

***DOMESTIC RELATIONS
ORDERS***



**San Joaquin
County Employees'
Retirement Association**

**SJCERA
BOARD OF RETIREMENT**

DISSOLUTION OF MARRIAGE DOMESTIC RELATIONS ORDERS (DROs) FOR DROs APPROVED AUGUST 1, 1997 AND LATER

This booklet is to provide general information for members, former spouses, and their attorneys regarding retirement benefits in the San Joaquin County Employees' Retirement Association.

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SECTION 1

GENERAL INFORMATION

Disclaimer

While reading this material, remember that we are governed by the "County Employees' Retirement Law of 1937" and it is the basis of all our decisions. The statements in this booklet are general and we have made them as simple as possible while still being accurate. The retirement law is sometimes very complex, but when a conflict arises, any decision will be based on the law and not on this booklet.

Introduction

Generally, SJCERA retirement accumulations and benefits are only payable to members, their survivors and beneficiaries, and cannot be assigned for payment to others. The benefits are intended solely for the security and welfare of members, their survivors, and beneficiaries. However, the law recognizes an exception to this rule in the case of domestic relations' orders.

SJCERA Should be Notified of Pending Marital Dissolution Actions

When a marital dissolution action has been filed, the member and/or other parties to the action should notify SJCERA of the pending action.

After notification, the case is assigned to a Retirement Services Officer who will coordinate the handling of the case. The officer will answer questions, provide necessary materials, receive and review the domestic relations order and other documents, notify the proper parties when actions occur that affect them, etc. The following documents are available:

- *Retirement Plan Information* booklet for the SJCERA plan
- *Domestic Relations Order* Booklet

What Information Does SJCERA Provide When a Member is Involved in a Marital Dissolution or Legal Separation?

Upon proper authorization, the Retirement Administrator provides a DRO Packet that includes:

- *Retirement Plan Information* booklet for the SJCERA plan
- *Benefits and Accumulations Worksheets* for the marital period, showing member contributions and earnings as well as service credit
- *Domestic Relations Order* Booklet

Note: An actuarial valuation of the member's retirement benefits is not included in the DRO Packet. The actuarial valuation can only be provided when the member becomes eligible and applies to retire.

A member's file is generally confidential. However, the member, the spouse/former spouse, and their respective attorneys or other properly authorized legal representatives can obtain the DRO packet. Before providing the information, the

Retirement Administrator must receive a Subpoena Duces Tecum as set forth in the Code of Civil Procedures, or a written request signed by the member that includes:

- the Plan member's name and Social Security number
- the member's current address, or name and address of the attorney representing the member
- the former spouse's current address, or name and address of the attorney representing the former spouse
- the marital period (date of marriage, date of separation)

Is the Community Property Division Shown in the DRO Packet?

No. The SJCERA does not determine the division. This must be determined by agreement between the member and former spouse approved by the court, or by a court ruling.

When Will the DRO Packet be Sent?

The packet will be sent within 20 days after the Retirement Administrator receives the request. The packet is not available immediately because the member's records must be compiled and calculations performed.

Who Administers the SJCERA Retirement Plan?

The San Joaquin County Employees' Retirement Association administers the plan.

Are the SJCERA Plans Subject to ERISA Rules or Other Laws?

No. SJCERA plans are governmental plans and as such are generally not subject to the rules of the Employee Retirement Income Security Act of 1974 (ERISA). Also, except for a few provisions specifically directed to governmental plans, the Retirement Equity Act of 1984 (REA) does not apply. However, Section 2610 (a) (3) (C) of the California Family Code is applicable.

Who is the Retirement Administrator?

The Plan Administrator serves as the Chief Executive Officer to the Board of Retirement. The incumbent Administrator has delegated to the Retirement Services Officer the responsibility to handle the day-to-day administration of marital dissolution cases.

How are the Former Spouse's Interests Protected? Does SJCERA Establish Separate Retirement Benefits for a Former Spouse?

When the Retirement Administrator first receives notice of a pending dissolution action, the member's account is flagged to note the pending dissolution. When the Administrator receives a complete certified copy of the order defining the community interest of the member's retirement benefits it is attached in the member's file. If the order directs that the member receive full interest then his/her file will be so noted. However, if the court directs the member's benefit to be divided, then SJCERA will divide the member's account for disbursement to both parties pursuant to the court order.

What Happens if the Member Tries to Retire or Withdraw Contributions from the SJCERA (refund of accumulations and interest), While the Case is Pending?

The flag on the account indicates that the account may be subject to a community property division, and the member's request will be forwarded to the Retirement Services Officer. If a final DRO has not been received by SJCERA, the officer assigned to the case will contact the member or member's attorney and the spouse or spouse's attorney to verify the outcome of the case before funds can be disbursed.

JOINDER

Does SJCERA Need to be Joined as a Party to the Proceedings?

Yes, SJCERA must be joined as a party to the dissolution action. The "joinder" must comply with the applicable procedures of the California Family Code and the rules of the court.

Is a Separate Joinder Required for a 457 Deferred Compensation Plan?

Yes, if the member participates in the San Joaquin County's Deferred Compensation Plan (457); the County Human Resources Division (44 N San Joaquin St., Suite 330 Stockton, California 95202) separately administers it. A joinder of SJCERA will not result in a joinder of the County's Deferred Compensation Plan.

DRAFTING THE ORDER

Does the Plan Administrator Provide a Sample Domestic Relations Order?

The SJCERA has model order language for dividing the community property interest in retirement benefits (See section in back of this booklet). However, by law the DRO cannot expand the statutory or contractual obligations of SJCERA. It is strongly recommended that the Retirement Services Officer assigned to your case review draft orders before they are submitted to the court.

A DOMESTIC RELATIONS ORDER

A DRO Should Contain the Following Information:

- The method of division of the member's account must be specified as community property for the former spouse.
- The Plan has been joined as a claimant to the proceedings.
- The order relates to community property rights of a former spouse of the Plan member.
- The order provides the member's name, Social Security number, and current address (or if not known, the name and address of the member's attorney).
- The order provides the former spouse's name, Social Security number, date of birth, and mailing address.

- The order states the period of the marriage (date of marriage and date of separation).
- The order states the method by which this amount or percentage is to be determined, or the amount or percentage of the member's benefits to be paid to the former spouse.
- The amount payable to the former spouse is equal to or less than the total benefit accrued by the member.
- The amount payable to the former spouse does not reduce the benefit rights payable to the current spouse, another former spouse, or dependent of the member.
- The order has been signed by the court; and the Retirement Administrator has been provided with a certified copy.
- The order should include reference to the nonmember rights set forth in Government Code Section 31685 (c).

After the Court has approved the DRO, What Happens When the Retirement Administrator Receives a Certified Copy of the Order?

The California Family Code allows the Administrator to review the DRO for compliance with the Plan. This could result in the parties having to return to court for further clarification. Therefore, it is important that SJCERA have an opportunity to review the DRO for compliance issues before court approval.

IMPLEMENTATION OF SJCERA RETIREMENT BENEFITS

When is the Earliest that a Former Spouse can Receive His or Her Share of the SJCERA Benefit? And How is the Benefit Paid?

If the DRO precedes the member's retirement, the former spouse could begin to receive a retirement benefit when she or he applies in writing to the Retirement Office and either: The member or the former spouse has attained the minimum age prescribed by the applicable service retirement formula of the member; or on the date of retirement, the member had sufficient credited service to retire for service, not withstanding any service credit awarded to the former spouse.

If the member has already retired when the DRO is issued, the former spouse will receive the community property share of the member's future retirement income established as a separate account through recalculation exclusively for the former spouse.

How are the Former Spouse's Benefits Affected if the Member Dies?

By establishing separate accounts, the benefits of the former spouse are not affected by the member's decision to retire or the death of the member. Please refer to DRO scenarios in this booklet.

What Happens to the Member's Survivor Benefits Under a DRO?

The member's retirement benefit is divided according to the specifications of the order between the member and the former spouse. If the active member (employee) dies, survivor benefits for the member's current eligible family members, if any; are

based on the member's pro-rated years of service. See the *Retirement Plan Information* booklet.

How is Community Interest Applied with Regard to Disability Retirement Benefits?

The member and former spouse receive separate retirement accounts based upon the division of contributions and service credit set out in the DRO. If the member receives a disability retirement, the former spouse remains eligible to retire when the former spouse meets the age and service credit requirements under the law. The former spouse (non-member) may not receive a disability retirement. Also, if the member receives a disability retirement, the combined benefit payments to both the member and the former spouse cannot exceed the amount that would have been otherwise paid to the member alone. This may result in a reduction of the retirement benefit to both the member and the former spouse, and create the need for the parties to return to court to modify the DRO.

If the Member Dies, are Survivor Benefits Payable to the Former Spouse?

No, the DRO actually divides the retirement benefits into two accounts: one for the member and one for the former spouse. The SJCERA plan provides certain statutory benefits to an eligible current surviving spouse that will not be paid to a former spouse.

Can the Former Spouse Designate a Beneficiary?

Yes. The '37 Act recognizes a former spouse's community property interest for the purpose of designating a beneficiary.

If the Member Dies and Has No Eligible Survivors, do the Benefits S/He Would have Received Revert to the Former Spouse?

No. The former spouse receives benefits based only on his or her division of the community property in the DRO. Similarly, if the former spouse dies, the benefit does not revert to the member.

What Happens if the Member Remarries?

Since the benefit has been permanently divided, the member's account is already reduced and the benefits to the former spouse are not affected. The member may select a beneficiary under the existing statutes and benefit options of the '37 Act.

What Information is Confidential?

Each party to the DRO gains sole control over her or his separate account. However, the Retirement Administrator is authorized to advise 1) the Member, if the former spouse withdraws or dies; and 2) the former spouse, if the Member retires or dies before the former spouse. Unless specified otherwise in the DRO, neither party has a right to any other information regarding the other party's actions relative to their separate account nor such actions shall be deemed confidential.

MISCELLANEOUS

What SJCERA Benefits are Subject to Taxes?

All pension payments, including those divided for community property interest, are subject to applicable federal and state tax regulations and are the responsibility of the individual receiving payment. Refer to the *Retirement Plan Information* booklet and your tax advisor for further tax information. (Note: For tax reporting purposes, SJCERA must have the former spouse's Social Security number before any payment can be made.)

Is the Former Spouse Eligible for Continued Medical, Dental and Optical Coverage?

No. County-sponsored coverage stops at the end of the month when the marital dissolution is final. However, a former spouse (or other dependent) may continue group health coverage for up to 36 months under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Contact the Benefits Representative in Human Resources for more information. In addition, the former spouse may be able to convert medical coverage (not dental or optical) to an individual plan; contact the specific insurance company for more information. For either continuation or conversion, be sure to inquire before group coverage ends.

Address

All correspondence to the Retirement Administrator regarding a case of marital dissolution or legal separation should be addressed to:

Retirement Administrator (DROs)
San Joaquin County Employees' Retirement Association
6 South El Dorado Street, Suite 400
Stockton, CA 95202

Telephone (209) 468-2163

**BYLAWS OF THE BOARD OF RETIREMENT
SECTION 12
DISSOLUTION OF MARRIAGE**

- 12.1 **COMMUNITY PROPERTY:** Effective August 1, 1997, pursuant to Resolution N. 97-474 of the Board of Supervisors of San Joaquin County, the Administrator shall accept orders pertaining to the division of the community property interest in a member's account only if such orders are issued (1) by a court of competent jurisdiction, (2) in conformance with the provisions of Family Code §2610 and (3) in conformance with the provisions of Article 8.4 of the County Employees Retirement Law of 1937 (The Act), commencing at GC§31685. The Administrator shall return orders that are not in conformance with these criteria to the parties for revision.
- 12.2 **NONMEMBER RIGHTS:** A nonmember who, pursuant to an order of the court, elects to establish a separate account, as authorized by Article 8.4 of The Act, may exercise the rights of a member, except that (a) a nonmember is not eligible to apply for or receive a disability retirement allowance, (b) a nonmember's pre-retirement death benefits shall consist of return of the contributions and interest in the nonmember's account and (c) a nonmember is not eligible to participate in the election of Board members.
- Pursuant to section 31685 c), the nonmember is entitled to the following:
- (1) The right to a retirement allowance.
 - (2) The right to a refund of accumulated retirement contributions.
 - (3) The right to redeposit accumulated contributions that are eligible for redeposit by the member.
 - (4) The right to purchase service credit that is eligible for purchase by the member.
 - (5) The right to designate a beneficiary to receive his or her accumulated contributions payable at the time of the nonmember's death.
 - (6) The right to designate a beneficiary for any unpaid allowance payable at the time of the nonmember's death.
- 12.3 **ELECTION OF OPTIONAL ALLOWANCES:** A nonmember may retire pursuant to the provisions of The Act and may elect any of the optional allowances set forth in The Act, subject to the limitation by that The Act.
- 12.4 **ACTUARIAL EQUIVALENCY:** The Administrator is responsible for ascertaining that the combined benefits payable to the member and nonmember are the actuarial equivalent of the value of the benefit to which the member would have been eligible had no division of the community property interest occurred, per GC§31685.95.
- 12.5 **APPROVAL:** All applications for nonmember benefits submitted pursuant to this section shall be subject to review and approval by the Board. The Administrator shall place such applications on the Board's agenda for ratification of staff's actions.

SECTION 2

California Family Code Division 7. Division of Property Part 5. Retirement Plan Benefits

§2610. *Division of Retirement Plan Benefits*

- (a) Except as provided in subdivision (b), the court shall make whatever orders are necessary or appropriate to ensure that each party receives the party's full community property share in any retirement plan, whether public or private, including all survivor and death benefits, including, but not limited to, any of the following:
- (1) Order the disposition of any retirement benefits payable upon or after the death of either party in a manner consistent with Section 2550.
 - (2) Order a party to elect a survivor benefit annuity or other similar election for the benefit of the other party, as specified by the court, in any case in which a retirement plan provides for such an election, provided that no court shall order a retirement plan to provide increased benefits determined on the basis of actuarial value.
 - (3) Upon the agreement of the nonemployee spouse, order the division of accumulated community property contributions and service credit as provided in the following or similar enactments:
 - (A) Article 1.2 (commencing with Section 21215) of Chapter 9 of Part 3 of Division 5 of Title 2 of the Government Code.
 - (B) Chapter 12 (commencing with Section 22650) of Part 13 of the Education Code.
 - (C) Article 8.4 (commencing with Section 31685) of Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code.**
 - (D) Article 2.5 (commencing with Section 75050) of Chapter 11 of Title 8 of the Government Code.
 - (4) Order a retirement plan to make payments directly to a nonmember party of his or her community property interest in retirement benefits.
- (b) A court shall not make any order that requires a retirement plan to do either of the following:
- (1) Make payments in any manner that will result in an increase in the amount of benefits provided by the plan.
 - (2) Make the payment of benefits to any party at any time before the member retires, except as provided in paragraphs (3) of subdivision (a), unless the plan so provides
- (c) This section shall not be applied retroactively to payments made by a retirement plan to any person who retired or died prior to January 1, 1987, or to payments made to any person who retired or died prior to June 1, 1988, for plans subject to paragraphs (3) of subdivision (a).

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County Employees' Retirement Law of 1937

Article 8.4

Community Property

§31685. *Separation of member and nonmember accounts; nonmember's rights*

- (a) Upon the legal separation or dissolution of marriage of a member, after joining the retirement system as a party to the proceeding pursuant to Chapter 6 (commencing with Section 2060) ... of the Family Code, the court shall include in the judgment or a court order the date on which the parties separated.
- (b) If the court orders the division of the community property interest in the system pursuant to Section 2610 of the Family Code, the accumulated contributions and service credit attributable to periods of service during the marriage shall be divided into two separate and distinct accounts in the name of the member and nonmember, respectively. Any service credit or accumulated contributions that are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member.
- (c) Upon receipt of the court order separating the account of the member and the nonmember pursuant to this section, the board shall determine the rights of the nonmember, taking into consideration the court order and the account of the member. These rights may include the following:
 - (1) The right to a retirement allowance.
 - (2) The right to a refund of accumulated retirement contributions.
 - (3) The right to redeposit accumulated contributions that are eligible for redeposit by the member.
 - (4) The right to purchase service credit that is eligible for purchase by the member.
 - (5) The right to designate a beneficiary to receive his or her accumulated contributions payable at the time of the nonmember's death.
 - (6) The right to designate a beneficiary for any unpaid allowance payable at the time of the nonmember's death.
- (d) In the capacity of nonmember, the nonmember shall not be entitled to any disability retirement allowance.

§31685.1. *Nonmember*

"Nonmember", as used in this article, means the spouse or former spouse, or child or other dependent as ordered by the court, of a member, who as a result of petitioning the court for the division of community property, has been awarded a distinct and separate account reflecting specific credited service and accumulated contributions.

§31685.2. *Nonmember rights to refund; waiver of all rights*

- (a) The nonmember who is awarded a separate account shall have the right to a refund of the accumulated contributions and interest credited in the separate account of the nonmember.

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- (b) The nonmember shall file an application on a form provided by the system to obtain the refund.
- (c) The refund shall be effective when the system deposits in the United States mail an initial warrant drawn in favor of the nonmember and addressed to the latest address for the nonmember on file with the system.
- (d) The nonmember is deemed to have permanently waived all rights in the system and all rights to any future retirement benefits pertaining to the service credit accumulated contribution, or both, when the refund becomes effective.
- (e) The nonmember may not cancel a refund once it has become effective.
- (f) The nonmember shall have no right to elect to redeposit the refunded accumulated contributions from the nonmember's account after the refund is effective, and shall have no right to redeposit or to purchase service credit after the refund becomes effective.
- (g) If at the time of the marriage dissolution or legal separation, the member does not have the necessary minimum credited service to elect deferred retirement, the nonmember shall receive a refund of the accumulated contributions and credited interest placed in the nonmember's account.
- (h) If the nonmember receives a refund under this section, the member may elect to redeposit accumulated contributions and interest refunded to the nonmember and to receive credit for the service time that had been forfeited by the nonmember. The election shall be made within five years of receipt of notice from the board of eligibility to redeposit the contributions. The board shall establish the manner of payment and the time period within which the redeposit of contributions may be made. The interest rate established by the board shall be the same as that charged to members on all other redeposits.

§31685.3. *Redeposit of accumulated contributions previously refunded*

- (a) The nonmember who is awarded a separate account may redeposit accumulated contributions and interest previously refunded to the member in accordance with the determination of the court required by Section 31685.
- (b) The nonmember may redeposit only those accumulated contributions and interest that were previously refunded to the member and that the court has determined to be the community property interest of the nonmember in accumulated contributions.
- (c) If the nonmember elects to redeposit, he or she shall repay the accumulated contributions and interest.
- (d) An election to redeposit shall be considered an election to repay all accumulated contributions and interest previously refunded that the nonmember is entitled to redeposit.

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- (e) The right of the nonmember to redeposit is subject to the regulations of the board.
- (f) The member has no right to the court-determined nonmember share of any previously refunded accumulated contributions and interest whether or not the nonmember elects to redeposit until the effective date of any refund requested by the nonmember pursuant to Section 31685.2, or the nonmember dies before redeposit is completed. However, any right to redeposit previously refunded accumulated contributions and interest not explicitly awarded to the nonmember by the judgment or court order shall be deemed the exclusive property of the member.
- (g) Any redeposit by the nonmember shall be made by lump sum before retirement.

§31685.4. *Service Credit*

- (a) The nonmember shall have the right to purchase service credit pursuant to the determination of the court required by Section 31685.
- (b) The nonmember may purchase only that service credit that the court has determined to be the community property share of the nonmember spouse.
- (c) If the nonmember elects to purchase service credit, he or she shall pay, prior to retirement, the contributions and interest pursuant to the regulations of the board.
- (d) The nonmember shall have no right to purchase the service credit after the effective date of a refund of the accumulated contributions in the separate account of the nonmember.
- (e) The member has no right to the court-determined nonmember share of the service credit whether or not the nonmember elects to purchase the service credit until the effective date of any refund requested by the nonmember pursuant to Section 31685.2 or the nonmember dies before the service credit eligible for purchase that is not explicitly awarded to the nonmember by the judgment or court order shall be deemed the exclusive property of the member.

§31685.5. *Nonmember's retirement*

A nonmember shall be retired upon his or her written application to the board if all of the following conditions are met:

- (a) The member or nonmember has attained the minimum age prescribed by the applicable service retirement formula of the member.
- (b) On the date of retirement, the member had sufficient credited service to retire for service, notwithstanding any service credit awarded to the nonmember.

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§31685.6. *Effective date of retirement*

Retirement shall be effective and the retirement allowance shall begin to accrue as of the date designated in the nonmember's application as the effective date of retirement, or the day following the date of court order dividing the community property of the member and nonmember, if later. In no event shall the retirement become effective or the retirement allowance begin to accrue earlier than the first day of the month in which the nonmember's application is received at an office of the board or by an employee of the system designated by the board.

§31685.7. *Final compensation*

- (a) If the nonmember retires before the member retires, "final compensation" means the highest average annual compensation earnable by the member during the three consecutive years, or one-year where applicable, prior to the date the nonmember retires. The nonmember may designate an earlier period to be used where the time period of the nonmember's marriage to the member and membership correspond.
- (b) If the member has retired before the nonmember, the "final compensation" for the nonmember shall be the final compensation used in calculating the member's retirement.
- (c) Upon receipt of an application for retirement by the member, the board shall notify the nonmember that his or her final compensation will not increase any further and shall identify which options are available to the nonmember and the impact thereof.

§31685.8. *Service retirement formula*

A nonmember entitled to receive a retirement allowance shall receive a retirement allowance based on the service retirement formula applicable to the service credited to the nonmember.

§31685.9. *Disability of member*

If a member becomes disabled, the combined benefit payments to both the member and nonmember shall not exceed the amount that would otherwise be paid to the member alone.

§31685.95. *Actuarial equivalency*

- (a) Under no circumstances shall a retirement plan be required to make payments in any manner that will result in an increase in the amount of benefits provided under the plan.
- (b) All benefits determined pursuant to Part 5 (commencing with Section 2060) ... of the Family Code and this article shall be determined on the basis of the actuarial economic and demographic assumptions and values prescribed by the board of the affected retirement plan.

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§31685.96. *Age Factors*

- (a) The age factor applicable to the nonmember shall be based on the age of the nonmember at the time of his or her retirement.
- (b) The board shall adopt age factors as recommended by the actuary.

§31685.96[sic]. *Applicability*

This article shall not be operative in any county until the board of supervisors shall, by resolution adopted by a majority vote, make this article applicable in the county.

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SECTION 3

Scenarios Based Upon Article 8.4

| Scenario | Member's Account | Former Spouse's Account |
|---|--|--|
| Member is Vested 5-years of accumulated service credit | Service Credit, Contributions & Interest are divided in accordance with DRO. Member may name beneficiary. Member remains vested. | Separate Account is established, with Service Credit, Contributions & Interest credited in accordance with DRO. Former spouse may name beneficiary. Former spouse may maintain the Separate Account, retire or request a refund. |
| Member is Not Vested at Separation Date | Service credit, Contributions & Interest are divided in accordance with DRO. Member may name beneficiary. Member will become vested based on combined service credit in both accounts. | Separate Account is established, with Service Credit, Contributions & Interest credited in accordance with the DRO. SJCERA must refund the balance in the Separate Account to the Former Spouse. |
| Former Spouse is Paid a Refund | SJCERA must notify the member. Member has five-years to elect to repurchase the service credits that were transferred to former spouse. | Refund is irrevocable. All rights to future SJCERA benefits cease. Redeposit is prohibited. |
| Purchase of Service Credit for Temporary Service & Military Service | Eligible to purchase community property share, if specified in the DRO. If DRO is silent, Member may purchase full service credit. If former spouse receives refund or dies, Member may repurchase former spouse's service credit. | Eligible to purchase community property share, if specified in the DRO. If DRO is silent, Former Spouse may not purchase any service credit. |
| Redeposit, if Account Withdrawn prior to the DRO | If eligible to Redeposit Contributions, then same as "Purchase of Service Credit" | If the Member is eligible to Redeposit Contributions, then the former spouse's options are the same as "Purchase of Service Credit" |
| Redeposit, if Account Withdrawn by Former Spouse after DRO | If eligible to Redeposit Contributions, then same as "Purchase of Service Credit". Member has five-years after notice to elect to repurchase the service credits transferred to former spouse. | If the former spouse has taken a refund, the former spouse may not redeposit the withdrawn contributions. |

| Scenario | Member's Account | Former Spouse's Account |
|--|--|---|
| Former Spouse is not Paid a Refund | After account is divided pursuant to the DRO, the member is no longer entitled to the contributions, interest and service credit which were transferred to the Former Spouse's account. | May name a beneficiary. Interest is credited semi-annually. The former spouse may receive a service retirement allowance when eligible. |
| Eligibility for Service Retirement | Age as defined in law. Service credit requirement is met by combining service-credit-earned-before-account-division to service-credit-earned-after-account-division | The former spouse is eligible to retire at earlier of: (1) Member's eligibility because of age & years of service, or (2) former spouse is age 50 and member has 10 years of combined service. |
| Member Retires before former spouse | Member's benefit based on age factor, final average compensation and service credit balance remaining after account division plus credit earned or purchased after account division. Member may select any optional allowance. | The former spouse will be notified of the member's retirement. The former spouse may elect: (a) to defer retirement to a later age, with the member's final average compensation frozen; or (b) to begin receiving monthly benefit based on the member's final average compensation, former spouse's age factor, and the former spouse's service credit balance after account division plus credit purchased after account division, if allowed. Former spouse may select any optional allowance. |
| Former Spouse retires before Member | <i>Same as "Member Retires Before former spouse"</i> | Former spouse's benefit is based on Member's "final average compensation" calculated as of the date of the former spouse's retirement, the former spouse's age factor, and the former spouse's service credit balance after account division plus credit purchased after account division. Former spouse may select any optional allowance. |
| Member Dies before Retirement | Benefits paid in accordance with SJCERA's provisions for the payment of death benefits. Beneficiary is named by member. | Former spouse is notified of Member's death. <i>Same as "Member Retires Before Former Spouse"</i> |

| Scenario | Member's Account | Former Spouse's Account |
|--|---|--|
| Former Spouse Dies before Retirement | Member is notified of former spouse's death & Member's eligibility to repurchase or redeposit, if applicable. Member is eligible to repurchase former spouse's service credit or redeposit contributions; including purchase of service credit which the DRO reserved for the former spouse, but only if former spouse had not done so. | Beneficiary named by former spouse receives former spouse's account balance. |
| Member Granted a Disability Retirement before former Spouse Retires | Combined Member & former spouse benefit may not exceed the actuarial equivalent that would be paid to the Member if the dissolution of marriage had not occurred. | Former Spouse is not eligible for a disability retirement. However, when eligible for service retirement, the court may order the division of payments taken from the Disability Retirement Benefit. |
| Member Granted a Disability Retirement after former spouse Retires | <i>Same as "Member Granted a Disability Retirement Before former spouse Retires", except the total benefit may not exceed the actuarial equivalent. This may be determined by court order.</i> | <i>Same as "Member's Account".</i> The former spouse benefit may be reduced by a new court order. |
| Vested Member Terminates | Member may elect a refund; retirement, if eligible; or deferred retirement. If inter-system reciprocity is established, final average compensation will not be frozen. If reciprocity is not established, final average compensation is frozen at member's termination. | <i>Same as "Member's Account".</i> |
| Nonvested Member Terminates | Member may elect a refund; or, if going to a reciprocal system, a deferred retirement. | Former spouse must receive a refund of the balance of the former spouse account. |

SECTION 4

GUIDELINES FOR DIVIDING MEMBER'S RETIREMENT ACCOUNT

The division of the member's community property is a critical part of the dissolution of marriage process.

The law allows the court to provide for the division of our Member's retirement account at the time of dissolution. Under the model orders attached to these Guidelines, both the member and the nonmember have the right to make certain decisions on how to handle a member's account.

If the Member is not already retired, refer to Domestic Relations Order "A".

Model DRO "A" splits the account proportionally and allows each party to make his or her own independent decision on how to handle each retirement account.

If the Member is already retired, refer to Domestic Relations Order "B".

Model DRO "B" divides the benefit which SJCERA is already paying.

GUIDELINES ARE NOT MANDATORY

Members and nonmembers are not mandated to use the provisions in these DRO guidelines. These guidelines are intended to provide the parties with reasonable flexibility, while facilitating the drafting of DROs that can be uniformly implemented by the Retirement Administrator.

MAXIMUM BENEFITS

The Court is prohibited from imposing a DRO on SJCERA to pay benefits whose total value would exceed the value the member would have received if the DRO had not been issued.

1 SAN JOAQUIN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

2 MODEL DOMESTIC RELATIONS ORDER A

3 *[Applicable to A Dissolution of Marriage **PRIOR** to Retirement]*

4
5
6 **CAUTION: YOU ARE HEREBY ADVISED TO SEEK COMPETENT LEGAL COUNSEL.**

7
8 The disposition of retirement benefits in domestic relations proceedings involves
9 complex marital rights and tax issues.

10
11 The San Joaquin County Employees' Retirement Association, its employees, agents
12 and consultants are not authorized to give legal advice and, therefore, make no
13 representation as to the model's sufficiency under applicable federal or state law or as
14 to its legal consequences under your particular facts and circumstances. You should
15 obtain the advice of your own legal counsel to create an appropriate court order for you.

1 [NAME OF COUNSEL]
2 [ADDRESS OF COUNSEL]
3 [CITY, STATE]
4 [PHONE NUMBER]
5 ATTORNEY FOR [PETITIONER/RESPONDENT]

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF _____

10 In Re the Marriage of) Case No. _____
11 Petitioner: _____) **MODEL ORDER A**
12 and) STIPULATED DOMESTIC RELATIONS
13 Respondent: _____) ORDER RE: DIVISION OF SAN
14) JOAQUIN COUNTY EMPLOYEES'
15 _____) RETIREMENT BENEFITS

17 Petitioner, _____, and Respondent, _____,
18 hereby stipulate as follows:

19 **RECITALS**

20 1. Petitioner and Respondent were married to each other on
21 _____. They separated on _____, and this Court entered a
22 judgment of dissolution of marriage in the action on _____.

23 2. This Court has personal jurisdiction over both Petitioner and Respondent
24 and jurisdiction over the subject matter of this Order and the dissolution of marriage
25 action.

26 3. San Joaquin County Employees' Retirement Association (SJCERA) is
27 governed by the County Employees Retirement Law of 1937 (the '37 Act), which is set

1 forth at section 31450, et seq., of the Government Code and was properly joined as a
2 party to the Petitioner and Respondent's dissolution of marriage action pursuant to
3 sections 2060 through 2065 of the Family Code.

4
5 **IT IS HEREBY ORDERED BY THE COURT THAT:**

6 1. This Order is entered pursuant to the Family Code.

7 2. **[Respondent or Petitioner]** ("Member") and **[Respondent or Petitioner]**
8 ("Nonmember") have acquired a community interest in the Member's monthly retirement
9 benefits attributable to periods of service in SJCERA from the Date of Marriage up to
10 the Date of Separation.

11 3. Pursuant to section 31685 of the Government Code, the Court allocates
12 and awards to the Nonmember 50% of the accumulated retirement contributions and
13 service credit attributable to the Member's service in SJCERA during the period from the
14 Date of Marriage up to the Date of Separation ("SJCERA Interest") as the Nonmember's
15 sole and separate property. All accumulated retirement contributions and service credit
16 attributable to the Member's service in SJCERA which are not awarded to the
17 Nonmember pursuant to this order shall be the Member's sole and separate property.

18 4. Pursuant to section 31685 of the Government Code, the Retirement
19 Administrator of SJCERA ("Administrator") shall divide the Member's accumulated
20 retirement contributions and service credit in accordance with Paragraph 3 of this Order
21 and establish a separate and distinct account for the Nonmember as soon as
22 administratively practicable after Administrator receives this Order.

23 5. In light of section 31685.5(b) of the Government Code and notwithstanding
24 any other provision of this Order, if the Member does not have five years of
25 accumulated service credit as of the date of legal separation, the Nonmember shall
26 receive a refund of the accumulated retirement contributions and any interest that has
27 been credited to such contributions which have been transferred to the Nonmember's

1 account as soon as administratively practicable following the date an account was
2 established for the Nonmember pursuant to paragraph 4 of this Order.

3 6. From and after the date that the Administrator has divided the Member's
4 accumulated retirement contributions and service credit pursuant to Paragraph 4 of this
5 Order, the Nonmember shall be entitled to all applicable rights, with respect to the
6 nonmember's interest under paragraph 4, permitted under section 31685 (c) of the
7 Government Code, including:

8 (a) The right to a retirement allowance; subject to the provisions of
9 Article 8.4 of the Government Code, including but not limited to, sections 31685(d),
10 31685.5, 31685.6, 31685.7, 31685.8, 31685.9, 31685.95 and 31685.96 of the
11 Government Code.

12 (b) The right to a refund of accumulated retirement contributions,
13 subject to the provisions of section 31685.2 of the Government Code.

14 (c) The right to redeposit accumulated contributions that are eligible for
15 redeposit by the Member, to the extent of the Nonmember's interest therein, subject to
16 the provisions of section 31685.3 of the Government Code.

17 (d) The right to purchase service credit that is eligible for purchase by
18 the Member, to the extent of the Nonmember's interest therein, subject to the provisions
19 of section 31685.4 of the Government Code.

20 (e) The right to designate a beneficiary to receive his or her
21 accumulated contributions and any interest that has been credited to such contributions
22 where death occurs prior to retirement.

23 (f) The right to designate a beneficiary for any portion of the
24 Nonmember's SJCERA Interest which is payable at the time of his or her death.

25 7. If the Nonmember fails to designate a beneficiary pursuant to paragraph
26 6(e) or 6(f) of this Order, or the designated beneficiary does not survive the
27 Nonmember, any portion of the Nonmember's SJCERA Interest which is payable at the

1 time of his or her death shall be paid in accordance with section 31458.2 of the
2 Government Code.

3 8. The Nonmember's SJCERA Retirement Benefit will be increased by all
4 applicable interest, cost-of-living or other similar increases, but only to the extent
5 permitted under the '37 Act and the Bylaws of SJCERA.

6 9. The Member and the Nonmember shall be responsible for, and pay, any
7 taxes due in connection with his or her receipt of the distributions from SJCERA.

8 10. The Member and Nonmember shall be responsible for filing Designation of
9 Beneficiary forms with the Administrator.

10 11. Member's Name. For the purpose of making any benefit payments
11 provided by the terms of this Order or providing any notice required by the terms of this
12 Order, Member's name, current mailing address, telephone number, Social Security
13 number and date of birth are as follows:

14 Name: _____
15 Address: _____
16 Telephone No.: _____
17 Social Security Number: _____
18 Date of Birth: _____

19 12. Nonmember's Name: For the purpose of making any benefit payments
20 provided by the terms of this Order or providing any notice required by the terms of this
21 Order, Member's name, current mailing address, telephone number, Social Security
22 number and date of birth are as follows:

23 Name: _____
24 Address: _____
25 Telephone No.: _____
26 Social Security Number: _____
27 Date of Birth: _____

1 13. Notice of change of address or telephone number shall be made in writing
2 to SJCERA, addressed as follows, or as the Administrator may specify in a written
3 notice to Member and Nonmember:

4 San Joaquin County Employees' Retirement Association
5 6 South El Dorado Street, Suite 400
6 Stockton, California 95202

7 14. The Member and the Nonmember shall sign all forms, letters and other
8 documents as required to effect the distribution(s) described herein and the intent of this
9 Order.

10 15. The Nonmember, the Nonmember's agents and attorneys are authorized
11 to receive only essential information concerning the Member's benefits until such time
12 as the Nonmember has received the Nonmember's SJCERA Interest.

13 16. It is further ORDERED that the Member shall act as constructive trustee of
14 any benefits assigned to the Nonmember under this Order which may be paid to or
15 received by the Member. The Member, as trustee, shall promptly pay or transmit any
16 such benefits to the Nonmember at the Nonmember's last known address. It is also
17 ORDERED that the Nonmember shall act as constructive trustee of any benefits
18 assigned to the Member under this Order which may be paid to or received by the
19 Nonmember. The Nonmember, as trustee, shall promptly pay or transmit any such
20 benefits to the member at the Member's last known address.

21 17. This Order shall be administered and interpreted in conformity with the '37
22 Act and the Bylaws of SJCERA and other applicable law. If the '37 Act and/or the
23 Bylaws of SJCERA are amended, then Member and the Nonmember shall immediately
24 take the steps necessary to amend this Order to comply with any such amendments,
25 changes and/or modifications, or, if permissible under any such change, amendment, or
26 modification to the '37 Act and the Bylaws of SJCERA, the Administrator may treat this

1 Order as acceptable. The Member and the Nonmember shall be responsible for any of
2 the costs and/or expenses associated with such amendment to this order.

3 18. The Member, the Nonmember, the Administrator, and the court intend that
4 this Order meet all requirements of a domestic relations order under the '37 Act and the
5 Bylaws of SJCERA and to resolve any disputes that may arise among the parties and
6 the Administrator concerning benefit payments or any other aspect of this Order. If any
7 portion of this Order is rendered invalid or otherwise unenforceable, the Court reserves
8 jurisdiction to make an appropriate adjustment to effectuate the intent of the parties.
9 Any future fees, taxes, and/or penalties will be assessed against the parties who then
10 have an interest payable from SJCERA.

11 19. This Stipulation and Order shall not expand the contractual or statutory
12 obligations, whether substantive or procedural, of San Joaquin County or the San
13 Joaquin County Employees' Retirement Association with respect to paying the above
14 benefits.

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IT IS SO STIPULATED:

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|--------------|-----------------------------------|
| Dated: _____ | _____ |
| | [NAME] Petitioner |
| Dated: _____ | _____ |
| | [NAME] Attorney for Petitioner |
| Dated: _____ | _____ |
| | [NAME] Respondent |
| Dated: _____ | _____ |
| | [NAME] Attorney for Respondent |

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Approved as to form:

Dated: _____
[NAME]
San Joaquin County Employees'
Retirement Association

ORDER

The parties having stipulated thereto and good cause appearing therefore.

IT IS SO ORDERED.

Dated: _____
JUDGE OF THE SUPERIOR COURT

1 SAN JOAQUIN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

2 MODEL DOMESTIC RELATIONS ORDER B

3 *[Applicable to A Dissolution of Marriage **AFTER** Retirement]*

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5
6 **CAUTION: YOU ARE HEREBY ADVISED TO SEEK COMPETENT LEGAL COUNSEL.**

7
8 The disposition of retirement benefits in domestic relations proceedings involves
9 complex marital rights and tax issues.

10
11 The San Joaquin County Employees' Retirement Association, its employees, agents
12 and consultants are not authorized to give legal advice and, therefore, make no
13 representation as to the model's sufficiency under applicable federal or state law or as
14 to its legal consequences under your particular fact and circumstances. You should
15 obtain the advice of your own legal counsel to create an appropriate court order for you.

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1 [NAME OF COUNSEL]
2 [ADDRESS OF COUNSEL]
3 [CITY, STATE]
4 [PHONE NUMBER]
5 ATTORNEY FOR [PETITIONER/RESPONDENT]

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF _____

10 In Re the Marriage of) Case No. _____
11 Petitioner: _____) **MODEL ORDER B**
12 and) STIPULATED DOMESTIC RELATIONS
13 Respondent: _____) ORDER RE: DIVISION OF SAN
14) JOAQUIN COUNTY EMPLOYEES'
15 _____) RETIREMENT BENEFITS

17 Petitioner, _____, and Respondent, _____,
18 hereby stipulate as follows:

19 **RECITALS**

20 1. Petitioner and Respondent were married to each other on
21 _____. They separated on _____, and this Court entered a
22 judgment of dissolution of marriage in the action on _____.

23 2. This Court has personal jurisdiction over both Petitioner and Respondent
24 and jurisdiction over the subject matter of this Order and the dissolution of marriage
25 action.

26

1 [Note that if the Member is currently receiving a non-service connected disability
2 retirement or service connected disability retirement, add the following language: As the
3 Member is currently receiving a disability retirement benefit as specified in paragraph 3
4 above, at the time when the Member becomes first eligible for a service retirement, the
5 Retirement Administrator of SJCERA shall designate that portion of the disability benefit
6 which is attributable to a service retirement and allocate that portion of the benefit as
7 specified in this section. The total combined benefit payments to both the Member and
8 Non-Member shall not exceed the amount that would otherwise be paid to the member
9 alone.] All retirement benefits which are not awarded to the Nonmember pursuant to
10 this Order shall be the Member's sole and separate property.

11 5. Commencement of Benefits to the Nonmember. The Nonmember shall
12 commence to receive the Nonmember's monthly benefits by separate warrant directly
13 from SJCERA as soon as administratively practicable following the date the
14 Administrator receives this Order.

15 6. Benefits payable at Member's Death. The Member shall be responsible
16 for filing a Designation of Beneficiary form with SJCERA. Upon the Member's death,
17 SJCERA shall continue to pay to the Nonmember the Nonmember's monthly benefit
18 until the death of the Nonmember. Upon the Member's death, SJCERA shall pay by
19 separate warrant directly to the beneficiary designated by the Member, the balance of
20 any accumulated retirement contributions and interest remaining in the Member's
21 account, less the amount attributable to any payments to the Nonmember pursuant to
22 this Order, and any other benefits payable to that designated beneficiary, including but
23 not limited to the any applicable death benefit. If the Member designates Member's
24 minor children as beneficiary, then monthly survivor benefits may be payable pursuant
25 to section 31760.1 of the Government Code.

26 7. Benefits Payable at Nonmember's Death. The Nonmember shall be
27 responsible for filing a Designation of Beneficiary form with SJCERA. If benefits are still

1 payable to the Member at the time of the Nonmember's death, SJCERA shall continue
2 to pay the Nonmember's monthly benefit by separate warrant directly to the beneficiary
3 designated by the Nonmember. Said payments shall cease upon the death of the
4 Member.

5 8. The Nonmember's monthly benefit will be increased by all applicable cost-
6 of-living increases or other similar increases, but only to the extent permitted under the
7 '37 Act and the Bylaws of SJCERA.

8 9. The Member and the Nonmember shall be responsible for, and pay, any
9 taxes due in connection with his or her receipt of distributions from SJCERA.

10 10. Member's Name. For the purpose of making any benefit payments
11 provided by the terms of this Order or providing any notice required by the terms of this
12 Order, Member's name, current mailing address, telephone number, Social Security
13 number and date of birth are as follows:

14 Name: _____
15 Address: _____
16 Telephone No.: _____
17 Social Security Number: _____
18 Date of Birth: _____

19 11. Nonmember's Name: For the purpose of making any benefit payments
20 provided by the terms of this Order or providing any notice required by the terms of this
21 Order, Member's name, current mailing address, telephone number, Social Security
22 number and date of birth are as follows:

23 Name: _____
24 Address: _____
25 Telephone No.: _____
26 Social Security Number: _____
27 Date of Birth: _____

1 12. Notice of change of address or telephone number shall be made in writing
2 to SJCERA, addressed as follows, or as the Administrator of SJCERA may specify in a
3 written notice to Member and Nonmember:

4 San Joaquin County Employees' Retirement Association
5 6 South El Dorado Street, Suite 400
6 Stockton, California 95202

7 13. The Member and the Nonmember shall sign all forms, letters and other
8 documents as required to effect the distribution(s) described herein and the intent of this
9 Order.

10 14. The Nonmember, the Nonmember's agents and attorneys are authorized
11 to receive information concerning the Member's benefits as may be needed to establish
12 the Nonmember's account.

13 15. It is further ORDERED that the Member shall act as constructive trustee of
14 any benefits assigned to the Nonmember under this Order which may be paid to or
15 received by the Member. The Member, as trustee, shall promptly pay or transmit any
16 such benefits to the Nonmember at the Nonmember's last known address. It is also
17 ORDERED that the Nonmember shall act as constructive trustee of any benefits
18 assigned to the Member under this Order which may be paid to or received by the
19 Nonmember. The Nonmember, as trustee, shall promptly pay or transmit any such
20 benefits to the Member at the Member's last known address.

21 16. This Order shall be administered and interpreted in conformity with the '37
22 Act and the Bylaws of SJCERA and other applicable law. If the '37 Act and/or the
23 Bylaws of SJCERA are amended, then Member and the Nonmember shall immediately
24 take the steps necessary to amend this Order to comply with any such amendments,
25 changes and/or modifications, or, if permissible under any such change, amendment, or
26 modification to the '37 Act and the Bylaws of SJCERA, the Administrator of SJCERA
27 may treat this Order as acceptable. The Member and the Nonmember shall be

1 responsible for any of the costs and/or expenses associated with such amendment to
2 this order.

3 17. The Member, the Nonmember, and the court intend that this Order meet
4 all requirements of a domestic relations order under the '37 Act and the Bylaws of
5 SJCERA and other laws of the State of California, and the Court shall reserve
6 jurisdiction to modify this Order and to resolve any disputes that may arise among the
7 parties and the Administrator of SJCERA concerning benefit payments or any other
8 aspect of this Order. If any portion of this Order is rendered invalid or otherwise
9 unenforceable, the Court reserves jurisdiction to make an appropriate adjustment to
10 effectuate the intent of the parties. Any future fees, taxes, and/or penalties will be
11 assessed against the parties who then have an interest payable from SJCERA.

12 18. This Stipulation and Order shall not expand the contractual or statutory
13 obligations, whether substantive or procedural, of San Joaquin County or the San
14 Joaquin County Employees' Retirement Association with respect to paying the above
15 benefits.

16
17 **IT IS SO STIPULATED:**

18 Dated: _____ [NAME]
19 Petitioner

20 Dated: _____ [NAME]
21 Attorney for Petitioner

22 Dated: _____ [NAME]
23 Respondent

24 Dated: _____ [NAME]
25 Attorney for Respondent

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Approved as to form:

Dated: _____

[NAME]
San Joaquin County Employees'
Retirement Association

ORDER

The parties having stipulated thereto and good cause appearing therefore.

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT