



ADDRESSING A CHANGING ECONOMY: QDRO PREPARATION: WHAT IS YOUR ETHICAL RESPONSIBILITY?

Introduction:

As the economic world changes around us, it is hard to ignore that there will be an ultimate effect on how the legal community must address retirement benefit issues. At LawData, we feel that it is time to begin to focus on the areas of divorce settlement that are vulnerable to liability due to the foreseeable (and unforeseen) changes ahead.

We are initiating a series of newsletters, each addressing a specific issue that has recently arisen in the course of our business.

Our fourth newsletter in this series will address the ethical responsibility of legal counsel where a divorcing couple must face pension distribution directly from the pension plan.

Introductory Special!

Free Pension Appraisal

If you are an attorney who has never used our services, then let us prepare a free pension appraisal (a \$200.00 value) so that we can demonstrate to you the outstanding support and expertise we provide to every one of our attorney/clients. We make this offer knowing that once you try us you will become a regular client.

Please use our standard submission form and note that you are a first time attorney client.

Visit www.lawdatainc.com to download form.

Let's talk about ethics.

Recently, we encountered a case where the attorney representing the wife was party to an agreement that stated, "The wife's attorney will be responsible for the preparation of a QDRO...". This same attorney, two years later, stated, "I have made it clear to her [wife] that I take no responsibility for QDRO preparation."

As you may have guessed, this particular scenario has proven to be very thought-provoking to our team here at LawDATA.

We are grateful that QDRO's are the headache that they are. Why? Because those headaches have provided LawDATA with 25 years of consistent business and gracious, loyal clientele.

While we encourage you to continue to use our services, we also dissuade you from assuming a mentality of, "...I take no responsibility for QDRO preparation."

Why? Because ethically, there is no way out.

The pension benefit(s) remain the most difficult and tedious marital asset to divide. While you may feel ill-equipped to follow through on that process once the divorce is final and the "case is closed", your client is far less equipped.

We want to assist you in ethically approaching the division of what is often -particularly in these economic times- the most valuable asset earned during a marriage.

Here are some basic steps to insure that you are meeting the ethical requirements to best serve and protect your client and yourself when addressing the division of pension benefits directly from the Plan. For the purpose of this newsletter, we will assume that LawDATA will draft the QDRO(s) involved in your case.

ETHICALLY:

Your role will involve making sure that all retirement benefits are revealed in the discovery process. Often, we find ourselves informing our attorney clients that an employer has more than one pension benefit, while only one was addressed in the parties' agreement.

ETHICALLY:

Your role will involve drafting* or overseeing the parties' agreement language to insure that all retirement benefits and survivorship issues are addressed thoroughly. It is advisable that the attorney for the non-pensionholder spouse be responsible to insure that the QDRO(s) is/are drafted. The non-pensionholder spouse has a vested interest in the benefit division and will be best served if his/her counsel assumes responsibility for division of that marital asset.

**Be reminded that LawDATA now offers assistance in drafting settlement language that will best achieve the parties' intent while also protecting our attorney clients. This service is FREE OF CHARGE.*

ETHICALLY:

You will want to move forward with QDRO preparation promptly to limit any vulnerability should the pensionholder take any action to reduce the benefit, die or should any other unforeseeable event take place that could hinder the execution of the QDRO(s). Along with our QDRO Intake Form, LawDATA will need a copy of the agreement between the parties detailing the distribution of pension assets and any/all plan information available.

ETHICALLY:

Once the QDRO(s) is/are drafted you will review them to insure that the intent of the Parties' agreement is fully met.

While some of the language in any QDRO is standard and irrelevant to the actual intent of the parties' distribution, it is imperative that the distribution language, any language addressing loan issues, and any language addressing survivorship rights is consistent with the parties agreed upon terms.

Should there be any question as to whether or not the language appears to accurately reflect your understanding of the parties' division of assets; LawDATA is committed to confirming your understanding of the language of any QDRO our office prepares. We invite you to direct any of the parties to the order in question to contact us directly with any questions or concerns.

ETHICALLY:

Once the QDRO(s) is/are drafted, reviewed and finalized you are ethically bound to submit them to the court in a timely manner, prior to prompt submission to the plan. As we addressed in an earlier newsletter (#58), while pre-approval from the plan is required in some jurisdictions, we do not advocate that practice as it increases the length of time of legal vulnerability. The Plan is under no obligation to freeze the benefit until a QDRO signed by a judge has been submitted to the Plan Administrator.

It remains our goal to partner with you in all divorce-related pension issues.

We welcome your questions and inquiries any time during our business hours. Monday thru Thursday 9-5 EST. Friday 9-3:30 EST. We are closed for all Federal Holidays.

Contact us at Info@LawDATAinc.com to assist you in preparing your settlement language. Allow our *25 years of experience* to assist you in minimizing both your liabilities and your headaches in your next marital dissolution case.

We now provide settlement language FREE OF CHARGE.
Download our forms at www.lawdatainc.com

LawDATA, Inc. has been active in the valuation of pensions and the preparation of Domestic Relations Orders for our attorney clients since the founding of LawDATA, Inc. in 1984. We have presented Continuing Legal Education programs, dealing with the valuation and distribution of retirement assets incident to divorce cases for State Bar Associations throughout the country and written many articles on the subject for legal publications.

For any questions or ideas for upcoming articles you can reach Michael Marasa at mike@lawdatainc.com or Tara Commerford at tara@lawdatainc.com

Web: www.lawdatainc.com