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HOW SOON SHOULD A QDRO BE OBTAINED?

The following is provided courtesy of Contributing Editor Garrick G. Zielinski, CFP, and CDFA. Mr. Zielinski is President of Divorce Financial Solutions, LLC specializing in retirement plan valuations, QDRO's and divorce financial counseling. You can reach Mr. Zielinski at 414-294-4755 or e-mail him at Garrick@DivFinSolutions.com

The terms and conditions of the plan, analysis and assumptions should be understood before the negotiations begin.

Many attorneys are surprised to learn that there is no statutory time limit that requires the preparation of a QDRO. It is of course, in the best interest of an alternate payee that a QDRO be obtained as soon as possible. On the other hand, it is in the best interest of the participant to delay as long as possible to have a QDRO prepared. I've run into situations where 10-15 years have past and the participant is prepared to retire or just retired and the QDRO has been satisfied.

Many attorneys are also surprised to learn that Plan Administrators are not subject to statutory requires on how long they may take to review a QDRO. In fact, many attorneys erroneously believe that the "18 month rule" applies here. It does not. ERISA clearly states that the QDRO must be processed "in a reasonable amount of time." The 18-month rule pertains to the time an account will *remain segregated and/or frozen* while the determination of the QDRO is pending.

Practice Pointer: To protect an alternate payee, counsel should immediately contact the Plan Administrator in writing and formally put the Plan on notice of his or her client's potential claim to the participant's retirement benefits. Many attorneys do not undertake this task and should become a routine part of your family law practice. This tactic may prevent your client's rights from being lost or diminished in a variety of forms.

My experience has been that it is common to wait a considerable amount of time after a divorce before a QDRO is prepared. Such a delay is risky for an alternate payee, potentially litigious for the attorney and may in fact benefit the participant. My advice is to get going on the proposed draft as soon as possible and have the final draft ready for the final hearing. In that manner, the court will sign the draft on the date of divorce and the QDRO can be facilitated with the Plan quickly.

There are numerous circumstances under which an alternate payee's ability to receive a benefit under a former spouses retirement plan may be in jeopardy. They include death of the participant and/or alternate payee, disability of the participant, loans, in-service withdrawals, large fluctuations in account balances, and termination of employment and subsequent distribution of the benefits. Survivor issues are particularly troublesome in regard to government benefits and the above-mentioned events.

Practice Pointer: To reduce any potential professional liability as well as Plan interference, it would be a good idea for the attorney to exercise diligence in the review and preparation of a DRO. I would suggest that you retain a paper trail complete with documents stamped on the date of receipt and retain a copy of post office stamped envelopes as well. Lastly, it would be a good idea to keep the parties apprised of the status of the review process as well as the final draft procedures.