

In re Marriage of Janes

We would like to think that when an MSA is signed and Judgment entered, our job is finished. On to the next case. Not so fast. There may be a QDRO to draft, enter and serve. There probably will be transfers to be made to implement the Judgment. Remember that the spousal fiduciary duty in Family Code section 721 continues *until the asset or liability has actually been distributed* [Family Code section 2102 (b)]. Of course, it must be clear as to the precise amount to be divided or transferred.

In the *Janes* case, the dispute was who had the right to gains and losses on the fixed retirement sum specified in the Judgment, and on what date did such accounting commence: the date of separation (2009), date of the MSA and entry of Judgment (2010), the date of the QDRO (2014), date of the transfer into an account in wife's name (2014)? Husband contended that wife should get only the fixed sum of \$113,392 set forth in the Judgment, and that he had the right to any and all gains on said sum. The trial court disagreed, ordered that wife was to receive gains from the date of separation. The Court of Appeal agreed that wife was entitled to the gains, but from the date closest to trial in April, 2010; the trial court order was affirmed with directions.

Following entry of Judgment, the wife's \$113,392 remained in husband's unsegregated retirement account. Several years later, when wife requested a transfer of the funds "plus gains and losses (realized and unrealized) income and expenses (accruals)," this dispute erupted. What duties do counsel have post-Judgment to see that provisions of the MSA and Judgment are actually transferred? Not only QDRO's, but real property transfers, change of beneficiary forms, estate planning changes, partnership interests, the list goes on. Perhaps a renewed look at our retainer letters to make certain that responsibility for post-judgment duties are set forth, or are they ignored? And more care should be given the drafting of the executory provisions of transfer of funds in agreements and judgments to avoid the type of problem encountered in the *Janes* case.

We're in the midst of baseball season. Don't forget the classic expression of the great Yankee catcher and renowned legal philosopher, Yogi Berra, which seems quite apt in this situation: "It's not over, 'til it's over." [The Jurisprudence of Yogi Berra, 46 Emory LJ 697].

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