

1
2 **SAMPLE ORDER – POST RETIREMENT**
3 **NOT INTENDED AS LEGAL ADVICE**

4 Updated 2/9/2024

5
6
7
8
9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

10
11 In re the Marriage of:

NO.

12 Petitioner:

**STIPULATION (FOR
MODIFICATION OF) AND ORDER
FOR DIVISION OF PENSION
BENEFITS, AND ORDER
THEREON**

13 And

14 Respondent:
15 _____

16 This court has personal jurisdiction over both Petitioner and Respondent and jurisdiction
17 over the subject matter of this order and the dissolution action.

18 **IT IS HEREBY STIPULATED** as follows:

19 1. [Respondent or Petitioner] _____ (Member) and [Respondent or
20 Petitioner] _____ (Former Spouse) have acquired a community interest in
21 the Member's monthly retirement benefits administered by the San Joaquin County Employees'
22 Retirement Association ("Association") and attributable to periods of service in the Association
23 from the Date of Marriage up to the Date of Separation or date of Retirement, whichever occurs
24 first. Member and Former Spouse intend, by this Stipulation and Order, to divide and allocate
25 their community property interest in the retirement plan in conformance with State law and with
26 the lawful provisions of the Association.

27 2. The Member is currently receiving retirement benefits of \$_____. For purposes of
28 this Order, the term "retirement benefits" shall include any service retirement benefits, any service

1 connected disability retirement benefits, any non-service connected disability retirement benefits,
2 but shall exclude any reimbursement for Medicare premiums. Upon dissolution of the marriage,
3 the Former Spouse ceases to qualify for unmodified survivor benefits pursuant to sections 31760.1
4 or 31760.2 of the Government Code or otherwise.

5 3. Former spouse shall be awarded an interest in Member's retirement benefits calculated as
6 follows: e.g. 50% of the monthly retirement benefits attributable to the Member's service in the
7 Association during the period from the Date of Marriage up to the Date of Separation as the Former
8 Spouse's sole and separate property. All retirement benefits which are not awarded to the former
9 spouse pursuant to this Order shall be the Member's sole and separate property. Member and
10 Former Spouse agree that the date of marriage was _____ and the date of separation
11 was _____ (**OR** describe other agreed upon manner in which retirement benefits are to be
12 divided.)

13 4. The Former spouse shall commence to receive his/her monthly benefit by separate
14 payment directly from the Association as soon as administratively practicable after receipt of an
15 acceptable Order.

16 5. Upon the Member's death, the Administrator shall cease paying the Former Spouse a
17 monthly benefit. (The Order may provide that if the Member has remarried or has minor child(ren)
18 who are eligible for monthly survivor benefits pursuant to sections 31760.2, 31785.1 or 31786.1 of
19 the Government Code, then a portion of that survivor benefit may be allocated to the Former Spouse
20 until the Member's beneficiary is no longer eligible for such continuance, in accordance with *In re*
21 *Marriage of Carnall* (1989) 216 Cal. App.3d 1010.) If there is no surviving spouse or minor
22 child(ren) the Administrator shall pay to the beneficiary designated by Member the balance of any
23 accumulated retirement contributions and interest remaining in the Member's account, if any.

24 6. Upon the Former Spouse's death, the Administrator shall continue to pay the Former
25 Spouse's monthly benefit directly to the beneficiary designated by the Former spouse, provided
26 benefits are still payable to the Member at the time of the Former Spouse's death. Such payments
27 shall cease upon the death of the Member. If the designated beneficiary does not survive the
28 Former Spouse and a successor beneficiary has not been nominated by the Former Spouse, the

1 monthly benefit shall be paid to the individual(s) named as beneficiary(ies) of the estate of the
2 Former Spouse, or as ordered by this court if there is no estate or the estate has been closed, until the
3 death of the Member in accordance with *In re Marriage of Powers* (1990) 218 Cal.App.3d 626.

4 7. As a condition for the entry of this Order, Member and Former Spouse understand and
5 agree that those provisions contained in sections 31760.1, 31760.2, 31785, 31785.1, 31786, and
6 31786.1 of the Government Code shall not be applicable upon the death of either the Member or the
7 Former Spouse unless otherwise specified herein.

8 8. Each party shall be responsible for and pay any taxes due in connection with his or her
9 receipt of distributions from the Association. Member hereby authorizes the Association to release
10 such information to Former Spouse as necessary so that each party may determine taxable and non-
11 taxable portions of any benefit paid by virtue of this Order.

12 9. The Association shall not be required by the terms of this Stipulation/Order: 1) to provide
13 any type or form of benefit or option not otherwise provided under Member's retirement plan; 2) to
14 increase the amount of any benefits provided under said plan; or 3) to suffer any additional burden
15 beyond the requirements specifically set forth in the County Employees Retirement Law of 1937
16 (Cal. Gov. Code secs. 31450 et seq.) as modified by the California Public Employees' Pension
17 Reform Act of 2013 (Cal. Gov. Code sec. 7522).

18 10. It is further ORDERED that the Member shall act as constructive trustee of any benefits
19 assigned to the Former Spouse that may be paid to or received by the Member. The Member, as
20 trustee, shall promptly pay or transmit any such benefits to the Former Spouse at the Former
21 Spouse's last known address. It is also ORDERED that the Former Spouse shall act as constructive
22 trustee of any benefits assigned to the Member under this Order that may be paid to or received by
23 the Former spouse. The Former Spouse, as trustee, shall promptly pay or transmit any such benefits
24 to the Member at the member's last known address.

25 11. Attorneys' fees will not be sought against the Association (Family Code section 2030,
26 subd. (a)(1)), and the parties hereto agree that the Association is a governmental entity within the
27 meaning of that section.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED:

Attorney for Petitioner/Member

DATED:

Attorney for Respondent/
Former Spouse

DATED:

SAN JOAQUIN COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION

By: _____
Brian McKelvey
Assistant Retirement Administrator

ORDER

Good cause appearing therefor,

IT IS SO ORDERED.

DATED:

JUDGE OF THE SUPERIOR COURT