

Include in Your “Dear Clients” Letter

In handling your case, we have told you that you need to have an expert attorney draft a pension dividing order to appropriately separate property and community property interests in pension plans involved in your divorce proceeding. A short-hand term for such an order is a “QDRO” from the term applicable to private pension plans. Derived from the term Qualified Domestic Relations Order the term “QDRO” is loosely used for all pension assignment orders, including those for governmental pension plans. At this time, you do not have or do not wish to expend the funds to have a proper QDRO drafted before the Judgment terminating your marital status is effective. Therefore, we are placing a temporary protective order in your Judgment which should, as soon as you can arrange it, be replaced by a permanent and detailed order.

We intend to send the named pension plan(s) a copy of this Judgment with a request that they agree to abide by the provisions regarding the pension plan. We fully expect that the pension plan administrator(s) will respond with a rejection letter. However, we are hopeful that the Judgment will secure the benefits from being paid out until the parties are given an opportunity to complete a permanent Order, such as a QDRO, that is acceptable to and/or enforceable against the plan(s)

The QDRO language included in the judgment is intended to protect against most problems, but is no substitute for a carefully crafted QDRO or other domestic relations order which will provide the best protection for the community and the separate property interests of both parties. Please, therefore, do not delay in getting your QDROs done.

Getting the QDRO done long before retirement under the pension plan will insure the orderly division of the benefits without delay when retirement occurs. Getting the QDRO done before either you or your former spouse should die will save expensive proceedings to seek posthumous QDROs involving heirs and beneficiaries.

Suggested Language to Include in Transmittal to Opposing Counsel

Because neither party is able to or wishes to complete the QDRO in this case we have included an attachment to the judgment under which utilizes the official language of Family Code § 2337 which was 2337. That language is discussed in pages 6-10 of the article contained in Issue 1, 2008, *Family Law News*, a copy of which is attached for your convenience. Hopefully, a formal attachment form will soon be adopted by the Judicial Council. [Article is available to Family Law Section members at California State Bar web site.]

What to Do When Client Wants Divorce But Can't or Won't Authorize QDRO

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Language to Include in the Judgment (As Attachment or Integrated in Text):

Each party (IMPORTANT: INSERT PARTY NAMES AND ADDRESSES HERE OR SOMEWHERE IN THE JUDGMENT) is provisionally awarded without prejudice and subject to adjustment by subsequent domestic relations order, a separate interest equal to one-half of all benefits accrued or to be accrued under the _____ Plan[[IT IS VITAL TO NAME EACH PLAN CORRECTLY AND INDIVIDUALLY]] (hereinafter “Plan(s)”) as a result of employment of the other party during the marriage/domestic partnership and prior to the date of separation.

In addition, pending further notice, the Plan(s) shall, as allowed by law as allowed by the terms of the plan, continue to treat the parties as married/domestic partners for purposes of survivor rights/benefits available under the Plan(s) to the extent necessary to provide for payment of an amount equal to that separate interest or for all of such survivor benefit if at the time of the death of the participant, there is no other eligible recipient of such survivor benefit.

Additional Clause to Include in Judgment as Authorized by FC §1100(e)

Until further order of the court, [employee spouse] shall immediately copy and provide to [nonemployee spouse] by first class mail, each statement or item of correspondence or other document that s/he receives from or regarding the Plan(s). In addition [employee spouse] does, by his/her signature on this document, provide authorization to the Plan(s) to provide [nonemployee spouse], upon request to the Plan(s), with all information regarding [employee spouse’s] Plan benefits to which [employee spouse] would be entitled.

TRANSMITTAL TO THE PLAN

DON’T FORGET TO PROVIDE CERTIFIED COPY OF THE JUDGMENT TO THE PLAN and request an acknowledgment of the pension provisions.

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