dollar amount as of a certain date. Sounds simple enough, but some Plan Administrators must have failed math in grade school, since they claim to be incapable of simple calculations on occasion. It is not uncommon for a participant to have had a certain amount in a 401k account upon marriage, and the Decree states that the alternate payee/spouse is awarded 50% of the value of the Plan that was contributed during the marriage. Most Plans can make the calculations, if you provide the relevant dates. Some Plans will require that you state in the QDRO the dollar amount that was in the account upon marriage. The math-challenged Plans claim they cannot mix and match dollars and percentages. In other words, if the parties agree that wife gets 50% of the balance of the account in excess of the first \$5,000, I have had Plans state that the formula is not clear and they can't calculate it. I've even provided a simple algebraic formula for their use, without success. They can figure out the balance as of a certain date, but they can't subtract \$5,000 before dividing by 2! Find out early if your Plan is math-challenged or your agreed division may be difficult to effectuate. Also, does the Plan require the date of division

be the end of a month or end of a quarter? Many do, and most require the special date be in the QDRO. Settle that issue prior while negotiating a settlement, not during a Motion for Judgment.

### 5. Increases or Decreases

Almost all Plans allow the QDRO to specify whether or not the awarded amount will include earnings (increases or decreases) from the date of the award to the date of distribution. A few don't allow an option, but that is rare. The attorney should be mindful of the effect of allowing the awarded amount to fluctuate in value with the Plan's investments. In an "up" era, the alternate payee would want to benefit from the value of his or her portion increasing with the other Participant's accounts. In a "down" era, however, it is possible that the alternate payee/spouse be awarded \$20,000 at divorce, and is expecting \$20,000, only to discover that a down-turn in the stock market has shrunk the \$20,000 to \$16,000 by the time the distribution is actually received 4 months after the divorce is concluded. From the other side, the participant may be unhappy to learn that the "ex" gets \$20,000 four months after the divorce when the total account balance has fallen from \$40,000 to \$32,000, and the participant is left with \$12,000 instead of the anticipated \$20,000. If you don't include increases or decreases, that will be the result. Remember to negotiate whether or not to include earnings or losses or to have the Judge rule on it at trial.

### 6. Beneficiaries

In the event the alternate payee/spouse dies before receiving the distribution, the vast majority of Plans allows the alternate payee/spouse to designate the name of a beneficiary who would receive the money. Some plans want the designation in the QDRO. Some plans don't allow the money to be left to the "Estate" of the alternate payee. And some Plans don't allow any beneficiaries, requiring the award to revert to the Participant in the event of death. Find out before negotiating. Although it is rare that an alternate payee/spouse will die in that relatively small window of time, I have seen it occur.

### 7. Loans

The existence of a loan against a 401k or other defined contribution account is important to know, especially if the Plan does not allow loans over 50% of the account value or you anticipate awarding more than 50% to the alternate payee/spouse. The QDRO can't require the Plan to pay out more money than is available. If the existing loan is large enough so that the remaining balance is less than the amount awarded, the Plan doesn't have to honor the QDRO. Also, in negotiating or trying your case, the Decree should say whether the division is "before" or "after" reduction for the loan amount, to avoid unpleasant surprises.

## **V. INFORMATION REQUIRED EVEN IF YOU CONTRACT OUT THE QDRO**

Whether you prepare your own QDROs or contract them out, as indicated above there is a significant amount of basic information that you must know in order to advise you client, negotiate a settlement or prepare for trial. A significant amount of my practice involves preparing QDROs for other attorneys, and I continue to be amazed at the totally insufficient information I receive from attorneys. I use a standard information sheet that I ask be completed and returned to me with certain documents. Too many times, the attorney doesn't know the basics, has delegated the task to a legal assistant who has no clue, or even sent the form to the client to complete, even though the client is usually the worst source of accurate information. I have actually received info. sheets that describe the Plan as "401k" without even giving me the name of the employer and the Decree is no better.

There are excellent checklists available in recent Advanced Family Law Seminar materials (*Retirement Plans: What to Do When No QDRO is Honored*, Advanced Family Law Seminar 2000, Chapter 65), or you can develop your own. The following is a brief list of the bare essentials you will need to know, if you are to divide a Plan:

- a. Exact Name of Plan
- b. Name, address & phone of Plan Administrator
- c. Type of Plan (defined benefit or defined contribution)
- d. Is the Plan subject to ERISA (private sponsor and qualified)

e. Is the participant retired or otherwise receiving benefits

f. If not subject to ERISA, will the Plan honor a QDRO or other dividing order.

g. Are you sure you know about all the Plans in which the employee participates

h. Does the Plan review proposed QDROs for pre-approval

i. Does the Plan provide forms or samples (even if you don't prepare QDRO, a form can alert you to unique problems or plan features)

j. If a military order, the exact dates of service, pay grade at time of divorce, and statement of points earned, if in the reserves

k. If CSRS or FERS, the exact dates of participation and pay grade at time of divorce

l. The participant's and alternate payee's current address, social security number and date of birth.

m. Whether the Plan requires a special valuation or division date, such as the end of a month or end of a quarter.

## **VI. WHAT EVERY DECREE SHOULD INCLUDE**

The Decree is the actual document that awards property. The QDRO only effectuates what the Decree says. The two must be consistent. Very few Decrees I review have enough detail for me to prepare a QDRO without asking questions or making choices that should have been resolved prior to the divorce. The Decree should not have all the technical language of a QDRO, but to simply award the wife 50% of all husband's retirement benefits doesn't get the job done. Strategically, if the opposing counsel or party doesn't really understand the Plan or QDROs, it is very possible to be purposefully vague in the Decree and then 'slash and burn' in the drafting of the QDRO. What they don't know won't hurt them, but the ethics of that approach don't sit well with me, and may not with the local grievance committee.

Every Decree that divides a Plan should include the following:

### **A. All Plan Types**

1) The exact Plan name or names. Although there are circumstances when an



additional general provision would be appropriate if a question arises as to unknown plans.

2) A clear, concise division of the benefit, whether by percentage or dollar amount.

3) The Date on which division occurs, such as date of divorce or other specific date. You may be required by the Plan to use the end of a month or end of a quarter date.

4) If a CSRS or FERS Plan, whether the division is for the "gross", "net" or "self-only" benefit and the extent, if any of a surviving spouse benefit. Most non-ERISA, government plans have unique terms or language that should be included in the Decree.

5) If a military plan, does the division include cost of living increases (COLA) and Survivor Benefit Plan (SBP).

#### **B. Include for Defined Benefit Plans**

1) If Plan allows lump-sum distribution (rare), state that as the option chosen.

2) Whether alternate payee is a "surviving spouse" and entitled to any pre-retirement or post-retirement death benefit, and the extent of the benefit.

#### **C. Include for Defined Contribution Plans**

1) Does the award include earnings or losses from date of division to date of distribution.

2) What happens if alternate payee/spouse dies before distribution, and if a beneficiary can be named, who is it.

3) If the Plan allows a lump sum cash-out (most do), state whether or not the alternate payee/spouse is cashing out, rolling over or leaving in the Plan (if allowed).

4) Is the award before or after reduction of the account balance for any outstanding loans.

### **VII. REAL-WORLD EXAMPLES OF WHAT CAN GO WRONG**

Without adequate and accurate information on a specific Plan, bad things can happen. Whenever one deals with a very technical and complex area such as QDROs, mistakes will occur, however the practitioner should strive to avoid the easy mistakes. The following is a summary of problems I have personally observed that could have been avoided with a little effort.

a) The Plan was a **defined benefit plan**, but the Decree awarded the alternate payee/spouse a large lump sum, which was not allowed. When no agreement could be reached on how to resolve the issue, it went back to Court. Since the division was agreed, and the Court had lost its plenary power to modify, the Judge felt that substantial changes were not allowed. The Court made the award into a money judgment, which the alternate payee will never collect. (Except maybe from her lawyer)

b) The Decree awarded the alternate payee/spouse a large sum from the **401k**, but did not designate her a "surviving spouse" or say what would occur if she died prior to receiving the money. She was killed in an accident two months after the divorce. The Plan ruled that her award reverted to the participant, instead of going to her beneficiaries, since none were designated and the Decree was silent.

c) The participant retired early, accepting a one-time supplemental package that encouraged early retirement. The supplemental plan was separate from the regular retirement plan, and the Decree only named the regular plan, but also had a general provision awarding the participant any other retirement benefits. Alternate Payee was not allowed to share in the substantial lump sum supplemental benefit.

d) The alternate payee fought for, and got, the Survivor Benefit Plan on a military retirement, but the cost came out of her share. However, after years of making payments for that benefit, she remarried before age 55, and found out federal law denied her the benefit when her ex-husband died.

e) The Defined Contribution Plan required that the date of division be the end of a calendar year. The Decree was silent on the division date. Further, the Plan was unable (or unwilling) to provide values on any date but the end of the year. The parties could not agree on an estimate for the balance as of the date of divorce, so it went back to Court. The Judge ruled that it would be valued as of the valuation date immediately before the divorce, which was 7 months. Since it was a bull market, the alternate payee/spouse lost thousands of dollars because of the early valuation.

f) After a nasty trial, the Court awarded the wife 50% of husband's military retirement. They had been married 12 years, but because of

a break in his service, he had only served 9 year and 7 months during the marriage. There were other decent-sized assets available, but not utilized, for an unequal division, since the Court anticipated that the military would make direct payments to the wife and she really needed the steady income after the divorce. Months after the divorce, the wife's attorney received notice that the military could not make direct payment because the husband had not served a full 10 years during the marriage. Husband refused to pay her share and by the time it got back to Court, wife had lost her house and good credit. Had the Court or attorneys realized the problem, the Court could have given the wife some other asset that could have produced income.

g) Decree awarded wife a large lump sum from husband's 401k. The entire division was negotiated under the assumption wife would receive the money within a few months of the divorce, pay her taxes, and use it to by a house. She could not afford rent or mortgage payments, and the award would just pay for a small house for her. Three months after the divorce, the Plan notified her that its provisions did not allow for immediate distribution and she would have to wait until she reached age 59 1/2.

h) Wife was awarded 60% of husband's substantial stock option plan, and the option was vested. However, months after the divorce, the employer notified her attorney that the stock plan was non-qualifying and not subject to ERISA. Therefore, the Plan would not honor a QDRO or any division order. Although husband was eventually ordered to exercise the option, sell the stock and turn over wife's share of the proceeds, the value of the stock dropped in the interim and wife lost tens of thousands of dollars.

i) Decree wrongly identifies the Plan name and Plan type, and awards wife 50%. Husband actually participates in a defined contribution 401k, not a defined benefit plan, even though the name of the plan included the word "pension". The Plan notified the alternate payee/spouse that the QDRO was for a plan that doesn't exist or is improperly named. The Plan was not very cooperative and provided no addition information. During the confusion, husband terminates employment and withdraws 100% of his 401k, which he can do without spousal consent. He disappears. Although wife

may have a cause of action against the Plan, it's a long shot and costly.

## VIII. CONCLUSION

There is no legitimate reason that QDROs should be so complex. It is possible to provide for the anti-alienation of a benefit to protect participants and still easily divide the benefit between spouses. ERISA needs to be amended to address the anal nature of the people who administer the Plans, and the lawyers that interpret these statutes. These difficulties are not inherent in the process, but created by a lack of common sense, and love for form over substance. However, until Congress addresses this problem, divorce lawyers must be cautious. QDROs are regarded by many divorce lawyers as an after-thought to the divorce process, when in reality they can be more complicated and time consuming than the entire divorce process. Until changes in the law are made, charge accordingly, do your homework, and make certain the QDRO gets prepared and accepted by the Plan.