

# EQUITABLY DISTRIBUTING MUNICIPAL PENSIONS

By K. Dean Kantaras and Jennifer H. Cavill

**I**N ANY DIVORCE PROCEEDING, THE Court is required to distribute between the parties all marital assets and marital liabilities in a way the Court deems equitable under the circumstances. See Florida Statute §61.075 for more details. Marital assets include “[a]ll vested and nonvested benefits, rights, and funds accrued during the marriage in retirement, pension, profit-sharing, annuity, deferred compensation, and insurance plans and programs” Florida Statute §61.075(6)(a)d. In order to accomplish the division of a party’s retirement plan, such as a 401(k), the court typically enters a Qualified Domestic Relations Order (QDRO). “A QDRO is a type of domestic relations order that creates or recognizes an alternate payee’s right to, or assigns to an alternate payee the right to, a portion of the benefits payable with respect to a participant under a plan.” *Boggs v. Boggs*, 520 U.S. 833, 846 (1997). In other words, QDROs force direct payment of a portion of the participant spouse’s retirement benefits to a nonparticipating spouse. In some cases, a retirement plan cannot be divided between the parties without a QDRO being entered by the Court, such as with a 401(k). In other cases, a QDRO is not necessary since the division of Individual Retirement Accounts do not require QDROs. However, not all pension plans are subject to QDROs and may not be distributed pursuant a QDRO even though one has been entered.

Specifically, courts cannot equitably distribute municipal pensions via QDRO. Therefore, a pension with the City, Police Department, or Fire Department, for example, will not be distributed between the parties through a QDRO. This does not mean that the municipal pension should not be considered a marital asset in equitable distribution. In fact, failure to include an existing marital pension in equitable distribution is an error and will result in the equitable distribution being reversed if challenged on appeal. See



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*Essex v. Essex*, 649 So.2d 293 (Fla. 3rd DCA 1995). Instead, the Court must consider the municipal pension in equitable distribution, but must determine other means to give the nonparticipant spouse the benefit of his or her interest in the municipal pension. This is because this type of pension and Florida Statute §185.25 make the municipal pension unassignable to others unless the payment is for alimony or child support. See *Bd. of Trs. of Orlando Police Pension Plan v. Langford*, 833 So.2d 230, 233-234 (Fla. 5th DCA 2002) and Florida Statute §185.25.

The Court in *Rumler v. Rumler*, 932 So. 2d 1165, 1167 (Fla. 2nd DCA 2006) and *Bd. of Trs. of Orlando Police Pension Plan v. Langford*, 833 So.2d 230, 235 (Fla. 5th DCA 2002) addressed the problem of protecting the nonparticipant spouse’s interest in a municipal pension for equitable distribution purposes and suggested that the court may require pension funds be paid into a trust account to be paid to the parties

by a trustee, the court may require the participant to pay a bond into the court to ensure the nonparticipant spouse receives his or her share of the municipal pension, the court may award the nonparticipant spouse assets from another source to compensate him or her for their interest in the municipal pension, or the court may enter an alimony award to compensate for not receiving his or her interest in the municipal pension. See *Rumler v. Rumler*, 932 So. 2d 1165, 1167 (Fla. 2nd DCA 2006); citing *Bd. of Trs. of Orlando Police Pension Plan v. Langford*, 833 So.2d 230, 235 (Fla. 5th DCA 2002). For more information on how your interest in a retirement benefit is impacted in a divorce, contact K. Dean Kantaras, P.A. ■■■

*EDITOR’S NOTE: K. Dean Kantaras has been licensed to practice law in Florida for over nineteen years. Mr. Kantaras is the managing partner of K. Dean Kantaras, P.A., a firm handling cases in family law and immigration. Mr. Kantaras is board certified in marital and family law by the Florida Bar, a distinction held by less than one percent of all attorneys licensed to practice in Florida. He is “A” rated by Martindale-Hubbell, the highest possible rating. He is a member of the Supreme Court of the United States, the United States Court of Appeals for the 11th Circuit and Middle District, The Florida Bar, and the Clearwater Bar Association. His offices are located at 3531 Alternate 19, Palm Harbor, 34683, (727) 781-0000 and 1930 East Bay Drive, Largo, 33771, (727) 544-0000. www.Kantaraslaw.com. Jennifer Cavill, Esq. is an Associate Attorney at the firm. She is a member of the Florida Bar, the United States District Court-Middle District of Florida, Clearwater Bar and St. Petersburg Bar Associations and Canakaris Inn of Court.*