

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## ***RULES CLEARINGHOUSE***

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## **CLEARINGHOUSE RULE 99-027**

### **Comments**

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### **2. Form, Style and Placement in Administrative Code**

a. Under s. 227.15 (1), Stats., an agency may not hold a public hearing on a proposed rule until after it has received the written report of the Legislative Council Staff review or until after the initial review period of 20 working days, whichever comes first. In this case, the report to the agency is due March 11, 1999 and the first possible hearing date is March 12, 1999 unless the Legislative Council Staff submits a report before its due date. However, the agency has scheduled a hearing on March 11, 1999. In order to avoid the necessity of rescheduling the hearing, this report is being submitted before its due date. In the future, unless prior arrangements are made with the Legislative Council Staff for early submission of its report, the agency should avoid scheduling hearings before the statutory due date of the Legislative Council Staff report.

b. The first line of the text of the rule should be: “SECTION 1. ETF 20.35 is created to read:”. [See s. 1.04 (1), Manual.]

c. The title of s. ETF 20.35 refers to a “qualified domestic relations order” and then follows it with a parenthetical reference to the acronym “QDRO.” The text uses only the acronym and indicates that it is defined in s. 40.02 (48m), Stats. However, s. 40.02 (48m), Stats., defines the term “qualified domestic relations order” without using the acronym. A definition of “qualified domestic relations order” or “QDRO” should be added, either as a subsection of s. ETF 20.35 or as a definition in s. ETF 10.01. [See s. 1.01 (8), Manual.]

d. In s. ETF 20.35 (intro.), the term “Intro:”, which should be “(intro.)”, is not necessary, since this is a created section, and should be deleted. In addition, unless this material grammatically leads into the following subsections, it should be renumbered as sub. (1) and the remaining subsections and internal cross-references should be renumbered accordingly. [See s. 1.03 (8), Manual.]

e. In the third sentence of s. ETF 20.35 (intro.), “must equal” should be changed to “shall equal.” In the fourth sentence of s. ETF 20.35 (intro.), “will determine” should be changed to “shall determine.” In the last sentence of s. ETF 20.35 (6) (d), “shall not receive” should be changed to “may not receive.” In the first sentence of s. ETF 20.35 (6) (k), “department will delay” should be changed to “department shall delay.” In the second sentence of s. ETF 20.35 (6) (k), “department will process” should be changed to “department shall process.” In the last sentence of s. ETF 20.35 (6) (k), “QDRO will have no effect” should be changed to “QDRO has no effect.” [See s. 1.01 (2), Manual.]

f. Section ETF 20.35 (5) (b) (intro.) and (7) (intro.) would benefit from including introductory language such as “all of the following” or “any of the following.”

g. In s. ETF 20.35 (2), the two references to “two” should be changed to “2.” [See s. 1.01 (5), Manual.] This comment also applies to s. ETF 20.35 (6) (a) and (7) (b) 1. and 2. Also, in sub. (2), the word “truncate” should be replaced by the word “round,” unless there is a specific reason for inconsistency with other provisions of the rule.

h. In s. ETF 20.35 (5), (6) and (7), a title should not be included unless titles are included for all of the subsections of s. ETF 20.35. [See s. 1.05 (1), Manual.]

i. In s. ETF 20.35 (5) (a), “Social Security” and “Social Security Administration” should not be capitalized. [See s. 1.01 (4) (a), Manual.]

j. In s. ETF 20.35 (5) (b) (intro.), “this par.:

k. In s. ETF 20.35 (6) (e), the notation “par.” should be replaced by the notation “pars.”

l. In s. ETF 20.35 (6) (g), “ch. ETF 11.02 (1)” should be changed to “s. ETF 11.02 (1).” [See s. 1.07 (2), Manual.]

m. In s. ETF 20.35 (6) (L), “ch. ETF 50 subch. III,” should be be changed to “subch. III of ch. ETF 50.” [See s. 1.07 (2), Manual.]

n. In the last sentence of s. ETF 20.35 (7) (b) 3., the reference to “s. 40.23 (2) (c), (2m) (c) or (d), or (3), or under s. 40.23 (2) (b) or (2m) (e), Stats.” should be changed to “s. 40.23 (2) (b) or (c), (2m) (c), (d) or (e) or (3), Stats.” Also, the introductory material of par. (b) does not grammatically lead into the following subunits. Consequently, the introduction should be renumbered as subd. 1. and the remaining subdivisions renumbered accordingly. Finally, par. (b)

makes references to rounding quotients to two decimal places; this does not appear to be necessary in light of sub. (2).

o. In the last sentence of s. ETF 20.35 (7) (c), the reference to “par. (6) (a)” should be changed to “sub. (6) (a).” [See s. 1.07 (2), Manual.]

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

In the last sentence of s. ETF 20.35 (6) (k), the reference to “par. (g)” should be to “par. (h).”

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. The close parenthesis symbol should be added before the period at the end of the first sentence in the analysis.

b. In the second sentence of the analysis, “alternate” should be changed to “alternate payee.”

c. In the second and the last paragraphs of the analysis, to avoid ambiguity about the status of the first and last dates, the phrase “between January 1, 1982 and April 27, 1990” should be changed to “on or after January 1, 1982, and on or before April 27, 1990” or “during the period that begins on January 1, 1982, and ends on April 27, 1990.” [See s. 40.08 (1m) (f) 3., Stats.] Alternatively, the phrase could be changed to “on or after January 1, 1982, and before April 28, 1990.” [See s. 40.08 (1m) (k) 2., Stats.] See, also, the title to s. ETF 20.35 (7).

Also, although the analysis refers to various dates with respect to the date a marriage terminates, s. ETF 20.35 does not do so, with the exception of the title of s. ETF 20.35 (7). A reference to those dates should be included in the rule text.

d. In the fourth paragraph of the analysis, the first sentence is difficult to follow. It may be useful to separate it into two sentences.

e. In the last paragraph of the analysis, the references to “degree date” should be changed to “decree date.” Also, in the last sentence, the word “a” should be deleted.

f. In the “Copies of Rule and Contact Persons” provision of the analysis, the last sentence should give the actual name, title and telephone number of the contact person, rather than stating “please call (name, title, phone).” Also, the sentence should end with a period.

g. In s. ETF 20.35 (5) (a), a period should be inserted after “2” in the reference to “s. 40.08 (1m) (f) 2, Stats.”

h. In the second sentence of s. ETF 20.35 (5) (a), “their” should be changed to “his or her.”

i. The first sentence of s. ETF 20.35 (6) (k) is difficult to follow. It may be useful to separate it into two sentences, for example, “The department shall reject a QDRO if it does not meet

all the requirements of s. 40.02 (48m), Stats., or if it is not an original QDRO signed by the judge or family court commissioner or does not have an original certification from the issuing court. If a QDRO is rejected and the department receives a benefit application that would close the participant's account through payment of a lump sum benefit, the department shall delay payment of the lump sum benefit for a period of 30 days after the date the QDRO is rejected.”

j. In the last sentence of s. ETF 20.35 (6) (k), a comma should be inserted after “closed” to set off the introductory phrase.

While the title of s. ETF 20.35 (7) refers to QDROs for marriages terminated between January 1, 1982, and April 27, 1990, s. ETF 20.35 (7) (intro.) refers to the division of accounts and annuities divided under QDROs submitted *under the provisions of s. 40.08 (1m) (f) 3., Stats.* Section 40.08 (1m) (f) 3., Stats., applies to marriages terminated during the period that begins on January 1, 1982, and ends on April 27, 1990 *for which the Department of Employee Trust Funds (DETF) receives a QDRO after May 2, 1998.* No reference is made in s. ETF 20.35 (7) to the provision of s. 40.08 (1m) (f) 3., Stats., relating to May 2, 1998.

Moreover, s. 40.08 (1m) (f) 3., Stats., simply provides that for marriages terminated during the period that begins on January 1, 1982, and ends on April 27, 1990 for which DETF receives a QDRO after May 2, 1998, the division of benefits does not apply to any benefits paid to the participant before DETF receives the QDRO. Thus, it may not be appropriate to refer only to QDROs submitted under the provisions of s. 40.08 (1m) (f) 3., Stats. Should there be a reference to s. 40.08 (1m) (k) 2., Stats., or to some other provision?

If a reference to s. 40.08 (1m) (f) 3., Stats., is retained, a period should be inserted following “3.”

k. In the last sentence of s. ETF 20.35 (7) (c), a comma should be inserted after the first use of the word “balance” to set off the introductory phrase.