- **The annual statements from pension plans do not equate to the ‘true value’ of the pension.**
  - Your Honor-the value of my CalPERs account is only $80,000, here take a look-this is a statement from CalPERs-so you know I am telling the truth!
    - Sir/Ma’am-My understanding of CalPERS is they do not provide actuarial values and the values on that statement only reflect a fraction of the true value of your CalPERS account. In fact-if you read that statement closer, I believe it says so-on the statement itself that the values only reflect your mandatory service contributions. To do a ‘buy out’ of your pension, I would recommend you seek actuarial services and consult with a financial advisor.
- **Ordering survivor benefits to remain in place does not secure survivor benefits in most instances when retirement is imminent, and bifurcation is being requested. A QDRO is generally required.**
  - Your Honor-I want to take status to be divorced today, so I can get remarried and retire tomorrow. Can’t you just order me to protect my spouse’s survivor benefits?
    - Sir/Ma’am-With retirement accounts, survivor benefits must be secured through proper benefit election forms and QDROs. I must follow Family Code 2337 and require a QDRO be entered before granting your bifurcation request, especially since you are planning on getting remarried and retiring soon.
- **401(k)/Defined Contribution Account Loans are different than Credit Card Loans**
  - Your Honor that’s a community loan! Order my ex to pay me back in cash!
    - Sir/Ma’am-I will order that the loan be classified as a community property loan and then I will advise you to speak to an expert on this-because it matters if the loan was taken out before or after date of separation, if the loan was paid back or not, when it was paid back and with what funds, and I want to make sure each of you receives your community share and that the math is correctly applied to the division of your 401(k).
- **Offsetting different retirement accounts of the same value does not equate to an equal community split.**
  - Your Honor let us simplify the process-just order that my ex keep their account and I will keep mine-look at the statements from separation-they are the same value. It is simple math-let’s not complicate things with doing multiple QDROs!
    - Sir/Ma’am-What if Mr. Smith earned a 15% return on his investments and Ms. Smith lost 10% on her investments since the date of separation? I have reviewed no statements to know the answer to this question and be certain that both these accounts performed similarly in the stock market since the date of separation. I would recommend you speak to a QDRO expert first, and then decide if you want to offset these accounts.
- **Adding in an additional award from a 401(k) to reimburse for non-retirement assets, has tax implications.**
  - Your Honor-I owe my ex $50,000 from the buyout of our home. Can we just tack on an additional award of $50,000 to be taken from my 401(k)?
    - Sir/Ma’am-The 401(k) is a pre-tax asset taxed at the ordinary income tax rate and the House is a capital asset-where the appreciation is charged at the capital tax rate. So, $1 in house equity does not equal $1 in 401(k) investments. I would recommend you discuss with your tax professional and then circle back with a joint stipulation if you still want to make this agreement.
- **When in doubt about judgment language-Use Judicial Council Form FL-348 for protection of retirement benefit rights and order QDROs to be completed right away!**
  - Your Honor-Here is a copy of our judgment language: “We agree to divide 50% of our retirement accounts.”
    - Sir/Ma’am-The Judgment language you are suggesting is a little thin and does not mention survivor benefits. If you do not mention survivor benefits in your judgment language, there may be a problem protecting your survivor benefits upon death/remarriage. *Marriage of Padgett* (2009) 172 Cal.App.4th 830. *Carmona v. Carmona* (9 Cir 2010) 603 F.3d 1041. Please look at the suggested judgment language in Judicial Council Form FL-348 for protection of retirement benefit rights and use similar language. Also, I want the QDROs completed in the next 3 months to avoid any complications later.