

1 **ORANGE COUNTY EMPLOYEES' RETIREMENT SYSTEM**

2 MODEL DOMESTIC RELATIONS ORDER B

3 APPLICABLE TO A DISSOLUTION OF MARRIAGE

4 **AFTER** THE MEMBER'S RETIREMENT

5
6
7 **WARNING!**

8 Issues involving retirement benefits divided under a Domestic Relations Order involve
9 complex Community Property laws, other marital rights and tax issues. You are hereby advised
10 to seek the advice of competent legal counsel.

11 The Orange County Employees' Retirement System, its agents, counsel and consultants
12 are not authorized to give you legal advice and make no representation as to this model Order's
13 sufficiency under applicable federal or state law or as to its legal consequences.

14 This model Order is in a form acceptable to the Orange County Employees' Retirement
15 System to allow the Retirement System to administer benefits to the parties.
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1 [Attorney or Party Name]
2 [Address]
3 [Telephone]

4 Attorney for

8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER**

11 In re Marriage of)
12 _____)
13 Petitioner,)
14 and)
15 _____)
16 Respondent.)
17 _____)

Case No. _____
STIPULATED DOMESTIC RELATIONS
ORDER DIVIDING THE PARTIES' INTEREST
IN THE ORANGE COUNTY EMPLOYEES'
RETIREMENT SYSTEM

18
19 Petitioner _____ and Respondent _____ hereby stipulate as follows:

20 **I.**

21 **RECITALS**

22 1. Petitioner and Respondent were married to each other on _____. They
23 separated on _____.

24 2. Respondent entered service for the County of Orange on _____ and
25 Respondent retired/terminated from county service effective as of _____.

26 3. This Court has personal jurisdiction over both Petitioner and Respondent, and jurisdiction
27 over the subject matter of this Order and the dissolution of marriage action.

1 4. Petitioner, Respondent and the Court intend that this Order shall be a Domestic Relations
2 Order, dividing the parties' interests in the Orange County Employees' Retirement System.

3 5. The captions and headers found in this Order are for the convenience of the parties and
4 the Court and do not create a separate legal right, equitable interest or material term of this Order.

5 6. Petitioner and Respondent have stipulated that the Court shall enter the following Order:
6

7 **NOW THEREFORE, IT IS HEREBY ORDERED BY THE COURT THAT:**

8 **1. DEFINITIONS:** As used in this Order, the following terms shall apply:

9 (a) "Member" refers to Respondent JOHN DOE, (Social Security No.
10 _____), whose last known address is 111 Pine Street, Santa Ana, California,
11 92706.

12 (b) "Non-Member" refers to Petitioner JANE DOE, (Social Security No.
13 _____), whose date of birth is _____, with a last
14 known address of 222 Birch Street, Santa Ana, California, 92706.

15 (c) "Plan" refers to the Orange County Employees' Retirement System, which is
16 a "governmental plan" as that term is defined in 29 U.S.C. Secs. 1002(32) and 1003(b)(1),
17 and which is statutorily exempt from all provisions of the Retirement Equity Act of 1984
18 except that a "qualified domestic relations order" involving a governmental plan is
19 sufficient under Federal law if it simply "creates or recognizes the existence of a [non-
20 member's] right to ... receive all or a portion of the benefits payable with respect to the
21 [member] under the plan." (26 U.S.C. §§414(p)(1)(A)(i); 414(p)(11).)

22 (d) "Plan Administrator" refers to the Orange County Employees' Retirement
23 System, located at 2223 E. Wellington Avenue, Suite 100 Santa Ana, California, 92701.

24 **2. STATUS OF NON-MEMBER:** The Non-Member is the former spouse of the Member.

25 **3. APPLICATION OF THE FAMILY CODE:** This Order is entered pursuant to the California
26 Family Code, Section 2060, and following.

27 **4. RIGHT TO RECEIVE MONEY:** This Order hereby creates and recognizes as to the
28 described Plan, the existence of a right given to the Non-Member to receive money from the Plan.

1 The Non-Member shall begin to receive payment by separate warrant directly from the Orange
2 County Employees' Retirement System as soon as administratively practicable following the date the
3 Plan Administrator determines that this Order is acceptable under the County Employees' Retirement
4 Law of 1937 and the Retirement System's regulations.

5 **5. MEMBER'S RETIRED STATUS/PAYMENT OPTION:** The Member is currently receiving
6 retirement benefits through the Orange County Employees' Retirement System in the amount of
7 \$_____ per month, under Option _____ with _____ named as beneficiary for any
8 and all benefits payable under such option upon the Member's death. For purposes of this Order, the
9 term "retirement benefits" shall include service retirement benefits, any service-connected disability
10 retirement benefits, any nonservice-connected disability retirement benefits, and any applicable
11 future death benefits. Upon the dissolution of marriage, the Non-Member will no longer qualify for the
12 unmodified surviving spouse benefits pursuant to Government Code Section 31760.1.

13 **6. APPLICATION OF THE JUDD FORMULA:** All retirement benefits payable to Member
14 JOHN DOE by the Orange County Employees' Retirement System, including any future cost-of-living
15 increases, will be divided between JOHN DOE and JANE DOE pursuant to the formula approve by
16 the Court of Appeal in *Marriage of Judd* (1977) 68 Cal.App.3d 515, 522. For purposes of calculating
17 each party's share of such retirement benefits, Petitioner and Respondent were married on
18 _____, separated on _____, Respondent entered county service on
19 _____, Respondent retired from service effective as of _____, and the total
20 length of their marriage during county service was _____ months. The Orange County
21 Employees' Retirement System will make direct payment to Petitioner and Respondent each party's
22 share of said retirement benefits, by separate check or warrant payable to Petitioner and Respondent
23 respectively. As a condition of receiving such payment, Petitioner and Respondent shall each keep
24 the Orange County Employees' Retirement System informed of their Social Security Numbers, and
25 such other information as may be reasonably required by the Orange County Employees' Retirement
26 System in order to effect direct payment. The current mailing address for the Retirement System is
27 2223 E. Wellington Avenue, Suite 100 Santa Ana, California, 92701.
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1 **7. DEATH OF NON-MEMBER:** If the Non-Member dies before the Member, any and all
2 payments that would have been made to the Non-Member pursuant to this Order, had the Non-
3 Member lived, will be paid instead to the estate of the Non-Member, in accordance with *In re*
4 *Marriage of Powers* (1990) 218 Cal.App.3d 626.

5 **8. DEATH OF MEMBER:** Upon the Member's death, the Non-Member shall not be treated
6 as a surviving spouse, but will be entitled to receive a pro-rata share of any survivor's benefits that
7 the Plan may become obligated to pay as a result of the Member's death, in accordance with *In re*
8 *Marriage of Carnall* (1989) 216 Cal.App.3d 1010.

9 **9. DESIGNATION OF BENEFICIARY:** The Member and Non-Member shall be responsible
10 for filing a Designation of Beneficiary form with the Plan Administrator.

11 **10. MEMBER'S FAILURE TO DESIGNATE BENEFICIARY:** If the Member fails to
12 designate a beneficiary or if the designated beneficiary does not survive the Member, and the
13 Member dies leaving a spouse (other than the Non-Member), the Member's spouse may petition the
14 Retirement System for beneficiary status pursuant to Government Code Section 31458.2.

15 **11. REQUIRED DOCUMENTS:** The Member and Non-Member shall sign all forms, letters,
16 and other documents as required to effect the distribution(s) described herein and to carry out the
17 intent of this Order.

18 **12. INFORMATION REGARDING AMOUNT OF BENEFIT:** The Non-Member, or the Non-
19 Member's attorney of record, are authorized to receive information concerning the amount of the
20 Member's benefits upon written inquiry or request until such time as the Non-Member begins
21 receiving payments as set forth in this Order. No other information will be provided to the Non-
22 Member or the Non-Member's attorney unless such request is made pursuant to Government Code
23 Section 31532.

24 **13. INCLUSION IN GROSS INCOME:** The Non-Member shall include retirement benefits
25 received by the Non-Member pursuant to this Order as and when received by the Non-Member in his
26 or her gross income and the Member need not do so.

1 **14. APPLICATION OF THE '37 ACT:** This Order shall be administered and interpreted in
2 conformity with the County Employees' Retirement Law of 1937, the regulations of the Orange
3 County Employees' Retirement System, and other applicable law.

4 **15. INTENT:** This Order is intended to be a Domestic Relations Order dividing the parties'
5 interest in the Plan and shall be administered and interpreted in conformity with the provisions of
6 general principles of California Community Property law, and is intended to be a Domestic Relations
7 Order in terms of the Retirement Equity Act of 1984 to the extent this Act is applicable to the Plan.

8 **16. LIMITATIONS ON ORDER:** Nothing contained in this Order shall be construed to
9 require the Plan or Plan Administrator:

10 (a) To provide to the Non-Member any type or form of benefit or any option not
11 otherwise available to the Member under the Plan;

12 (b) To provide to the Non-Member increased benefits, determined on the basis
13 of actuarial value, not available to the Member;

14 (c) To pay any benefits to the Non-Member that are required to be paid to
15 another Non-Member under another order determined by the Plan Administrator to be a valid
16 Domestic Relations Order entered by a Court of competent jurisdiction; or

17 (d) To change the payment option of the Member once the Member has retired.

18 **17. RESERVATION OF JURISDICTION:** The Member, Non-Member, and the Court intend
19 that this Order meet all the requirements of a Domestic Relations Order under the County Employees'
20 Retirement Law of 1937, the regulations of the Orange County Employees' Retirement System, and
21 other laws of the State of California. The Court shall reserve jurisdiction to modify this Order and to
22 resolve any disputes that may arise among the parties and the Plan Administrator concerning the
23 benefit payments or any other aspect of this Order. If any portion of this Order is rendered invalid or
24 otherwise unenforceable, the Court reserves jurisdiction to make an appropriate adjustment to
25 effectuate the intent of the parties. Any future fees, taxes, and/or penalties will be assessed against
26 the parties who then have an interest payable from the Plan.
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IT IS SO STIPULATED:

Dated: _____
[NAME]
Petitioner/Non-Member

Dated: _____
[NAME]
Respondent/Member

APPROVED AS TO FORM AND CONTENT

Dated: _____
[NAME]
Attorney for Petitioner/Non-Member

Dated: _____
[NAME]
Attorney for Respondent/Member

IT IS SO ORDERED:

Dated: _____
JUDGE OF THE SUPERIOR COURT