

QDROs: Don't Kick the Can

Table of Cases and Code Sections

Code sections:

ERISA: Title 29, U.S.C.

- Definitions at: 29 U.S.C. §1003 (a) and 29 U.S.C. §1002
- 29 U.S.C. §1056(d) (Assignment of Plan Benefits)

Code of Federal Regulations:

- 5 CFR § 838.1004 Qualifying court orders.

Internal Revenue Code, Title 26 U.S.C.

- I.R.C. §414(p)
- Sections 402 and 72 regarding apportioning taxes for distributions made in accordance with ERISA.
- I.R.C. §408(d)(6)
- Pursuant to divorce or separation agreement as defined in:
 - I.R.C. §71(b)(2)(A)
 - I.R.C. §121(d)(3)(C)(i)

California Government Code:

- Definitions at California Gov Code, §31204.
- CalPERS at §20000 et. seq.
- County Employees Retirement Act of 1937--California Gov Code §31450 et seq

California Education Code

- CalSTRS at §22000 et. seq.

California Evidence Code

- §730

California Family Code

- §2610
- §2550
- §2552
- §2337
- §755
- §2060

California Probate Code §5600

CASES

How and when to divide benefits; what to include:

In re Marriage of Brown (1976) 15 Cal. 838

- Holding re: Vesting and Re type of division appropriate:
- FACTS: In describing options available to court to divide nonvested pensions, court suggested either cash-out, where present value of rights are determined, after taking into account possibility that death or termination may destroy rights before they mature, or in-kind division, where future pension payments are divided when received:
 - "[I]f the court concludes that because of uncertainties affecting the vesting or maturation of the pension that it should not attempt to divide the present value of pension rights, it can instead award each spouse an appropriate portion of each pension payment as it is paid. This method of dividing the community interest in the pension renders it unnecessary for the court to compute the present value of the pension rights, and divides equally the risk that the pension will fail to vest." (Fn. omitted.) (Id. at p. 848.)

See also:

- In re Marriage of Judd (1977) 68 Cal.App.3d 515,
- In re Marriage of Bergman (1985) 168 Cal.App.3d 742
- In re Marriage of Gowan (1997) 54 Cal.App.4th 80

In re Marriage of Gray (2007) 155 Cal App.4th 504

- HELD: Court must exercise discretion to equitably apportion defined pension benefits and divide c/p per FC 2610(a) and 2550; abuse of discretion to apply "time rule" simply b/c 1980 judgment referred to using "Brown formula."

In re Marriage of Cooper (2008) 160 Cal.App.4th 574

- HELD: Trial court erred by allocating to W the entirety of CalPERS survivor benefit; proper course is that H buy out W's c/p share of retirement benefits and the survivor benefit.

In re Marriage of Lehman (1998) 18 Cal.4th 169

- HELD: W owns c/p interest in retirement benefits as enhanced.

In re Marriage of Belthius (No. B315673 (Cal. Ct. App. Jan. 4, 2023))

- Terminable Interest Rule:

- Section 2610(a) of the Family Code provides nonemployee spouses with the right to treat community property awarded to them under a retirement plan as entirely their own -it was enacted to end the “terminable interest rule” that the nonemployee spouse could not pass on their awarded benefits by will.
- A retirement plan Order which provides a “reversion” to the employee - the nonemployee spouse’s pension interest is returned to the employee upon the nonemployee spouse’s death - violates Section 2610(a) of the Family Code.
 - Does not override ERISA plan requirements
- Frozen coverture:
 - Employee tried to argue that certain years of his pension accrual were more valuable than others, so he should be able to keep those years which were not earned during marriage.
 - The Time Rule has zero to do with the value of any particular time periods. It is a percentage calculated purely based on time, which is applied to the final pension (regardless of what all went into calculating the value of that pension)

In re Marriage of Poppe, (1979) 97 Cal. App.3rd 1, at 11

- HELD: The “apportionment of retirement benefits between the separate and community property estates must be . . . fairly representative of the relative contributions of the community and separate estates.”

In re Marriage of Colvin, (1992) 2 Cal.App.4th 1570

- Trial Court affirmed where it upheld a time rule division of the community interest in a pension plan that was later amended to offer a separate interest division.
- Former Spouse not obligated to elect a benefit division option that would reduce her monthly benefit payments.

In re Marriage of Janes (2017) 11 Cal.App.5th 1043

- HELD: W's share of retirement became her s/p on the date of the judgment and she was thereafter entitled to any gains or losses thereon. There was no need for the judgment to state W was entitled to gains on her share of H's retirement. The judgment included all the necessary information—\$113,392 of the 401(k) account was W's s/p as of date of judgment. Gains or losses thereafter were W's s/p. H had no right to them. This was not a modification of the judgment. W did not seek to modify the amount of principal she was receiving. She simply took the gain or loss on her s/p.

In re Marriage of Stenquist (1983) 21 Cal. 3d 779

- HELD: Affirmed. H's argument that disability pay was primarily to compensate for loss of earnings resulting from compelled premature retirement and loss of ability to compete in civilian job market, and therefore his s/p, was of less force when, as here, he continued to serve in military for 17 years following injury. Court held that primary purpose of payments was to provide retirement support, not compensation for injury. Unfair to permit H to select disability pay and thereby deprive W of c/p interest in what was mostly longevity retirement, in fact. The trial ct. followed the proper method of allocating mixed disability/pension benefits: "It first classified as separate property that portion of the husband's pension attributable to employment before marriage. Turning to the balance of the pension, it assigned as separate property only the excess of the husband's pension over the 'retirement' pension that he would have received if not disabled; the remainder of the pension it divided as community property." (Id. at p. 788.)
- There are limitations from subsequent caselaw on other holdings in *Stenquist*.

In re Marriage of Moore, (2014) 226 Cal.App.4th

- HELD: No abuse of discretion in reserving jurisdiction on division and value of H's accrued sick leave; community has an interest in it at time of retirement as then the payments are no longer in lieu of wages but paid for purposes of retirement.

Federal Preemption cases

In re Marriage of Peterson 243 Cal.App.4th 923

- HELD: Because H's SS is s/p under federal law and W's county retirement benefits are a community asset under CA law, trial court correctly held it had to divide only W's benefits equally.

Carmona v. Carmona (9th Cir. 2008) 544 F.3d 988

- HELD: Under an ERISA-regulated plan, spouse married to employee at time of retirement "vests" in QJSA survivor benefits and a subsequent QDRO may not dislodge or reassign that survivor benefit even where parties clearly intended otherwise in their state court judgment.

Boggs v. Boggs (1997) 520 U.S. 833, 177 S. Ct. 1754

- HELD: ERISA preempts state law allowing nonparticipant spouse to transfer by testamentary instrument an interest in undistributed pension plan benefits.

In re Marriage of Padgett (2009) 172 Cal.App.4th 830

- HELD: Where plan participant dies before former spouse acquires order awarding her an interest in plan, DRO that simply "reserves jurisdiction" over plan is not a QDRO.

Stewart v. Thorp Holding Co. Profit Sharing Plan, 207 F.3d 1143 (2000).

- QDROs are enforceable despite minor variations from statutory requirements where such requirements are “satisfied in substance,” and where an “unduly narrow” reading would deny the primary statutory purpose of ensuring that alternate beneficiaries receive their intended QDRO payments.