

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

KUBY MCCARTY,	:	NO. FC-16-20,960
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	IN DIVORCE
	:	
RICHARD MCCARTY,	:	Motion for Contempt
Defendant	:	

**OPINION**

**AND NOW**, this 29<sup>th</sup> day of **January, 2021**, this matter is before the Court on a Petition for Contempt filed by the Plaintiff on December 14, 2020 on the basis that Defendant's Counsel has failed to propose and return the Qualified Domestic Relations Order ("QDRO") to Plaintiff's counsel. A hearing was scheduled and held on January 6, 2021 at which time Counsel for Plaintiff and Counsel for Defendant appeared. The parties did not appear. Also on January 6, 2021, Defendant filed a Response to Plaintiff's Motion for Contempt and New Matter. With leave of the Court, Plaintiff filed a Reply to Defendant's Response on January 15, 2021. Both parties are requesting attorney's fees. Based upon the Petition, Response, Reply, and arguments made by Counsel at the time of the hearing, the Court will now issue its decision and enter the below Order.

A Marital Settlement Agreement ("the Agreement") was entered into by the parties on September 6, 2019. Paragraph 5 of the Agreement titled "Pension, Vacation Pay, Annuities, Etc. states, in relevant part, as follows: "In the event that CalPERS requires a qualified domestic relation order (QDRO) to be prepared, Plaintiff shall be responsible for preparing and providing said QDRO to CalPERS, subsequent to said QDRO being reviewed and agreed upon by Defendant and/or Defendant's counsel."

By Order dated March 6, 2020, Defendant's Counsel was directed to return the QDRO to Plaintiff's Counsel outlining changes or corrections that needed to be made to the proposed QDRO. On March 18, 2020, Defendant's Counsel sent an email to Plaintiff's Counsel explaining that the proposed QDRO was for a PSERS pension when it should be for a CalPERS pension and that the entire document needed to be changed. A new draft QDRO was sent from Plaintiff's Counsel to Defendant's Counsel on August 12, 2020. On September 2, 2020, Defendant's Counsel emailed Plaintiff's Counsel a list of several questions and concerns regarding the QDRO as well as a marked up copy of the QDRO. One week later, Plaintiff's Counsel sent a revised QDRO to Defendant's Counsel, but failed to address Defendant's Counsel's questions and concerns. Thereafter, the Counsels communicated back and forth several times regarding the issues with the QDRO. On September 13, 2020, Plaintiff's Counsel told Defendant's Counsel that she does "not want to file anything that won't work" and to "[s]ee what you [Defendant's Counsel] can find out." *See Defendant's Response to Plaintiff's Motion for Contempt at Exhibit G.* Between August 2020 and December 2020, both Counsels corresponded several times via email regarding the status of Defendant's Counsel's review of the QDRO.

Based on the language from the Agreement, it is Plaintiff's burden/responsibility to prepare the QDRO. While Defendant's Counsel had offered to assist with the QDRO, the Agreement does not put that responsibility on the Defendant. Defendant's Counsel has been clear about her issues with the QDRO and Plaintiff's Counsel has failed to revise, amend, or correct those issues. Defendant's Counsel has not objected to proceeding with the QDRO in its proper form, raised a frivolous claim, or withheld information necessary for Plaintiff's Counsel

to complete the QDRO properly. The disagreement over who failed to prepare the QDRO is not a dispute between the parties, but between the parties' counsel and, for that reason, the Court will not penalize either of the parties. Rather, the parties are to proceed as follows:

Plaintiff's Counsel is directed to provide a QDRO suitable for a CalPERS pension to the Defendant's Counsel who will review the draft QDRO with the Defendant to ensure all amounts regarding payments to each party is accurate and the information is correct to best of Defendant's knowledge. Within twenty (20) days of receiving the proposed QDRO, Defendant's Counsel is directed to either provide a signed copy of the QDRO to Plaintiff's Counsel or respond to Plaintiff's Counsel with any corrected information. If CalPERS rejects the QDRO, it shall be Plaintiff's or Plaintiff's Counsel's responsibility to make the necessary changes. If a revised QDRO is required by CalPERS, Defendant shall sign and return the revised QDRO to Plaintiff within twenty (20) days of receipt of the revised QDRO.

**ORDER**

AND NOW, this 29<sup>th</sup> day of **January, 2021**, upon consideration of Plaintiff's Petition for Contempt and Defendant's response thereto, Plaintiff's petition is **DENIED**. Plaintiff's Counsel shall provide a QDRO suitable for a CalPERS pension to the Defendant's Counsel. Defendant's Counsel shall review the draft QDRO with the Defendant to ensure all amounts regarding payments to each party is accurate and the information is correct to best of Defendant's knowledge. Within twenty (20) days of receiving the proposed QDRO, Defendant's Counsel shall either provide a signed copy of the QDRO to Plaintiff's Counsel or respond to Plaintiff's Counsel with any corrected information. If CalPERS rejects the QDRO, it shall be Plaintiff's or Plaintiff's Counsel's responsibility to make the necessary changes. If a revised QDRO is required by CalPERS, Defendant shall sign and return the revised QDRO to Plaintiff within twenty (20) days of receipt of the revised QDRO.

BY THE COURT,

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Ryan M. Tira, Judge

cc: Mary Kilgus, Esq.  
Tiffani Kase, Esq.  
Gary Weber, Esq.