

QDRO consultants

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- ▶ Ohio Public Employees Retirement System (OPERS)
- ▶ State Teachers Retirement System of Ohio (STRS)
- ▶ School Employees Retirement System of Ohio (SERS)
- ▶ Ohio Police and Fire Pension Fund (OP&F)
- ▶ Ohio Highway Patrol Retirement System (OHPRS)

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- ▶ Social Security Offsets
- ▶ Judgment Entry Language and Division of Property Orders
- ▶ DROP
- ▶ Questions

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- ▶ *Hisquierdo v Hisquierdo* 439 U.S. 572 (1979)
- ▶ *Cornbleth v. Cornbleth* 397 Pa. Super. 421, 580 A.2d 369 (1990)
- ▶ *Stovall v. Stovall* 1992 WL 236770, *Walker v. Walker* 112 Ohio App.3d 90, 667 N.E.2d 1252 (1996), *Neel v. Neel* 113 Ohio App.3d 24, 680 N.E.2d 207 (1996)
- ▶ *McClain v. McClain* 693 A. 2d 1355 (Pa.1997)
- ▶ *Neville v. Neville*, 99 Ohio St.3d 275 (2003)
- ▶ HB 395 of the 127th General Assembly – 2009
- ▶ *Thompson v. Thompson*, 2011-Ohio-6689

Did Congress write this statute to ensure that long-term former spouses did not share in the Tier I benefit or was it about protecting the benefit from creditors?

- ▶ Court focused on the meaning of 45 U.S.C. §231 m regarding Tier I Railroad Retirement benefits
- ▶ “... no annuity or supplemental annuity shall be assignable or be subject to any tax or to garnishment, attachment or other legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated.”
- ▶ Did Congress write this statute to ensure that long-term former spouses did not share in the Tier I benefit or was it about protecting the benefit from creditors?

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- ▶ "...employees who do not participate in the social security system are at a disadvantage in that their entire pension value is considered marital property while a private employee's contributions to Social Security are precluded by federal statute from consideration as marital property."
- ▶ "...to the extent that part of the pension (CSRS) might figuratively be considered 'in lieu of' a Social Security benefit we believe that a portion should be exempted from the marital estate."
- ▶ "...we believe it will be necessary to compute the present value of a Social Security benefit had the CSRS participant been participating in the Social Security system. This present value should then be deducted from the present value of the CSRS pension at which time a figure for the marital portion of the pension could be derived and included in the marital estate for distribution purposes. This process should results in equating, as near as possible, the two classes of individuals for equitable distribution purposes."

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- ▶ Hypothetical offset can overcompensate the non-covered pension participant when there is an interruption in earnings or disparity in wages
- ▶ Some Ohio courts decided that using the actual Social Security of the covered spouse would help to eliminate the problem
 - ▶ *Eickelberger v. Eickelberger* 93 Ohio App. 3d 221 (1994)
 - ▶ *Bourjaily v. Bourjaily* Licking App. No. 99 CA 120 2000 WL 968509 (July 3, 2000)
 - ▶ *Bauer v. Bauer*, Lucas App. No. L-99-1051, 2000 WL 281718 (Mar. 17, 2000)
 - ▶ *Harshbarger v. Harshbarger* 158 Ohio App.3d 121 (2004)

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- ▶ John is a 54 year-old teacher with 30 years of service. His current salary is \$70,000
- ▶ Mary got her first job ten years ago when their last child started high school. Her current salary is \$27,000
- ▶ Hypothetical Offset: \$1,800 per month = \$272,000
- ▶ Actual Offset: \$550 per month = \$83,000

Example of a QPRT

- ▶ Jerry is a bus driver covered by SERS with 12 years of service. Current annual pay is \$18,000.
- ▶ Sally is a Controller at a large corporation with 28 years of service and a current annual salary of \$105,000.
- ▶ SERS Present Value: \$61,000
- ▶ Hypothetical Offset: \$36,000
- ▶ Actual Offset: \$324,000

Determine the Social Security benefit that the spouse of the public pension participant actually earned

- ▶ Determine the Social Security benefit that the spouse of the public pension participant actually earned
- ▶ Prepare a present value of the marital portion to offset from the marital portion of the public pension

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- ▶ “The hypothetical offset method is simply unfair in this case, and many cases” concluded the court. The court explained how the *Cornbleth* holding had continued to “evolve in the Pennsylvania court system.” It specifically referenced the 1997 Pennsylvania case of *McClain v. McClain* which held that “it would be inequitable under the facts of this case to credit Husband with the value of hypothetical social security contributions when Wife, unlike the [wife in *Cornbleth*, had] no appreciable social security benefits of her own to balance against such a credit.’

Beierle v. Joliot

C. 11DR-1440 (C.P. Franklin County) Oct. 10, 2013

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- ▶ Marital Present Value of Husband's OP&F: \$187,000
- ▶ Marital Present Value of Wife's Social Security: \$42,000
- ▶ Amount for equitable distribution after offset: \$145,000

RESULT:

Wife receives 38.77% of the marital portion of the OP&F benefit
(\$72,500 / \$187,000)

Development of the Standard Form

- ▶ Prior to January 1, 2002 state plans were not directly divisible
- ▶ H.B. 535 plans developed one-for-all form
- ▶ No COLA or Survivorship
- ▶ Form revised in October 2003 to accommodate partial lump sums and DROP
- ▶ Effective October 27, 2006 (H.B. 98) AP can receive COLA and new elections created for survivorship
- ▶ Form revised in January 2010 to clarify wording of assignments
- ▶ Form revised in January 2014 to add language regarding COLA

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- ▶ Secure payments to Alternate Payee, “only during the life of the participant”
 - ▶ **Survivorship is NOT permitted in the DOPO***

“Although we may not like the result, a different solution lies only with the General Assembly”

*Cosby v. Cosby, 96 Ohio St.3d 228, 2002-Ohio-4170.

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1

Life Insurance

2

Order Participant to elect J&S for Alternate payee, “to the extent of her assigned interest”

3

Send a certified copy of Entry to the attention of the Legal Dept. of the plan with a cover letter drawing their attention to the section or paragraph that requires the survivor election.

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- ▶ The employee shall cooperate with the former spouse in obtaining a term life insurance policy on the employee's life with the former spouse named as the owner and sole beneficiary of the policy, in the amount of \$_____. The employee shall cooperate in the completion of any necessary paperwork, forms, physicals, etc., necessary to secure such term insurance coverage.
- ▶ The parties shall maintain such term life insurance policy in full force and effect by paying all applicable premiums in a timely fashion until the earliest to occur of employee's death, former spouse's death or the date that the former spouse has obtained post-retirement survivorship coverage under the Plan to the extent of her assigned ownership interest in the pension.

Multiple Beneficiary Option

- ▶ Upon retirement under the Plan, the employee shall be required to elect his benefits in the form of joint and survivor annuity with _____ named as beneficiary. The joint and survivor percentage that is to be elected by the employee and provided to the former spouse (beneficiary) shall be based upon the “Amount of Assignment” and “Marital Portion” as set forth above.
- ▶ If the multiple beneficiary option is chosen, the court specifically retains jurisdiction to insure that the former spouse's portion is not reduced due to the participant's election of a second, third, or fourth beneficiary. If the employee elects several beneficiaries or one which is much younger the reduction in the benefits could be significant and reduce the former spouse's share. If that occurs, calculations must be made to determine the appropriate reduction that accounts for only the former spouse's survivor benefits and this would be assigned as a dollar amount in a revised Division of Property Order.

QDRO election

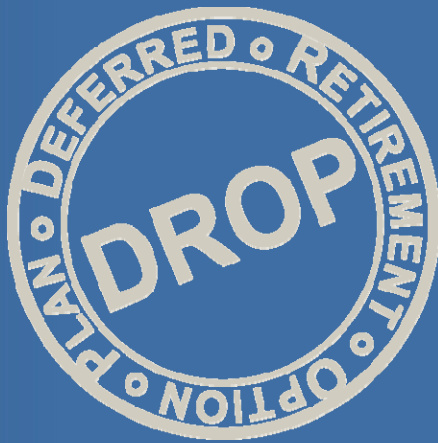
- ▶ The parties agree to notify the Plan of the requirement of electing a joint and survivor annuity by sending a certified copy of this Entry to the attention of the legal department of the plan along with a cover letter directing attention to the page, section and paragraph that contains the requirement.

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- ▶ There may be insufficient coverage to secure the former spouse's ownership interest in the pension. Use this as a last resort if a term insurance policy is not feasible.
- ▶ This designation is *automatically revoked* by the participant's remarriage
- ▶ Further, this refund of contributions is **not available** if statutory survivorship is being extended to eligible dependents, such as minor children or a subsequent spouse.

Forcing a Participant to Elect a Beneficiary

- ▶ Read the DOPO
- ▶ When to Check Boxes
- ▶ Differing Interpretations
- ▶ Checking the Numerator
- ▶ 50% Limit
- ▶ COLA
- ▶ Priority of Other Orders
- ▶ Death of the Participant
- ▶ Clerk of Courts
- ▶ 60 days



- ▶ The Deferred Retirement Option Plan (DROP) is an optional benefit that allows eligible police officers and firefighters to accumulate a lump-sum of money for retirement. The Ohio Police & Fire Pension Fund (OP&F) is proud to offer this benefit to its membership, which has been the most requested addition to OP&F's benefit offerings in many years.
- ▶ The popularity of DROP programs has grown across the country since public sector employers first introduced them in the 1980s. Based on tremendous member request, OP&F has put in place a beneficial program without additional cost to members, their employers or OP&F. Thanks to member persistence, the support of member unions and associations and the receptive Ohio Legislature, the Governor signed Senate Bill 134 into law in 2002, which enabled OP&F to begin offering DROP in 2003.
- ▶ Enrolling in DROP is a voluntary decision that members should make after careful consideration of their own individual situation. OP&F strongly encourages all members to seek financial, legal and tax advice from professional counselors before entering DROP.

OPERS, STRS & SERS

- ▶ OPERS, STRS & SERS have a partial lump sum option plan (PLOS)
- ▶ Participant can receive 6-36 months of accrued benefit up front as a lump sum and a reduced monthly benefit for life
- ▶ Often confused with DROP because they sound similar and are referenced together in section II.A of the DOPO form

Getting It Right: Private Shop CURS

- ▶ Under Police and Fire, a member upon attaining eligibility for retirement (25 & 48) may choose to enter DROP.
- ▶ Pension stops accruing and pension payments are deferred into DROP where they gain interest.
- ▶ Member continues work and a percentage of their salary also goes into DROP and gains interest.

Wyoming

- ▶ Deferral of pension benefit accrued prior to DROP
 - ▶ Service and benefit determined as of DROP Entry Date
 - ▶ Increases by COLA, if applicable
- ▶ Contribution from current salary
 - ▶ 10% of salary deducted and deposited into DROP as follows:
 - ▶ Years 1-3 - 50%
 - ▶ Years 4&5 – 75%
 - ▶ Years 6-8 – 100%

Portability

- ▶ Member must stay in DROP 3 or 5 years to receive interest
- ▶ Maximum time in DROP is 8 years
- ▶ When the member quits working and retires, they receive their pension with COLAs plus the value of their DROP account

Options for Withdrawal

- ▶ One-time lump sum distribution of the entire account
- ▶ Partial lump-sum distributions of at least \$1,000 up to four times a year
- ▶ Monthly distributions of at least \$100
- ▶ Rollover to qualified retirement plan

Potential \$106,080 for AP

- ▶ If we assume that a member has a \$24,000 pension at the time he enters DROP and it is all marital, \$12,000 is his and \$12,000 is the AP's each year.
- ▶ If the member stays in for 8 years, the AP's share is \$106,080 (including COLA) plus interest.

GURSTENBERG

- ▶ John and Sally are divorcing after 25 years. The Decree is filed on Tuesday and John enters DROP on Wednesday. Should Sally get a portion of DROP?
- ▶ Why or why not?

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- ▶ If John had quit working as a policeman and took a security guard position with a new company where he began to participate in a new 401(k) Plan there would be no question that the entire 401(k) is his separate property.
- ▶ DROP is different because it is funded partly with the deferral of a marital property interest.

GRS# of FGRSRU

- ▶ Police and Fire will not determine marital portion
- ▶ Two choices that exist right now in coverture DOPO:
 - ▶ Exclude DROP; AP loses up to 8 years of pension
 - ▶ Include DROP; forces participant to share post marital contributions with AP
- ▶ Cannot assign coverture share of pension and lump sum of DROP. (Can't mix % and \$)

Key Takeaways

- ▶ John is 48 and his benefit is \$3,200/month at the time he enters DROP. All 25 years are marital.
- ▶ If John stays in DROP for 8 years, Sally's share is \$153,600 plus interest.

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Date	DROP Deferral	AP's Share of Deferral	Marital Contributions	AP's Share of Marital Contribution	AP's Interest in DROP
May-14	\$98.33	\$49.17	\$ -	\$ -	\$49.17
June-14	\$3,130.38	\$1,565.19	\$224.26	\$112.13	\$1,726.49
July-14	\$3,130.38	\$1,565.19	\$222.02	\$111.01	\$3,402.69
August-04	\$3,130.38	\$1,565.19	\$328.82	\$164.41	\$5,132.29
September-14	\$3,130.38	\$1,565.19	\$225.15	\$112.58	\$6,810.05
October-14	\$3,130.38	\$1,565.19	\$215.64	\$107.82	\$8,483.06
November-14	\$3,130.38	\$1,565.19	\$275.49	\$137.75	\$10,186.00
December-14	\$3,130.38	\$1,565.19	\$220.68	\$110.34	\$11,861.53
January-15	\$3,130.38	\$1,565.19	\$360.44	\$180.22	\$13,606.94
February-15	\$3,130.38	\$1,565.19	\$220.68	\$110.34	\$15,282.47
March-15	\$3,130.38	\$1,565.19	\$264.02	\$132.01	\$16,979.67
April-15	\$3,130.38	\$1,565.19	\$219.87	\$109.94	\$18,654.79
May-15	\$3,152.26	\$1,576.13	\$218.98	\$109.49	\$20,340.41
June-15	\$3,224.29	\$1,612.15	\$224.02	\$112.01	\$22,064.57

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- ▶ An Alternate Payee can only share in a distribution made to the Participant.
- ▶ Due to a limit of 50% of any distribution, Sally can only receive her entire entitlement if John takes a one-time lump sum or a partial lump sum equal to twice Sally's interest.

DROP

- ▶ “At any point, when the member is eligible to take distributions from the DROP account, he shall have the option to initiate a distribution in the full amount of the former spouse’s share as determined by a mutually agreed upon expert. This distribution will be rolled into a qualified IRA then transferred to the former spouse. In this manner the former spouse will receive her full entitlements from the DROP account and will waive all future claim to DROP benefits. The former spouse will however maintain her interest in the marital portion of the age and service benefit.”