



Example Court Questions

Direct Examination Questions to Ask QDRO Group Expert

Would you please give the court your name?

Would you also give us your business name and address?

What does QDRO Group do?

Could you give us some sense of the scope of your work?

How many present values do you do in a typical month?

Approximately how many of these are for state pension plans in Ohio?

And approximately how many are Social Security evaluations?

And can you tell me how many Division of Property Orders (DOPOs) you prepare in a typical month?

Could you tell me about your academic background?

What is your background and training in the field of mathematics?

Can you explain why your mathematics background is adequate for understanding and performing present value calculations?

What is your training in the pension field?

How long have you been in the field?

What professional affiliations or designations do you have?

(Introduce CV as exhibit)

Is this an accurate copy of your CV?

How long have you been doing present values?

How many times have you been accepted as an expert witness in court on either the present value of pensions or how to divide pensions with a Qualified Domestic Relations Order or a similar vehicle?

In how many counties have you testified?



Have you ever been published in the field of dividing pensions in divorce?

Could you tell us what some of those publications are?

What have you written that would help this court understand the issues inherent in the division of a state of Ohio pension plan, specifically when one party has health concerns?

(Introduce HB395 Article, When Present Values Fail and Chapter 9 of Dividing Pensions in Divorce and Chapter 30 on Present Values)

Have you ever given a presentation regarding retirement asset evaluation or division?

What groups attend these presentations?

What areas of knowledge must a pension evaluator have?

What is the most important area?

How do you happen to be here testifying as to the potential value and division of _____ and _____'s retirement benefits?

Can you describe the type of retirement benefit for which a present value calculation would be necessary to determine the benefit's current value?

What information is necessary to determine a current value of a future income stream?

Can you explain why varying actuarial assumptions exist for interest and mortality that result in significantly different "current values" of the same benefit for the same individual?

Is there precedent for which specific "current value" DR courts are seeking, or in other words, which set of actuarial assumptions is most proper?

What is the PBGC and why do they have their own method of calculating present values of defined benefit pensions?

Why do you think this court should accept, and previous courts have accepted, this valuation method that your company, and the PBGC, utilize?

Are you aware of any appellate decisions that uphold your assertion that the PBGC method most closely replicates the replacement cost of the future income stream?

In the last five years of testifying against Mr. _____ what have courts decided?



(Introduce Four Contested Cases)

Could you explain how you disagree with Mr. _____'s reports?

What statements does he make in the reports which you find misleading?

What potential inequities may arise in this case?

How would you describe the PBGC's and your firm's utilization of health assumptions?

Can you tell me which benefit is a disability benefit that _____ is currently receiving?

What is the problem inherent in offsetting the present value of a benefit calculated using a disabled mortality assumption from a present value calculated using a healthy mortality assumption?

What do you normally recommend in a scenario involving disability benefit valuations?

Why is that solution not viable in this case?

How would you propose to divide the PERS and Social Security benefits, without offsetting present values?

Could you take me through this calculation now, using accrued benefits for those that are not in pay status?

(Introduce Social Security monthly benefit offset calculation)

Can you tell me why we are offsetting Social Security from _____'s monthly benefit, at all?

Could you briefly summarize the chronology of the cases pertaining to the consideration of Social Security in the property division phase?

Are you aware of the case for this specific Appellate District?

What have you written specifically on the role of Social Security in dividing Ohio state pensions?

(Introduce Turner materials as exhibit)

Can you explain the "totality of circumstances" logic that Bret R. Turner refers to in the third edition of Equitable Distribution of Property and how it relates to the use of Social Security in dividing marital property?



Cross Examination Questions for Opposing Expert

Mr. _____, thank you for being here. I am going to ask you a series of questions that are basically factual ones that require either a short, specific answer or a Yes/No. Are you aware of what I will be attempting to do to save time and to get to the essential issues?

Are you familiar with the *Hoyt v. Hoyt* case of the Ohio Supreme Court back in 1990?

Would you agree that it basically set up “proportionate share” -- or what we call coverture QDROS today -- where the numerator of the fraction for a QDRO is the credited service during the marriage and the denominator is the credited service at retirement?

Did you testify in the *Giuliano* case against [QDRO Group Expert] in Cleveland back in 2013?

In that case did you also offer present values under three different health categories: healthy, disabled and disabled receiving Social Security as well as the value of the survivorship elections?

Are you aware of what the magistrate wrote in Dec. 31, 2013 decision following your testimony and that of [QDRO Group Expert]? (If he says that he is not you should ask: At what point in time are you concerned that the tide of case law is against you and that under the Actuarial Standard Board standards of practice that you need to inform people that your opinion is not in alignment with case law or statutes?)

Are you aware that the *Giuliano* court said: “This basis of this testimony (referring to you Mr. _____) is in direct conflict with *Hoyt v. Hoyt*?”

During the *Giuliano* case were you asked the following question by attorney _____?

I would like you to assume the following facts: That a plan participant retires and gets divorced on the same day. That he was married to the same woman for the entire time that he was employed. That his wife is the same age that he is and that he elected a 50 percent joint and survivorship annuity, okay? If all of that is true, in your theory, the wife would not receive 50 percent of the pension while the participant is alive, right? Yes or no?

Do you understand the question Mr. _____?

What was your answer at that time?

Is that still your answer?

Mr. _____, you have again valued the survivorship elections in the pension plans have you not?

Are you familiar with ERISA – the Employee Retirement Income Security Act of 1974 and amended many time since?

Do you know where the right to a joint and survivor annuity and preretirement survivor annuity are outlined?

Mr. _____, you are aware that it is clear federal law that similarly situation men and women retiring from a pension plan must receive equal income for life from the pension?

Could you tell me any federal case law on this subject?

Are you familiar with U.S. Supreme Court case of *Arizona Governing Comm. v. Norris*, 463 U.S. 1073 (1983) that established the rule that similarly situated men and women must be treated the same by pension plans?

Are you familiar with Title VII of the 1964 Civil Rights Act that prohibits makes it unlawful to discriminate against someone on the basis of race, color, national origin, sex (including pregnancy and gender identity) or religion?

Mr. _____, you have valued the survivorship rights of _____ under three health categories have you not?

Do you still believe as in *Giuliano* that the value of the survivorship tail of the pension should be used to adjust the amount of the pension being paid out while both parties are alive?

Mr. _____, I would like you to think about this question carefully. Is it possible to craft a Qualified Domestic Relations Order under your methodology that grants a joint and survivor annuity to the alternate payee without calculating the actuarial present value of the pension and the survivorship first?

We would have to do the same for the OPERS pension for _____ when she retires and elects survivorship for _____ would we not?

Is it fair to say that without actuarial present values of both the pension and the survivorship no QDROs with survivorship can be accurately drafted?

How much have you charged for the present values to date?

Mr. _____, is it possible that public policy supersedes actuarial principles?

Have you read the 2014 *Forman v. Forman* decision from the third appellate district in



which the court upheld the trial court's rejection of your actuarial methodology and assumptions?

Because I want this court to be aware of how greatly present values can vary and the inherent danger of using them, especially, when pensions are in pay status I would like to have you read from page 13 of the Forman court of appeals decision:

Of the three valuations, _____ testified that he recommended selecting the value of \$131,222.84 as the amount subject to equitable distribution (Aug. 6, 2013 Tr. At 130); Doc. No. 63). Specifically, _____ testified that \$131,222.84 was based on the assumption that _____ would stop working with 28 years of service and defer receiving his retirement benefits until age 65. (Id. At 135).

Do you remember testifying that the present value of the STRS pension of a 53-year-old teacher with 28 years of service should be based on the assumption that the teacher would quit work and not draw on the pension for another 12 years?

But that is what you testified to is it not?

You testified that the court should assume that the teacher would not even draw on the age 55 pension but instead assume that the teacher would just quit and wait 12 years?

Are you aware that the trial court accepted [QDRO Group Expert]'s STRS present value of \$355,761.91 and that the court of appeals backed up that decision?

The difference between your present value and [QDRO Group Expert]'s was about \$225,000 was it not?

Are you aware that your testimony was nearly 70 pages of transcript?

Mr. _____, do you go back to read decisions in cases where you have testified to see if your opinion was endorsed by the court?

How many times would your methodology have to fail before you change your reports and tell the requesting party that courts have not agreed with your positions?

Do you think it is material to the parties requesting your reports to know how your opinion has been viewed by courts that have directly weighed your opinion against that of others?

Mr. _____ sitting here today can you answer questions on the other three contested cases that you have had against [QDRO Group Expert] in the last five years where courts specifically made findings of fact and law?



Would you at least agree that your position was rejected and [QDRO Group Expert]'s was accepted in *Beirele v. Joliot*, *Giuliano v. Giuliano* and *Colan* or do I have to read the decisions to you?

Mr. _____, this is from the *Beirele v. Joliot* decision, "The court finds [QDRO Group Expert]'s argument to be more equitable and thus more persuasive."

Mr. _____ would you assert that your testimony and opinion carried the day in Franklin County?

Mr. _____ this is from *Colan*, "...the proposed QDRO submitted by wife on or about May 24, 2013 is acceptable, is more reflective of the terms and intent of the decree and should be signed."

Would you consider that your testimony for the husband was accepted there?

Mr. _____, would you agree that your testimony was rejected by the *Giuliano* court in Cleveland?

Mr. _____, would you please go to your Social Security report for _____. Would you tell what year of earnings outside the marriage were used in determining his final benefit?

Do you not agree that the 35 years of indexed earnings used to calculate his benefit all occurred during the marriage?

Are you aware of ORC section 3105.17 that calls for determining the benefit earned during the marriage?

Do you think it's proper to classify _____ as disabled, despite the fact that he is not receiving a disability benefit?

Does incorporating health assumptions within present value calculations skew the division of the PERS and both Social Security benefits in favor of the "disabled" individual, in this case?

If we were to offset present values where _____ is considered disabled, would we be effectively giving him more per month while he is alive?

Do you think it's equitable to force _____ to pay her former spouse a greater amount per month because he was diagnosed with an illness and may face a reduced remaining lifetime?

How many domestic relations cases have you testified in?

How many present value reports do you prepare each month for domestic relations cases?

Could you give us the name of any other actuaries or individuals or present value services that you consider to be experts in the field of valuing pensions?

Could you name some of the other companies in the country which do domestic relations present values?

Could you offer the names of some books in the Domestic Relations field you have read?

Do you know of any case where the court specifically wrote in its decision that you or your company was right and the other side was wrong?

Would you agree that in recent years that in at least four cases courts have stated that they accepted the testimony and numbers of [QDRO Group Expert] and directly rejected yours? (Have the names of the cases in your hand and ask if he has heard of them?)

Mr. _____, have you read the decisions in those four cases?

Mr. _____, in your testimony in the Forman case you stated that the research done by the American Council of Life Insurers every three months for the Pension Benefit Guaranty Corporation is not a survey did you not?

Can you name any other individual in the country who has ever said that the work checking interest rates by the council is not a survey?

So when the PBGC says in the Dec. 26, 2002 Federal Register that “*This voluntary collection of information is a quarterly survey of insurance company rates for pricing annuity contracts*” in referring to the Council’s work they are wrong in characterizing the work as a survey?

(Introduce Federal Register Notice: December 26, 2002)

Would you please read the following and tell me if you agree or disagree with the writer:

As the objective of the valuation is to estimate a “market value” for the accrued pension, the interest rate used by the actuary should produce present values that are consistent with the current market prices of comparable annuities. A commonly used practice is to use the interest rates published by the federal Pension Benefit Guaranty Corporation. These interest rates are based on periodic surveys of the interest rates used by large life insurance companies in providing annuities. Use of the Pension Benefit Guaranty

Corporation interest rates has the advantage of producing present values that in line with the market prices of comparable annuities.

If I revealed to you that the author of the article that this came from “Put Your Actuary to Work – Valuing the Pension” is Sandor Goldstein, a Fellow of the Society of Actuaries with a remarkable consulting record with pension funds and legislatures would it cause you to reconsider your opinion?

Can you provide this court with the name of one actuary who has written an article in a referred journal rejecting the PBGC Method?

(If he tries to introduce the Jennings and Furdak article ask him the following): Mr. _____, this article by two economists actually helps [QDRO Group Expert] and hurts you doesn't it if you actually read it carefully?

It calls for using US. Treasury bonds of 30 years does it not which gives present values higher than those of the PGBC does it not?)

(Introduce ASOP 34's Recommendations Regarding Interest Rates)

Mr. _____, would you please read this and again tell the court if you agree or disagree with what the author states. And you can explain why?

Do you agree that the author says the American Council of Life Insurers actually conducts a survey?

Do you agree that the PBGC approach makes sense, and I quote, “if one agrees that the present value placed on a pension should be equal to the cost of a similar pension that can be purchased today to replace it?”

Could you explain what the author means when he notes that buying an annuity avoids the problem, and I quote, of “... buying long-term U.S. Treasury bonds or high-quality corporate bonds and then trading them or holding them to maturity?”

Could you tell me what commissions _____ would face if she goes out and tries to buy corporate bonds?

Could you explain the reinvestment interest rate risk that crops up every six months?

Let me hand you the article by Scott L. Dennison, a Fellow of the Society of Actuaries who was West Virginia's state actuary before assuming other posts that I just had you comment on. Does this actuary cause you to reconsider your positions?

Can you tell we what present methodology [Actuary #1] in Cleveland uses for Domestic Relations?



Let me have you read his email and see if you agree with him?

Could you tell us what method Columbus [Actuary #2] uses for present values in divorce cases?

Could you tell us the method that [Actuary #3] and her associates use in Cincinnati?