

FOOTE Notes on Retirement

Scenario

Husband (participant) and wife (alternate payee) are divorced after 22 years of marriage. In preparing a settlement proposal, the attorney of the husband includes the following provision when dividing the retirement account.

"Ms. Smith is awarded one-half of the community portion of the Exxon Retirement account in the name of Mr. Smith pursuant to the Sims Formula. Additionally, Ms. Smith is awarded one-half of the community portion of any survivor benefits."

Issue

What objections to this paragraph should the wife's attorney make?

Proposed Answer

Ms. Smith should request **all** of the community survivor benefits, not one-half. The husband's one-half of the survivor benefits will do him no good if he is dead. There may or may not be a subsequent spouse of the participant. However, if the above language is used, then the second spouse will receive a bigger portion of the survivor benefit than Ms. Smith, even though a majority of the pension was acquired during the marriage. The subsequent spouse would receive any service time attributable to the second marriage AND the participant's one-half attributable to the first marriage.

Additionally, what happens to the participant's one-half of the survivor benefits if participant never remarries? Although each case is different, this issue should be addressed prior to the final signatures on the property settlement and not left up to additional negotiations when the QDRO is eventually prepared.