

**SAMPLE ORDER – POST RETIREMENT
NOT INTENDED AS LEGAL ADVICE**

Updated 2/9/2024

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

In re the Marriage of:

NO.

Petitioner:

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

And

Respondent:

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

IT IS HEREBY STIPULATED as follows:

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

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

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

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

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

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

6. Upon the Former Spouse's death, the Administrator shall continue to pay the Former Spouse's monthly benefit directly to the beneficiary designated by the Former spouse, provided benefits are still payable to the Member at the time of the Former Spouse's death. Such payments shall cease upon the death of the Member. If the designated beneficiary does not survive the 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.

12. Both Member and Former Spouse shall keep the Association advised at all times of that party's current mailing address, and shall supply the Association with such other information as may be reasonably required by the Association in order to effect payment. Any notice required to be given by the Association shall be deemed to have been delivered if sent to the current mailing address, as updated by each party, by First Class Mail.

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

Member's Name: _____

Address: _____

Telephone Number: _____

Social Security Number: To be provided to SJCERA upon submission of signed order.

Date of Birth: _____

Former Spouse's Name: _____

Address: _____

Telephone Number: _____

Social Security Number: To be provided to SJCERA upon submission of signed order.

Date of Birth: _____

14. This court retains jurisdiction to make such further orders as appropriate to enforce and clarify the provisions of this Order and to amend this Order so that its provisions are consistent with the intent of the parties as expressed herein, and with the Association's requirements.

DATED:

Petitioner/Member

DATED:

Respondent/Former Spouse

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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