

1 **ORANGE COUNTY EMPLOYEES' RETIREMENT SYSTEM**

2 **MODEL DOMESTIC RELATIONS ORDER A**

3
4
5 **APPLICABLE TO A DISSOLUTION OF MARRIAGE**

6 **PRIOR TO THE MEMBER'S RETIREMENT**

7
8 **WARNING!**

9 Issues involving retirement benefits divided under a Domestic Relations Order involve
10 complex Community Property laws, other marital rights and tax issues. You are hereby advised
11 to seek the advice of competent legal counsel.

12 The Orange County Employees' Retirement System, its agents, counsel and consultants
13 are not authorized to give you legal advice and make no representation as to this model Order's
14 sufficiency under applicable federal or state law or as to its legal consequences.

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16 This model Order is in a form acceptable to the Orange County Employees' Retirement
17 System to allow the Retirement System to administer benefits to the parties.

1 4. Petitioner, Respondent and the Court intend that this Order shall be a Domestic
2 Relations Order, dividing the parties interests in the Orange County Employees' Retirement
3 System.

4 5. The captions and headers found in this Order are for the convenience of the parties
5 and the Court and do not create a separate legal right, equitable interest or material term of this
6 Order.

7 6. Petitioner and Respondent have stipulated that the Court shall enter the following
8 Order:

9 **NOW THEREFORE, IT IS HEREBY ORDERED BY THE COURT THAT:**

10
11 **1. DEFINITIONS:** As used in this Order, the following terms shall apply:

12 (a) "Member" refers to Respondent JOHN DOE, (Social Security No.
13 _____), whose last known address is 111 Pine Street, Santa Ana,
14 California, 92706.

15 (b) "Non-Member" refers to Petitioner JANE DOE, (Social Security No.
16 _____), whose date of birth is _____, with a last
17 known address of 222 Birch Street, Santa Ana, California, 92706.

18 (c) "Plan" refers to the Orange County Employees' Retirement System, which
19 is a "governmental plan" as that term is defined in 29 U.S.C. Secs. 1002(32) and
20 1003(b)(1), and which is statutorily exempt from all provisions of the Retirement Equity
21 Act of 1984 except that a "qualified domestic relations order" involving a governmental
22 plan is sufficient under Federal law if it simply "creates or recognizes the existence of
23 a [non-member's] right to ... receive all or a portion of the benefits payable with
24 respect to the [member] under the plan." (26 U.S.C. §§414(p)(1)(A)(i); 414(p)(11).)

25 (d) "Plan Administrator" refers to the Orange County Employees' Retirement
26 System, located at 2223 E. Wellington Avenue, Suite 100 Santa Ana, California, 92701.

27 **2. STATUS OF NON-MEMBER:** The Non-Member is the former spouse of the
28 Member.

1 **3. APPLICATION OF THE FAMILY CODE:** This Order is entered pursuant to the
2 California Family Code, Section 2060, and following.

3 **4. RIGHT TO RECEIVE MONEY:** This Order hereby creates and recognizes as to the
4 described Plan, the existence of a right given to the Non-Member to receive money from the
5 Plan.

6 **5. APPLICATION OF THE JUDD FORMULA:** All retirement benefits payable to
7 Member JOHN DOE by the Orange County Employees' Retirement System, including any future
8 cost-of-living increases, will be divided between JOHN DOE and JANE DOE pursuant to the
9 formula approve by the Court of Appeal in *Marriage of Judd* (1977) 68 Cal.App.3d 515, 522. For
10 purposes of calculating each party's share of such retirement benefits, Petitioner and
11 Respondent were married on _____, separated on _____, Respondent
12 entered county service on _____, and the total length of their marriage during county
13 service was _____ months. The Orange County Employees' Retirement System will make
14 direct payment to Petitioner and Respondent each party's share of said retirement benefits, by
15 separate check or warrant payable to Petitioner and Respondent respectively. As a condition of
16 receiving such payment, Petitioner and Respondent shall each keep the Orange County
17 Employees' Retirement System informed of their Social Security Numbers, and such other
18 information as may be reasonably required by the Orange County Employees' Retirement
19 System in order to effect direct payment. The current mailing address for the Retirement System
20 is 2223 E. Wellington Avenue, Suite 100 Santa Ana, California, 92701.

21 **6. PAYMENTS AVAILABLE WHEN MEMBER RETIRES:** Payments to the Non-
22 Member shall be available, on application by the Non-Member to the Plan Administrator, on the
23 same basis and at the same times as such benefits are actually paid to the Member in
24 accordance with *In re Marriage of Jensen* (1991) 235 Cal.App.3d 1137.

25 **7. DEATH OF NON-MEMBER:** If the Non-Member dies before payments commence
26 hereunder, any and all payments that would have been made to the Non-Member pursuant to
27 this Order, had the Non-Member lived, will be paid instead to the estate of the Non-Member, in
28 accordance with *In re Marriage of Powers* (1990) 218 Cal.App.3d 626.

1 **8. DEATH OF MEMBER:** If the Member dies before payments commence, the Non-
2 Member shall not be treated as a surviving spouse, but will be entitled to receive a pro-rata share
3 of any survivor's benefits that the Plan may become obligated to pay as a result of the Member's
4 death, in accordance with *In re Marriage of Carnall* (1989) 216 Cal.App.3d 1010.

5 **9. DESIGNATION OF BENEFICIARY:** The Member and Non-Member shall be
6 responsible for filing a Designation of Beneficiary form with the Plan Administrator.

7 **10. MEMBER'S FAILURE TO DESIGNATE BENEFICIARY:** If the Member fails to
8 designate a beneficiary or if the designated beneficiary does not survive the Member, and the
9 Member dies leaving a spouse (other than the Non-Member), the Member's spouse may petition
10 the Retirement System for beneficiary status pursuant to Government Code Section 31458.2.

11 **11. REQUIRED DOCUMENTS:** The Member and Non-Member shall sign all forms,
12 letters, and other documents as required to effect the distribution(s) described herein and to carry
13 out the intent of this Order.

14 **12. INFORMATION REGARDING AMOUNT OF BENEFIT:** The Non-Member, or the
15 Non-Member's attorney of record, are authorized to receive information concerning the amount of
16 the Member's benefits upon written inquiry or request until such time as the Non-Member begins
17 receiving payments as set forth in this Order. No other information will be provided to the Non-
18 Member or the Non-Member's attorney unless such request is made pursuant to Government
19 Code Section 31532.

20 **13. INCLUSION IN GROSS INCOME:** The Non-Member shall include retirement
21 benefits received by the Non-Member pursuant to this Order as and when received by the Non-
22 Member in his or her gross income and the Member need not do so.

23 **14. APPLICATION OF THE '37 ACT:** This Order shall be administered and interpreted
24 in conformity with the County Employees' Retirement Law of 1937, the regulations of the Orange
25 County Employees' Retirement System, and other applicable law.

26 **15. INTENT:** This Order is intended to be a Domestic Relations Order dividing the
27 parties interest in the Plan and shall be administered and interpreted in conformity with the
28 provisions of general principles of California Community Property law, and is intended to be a

1 Domestic Relations Order in terms of the Retirement Equity Act of 1984 to the extent this Act is
2 applicable to the Plan.

3 **16. LIMITATIONS ON ORDER:** Nothing contained in this Order shall be construed to
4 require the Plan or Plan Administrator:

5 (a) To provide to the Non-Member any type or form of benefit or any option
6 not otherwise available to the Member under the Plan;

7 (b) To provide to the Non-Member increased benefits, determined on the
8 basis of actuarial value, not available to the Member;

9 (c) To pay any benefits to the Non-Member that are required to be paid to
10 another Non-Member under another order determined by the Plan Administrator to be
11 a valid Domestic Relations Order entered by a Court of competent jurisdiction; or

12 (d) To change the payment option of the Member once the Member has
13 retired.

14 **17. RESERVATION OF JURISDICTION:** The Member, Non-Member, and the Court
15 intend that this Order meet all the requirements of a Domestic Relations Order under the County
16 Employees' Retirement Law of 1937, the regulations of the Orange County Employees'
17 Retirement System, and other laws of the State of California. The Court shall reserve jurisdiction
18 to modify this Order and to resolve any disputes that may arise among the parties and the Plan
19 Administrator concerning the benefit payments or any other aspect of this Order. If any portion of
20 this Order is rendered invalid or otherwise unenforceable, the Court reserves jurisdiction to make
21 an appropriate adjustment to effectuate the intent of the parties. Any future fees, taxes, and/or
22 penalties will be assessed against the parties who then have an interest payable from the Plan.
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IT IS SO STIPULATED:

Dated: _____

[NAME]
Petitioner/Non-Member

Dated: _____

[NAME]
Respondent/Member

APPROVED AS TO FORM AND CONTENT

Dated: _____

[NAME]
Attorney for Petitioner/Non-Member

Dated: _____

[NAME]
Attorney for Respondent/Member

IT IS SO ORDERED:

Dated: _____

JUDGE OF THE SUPERIOR COURT