

MODEL DOMESTIC RELATIONS ORDER B

Retired Members

This Model Domestic Relations Order (DRO) is designed only for use by retired members who are receiving a retirement benefit.

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

This Domestic Relations Order B is a model. It may not be appropriate for your unique circumstances. 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 marital 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 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. 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.

[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 were 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 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 not to be filed with the court.:

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 not to be filed with the court.

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. If 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 attributable to periods of service in OCERS from the Date of Marriage to the Date of Separation.

5. Member Status: Member made an irrevocable election at the time of retirement and elected the unmodified option. Upon dissolution of marriage, Nonmember will not be considered a “surviving spouse” and ceases to qualify for survivor benefits (continuance) pursuant to Government Code section 31760.2 or for death benefits under Government Code sections 31765, 31765.1, or 31786.

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	Number of months service credit earned or purchased during community ([date of marriage] to [date of separation])	X 50%	=	Nonmember's monthly benefit
		<hr/> Total number of months service credit earned or purchased by Member at retirement (excluding service credited for unused sick time or retirement incentive)			

[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.]

Nonmember understands their community property share of Member's retirement benefits shall terminate upon Member's death unless Member is married to an eligible spouse at the time of Member's death, and OCERS pays that spouse a continuance pursuant to Government Code section 31760.2. In such event, OCERS will pay Nonmember's community portion of that continuance to Nonmember according to formula above.

7. Payments of Benefits to the Nonmember: Payment of the Nonmember's share shall commence after OCERS's final approval and receipt of a conformed copy of this Order and as soon as administratively possible after Nonmember returns all required forms to OCERS.
8. Death of Nonmember If Nonmember dies before Member, any retirement benefits which would have been paid (excluding burial) by OCERS to Nonmember, if they were still alive, will be paid to Nonmember's estate or designated beneficiary (if eligible), 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: If any return of accumulated contributions becomes payable as the result of Member's death, Nonmember is entitled to their community property share of those accumulated contributions as calculated in Paragraph 6.
10. Designation of Beneficiaries: Member and Nonmember shall be responsible for filing a Designation of Beneficiary form with OCERS.
11. 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.

12. 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.
13. 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.
14. 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 Nonmember of benefits forfeited by Member.
 - e. To change Member's benefit election once Member has retired.
15. 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.
16. 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

17. 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.
18. Intent: Member, Nonmember, OCERS, and the Court intend that this Order meet all requirements of a domestic relations order under the CERL, an 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.

- 19. 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