

# QDROS: WHAT TO EXPECT



J. Eileen Zell, Esq. – QDRO Attorney

The Law Office of J. Eileen Zell, PLLC  
P.O. Box 17872  
Ft. Mitchell, Kentucky 41017-0872  
(859) 242.5290  
eileen@ezqdrolaw.com  
www.ezqdrolaw.com

## WHY DO I NEED A QDRO?

Retirement plans are different. Unlike other assets in a divorce, like a checking or savings account, retirement benefits are not transferable by consent or regular court order. Federal law sets strict rules for dividing retirement plans in divorce, permitting transfer *only* by a special court order called a “Qualified Domestic Relations Order,” or “QDRO.” A QDRO may be issued by a state court to provide spousal or child support, but most often, QDROs are issued to transfer marital property. Federal law exempts government plans and certain other retirement plans from QDRO rules, but these plans may permit a domestic relations order (“DRO”), akin to QDRO, in certain circumstances.

### Q: What is the Court’s role?

The Court reviews a QDRO solely to determine if it complies with state law. In most cases, a QDRO is entered as part of an agreed property settlement.

### Q: Who “approves” the QDRO?

The plan reviews the QDRO for compliance with federal law, and the specific terms of the plan. Keep in mind: the plan does not review the QDRO to ensure its terms are fair and reasonable to one or both parties, that it adheres to state domestic relations law and the parties’ agreement, nor does it review whether a QDRO’s terms improperly limit the parties’ rights and obligations under federal law and plan terms. These tasks are the sole responsibility of the QDRO attorney.

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***QDROs assign lifetime savings that often far-exceed the value of any other marital property.***

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## WHY DO I NEED A QDRO ATTORNEY?

Bringing in an expert, in any situation, is about value-adding and risk avoidance. It’s about recognizing that, in our lives or legal practices, there are some things we *must* get right the first time.

- Retirement benefits are often the largest marital asset. Representing your clients’ best interests commands a full understanding of domestic relations law impacting such benefits, federal regulatory law, plan mechanics, individual plan terms, and careful review of each plan’s unique QDRO procedures.
- A QDRO is a powerful tool. A properly drafted QDRO involves strategy; every person’s work history and overlapping marital timeline is unique, and every plan is different. Expert review is critical to secure essential rights for your client and avoid unintended consequences, and improves chances of timely plan acceptance of initial QDRO submissions, saving time and money.
- Some plans provide sample QDRO forms to keep their costs down. Reliance on forms can result in forsaking benefits to which your client is entitled and overlooking alternate distribution schemes and enhanced protections.

The right QDRO attorney will give you and your clients peace of mind, knowing it’s getting done right.

## WHO IS EILEEN ZELL?

Eileen's entire practice is devoted to consulting with family law attorneys on a variety of QDRO-related matters, including settlement negotiations, mediation, collaboration, and litigation. Her practice focuses exclusively on the division of retirement benefits and other forms of deferred income in domestic relations matters.

Eileen is the author of "QDROs and Similar Assignments of Income/Retirement Assets," published as part of the nationally acclaimed Bloomberg Tax & Accounting Tax Management Portfolios. Eileen has been qualified as an expert witness on retirement benefits and other forms of deferred compensation for family courts in Ohio and Kentucky. She presents regularly for local and state bar associations, judges, and other professional organizations.

Working with hundreds of attorneys on both sides of the Ohio River, Eileen successfully negotiates and promotes creative settlement solutions, accomplishes client goals, and navigates even the most difficult litigation issues.



Check out our EZ QDRO Law Blog, a proprietary QDRO database of case law and legal research library for attorneys.

## HOW DOES THE QDRO PROCESS WORK?

- (1) Eileen is engaged through counsel to evaluate the case;
- (2) Plan documents are obtained, including benefit statements, governing plan documents, and written QDRO procedures;
- (3) A retirement division is negotiated or ordered by the Court;
- (4) Eileen drafts the QDRO and submits it to representing counsel;
- (5) Counsel reviews the QDRO with the parties;
- (6) Counsel submits the QDRO to the Court for entry into the Court record and then submits to the plan for approval; and
- (7) The plan reviews the QDRO (or a draft, for pre-approval) and determines whether it 'qualifies' under federal law and plan terms.

## HOW LONG DOES THE QDRO PROCESS TAKE?

It depends on how fast the parties can gather needed information and documents. The parties control the timeline here, and getting this quickly can allow the next phase to begin immediately. Depending on Eileen's caseload, the actual 'QDRO drafting' may take around 5-10 business days, and is typically the shortest part of the process. As for the plan's review, federal law only requires that it be completed within a "reasonable time." Keep in mind, the nonemployee-spouse has no ownership rights under federal law prior to the plan's approval of the QDRO, and may be restricted by plan terms from an immediate distribution or commencement of benefits thereafter.

## HOW DO I GET STARTED?

The Law Office of J. Eileen Zell will identify any additionally needed plan information, and work with representing counsel, who will gather the remaining items and complete the Intake Contract for the QDRO.

Most QDROs or similar orders are drafted for a flat fee, and are subject to the terms of Eileen's Intake Contract. Exceptions, including for some state retirement systems, apply. Attorneys representing the parties will incur their own expenses, related to any negotiation or discussion of the QDRO's terms with other counsel or their client, review of the QDRO, other preparation, and entry and submission of the order.

Eileen is a third-party consultant to family law attorneys, and does not represent parties directly. This document is intended to aid with attorney-client discussions related to the QDRO process, only.

*This pamphlet does not constitute legal advice and is provided for general information purposes, only.*