



## *Divorce, Pensions and Retirement Benefits*

---

Number: 38

Paul Commerford - President - LawDATA, Inc.

January 2006

---

### **Why Two Pension Appraisals Are Usually Better Than One - Even If You Represent The Participant**

(See next page for this month's article)

---

#### Practice Tip of the Month:

**If you intend to argue that a specific medical problem resulting in a disability retirement benefit will reduce the actuarial life of your client, and therefore the value of his or her pension, be prepared to use a medical doctor in the preparation and litigation of your case.**

Pension appraisers can prepare many forms of pension appraisals, using different actuarial assumptions on defined benefit plans. The standard forms are a report based on a normal healthy life, a report based on the participant receiving a disability pension but no Social Security Disability benefits or a report that assumes the participant is disabled and receiving Social Security Disability benefits. These are generalized breakdowns. Each report will produce a different present value with the healthy participant's being the highest (greater potential lifespan) and the participant receiving disability Social Security having the lowest present value. So while we can prepare a report utilizing the different scenarios they are not really accurate reflections of the differing values. This is because a disability does not have to reflect a diminished lifespan (although it often may do so and statistically usually does). To qualify for disability benefits all an employee has to demonstrate is an inability to perform work duties. This could be for mental problems, a bad back or wrist, vision problems, etc. None of the foregoing would necessarily mean that the participant would have a shorter life span. The only way you can establish to your opposing counsel and/or the court that your client has a diminished lifespan and, therefore, a less valuable lifetime pension, is through evidentiary or testimonial evidence from a medical doctor with specialized knowledge of the client's medical condition. With a stated numerical range an appraiser can prepare a more accurate report. Do not expect your opposing counsel, or the judge, to rely on the mere fact that your client is receiving a disability pension as proof of a lower value. Only a medical doctor can establish that fact based on the circumstances of the particular individual and his/her condition.

---

### ***Introductory Special!***

#### **Free Pension Appraisal**

If you are an attorney who has never used LawDATA, Inc.'s services, then let us prepare a free pension appraisal (a \$150.00 value that will be paid for by your client) so that we can demonstrate to you the outstanding support and expertise we provide to every one of our attorney/clients. We make this offer knowing that once you try us you will become a regular customer.

**[CLICK HERE](#)**

## Why Two Pension Appraisals Are Usually Better Than One – Even If You Represent The Participant

Depending upon the case, or statutory law in the State in which you practice, you will be obtaining a pension appraisal based on one of two assumptions:

1. The plan participant will continue to work until his earliest unreduced retirement date and the plan will be valued using that retirement date but with the salary on the marital property cut-off date being used to determine the present value of the pension. Any supplemented early retirement benefits (unreduced retirement prior to normal retirement age, enhanced benefits until the participant reaches Social Security eligibility, etc.) which would be available to the participant on the date of his projected retirement would be included in the present value and a coverage calculation based on the number of years married while employed vs. total years of employment at the time of projected retirement would be calculated to identify the marital component. This is often referred to as a **matured full benefit pension appraisal**. A matured full benefit appraisal usually results in a higher present value and is a better reflection of the retirement benefits that the couple was actually accruing during the marital period.

2. The plan participant is assumed to stop working on the cut-off date for the accrual of marital property in your State. Any supplemental benefits that would accrue based on employment after that date are not included. Even if the participant were eligible to receive substantially more valuable supplemented benefits the very next year (i.e., 30 and out unreduced benefits at age 53) the value of the non-participant's benefit would be based on receiving the marital share of the accrued benefit on the normal retirement age, usually age 65. The accrued benefit is based on its value on the cut-off date for the accrual of marital property and even if a QDRO is used to distribute the pension, the non-participant spouse will only get 50% of the marital component that was accrued on the cut-off date for the accrual of marital property. No increases would be credited even if he or she had to wait 20 years to begin receiving their share. Inflation would decimate the value that had been awarded to the non-participant while the participant's share of the marital component is continuously being increased because pensions are constantly being adjusted to reflect the diminished purchasing power of the dollar due to inflation. This is often referred to as a **deferred vested pension appraisal** and usually results in a very inequitable distribution of the marital retirement assets to the non-participant spouse.

Often the difference in values of these two appraisal methodologies can exceed hundreds of thousands of dollars. When you obtain appraisals using both methods you can enter into settlement negotiations armed with the facts. If you represent the non-participant spouse in a deferred vested state, demonstrating the disparity in valuations should enable you to get additional consideration on other divisible marital property even if the participant is unwilling to increase the marital share being awarded to the non-participant spouse. If a QDRO has to be used, then demonstrating the huge disparity in distributions should get you some consideration.

And if you represent the participant in a matured full benefit state and the marriage is not of great duration you can present the non-participant's share as a windfall and usually get some consideration on equalizing the distribution.

A unique situation has developed in Pennsylvania in the past two years. If you make an immediate offset distribution you must use the deferred vested methodology but if you use a QDRO you must use matured full benefit methodology. Two appraisals detailing the different

values should have a serious negotiation impact if you represent the alternate payee and insist on a QDRO settlement unless a greater share of the present value is awarded to the non-participant spouse. That second appraisal will carry serious leverage in this situation as it will clearly demonstrate the disparity.

You can be as creative as you want with the second appraisal but I cannot foresee a situation where it will not enhance your negotiating acumen and better serve you and your client. Most pension appraisal services charge very little for a second appraisal so the cost should not be off-putting to your client.

---

---

### **Model Property Settlement Language**

Download our settlement language form and let the experts at LawDATA, Inc. **draft model property settlement language** (<http://www.lawdatainc.com/SetLanForm.pdf>) that deals specifically with the pension plan to which the order is addressed and the facts of your case.

---

---

Mr. Commerford has been active in the valuation of pensions and the preparation of Domestic Relations Orders for his attorney clients since the founding of LawDATA, Inc. in 1984. He has presented Continuing Legal Education programs, dealing with the valuation and distribution of retirement assets incident to divorce cases, for State Bar Associations throughout the country and written many articles on the subject for legal publications.

For any questions or ideas for upcoming articles you can reach Paul Commerford at [paul@lawdatainc.com](mailto:paul@lawdatainc.com).

Web: [www.lawdatainc.com](http://www.lawdatainc.com);

©LawDATA, Inc 2006