

(2003). See, *Felix v. Felix*, 1998 WL 458499, \*2 (D.V.I. 1998). Compare, 16 V.I.C. 68 (defining what constitutes 'separate property' of a spouse, not subject to distribution).

1. Equitable Distribution of Retirement Accounts

**[6]** [HN5] Considering the tremendous statutory examples and case law from other jurisdictions holding pension funds as marital property, the Virgin Islands has determined that a pension fund is also marital personal property, subject to claim by the other spouse upon divorce. *Fuentes*, 38 V.I. at 40, 1997 WL 889532, at \*8. The *Fuentes* Court goes on to rationalize its decision by quoting the Rhode Island Supreme Court in *Stevenson v. Stevenson*, 511 A.2d 961, 965 (R.I. 1986):

To the extent earned during the marriage, the [pension] benefits represent compensation for marital effort and are substitutes for current earnings which would have increased ... the marital standard of living or would have been converted into other assets divisible at dissolution. Subjecting the benefits to division is just, because in most cases the retirement benefits constitute the most valuable asset the couple has acquired and they both have relied upon their pension payments for **[\*\*28]** security in their older years. **[\*24]** *Family Law and Practice*, § 37.07[1] at 37-81 (1985).

*Fuentes v. Fuentes*, 38 V.I. 29, 1997 WL 889532 (Terr. V.I. 1997). The evidence shows that Mr. Francis has approximately Five Hundred Thousand Dollars (\$500,000.00) in his retirement account. While, Dr. Wright-Francis has an amount that exceeds Five Hundred Thousand Dollars (\$500,000.00), the exact amount is unknown.

According to the Court in *Fuentes*, both parties are entitled to an equitable share of the other's retirement account. The *Fuentes* Court further explains that there are two (2) different methods used to determine the percentage which spouses are entitled. The first method presumes a present value on the retirement plan based on the expected lifespan of the employee-spouse. *Weir v. Weir*, 173 N.J. Super. 130, 413 A.2d 638 (1980). This method requires the Court to determine values contingent on life expectancy and employee-spouse's share of the retirement pay. *Fuentes*, 38 V.I. at 41, 1997 WL 889532, at \*7. The second method calculates the percentage that the non-employee is entitled to, based on length of employment and marriage. They receive benefits when they become available under the plan. *Id.* Both methods require basic knowledge of the retirement plans that includes, but are not limited to the following information: 1) present value; 2) account history; **[\*25]** 3) retirement plan regulations; and 4) the distribution schedule.

With regard to the retirement accounts, the parties have simply failed to submit sufficient information for the Court to make a determination. Mr. Francis' submission only demonstrates the balance of his Fidelity IRA account when the parties dissolved their marriage in 2012. The Court has no reliable evidence from Dr. Wright-Francis regarding her retirement fund other than her vague testimony. Neither party has made sufficient information available to this Court, to justify the division of their respective individual accounts.

**[7]** On July 25, 2012, the Court refused to make a determination on Dr. Wright-Francis' show cause motion because it lacked sufficient evidence and ordered the parties to commission a CPA *supra*. The parties failed to comply. As a result, the record is still void of evidence of a CPA analysis or recommendation to aid the Court. Kellerhals reports and testimony are not helpful in this regard since it was designed for the sole purpose of demonstrating waste of assets by Mr. Francis. Notwithstanding, **[\*\*29]** it appears that the

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