

STRATEGY IN HANDLING FEDERAL CIVILIAN PENSIONS IN FAMILY CASES

By: Matthew Lundy, Esq.
The Matthew Lundy Law Group, P.L.
1-855-QDRO-LAW (737-6529)
Matt@PrecisionQDRO.com
Atlanta, Georgia

Basic Questions

- ▣ Who thinks that they can identify all of the issues that must be addressed in a settlement agreement and/or final judgment when it comes to dividing a retirement account?
- ▣ How long does the government have to review and administer an order directing the division of a retirement plan account?

What is so important about retirement accounts?

- ▣ Frequency as an issue; how much money is in qualified retirement accounts in the United States?
- ▣ The economy--The housing marketing
- ▣ Dabblers

Mediation Scenario

- ▣ You represent the Wife in a highly contested divorce. The parties have no children, and no assets other than Husband's federal retirement account(s), which was/were set up by virtue of his employment with the U.S. Government.
- ▣ You are now at mediation, and you never thought the case would settle, but apparently you and opposing counsel did a good job talking your clients down. Miraculously, the parties turn the corner. Husband makes a good offer for alimony, and that leaves only the issue of division of his retirement account(s). You have statements for a retirement plan, and you are not exactly sure how to read it, and you have not consulted with a QDRO attorney. What do you do?

Mediation Scenario (cont.)

- ▣ Option 1: Reserve on the issue until you can get full discovery and discuss the issue with someone who regularly deals with QDROs and similar orders.

- ▣ Option 2: Clearly lay out the parties' intent, and leave open the option to modify or supplement the agreement solely as to that issue; make sure that appropriate benefits are covered before agreeing to finalize.
 - Key cases to consider. Morgan v. Morgan, 288 Ga. 417 (2011); Samaroo v. Samaroo, 193 F.3d 185 (3d Cir. 1999)

Federal Civilian Retirement Key Terms

- ▣ Court Order Acceptable for Processing
- ▣ Self-Only Annuity: Annuity based on the lifetime of the employee spouse
- ▣ Gross Annuity: self-only annuity less survivor annuity cost
- ▣ Net Annuity: gross annuity, less amounts: owed to government, deducted for health benefits, deducted for life insurance, deducted for Medicare, deducted for state and federal taxes

Federal Civilian Retirement Key Terms

- ▣ Retirement Benefits Court Order
- ▣ Cost-of-Living Adjustment: Uses CPI
- ▣ Former Spouse Survivor Annuity: reduces pension by specified percentage, depending upon level of coverage
- ▣ Refund: for employees who separate, they can receive a refund of their contributions to the federal pension
- ▣ Spousal Equity

Choosing a Formula

- ▣ Before electing a formula:
 - True Coverture
 - ▣ $50\% \text{ times (total number of years in the Plan while married divided by total number of years in the Plan) times monthly benefit}$
 - Frozen Coverture
 - ▣ $50\% \text{ times (total number of years in the Plan while married divided) times monthly benefit}$
 - Never utilize a marital portion formula for defined contribution plans

Thrift Savings Plan Benefits

- 1) Valuation: Make sure that you know the actual value of the account on the date of valuation
 - Get Discovery
- 2) Passive Gains and Losses: Changes in value from valuation date to date of segregation of accounts
- 3) Outstanding Loans: Will they factor into award?

Defined Benefit Plan Benefits

- 1) Survivor Benefits
- 2) Duration and Benefit Commencement
- 3) Amount – Valuation (always available)
- 4) Cost of Living Adjustments
- 5) Refunds

Remarriage Prior to Age 55

- ▣ ALWAYS advise a client who is receiving a former spouse survivor annuity that if they re-marry prior to age 55, they lost their entitlement to the survivor annuity

Timing

- ▣ Why you need to hurry when it comes to getting these orders done
- ▣ How long should drafting take?
- ▣ Must supply administrators with a certified copy of the Final Decree

Preparation and Fees

- ▣ Who should be responsible for preparing the order?
 - Attorney versus Non-Attorney
 - ▣ Liability Issues: Shifting to another attorney
- ▣ How should fees and costs be divided?
- ▣ Who should be required to contact the drafter?

The Engagement Letter

- ▣ State in your engagement letter that:
 - you do not handle QDROs or similar orders used to divided retirement accounts;
 - if a QDRO is necessary, it will require a separate fee to be paid by the client; and,
 - a retirement account or a claim to the benefits under same may be at risk if the client does not seek and obtain a QDRO immediately upon the execution of a settlement agreement or entry of any Final Judgment or other ordering necessitating a QDRO.