

HOW TO REQUEST APPROVAL OF A QUALIFIED DOMESTIC RELATIONS ORDER BY ELECTRONIC MEANS

Parties to actions for dissolution of marriage or legal separation frequently submit for court approval proposed Qualified Domestic Relations Orders and other domestic relations orders relating to retirement assets. Such orders, referred to in these instructions as “QDROs,” are most commonly requested after judgment has entered, for the purpose of effectuating the terms of the judgment about the division of retirement assets.

The customary procedure for requesting approval of a QDRO is to submit a hard copy of the proposed order for review by the court and signature by a judge. A QDRO is often prepared by independent counsel retained for that purpose who does not have an appearance in the file (a “QDRO attorney”). The QDRO attorney typically mails the proposed order to the court with an explanatory cover letter, requesting that the proposed order be signed by a judge and returned to the QDRO attorney for submission to the administrator of the retirement plan.

The limitation of court operations during the COVID-19 public health emergency has made it infeasible for the clerks of the courts that remain open to perform the nonpriority functions of receiving, presenting to a judge, and returning hard copies of QDROs via mail. To facilitate the continued processing of QDROs, the Judicial Branch has established an optional procedure whereby the proposed orders may be submitted and acted upon electronically. This option is available only in paperless, electronic files in which at least one appearing attorney or self-represented party is enrolled in e-filing. The procedure is not available in paper files.

The following are the steps of the process when it is available. (For purposes of the instructions it is assumed that the parties have retained an independent QDRO attorney, but that is not a requirement of the procedure.)

1. The QDRO attorney prepares the proposed domestic relations order and has the parties sign it.
2. The QDRO attorney also prepares a cover sheet for e-filing with the QDRO, requesting that the QDRO be approved electronically. The cover sheet should also specify the name of the retirement plan, and the date in the QDRO case caption heading, exactly as the QDRO attorney would like it to appear in the separate electronic order that will be issued by the court if it approves the QDRO as filed.
3. The QDRO attorney mails copies, or emails PDF digital copies, of the QDRO and the cover sheet to an e-filer with an appearance in the case, typically the attorney for one of the parties. If e-mailing, the set of documents should be sent as one PDF document with the cover sheet first, followed by the proposed QDRO itself.

4. The attorney or other e-filer then e-files the cover sheet and proposed QDRO (as a single document, in the same order specified in Step 3), selecting the e-filing document type "QDRO." No fee is payable with this filing as it is not possible at this point in the process to request a certified copy (see below).
5. If the QDRO is approved by the court, the reviewing judge issues a separate electronic order that refers to and approves the QDRO as so filed. The electronic order bears the judge's electronic signature (using the judge's juris number) and appears in the electronic file immediately or closely following the proposed QDRO.
6. Upon entry of the order, attorneys and other e-filers in the case receive notice of it from the court electronically. Attorneys or e-filing self-represented parties in the case are then able, from their law office or home computers, to print both the QDRO and the separate order approving it.
7. After doing so, one of the e-filers mails or emails the documents back to the QDRO attorney for submission to the retirement plan administrator.

As noted above, one limitation of the above process is that it does not allow the QDRO attorney to obtain court certified copies of the QDRO and the separate order approving it. Furthermore, the issuance of certified copies is not one of the priority functions to be performed by court clerks during the COVID-19 emergency. In the interim, QDRO counsel might inquire of retirement plan administrators whether they will accept, in lieu of court certification, a certification by an attorney in the case that he or she has printed the documents, in full and without alteration, from the official court file, and that during the emergency the court cannot provide certified copies. Alternatively, when court operations resume to the point where clerks are able to provide certified copies, QDRO attorneys may request certified copies of orders that have already been issued.