

MODEL DOMESTIC RELATIONS ORDER A

Active or Deferred Members Prior to Retirement

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

CAUTION: You are advised to consult an attorney knowledgeable on the subject of pension division.

This Domestic Relations Order A is a model. It may not be appropriate for your unique circumstance. Parties are advised to consult an attorney to determine the content required for the parties' specific needs.

The disposition of retirement benefits in a divorce proceeding involves complex legal and tax issues.

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

OCERS must review any proposed DRO to ensure it can be administered before it is 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. The parties will bear the cost associated with revising a DRO to meet OCERS' guidelines.

OCERS is not responsible for the parties' failure to timely file a DRO.

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

[Name or Attorney name]

[Address]

[Phone Number]

[Email Address]

ATTORNEY FOR [Petitioner/Respondent] PETITIONER/RESPONDENT IN PRO PER

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 married on ___ and separated on _____,
This Court entered a judgment of dissolution in the parties' divorce action on
_____.
2. This Court holds jurisdiction over the Petitioner, Respondent, subject matter of this
Order, and 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. **[INSERT NAME]**, [Respondent or Petitioner], is hereinafter referred to as “Member.” For the purposes of making any benefit payments or providing any notice required by the terms of this Order, Member’s current mailing address, email address, telephone number, Social Security number, and date of birth will be provided under separate cover.
2. **[INSERT NAME]**, [Respondent or Petitioner], hereinafter referred to as “Nonmember,” is Member’s former spouse. For purposes of making any benefit payments or providing any notice required by the terms of this Order, Nonmember’s current mailing address, email address, telephone number, Social Security number and date of birth will be 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 Family Code section 2060. 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 Member’s monthly retirement benefits and death benefits attributable to periods of service in OCERS from the Date of Marriage to the Date of Separation.
5. Benefit Allocation: Pursuant to Family Code section 2610, the Court allocates and awards to Nonmember 50% of the monthly benefits attributable to Member’s service in OCERS during the period from the Date of Marriage to the Date of Separation as Nonmember’s sole and separate property. All monthly benefits attributable to Member’s service in OCERS which are not awarded to Nonmember pursuant to this Order shall be 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 Member’s retirement benefits, including any future cost-of-living (COLA) 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	$\frac{\text{Number of months service credit earned or purchased during community ([date of marriage] to [date of separation])}}{\text{Total number of months service credit earned or purchased by Member at retirement (excluding service credited for unused sick time or retirement incentive)}}$	X 50%	–	Monthly adjustment for Retirement Option] election (if applicable)	=	Nonmember's monthly benefit
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[THE TIME RULE FORMULA MAY BE ADJUSTED BASED ON THE REQUIRED SELECTION OF A RETIREMENT OPTION AND WHETHER MEMBER OR NONMEMBER BEARS THE COST OF SUCH RETIREMENT OPTION.]

[THE PARTIES MAY DESIGNATE A DIFFERENT METHOD FOR CALCULATION SUCH AS A FLAT DOLLAR AMOUNT OR PERCENTAGE OF THE PARTIES' RESPECTIVE SHARES SUBJECT TO APPROVAL BY OCERS. WHEN USING A DIFFERENT CALCULATION METHOD, THE DRO MUST CLEARLY STATE WHETHER NONMEMBER WILL/WILL NOT RECEIVE ALL COST-OF-LIVING ADJUSTMENTS.]

7. Payments Available When Member Retires: Payments to 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 6. 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 Before Member Retires: If Nonmember dies before the Member retires, any retirement benefits that would have been paid by OCERS to the Nonmember, if they were still alive, will be paid to Nonmember's estate or designated beneficiary (if eligible under the Plan), 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 until the Member retires, they shall designate Nonmember as their 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 Paragraph 6.

Member may designate a co-beneficiary to receive the remainder of any lump-sum death benefit OCERS may be obligated to pay, after subtraction of Nonmember's share.

If, at the time of Member's death before retirement, 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, at the time of Member's death before retirement, Member 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 (continuance) under the terms of the Plan, Nonmember will be entitled to a pro-rata portion of that survivor's allowance until those children are no longer eligible to receive the allowance. If any lump sum benefit (excluding burial) is paid to a surviving spouse or surviving minor children pursuant to the terms of the Plan, Nonmember's share shall be calculated pursuant to the formula in Paragraph 6.

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

[IF THE PAYMENT OPTION 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 PAYMENT OPTION IS NOT BASED ON MARITAL STATUS AT THE TIME OF RETIREMENT ONLY ONE OPTION MAY BE IN THE DRO. ALL OTHER PAYMENT OPTIONS MUST BE REMOVED.]

[UNMODIFIED OPTION] If Member is married to a qualified spouse at the time of retirement, Member shall elect the "Unmodified Option" under the Plan and name that spouse as beneficiary for the "surviving spouse continuance" under such option. Nonmember shall receive their community property interest, if any, in any "surviving spouse continuance," pursuant to the calculation described in Paragraph 6, which may be payable to Member's surviving spouse pursuant to *In re Marriage of Carnall* (1989) 216 Cal.App.3d 1010.

[OPTION 2] If at the time Member retires, they have no qualifying spouse, they shall elect “Optional Settlement 2” pursuant to Government Code section 31762 and shall designate 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 Option 2, Nonmember’s right to receive a continuance allowance, after Member’s death, exists only for Nonmember’s lifetime. After Nonmember’s death, no further payment will be made to Nonmember’s estate or beneficiary. If Nonmember dies before Member retires, Member need not elect an Optional Settlement in favor of the Nonmember.

[OPTION 3] If at the time Member retires, they have no qualifying spouse, they shall elect “Optional Settlement 3” pursuant to Government Code section 31763 and shall designate 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 Option 3, the Nonmember’s right to receive a continuance allowance, after Member’s death, exists only for Nonmember’s lifetime. After Nonmember’s death, no further payment will be made to Nonmember’s estate or beneficiary. If Nonmember dies before Member retires, Member need not elect an Optional Settlement in favor of the Nonmember.

[OPTION 4] If at the time Member retires, they have no qualifying spouse, they shall elect “Optional Settlement 4” pursuant to Government Code section 31764 and shall designate Nonmember as beneficiary. Under this optional settlement, Nonmember’s right to receive a continuance allowance, after Member’s death, exists only for Nonmember’s lifetime. After Nonmember’s death, no further payment will be made to Nonmember’s estate or designated beneficiary. If Nonmember dies before Member retires, Member need not elect an Optional Settlement in favor of the Nonmember.

[THE DRO MUST CLEARLY STATE WHICH PARTY IS RESPONSIBLE FOR THE COST OF THE OPTION 4 ELECTION.PLEASE SELECT ONE OF THE FOLLOWING PARAGRAPHS:]

[(OPTIONAL LANGUAGE 3A – MEMBER BEARS COST OF OPTIONAL SETTLEMENT 4)]

The Member shall bear all the costs associated with the Option 4 election.

[(OPTIONAL LANGUAGE 3B – NONMEMBER BEARS COST OF OPTIONAL SETTLEMENT 4)]

Member’s unmodified retirement benefit will not be reduced, and Nonmember shall bear all the costs associated with the Option 4 election by a reduction in benefit, that Nonmember will receive for the remainder of their lifetime.

11. Designation of Beneficiaries: Member and Nonmember shall be responsible for filing a Designation of Beneficiary form with OCERS.
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 Member wishes to withdraw their accumulated contributions, Nonmember shall be entitled to receive, at the time Member receives their accumulated contributions, Nonmember's community property share of those accumulated contributions pursuant to Paragraph 6. 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 notarized written statement. That statement shall include language stating Nonmember understands they are waiving their right to a lifetime benefit.
14. Signatures: Member and Nonmember shall sign all forms, letters and other documents 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 parties shall bear the cost of any and all revisions to 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 (including COLA).
 - 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 Member.
 - e. To change Member's benefit election once 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:

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

19. This Order shall be administered and interpreted in conformity with County Employees Retirement Law of 1937 (CERL), the regulations of the Orange County Employees' Retirement System, and other applicable law.
20. Intent: Member, Nonmember, OCERS, and the Court intend that this Order meet all requirements of a domestic relations order under the CERL, OCERS' Regulations, and other laws of the State of California. Any fees, taxes, and/or penalties will be assessed against the parties and not against OCERS.
21. Acknowledgment: Both parties acknowledge that they have read and understand each and every term of this order, this order was not procured under duress or undue influence and agree to be bound by the terms herein.

This document may be signed in parts, and facsimile and PDF signatures will be deemed the same as originals.

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