

I'm opposed to the proposed change to ACJA 7-208 to prohibit LDPs from preparing "Qualified Domestic Relations Order (QDRO) or supplemental orders dividing retirement assets."

## I. PURPOSE OF THE LEGAL DOCUMENT PREPARER PROGRAM

It's important to review the purpose of the Legal Document Preparer Program:

"the need to protect the public from possible harm caused by nonlawyers providing legal services must be balanced against the public's need for access to legal services." (ACJA 7-208 (C))

How will this proposed change improve the public's access to legal services?

The stated rationale for the change is that "effectively developing a QDRO requires providing legal advice." There is nothing in the rationale that suggests the change will improve the public's access to legal services. On the contrary, it will make it more difficult for the general public to access legal services when they cannot afford to have a QDRO or Domestic Relations Order (DRO) prepared due to the high cost.

I've prepared many QDROs and DROs in my 15+ years of service as a Legal Document Preparer. On one occasion I was contacted by a woman who was a 3-hour drive from my office. She could find no one to prepare the QDRO at a price that she could afford. The attorney who did the divorce years before, did not prepare the QDRO. This left her at risk of her ex-husband (plan participant) dying and then not being able to divide the retirement asset due to his death. We helped her through the process and the QDRO was successfully entered protecting her interest in the retirement account.

I see nothing in the rationale behind the proposed change to 7-208 that indicates there has been any harm done to the public by LDPs preparing QDROs and DROs. If the LDP is competent, there should be no restriction.

## II. PREPARING A QDRO OR DRO DOES NOT *REQUIRE* LEGAL ADVICE

The rationale that a "QDRO requires legal advice" has not been the case in my years of practice. I have never provided any legal advice while preparing Qualified Domestic Relations Orders or Domestic Relations Orders, nor has it been required. If the situation arose where legal advice was required for any document, not just QDROs or DROs., we would refer to a competent attorney.

The procedure generally involves contacting the Plan Administrator to see if they have model orders. This may trigger a hold on the retirement account, so we give the parties that information. Fidelity has a very simple tool that will generate a complete order. Usually, our clients divorce by consent where both parties agree to the division of the retirement asset. Sometimes we prepare the QDRO for an already divorced couple who simply need the Order prepared in a manner consistent with the Decree. No legal advice is required because they are telling us what they want done.

On occasion, we have included the QDRO language in the Decree and included the relevant portions of Internal Revenue Code (IRC) Section 414(p). This allows the Decree to be used as the QDRO. None of this requires legal advice because the requirements are generally set by statute and the Plan Administrator.

### III. THE PLAIN LANGUAGE OF 7-208 DOES NOT RESTRICT AN LDP FROM PREPARING A QDRO OR DRO

The current language of 7-208 states,

“A certified legal document preparer is authorized to:

- a. Prepare or provide legal documents, without the supervision of an attorney, for a person or entity in **any legal matter** when that person or entity is not represented by an attorney.” *Emphasis added.*

I’m a little surprised at the conclusion of the workgroup: “In their discussions the workgroups identified that **no permission to write or develop QDROs existed for Legal Document Preparers.**” (*emphasis added*) The plain language of “any legal matter” certainly includes QDROs and does not require additional permission. The word “any” is all inclusive.

### IV. REMOVING THE RESTRICTION ON LPs PREPARING QDROs WOULD IMPROVE THE PUBLIC’S ACCESS TO LEGAL SERVICES

Sadly, the workgroup did not include any LDPs. Logically, it would makes sense to have input from the very ones you are trying to restrict who have been actually doing the work for years without issue. Not only were LDPs not included, LDPs were not even notified of the proposed change. But for one of the LDPs keeping an eye on proposed changes, we would have little notice of proposed changes and that seems a violation of due process.

If the real issue here is that LPs are restricted, and therefore, LDPs should be restricted, perhaps you should allow LPs to prepare QDROs, also. That would improve the public's access to the legal services which is the whole point of both programs.

This proposed change will do nothing to improve the public's access to legal services. For this reason, and those enumerated above, I oppose the proposed change.

Respectfully,

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