

STATE BAR ASSOCIATION FAMILY LAW CHAIRS ASSESS THE USE AND USEFULNESS OF QUALIFIED DOMESTIC RELATIONS ORDERS (QDROS)

Executive Summary

The status of Qualified Domestic Relations Orders (QDROs) – their efficacy as a tool in safeguarding a women’s right to part of her husband’s pension -- sits squarely in the middle of the retirement security issues that affect women as they age. Given (1) the increased numbers of women divorcing later in life, (2) the increased likelihood that a pension will be part of the marital assets, and (3) the potential for an increase in the numbers of older divorced women in poverty, an examination of the status of QDROs has important implications for policymakers wrestling with public and private reforms to improve the financial security of aging women.

The QDRO can serve as a retirement security “safeguard” for women. QDROs apply only to private pension plans qualified under the Employee Retirement Income Security Act (ERISA). Other pensions can be divided by similar court orders. They allow retirement benefit distributions to be made to individuals who are not plan participants (alternate payees). Distributions may be made to fulfill family obligations or marital property settlements. A QDRO is a domestic relations order (DRO), which is a judgment, decree or order under a state domestic relations law that relates to the provisions for a spouse, former spouse, or a dependent of child support, alimony payments, and marital property rights.

Unfortunately, the development and implementation of a QDRO is a complicated and costly process involving several players with, often, conflicting interests. It is essential to have legal representation that is competent to shepherd, in as timely a manner as possible, the process of identifying, fairly valuing, and dividing a spouse’s pension. The decisions women make at the time of a divorce will have long lasting consequences on their financial future and the future of their family.

The National Center on Women and Aging (NCWA) and the Women’s Institute for a Secure Retirement (WISER) as part of their efforts to examine issues related to aging women’s economic security conducted a study on the experience and opinions of Family Law practitioners, the lawyers thought to be the most familiar with and competent to address the division of private pension benefits in divorce. Chairpersons of the family law divisions of each state bar association were surveyed to gain more insight on a number of questions including:

- How informed are Family Law practitioners about QDROs?
- What are the problems faced by Family Law practitioners?
- What is their perspective on the other players involved in the implementation of QDROs?
- Do women get the kind of advice and education they need from their attorneys to help plan their financial future after divorce?

Key Findings

Responses were received from 36 states as well as from the District of Columbia.

- ✓ **The primary difficulty faced by attorneys when dividing pensions is obtaining acceptance of the QDRO by the Plan Administrator.**
- ✓ **Attorneys and their clients fail to accurately assess (1) the challenges to economic security faced by women as they age; and (2) how the risk of economic insecurity is exacerbated by divorce.**
- ✓ **More than a quarter (27%) of the responding states do not require financial disclosure of retirement plans/pensions.**
- ✓ **Attorneys and judges involved in the divorce may be lacking in the specific knowledge required to properly draft, review and approve, and implement QDROs.**
- ✓ **There is a lack of equity, fairness and simplification of QDROs and in the valuation and division of pension benefits. Respondents provided their opinions regarding the need for changes in court procedures, and state and federal law.**

These findings along with comments from respondents, reviewers and a review of the literature suggest five key areas for reform:

1. Education counts for a lot. Decisions made during an acrimonious divorce will affect the rest of the non-employee's life. Although, it is not possible to mandate that a pension participant and the spouse become educated on the rules and regulations that govern the plan(s) they are enrolled in, it is possible to legislate that education be offered. Employers currently carry most of the burden for education and this burden needs to be spread to others. Education can be offered through State or Federal Government agencies, employers, or advocacy groups. Certainly, continuation of successful consumer advocacy programs such as the Pension Rights Project, funded by the U.S. Administration on Aging is important. *Better and more frequent education of all players – clients, attorneys, plan administrators, and judges -- involved in drafting, approving and executing a QDRO is of paramount importance.*

2. Financial disclosure of assets, including all types of retirement vehicles, should be mandated in all states.

3. Spousal protection must be ensured by providing clear language on how to address and fairly distribute/divide pensions/retirement plans. The Department of Labor should specifically include early retirement subsidy language and recalculation language to protect the spouse's share of early retirement incentives.¹

4. Improve access to pension plans and QDRO requirements from Plan Administrators. Better publicize to attorneys the Department of Labor's (DOL) role in obtaining information from Plan Administrators (e.g. the new rule that requires that the Plan must provide documents within 30 days of DOL's request or pay a penalty). The threat of involvement by DOL may be enough for Plan Administrators to provide the required documents.

5. Reduce costs associated with QDROs. Though not a specific question on the survey, the costs associated with QDROs were mentioned by several respondents. It is well known that it costs money to get money in the process of division of pensions in divorce. Many women are not in a financial position to afford legal representation for divorce let alone incur legal expense for a QDRO (if they know their spouse has a defined benefit and/or defined contribution pension). Specific questions/recommendations must be elicited to address this most basic issue of expense.

¹ Gary A. Shulman and David I. Kelley, "Early Retirement Subsidies and Their Impact on the QDRP Process"; *American Journal of Family Law*, v. 13/2, p. 73-77, 1999.

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