

ORANGE COUNTY EMPLOYEES' RETIREMENT SYSTEM

MODEL DOMESTIC RELATIONS ORDER

APPLICABLE TO A DISSOLUTION OF MARRIAGE

PRIOR TO THE MEMBER'S RETIREMENT

WARNING!

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

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

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

[Attorney or Party Name]

[Address]

[Telephone]

Attorney for

SUPERIOR COURT OF CALIFORNIA

COUNTY OF _____

In re Marriage of

_____,

Petitioner,

and

_____,

Respondent.

Case No. _____

STIPULATED DOMESTIC RELATIONS
ORDER DIVIDING THE PARTIES'
INTEREST IN THE ORANGE COUNTY
EMPLOYEES' RETIREMENT SYSTEM

Petitioner _____ and Respondent _____ hereby stipulate as follows:

I.

RECITALS

1. Petitioner and Respondent were married to each other on _____. They separated on _____.
2. Respondent entered service for the County of Orange on _____.
3. This Court has personal jurisdiction over both Petitioner and Respondent, and jurisdiction over the subject matter of this Order and the dissolution of marriage action.

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

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

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

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

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

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

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

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

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

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

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

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

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

P.O. Box 1229, Santa Ana, CA 92702.

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

PLEASE NOTE: OCERS will commence payments to the non-member spouse upon the member's retirement regardless of whether the member is retiring under a service, non-service connected disability, or service connected disability retirement unless specified in this Domestic Relations Order. Should you have questions regarding the effect of a service connected disability retirement on your divorce, please consult an attorney who practices in this area.

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

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

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

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

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

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

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

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

15. INTENT: This Order is intended to be a Domestic Relations Order dividing the parties' interest in the Plan and shall be administered and interpreted in conformity with the provisions of general principles of California Community Property law, and is intended to be a Domestic Relations Order in terms of the Retirement Equity Act of 1984 to the extent this Act is applicable to the Plan.

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

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

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

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

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

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

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