QDROs for Support and LIQDROs Bench Card

Authority for Collecting Support via QDRO	• "The term "domestic relations order" means any judgment, decree, or order (including approval of a property settlement agreement) which— (i) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and (ii) is made pursuant to a State or Tribal domestic relations law (including a community property law)." 26 U.S.C. § 414(p)(1) [underlining added]. • Judicial Council Form FL-460, Qualified Domestic Relations Order for Support exists. However, many private plans will not accept it as-is – crucial for the support payee to obtain preapproval for a draft version of the Order (if Plan provides preapproval to drafts; most do) to confirm Plan will implement it. If filed, the FL-460 must be served on the payor with a blank FL-450, Request for Hearing Regarding Earnings Assignment. • For more information about QDROs for Support, click here.
Predicate Questions /Notes	• What type of plan is it? Click here for more information on each Plan type. Defined benefit (DB), cash balance (CB), defined contribution (DC) or individual account plan (IRA)? • If the plan is a pension (DB or CB), is the Participant retired?[1] • Remember that even for a DC, the funds are not just in a bank account. Funds will maintain their character as retirement assets/income even upon transfer to payee. *See* Taxes section, below.
Enforcement of Arrearages	• If possible, it is preferable to collect arrears from DCs or CBs (if Participant is not retired). This is because the payee can receive a lump sum. *See also* Taxes section, below. • Can also collect arrears from a DB or CB if Participant is retired, but will be repaid on a monthly basis, not as a lump sum. • Not possible to collect from a DB if the Participant is not retired. Can still prepare the QDRO and serve it on the Plan, but payment cannot begin until Participant retires. If that's many years in the future, any interest calculation may be stale at the time payments begin.
Enforcement of Ongoing Support	• Not possible to collect from a DC plan at all & not possible from a DB or CB plan if the Participant has not retired. • Can be done from a DB or CB plan if Participant is retired (i.e., receiving a monthly benefit from the Plan).
Special Issues	• Child Support from a Defined Contribution Plan: Funds awarded in a child support QDRO from a DCP cannot be rolled over into a retirement account in the payee's name. Award must be withdrawn from the retirement plan and distributed to the custodial parent (or Child Support Services Department) as cash.[2]

[1] For these purposes, "retired" means currently collecting payments from their plan. Sometimes litigants will call themselves retired because they've stopped working entirely or no longer work for a particular employer. It's crucial to clarify whether they are currently receiving a monthly benefit to determine if they are retired for QDRO purposes.
[2] 26 C.F.R. §1.402(c), Q-12.

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Taxes – Issue Spotting	• Tension between taxability of support (child support is non-taxable income; spousal support is likely (federally) non-taxable income depending on date of order entry) and taxability of retirement income (pension payments are taxable income; DCP withdrawals incur taxes and potentially penalties if withdrawn early; plan will usually withhold some amount of the award for taxes).
Taxes – Possible Solutions	• Three options: ○ Gross up the award to account for the likely withholding. ○ Try to get the Plan to gross it up. Only some plans will do this. Also, may not be possible if there are insufficient funds in the DCP. ○ [For child support only]: Order the Participant to waive the withholding on the form provided by the Plan.[3]
Qualified Medical Child Support Orders (QMCSOs)	• Requires an employer or employee organization (i.e., a union) that offers a group health plan[4] (medical, dental, and/or vision) to provide coverage for the child/children of a non-custodial Participant. • Requires a predicate order that a parent provides health insurance coverage for children & assigning responsibility for payment of premiums. • QMCSO can order health insurance coverage for children even if a Participant has not elected to receive coverage for themselves, and even if it is not the plan's open enrollment period.
Life Insurance Qualified Domestic Relations Orders (LIQDROs)	• If order requires the payor to name the former spouse and/or children as beneficiaries on a life insurance policy[5], a LIQDRO can prevent any changes from being made to the beneficiaries.[6] • For private employers, beneficiary must be a spouse, former spouse, child or dependent of the Insured/Participant to qualify as an alternate payee for a LIQDRO.[7] • For state government and individual-provided life insurance policies, a LIQDRO MAY be sufficient on its own to protect a beneficiary, depending on the Plan. Insured/Participant must check with the life insurance company to ensure that no further action is required (e.g. beneficiary form designation) to protect the court ordered beneficiary's rights. • Information needed for LIQDRO: ○ Life insurance company that is the carrier of the policy. ○ Name of each policy (any group or applicable supplemental group policies). ○ Each policy/contract number(s). ○ Type of each policy (term or permanent-whole life and universal life). ○ Coverage amount for each policy. ○ Duration of each policy. ○ Whether policy is a Private Employer Policy, Public Employer Policy, or Individual Policy. ○ If an Individual Policy, is the Participant or the Former Spouse responsible for payment of premiums?

[3] The Participant is specifically allowed by statute to waive this withholding, but the plan cannot force the Participant to waive the withholding. *See* Internal Revenue Code Reg 1.402(c)-2 Q&A 12.
[4] A "group health plan" for QMCSO purposes must : (1) be sponsored by an employer or employee organization (or both); and (2) provide "medical care" to employees, former employees, or their families. *See* 19 U.S.C. § 1167. "Medical care" means amounts paid for the diagnosis, cure, mitigation, treatment or prevention of a disease; for the purpose of affecting any structure or function of the body; transportation primarily for or essential to such care or services; or for insurance covering such care or services. *See* 26 U.S.C. § 213(d)(1).
[5] California Family Code §4360.
[6] California Family Code §2051.
[7] 26 U.S.C. § 414(p).