

This excerpt from Chapter 12 includes vitally important information about protecting your client's rights in a pension/retirement plan, whether or not a Qualified Domestic Relations Order ("QDRO") has been prepared at the time of the Judgment.

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B. Special Notes About Pensions/Retirement Plans

- Prior to scheduling the Disso III appointment, all relevant pension/retirement plans should have been joined. **See Chapter 25.**
- **Note: “Reserving Jurisdiction” over the issue of division of the pension/retirement plan will not protect the non-employee spouse.** While it allows the court to consider the matter at a later date, it does not prohibit or prevent the pension/retirement plan from distributing the funds. Thus, reserving jurisdiction is illusory—it is the equivalent to taking no action at all beyond claiming the pension/retirement plan as a community asset.
- When there is a Qualified Domestic Relations Order (QDRO) prepared, be sure to include the QDRO Attachment with the Judgment. **See Sample Form 13E-13.** The QDRO should also be filed separately along with three copies.
- The Judicial Council created a judgment attachment entitled **Pension Benefits—Attachment to Judgment (FL-348).** **Sample Form 25W.**

This attachment is designed to protect the rights of the non-participant spouse who is unable to obtain a QDRO before Judgment of dissolution is granted. Although it may be useful as a stop-gap measure, this form is **not** a QDRO and should never be used in place of a QDRO.

HBCFL Practice: The Center’s practice is to prepare a QDRO prior to scheduling the Litigant for Disso III so that it is complete prior to entry of Judgment.

Preparing a QDRO is critical to protect the Litigant’s interest in the spouse’s pension/retirement plan because until it is served on the plan, the plan is under no obligation to prevent the participant spouse from depleting the funds. In fact, the plan is contractually obligated to allow the participant to withdraw funds in the absence of an appropriate court order in an action to which they have been properly joined. Additionally, if the dissolution of marriage is granted and the participant spouse passes away prior to entry of a QDRO, the non-participant spouse, now an ex-spouse, has no rights to the pension/retirement plan. At the Disso III-Default appointment, a Request for Default Setting is prepared. **See Sample Form 13II-1.**

- **The proposed Judgment should include an attachment stating that “the Respondent’s pension/retirement benefits shall be paid to each of the parties pursuant to the QDRO / DRO / Order Dividing Pension submitted simultaneously herewith and incorporated by reference as if fully set forth herein.”**
- **A copy of the QDRO should be attached to the declaration and an original and three copies submitted to the judge on the date of the default hearing.**

For cases in which the Center has not prepared a QDRO, the Center completes and attaches the Pension Benefits—Attachment to Judgment (FL-348) form.

Sample Form 13E-13: Judgment Attachment: Pension QDRO Order

1 Case Name Smith and Smith Case No. BD345678

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3 The community property portion of Respondent's pension/retirement benefits are awarded one-half(½)
4 to each of the parties pursuant to the QDRO / DRO / Order Dividing Pension submitted simultaneously
5 herewith.

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28 [] Signature follows last attachment.

JUDGMENT

13 • DISSOLUTION III – FORMS

Sample Form 13II-1: Request for Default Setting (FAM-031)

NAME, ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY OR PARTY WITHOUT ATTORNEY: Maria Smith 105 W. Beverly Blvd. Los Angeles, CA 90042 (323) 298-3224 ATTORNEY FOR (Name) Petitioner in Pro Per	STATE BAR NUMBER	<i>Reserved for Clerk's File Stamp</i>
HBCFL		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES		
COURTHOUSE ADDRESS: 111 N. Hill Street Los Angeles, CA 90012		
PLAINTIFF: Maria Smith		
DEFENDANT: Jose Smith		CASE NUMBER: BD354789
REQUEST FOR DEFAULT SETTING		DEPT.

The Petition filed in this case is for:

- Dissolution**
- Legal Separation**
- Paternity**
- Nullity**
- Other** _____

More than 30 days have passed since service of the Summons and Petition and the:

- Request for Entry of Default has been filed and entered
- Request for Entry of Default is included in the Judgment packet
- Response was not filed prior to the entry of the Request for Entry of Default

Petitioner seeks to obtain a judgment and requests to set this case for an uncontested trial based on a:

- Request to terminate spousal support in a marriage of over 10 years
- Request for no visitation or supervised visitation
- Request for a specific amount of spousal support
- Request for child support other than guideline
- Other _____

Trial time estimate is 1/2 _____ hours.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 2/3/2012

Maria Smith
Print or Type Name

Maria Smith

Petitioner's Attorney's Signature

NOTICE: The [proposed] judgment must be submitted with this form.
 If the Court finds that a hearing is not required and the Judgment meets the criteria [set by statute], your judgment will be entered. If the Court finds that a hearing, declaration, or further evidence is required, a request or a notice of the date, time and location will be sent to you.

Sample Form 25W: Pension Benefits — Judgment Attachment (FL-348)

FL-348

PETITIONER/PLAINTIFF: Maria Smith	CASE NUMBER:
RESPONDENT/DEFENDANT: Jose Smith	BD398754

PENSION BENEFITS—ATTACHMENT TO JUDGMENT
(Attach to form FL-180)

This order concerns the division of retirement and survivor benefits between the following two parties:

Name of petitioner: Maria Smith	Name of respondent: Jose Smith
Address of petitioner: 2800 West King Blvd. Los Angeles, CA 90008	Address of respondent: 300 9th Street Los Angeles, CA 90042

Date of marriage or registration of domestic partnership: 1/15/2000 Date of separation: 6/15/2012

TO THE EMPLOYER/PLAN ADMINISTRATOR OF EACH PLAN IDENTIFIED BELOW:

Each party identified above is provisionally awarded without prejudice, and subject to adjustment by a later domestic relations order, a separate interest equal to one-half of all benefits accrued or to be accrued under any retirement plan in which one party has accrued a benefit, including but not limited to the plans listed below, as a result of employment of the other party during the marriage or domestic partnership and before the date of separation. In addition, pending further notice, the plan must, as allowed by law, or as allowed by the terms of the plan in the case of a governmental plan, continue to treat the parties as married persons or domestic partners for purposes of any survivor rights and benefits available under the plan to the extent necessary to provide for payment to the surviving spouse or domestic partner of an amount equal to that separate interest or of all of the survivor benefits if at the time of death of the participant there is no other eligible recipient of the survivor benefit.

TO THE PARTIES:

Each party must provide the information and take the required actions listed below to protect the other party's interest in retirement benefits:

- List below (or on a page attached) the name and address of each employer for which you or the other party work or worked where either of you participated in a retirement plan during the marriage and before your separation. Include the name (or a description if you do not have the name) of each of these plans.

Employer: Los Angeles Department of Water and Power
 111 W. Main Street
 Los Angeles, CA 90254

Plan: Employee DWP Retirement Pension - Plan

See Attached

- For each plan you listed under item 1, promptly deliver a copy of this order to the plan's administrator. You can deliver a copy of this order in person or by mail. Provide a proof of service to the court and the other party.
 If you do not know the plan's administrator, deliver a copy to
 - the employer or plan sponsor, or, if unknown,
 - the trustee or custodian of any assets of the plan.
- Each party who is a participant in a plan listed under item 1 must join that plan as a party to this case when joinder is required by law. (See Retirement Plan Joinder—Information Sheet [form FL-318-INFO].)
- If you are not the party who participated in a plan listed in item 1 and are concerned that you have not received proof that notice of your interest has been delivered to that plan, you are encouraged to deliver a copy of this order to the appropriate plan administrator as described in item 2. You also have a right to join any plan that requires joinder in the event that no joinder documents have been filed with the court or served on the plan's administrator.
- Each party must promptly let each plan representative know of any change in that party's mailing address until all benefits due that party under the plan have been paid.