

MODEL DOMESTIC RELATIONS **ORDER A**

Active or Deferred Members Prior to Retirement

**This Model Domestic Relations Order is designed for use by active and deferred members of OCERS.**

**CAUTION: You are hereby advised to seek competent legal counsel.**

The OCERS Model Domestic Relations Order A is a model. It may not be appropriate for all circumstances. Parties are advised to consult an attorney to determine the content required for the parties' specific needs.

The disposition of retirement benefits in domestic relations proceedings involves complex legal and tax issues.

The Orange County Employees' Retirement System, its agents and consultants are not authorized to give legal advice and, therefore, make no representation as to the sufficiency of the model orders under applicable federal or state law or as to legal consequences.

OCERS must review any proposed DRO to ensure it can be administered before it's submitted to the court. If a DRO is submitted to the court without review and approval, OCERS will move to set aside a DRO that does not meet its guidelines.

OCERS must be joined before the proposed DRO will be reviewed.

**ALL TEXT IN BOLD RED MUST BE REMOVED BEFORE OCERS WILL REVIEW THE DRAFT DOCUMENT.**

\_\_\_\_\_  
[Name of Counsel]

\_\_\_\_\_  
[Address of Counsel]

\_\_\_\_\_  
[Phone Number]

ATTORNEY FOR \_\_\_\_\_  
[Petitioner/Respondent]

SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF

In Re the Marriage of

Case No. \_\_\_\_\_

Petitioner: \_\_\_\_\_

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

\_\_\_\_\_

and

Respondent: \_\_\_\_\_

\_\_\_\_\_

Claimant: Orange County Employees  
Retirement System (OCERS)

Petitioner, \_\_\_\_\_, and Respondent, \_\_\_\_\_,  
hereby stipulate as follows:

**RECITALS**

1. Petitioner and Respondent were married on \_\_\_\_\_ They separated on \_\_\_\_\_, and this Court entered a judgment of dissolution in the action on \_\_\_\_\_.
2. This Court has jurisdiction over both Petitioner and Respondent and jurisdiction over the subject matter of this Order and the dissolution of marriage action.
3. OCERS was properly joined as a party to the Petitioner and Respondent's dissolution of

marriage action on \_\_\_\_\_ pursuant to sections 2060 through 2065 of the Family Code.

**IDENTIFICATION OF PARTIES AND STATISTICAL INFORMATION**

1. Member's Name: \_\_\_\_\_  
[INSERT NAME], [Respondent or Petitioner], hereinafter referred to as "Member," for purposes of making any benefit payments provided by the terms of this Order or providing any notice required by the terms of this Order, Member's current mailing address, telephone number, Social Security number and date of birth are as follows:

- a. DATE OF BIRTH: Provided Under Separate Cover.
- b. SOCIAL SECURITY NUMBER: Provided Under Separate Cover.
- c. ADDRESS: Provided Under Separate Cover.
- d. PHONE: Provided Under Separate Cover.
- e. EMAIL: Provided Under Separate Cover.

2. Nonmember's Name: \_\_\_\_\_  
[INSERT NAME], [Respondent or Petitioner], hereinafter referred to as "Nonmember," for purposes of making any benefit payments provided by the terms of this Order or providing any notice required by the terms of this Order, Nonmember's current mailing address, telephone number, Social Security number and date of birth are as follows:

- a. DATE OF BIRTH: Provided Under Separate Cover.
- b. SOCIAL SECURITY NUMBER: Provided Under Separate Cover.
- c. ADDRESS: Provided Under Separate Cover.
- d. PHONE: Provided Under Separate Cover.
- e. EMAIL: Provided Under Separate Cover

**STIPULATION**

This Order is acceptable under the County Employees Retirement Law of 1937 (CERL), which is set forth at section 31450 et seq. of the Government Code. OCERS is a "governmental plan" as defined by 29 U.S.C. section 1002(32) and is therefore statutorily exempt from the provisions of Employee Retirement Income Security Act (ERISA) 29 U.S.C. section 1001, et seq., as amended by the Retirement Equity Act of 1984

(REA) which govern “Qualified Domestic Relations Orders (“QDRO’s”). See 29 U.S.C. section 1003(b)(1). Therefore, any order directed to OCERS should not be referred to as a “Qualified Domestic Relations Order,” nor should it require OCERS to comply with any provisions of ERISA or REA, or any other provisions of law generally applicable to Qualified Domestic Relations Orders.

3. Authority: This Order is entered pursuant to the Family Code, Section 2060, and following. In the event that anything in this order conflicts with statute or authoritative case law, the statute or case law will control.
4. Party Interests: Member and Nonmember have acquired a community interest in the Member’s monthly retirement benefits and death benefits attributable to periods of service in OCERS from the Date of Marriage up to the Date of Separation.
5. Benefit Allocation: Pursuant to section 2610 of the Family Code, the Court allocates and awards to the Nonmember 50% of the monthly benefits attributable to the Member’s service in OCERS during the period from the Date of Marriage up to the Date of Separation as the Nonmember’s sole and separate property. All monthly benefits attributable to the Member’s service in OCERS which are not awarded to Nonmember pursuant to this Order shall be the Member’s sole and separate property.
6. Calculation of Nonmember’s Interest: OCERS is ordered to pay directly to Nonmember an interest in any and all of the Member’s retirement benefits, including any future cost-of-living increases pursuant to the *Judd* or “time rule”. (*In re Marriage of Judd* (1977) 68 Cal.App.3d 515), as follows:

Member’s Unmodified Gross Monthly Benefit	X	Number of months service credit earned or purchased during community ([date of marriage] to [date of separation])	X 50%	–	Monthly adjustment for Retirement Option] election (if applicable)	=	Nonmember’s monthly benefit
		Total number of months service credit earned or purchased by Member at retirement (excluding service credited for unused sick time or retirement incentive)					

**[THE TIME RULE FORMULA MAY BE ADJUSTED BASED ON THE REQUIRED SELECTION OF A RETIREMENT OPTION AND WHETHER THE MEMBER OR NONMEMBER BEARS THE COST OF SUCH RETIREMENT OPTION.]**

7. Commencement of Benefits to the Nonmember: Payments to the Nonmember shall be made at the same time that such benefits are paid to the Member in accordance with *In re Marriage of Jensen* (1991) 235 Cal.App.3d 1137. OCERS will make direct payment of each party’s share of said retirement benefit, by separate check, warrant, or

electronic fund transfer. Should Member receive a disability retirement benefit, Nonmember shall be entitled to a portion of Member's disability retirement equal to the amount Nonmember would have received had Member service retired pursuant to Paragraph 4 above. Payment to Nonmember shall commence upon the latter of (1) the date Member would have reached earliest retirement date under the Plan, or (2) the date of Member's actual retirement for service.

8. Death of Nonmember: If Nonmember dies before Member, any retirement benefits that would have been paid by OCERS to Nonmember, if Nonmember were still alive, will be paid instead to Nonmember's estate or designated beneficiary, pursuant to *In re Marriage of Powers* (1990) 218 Cal.App.3d 626. Nonmember may designate a beneficiary to receive such benefits, pursuant to Government Code section 31458.4.
  
9. Death of Member Before Retirement: From the date of this Order, and until the time Member retires, Member shall designate Nonmember as Member's beneficiary to receive a portion of any lump sum death benefit (excluding burial) OCERS may become obligated to pay if Member dies before retirement. Said beneficiary designation shall allow Nonmember to receive a portion of any such death benefit, equal to Nonmember's percentage interest in Member's retirement benefit as of the date of Member's death, calculated pursuant to the "time rule" formula in section 4 above. Member may designate a co-beneficiary of Member's choosing to receive the remainder of any lump-sum death benefit OCERS becomes obligated to pay, after subtraction of Nonmember's share. If, at the time of Member's death before retirement, the Member leaves a "surviving spouse" who is eligible to elect, and does elect, a monthly survivor's allowance (continuance) pursuant to the terms of the Plan, Nonmember will be entitled to a pro-rata portion of such survivor's allowance pursuant to *In re Marriage of Carnall* (1989) 216 Cal.App.3d 1010. If Member dies and does not leave a surviving spouse but leaves one or more surviving minor children who are eligible to elect, and do elect, a monthly survivor's allowance under the terms and conditions of the Plan, Nonmember will be entitled to a pro-rata portion of such survivor's allowance until such children are no longer eligible for a monthly survivor's allowance. If any lump sum benefit (excluding burial) is paid to a surviving spouse or surviving minor children pursuant to the terms and conditions of the Plan, Nonmember's share shall be calculated pursuant to the formula in paragraph 4 above.

**[THE FOLLOWING PARAGRAPH PROVIDES SEVERAL OPTIONAL RETIREMENT ELECTIONS AVAILABLE UNDER THE CERL. CAREFULLY READ THE AVAILABLE OPTIONS. THE OPTIONS YOU DO NOT CHOOSE MUST BE REMOVED FROM THE DRO]**

10. Death of Member After Retirement/Retirement Option Selection: At the time of Member's Retirement, Member shall elect a benefit election based upon Member's marital status at retirement as follows:

**[IF THE BENEFIT ELECTION IS BASED ON MARITAL STATUS AT THE TIME OF**

**RETIREMENT, YOU MUST INCLUDE INSTRUCTIONS FOR A MEMBER MARRIED AT THE TIME OF RETIREMENT AND A MEMBER NOT MARRIED AT THE TIME OF RETIREMENT. IF THE BENEFIT ELECTION IS NOT BASED ON MARITAL STATUS AT THE TIME OF RETIREMENT ONLY ONE ELECTION MAY BE IN THE DRO. ALL OTHER POSSIBLE ELECTIONS MUST BE REMOVED.]**

If the Member is married to a qualified spouse at member's date of retirement, Member shall elect the "Unmodified Option" under the Plan, and name such qualifying spouse as beneficiary for the surviving spouse continuance under such option. It is the intention of the parties that Nonmember shall receive Nonmember's community property interest, if any, in any surviving spouse continuance, pursuant to the calculation described above in section 4 above, which may be payable to Member's surviving spouse pursuant to *In re Marriage of Carnall* (1989) 216 Cal.App.3d 1010, and any future qualified spouse who may qualify after Member's retirement.

**[ONLY ONE ALTERNATIVE MAY BE CHOSEN. ALL OTHER ALTERNATIVES MUST BE DELETED FROM THE DRO.]**

**[ALTERNATIVE NO. 1]** If at the time the Member retires, the Member has no qualifying spouse, Member shall elect "Optional Settlement 2" pursuant to Government Code section 31762 and shall nominate Nonmember as sole beneficiary. Pursuant to this option, if Member predeceases Nonmember, Nonmember will receive, for the remainder of Nonmember's lifetime, a continuance allowance equal to 100% of the total retirement benefit. Under this optional settlement, the right of Nonmember to receive a continuance allowance, after the death of Member, exists only for the lifetime of the Nonmember, and after the death of Nonmember, no further payment will be made to the estate or beneficiary of Nonmember. If Nonmember dies before the Member retires, Member need not elect an Optional Settlement.

**[ALTERNATIVE NO. 2]** If at the time the Member retires, the Member has no qualifying spouse, Member shall elect "Optional Settlement 3" pursuant to Government Code section 31763 and shall nominate Nonmember as sole beneficiary. Pursuant to this option, if Member predeceases Nonmember, Nonmember will receive, for the remainder of Nonmember's lifetime, a continuance allowance equal to 50% of the total retirement benefit. Under this optional settlement, the right of Nonmember to receive a continuance allowance, after the death of Member, exists only for the lifetime of the Nonmember, and after the death of Nonmember, no further payment will be made to the estate or beneficiary of Nonmember. If Nonmember dies before the Member retires,

**[INSERT OPTION 4 INSTRUCTIONS]**

**[ALTERNATIVE NO. 3]** If at the time the Member retires, the Member has no qualifying spouse, Member shall elect "Optional Settlement 4" pursuant to Government Code section 31764, and shall nominate Nonmember as beneficiary. Under this optional settlement, the right of Nonmember to receive a continuance allowance, after the death of Member, exists only for the lifetime of the Nonmember, and after the death of Nonmember, no further payment will be

made to the estate or beneficiary of Nonmember. If Nonmember dies before the Member retires, Member need not elect an Optional Settlement.

**[THE DRO MUST PROVIDE CLEAR INSTRUCTIONS FOR ALLOCATING THE COST OF THE OPTIONAL SETTLEMENT 4 ELECTION. PLEASE SELECT ONE OF THE FOLLOWING COST ALLOCATION:]**

**[[OPTIONAL LANGUAGE 3A – MEMBER BEARS “COST” OF OPTIONAL SETTLEMENT 4]]**

Pursuant to this Option, Member’s unmodified retirement allowance is reduced during Member’s lifetime, and if Member predeceases Nonmember, Nonmember will receive, for the remainder of Nonmember’s lifetime, a continuance of the retirement allowance equal to the amount Nonmember received at the time of Member’s death.

**[[OPTIONAL LANGUAGE 3B – NONMEMBER BEARS “COST” OF OPTIONAL SETTLEMENT 4]]**

Pursuant to this Option, Member’s unmodified retirement allowance will not be reduced, and Nonmember shall bear the cost of this retirement benefit election by a reduction in benefit, which amount Nonmember will receive, for the remainder of Nonmember’s lifetime.

11. Designation of Beneficiaries: Member and Nonmember shall be responsible for filing a Designation of Beneficiary form with the OCERS Administrator.
12. Constructive Trusts: In the event OCERS inadvertently or otherwise pays to Member or Member’s survivor any benefits that are assigned to Nonmember hereunder, Member or Member’s survivor shall be deemed a constructive trustee of said amounts. In the event OCERS inadvertently or otherwise pays to Nonmember or Nonmember’s survivor any benefits that are assigned to Member hereunder, Nonmember or Nonmember’s survivor shall be deemed a constructive trustee of said amounts.
13. Withdrawal of Contributions by the Member: If the Member wishes to withdraw their accumulated contributions, Nonmember shall be entitled to receive, at the time Member receives Member’s accumulated contributions, Nonmember’s community property share of those accumulated contributions pursuant to Paragraph 4, above. To ensure that Nonmember receives the full value of benefits guaranteed pursuant to Family Code section 2610, Nonmember must agree to the withdrawal in the form of a written statement that must be notarized. That statement shall include language stating the nonmember understands that they are waiving their right to a lifetime benefit.
14. Signatures: Member and Nonmember shall sign all forms, letters and other documents as required to affect the distribution(s) described herein and the intent of this Order.

15. Cooperation: If OCERS does not approve the form of this Order, then each party shall cooperate and do all things necessary to devise a form of Order acceptable to OCERS. The Member and Nonmember shall bear the cost of revising this order.
16. Limitations on Order: Nothing contained in this Order shall be construed to require OCERS:
- a. To provide to Nonmember any type or form of benefit or any option not otherwise available to Member under the Plan.
  - b. To provide to Nonmember increased benefits (as determined based on actuarial value) not available to Member.
  - c. To pay any benefits to Nonmember which are required to be paid to another non-member spouse under court order.
  - d. To provide payment to the Nonmember of benefits forfeited by the Member.
  - e. To change the benefit election of the member once the Member has retired.
17. Continuing Jurisdiction: The Court reserves jurisdiction to enforce, revise, modify, or amend this Order, provided, however, neither this Order nor any subsequent revision, modification, or amendment shall require OCERS to provide any form or amount of benefits not otherwise provided by OCERS. 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.
18. Notices: Notice of change of address or telephone number shall be made in writing to OCERS addressed as follows, or as the Administrator may specify in a written response to Member and Nonmember:

Orange County Employees Retirement System  
P.O. Box 1229  
Santa Ana, CA 92702

19. Intent: Member, Nonmember, the OCERS Administrator, and the Court intend that this Order meet all requirements of a domestic relations order under the CERL and the Regulations of OCERS and other laws of the State of California. Any fees, taxes, and/or penalties will be assessed against the parties and not against OCERS.

**IT IS SO STIPULATED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Name]  
Petitioner



Dated: \_\_\_\_\_

\_\_\_\_\_  
[Name]  
Attorney for Petitioner (if  
represented)

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Name]  
Respondent

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Name]  
Attorney for Respondent (if  
represented)

**ORDER**

The parties having stipulated and good cause appearing, therefore:

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT