

MAN ACCUSED OF MURDER USES RETIREMENT PLAN FUNDS FOR LEGAL FEES



A Wisconsin murder suspect is being permitted to utilize funds from his 401(k) to hire an attorney for representation. Jason Anderson of Fond du Lac, WI, was arrested in November for the murder of his wife, Nicole Anderson, who was discovered dead at their home from a single gunshot wound. After fleeing from the authorities, he was picked up by the police in Alabama and extradited to Fond du Lac. A one-million dollar bond was set in December. Anderson, who reportedly claimed to police that the shooting was an accident, was denied access by Judge Peter Grimm to his marital estate for the purpose of paying for a lawyer. However, Judge Richard Nuss of the Fond du Lac County Circuit Court allowed Anderson to extract 37,000 dollars from his 401(k) savings plan. A defense attorney, Robin Shellow, said that the suspect was planning on hiring her to represent him. A 401(k) is a retirement savings plan with funds from which employees generally cannot withdraw until at or around the age of 59½ years. The exception to potential extraction from a 401(k) is “hardship distribution.” The IRS defines such a hardship as “an immediate and heavy financial need” for the employee. Whether the requested funds are immediate or heavy is dependent upon the individual person and the situation. The IRS lists possibilities such as medical expenses, costs in relation to the purchase of a principal residence, tuition and expenses related to education, monetary safeguards to prevent eviction or foreclosure of a principal residence, burial or funeral expenses, or expenses for the repair of a principal residence. A person younger than 59½ with a 401(k) really only has to prove that



he/she is experiencing a hardship to withdraw funds.

A 401(k) and other plans may provide hardship distributions but are not required to do so. The IRS states that, if providing for hardship distributions, a 401(k) “must provide the specific criteria used to make the determination of hardship.” In other words, distribution may be made for medical expenses, as an example, but not for tuition. To determine the actual need and the required amount to satisfy the need, the plan “must specify and apply nondiscriminatory and objective standards.” Shellow filed a document which alleged that Anderson stated that, on the night that his wife was killed, he believed he heard an intruder. He armed himself, and a handgun was inadvertently discharged when the trigger guard made contact with some furniture, the recoil causing the man to nearly fall and the gun to fire a second time. District Attorney Dan Kaminsky and Chief of Police Bill Lamb said in a press release that Anderson’s documented claim will not affect the charge of first-degree intentional homicide that was filed. A preliminary hearing for Anderson’s case is scheduled for this Friday, January 6th.