

MODEL DOMESTIC RELATIONS ORDER B

Retired Members

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

CAUTION: You are hereby advised to seek competent legal counsel.

The OCERS Model Domestic Relations Order B is a model. It may not be appropriate for all circumstances. Parties are advised to consult an attorney to determine the content required for the parties' specific needs.

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

The Orange County Employees' Retirement System, its agents and consultants are not authorized to give legal advice and, therefore, make no representation as to the sufficiency of the model orders herein 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.

OCERS must be joined before the proposed DRO will be reviewed.

[Name of Counsel]

[Address of Counsel]

[Phone Number]

ATTORNEY FOR _____
[Petitioner/Respondent]

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 _____ They separated on _____, and this Court entered a judgment of dissolution in the action on _____.
2. This Court has jurisdiction over both Petitioner and Respondent and jurisdiction over the subject matter of this Order and the 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. Member's Name: _____
[INSERT NAME], [Respondent or Petitioner], hereinafter referred to as "Member,") for purposes of making any benefit payments provided by the terms of this Order or providing any notice required by the terms of this Order, Member's current mailing address, telephone number, Social Security number and date of birth are as follows:

- a. DATE OF BIRTH: Provided Under Separate Cover.
- b. SOCIAL SECURITY NUMBER: Provided Under Separate Cover.
- c. ADDRESS: Provided Under Separate Cover.
- d. PHONE: Provided Under Separate Cover.
- e. EMAIL: Provided Under Separate Cover.

1. Nonmember's Name: _____
[INSERT NAME], [Respondent or Petitioner], hereinafter to as "Nonmember," for purposes of making any benefit payments provided by the terms of this Order or providing any notice required by the terms of this Order, Nonmember's current mailing address, telephone number, Social Security number and date of birth are as follows:

- f. DATE OF BIRTH: Provided Under Separate Cover.
- g. SOCIAL SECURITY NUMBER: Provided Under Separate Cover.
- h. ADDRESS: Provided Under Separate Cover.
- i. PHONE: Provided Under Separate Cover.
- j. EMAIL: Provided Under Separate Cover.

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.

2. **Authority:** This Order is entered pursuant to the Family Code. If anything in this order conflicts with statute or authoritative case law, the statute or case law will control.
3. **Party Interests:** Member and Nonmember have acquired a community interest in the Member’s monthly retirement benefits attributable to periods of service in OCERS from the Date of Marriage up to the Date of Separation.
4. **Member Status:** The member made an irrevocable election at the time of retirement and elected the unmodified option, upon dissolution of marriage, Nonmember ceases to qualify for survivor benefits (continuance) pursuant to section 31760.2 of the Government Code or for death benefits under Government Code sections 31765, 31765.1, or 31786.
5. **Calculation of Nonmember’s Interest:** OCERS is ordered to pay directly to Nonmember an interest in any and all of the Member’s retirement benefits, including any future cost-of-living 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]) <hr style="width: 50%; margin-left: 0;"/> Total number of months service credit earned or purchased by Member at retirement (excluding service credited for unused sick time or retirement incentive)	X 50%	–	Monthly adjustment for Retirement Option] election (if applicable)	=	Nonmember’s monthly benefit
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Nonmember’s community property share of Member’s retirement benefits shall terminate upon the death of Member unless Member is married to an eligible spouse at the time of Member’s death, and OCERS pays the eligible spouse a continuation allowance pursuant to Government Code section 31760.2. In such event, OCERS will pay the Nonmember’s community portion of the continuation allowance to Nonmember according to formula above.

6. **Commencement of Benefits to the Nonmember:** Payment of the Nonmember’s share shall commence after OCERS’s final approval of a conformed copy of this order and as soon as administratively possible after Nonmember returns all required forms to OCERS.

7. Death of Nonmember: If Nonmember dies before Member, any retirement benefits which would have been paid (excluding burial benefits) by OCERS to Nonmember, if Nonmember were still alive, will be paid instead to Nonmember's estate, 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.
8. Death of Member: If any return of accumulated contributions becomes payable as the result of the death of Member, the Nonmember is entitled to the Nonmember's community property share of the accumulated contributions(excluding burial) as calculated in section 4 above. Member is hereby ordered to name Nonmember as beneficiary for the community property share of the accumulated contributions.
9. Designation of Beneficiaries: Member and Nonmember shall be responsible for filing a Designation of Beneficiary form with the OCERS Administrator.
10. 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.
11. Signatures: Member and Nonmember shall sign all forms, letters and other documents as required to affect the distribution(s) described herein and the intent of this Order.
12. 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 Member and Nonmember shall bear the cost of revising this Order.
13. 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.
 - 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 the Nonmember of benefits forfeited by the Member.
 - e. To change the benefit election of the member once the Member has retired.

- 14. 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.
- 15. Notices: Notice of change of address or telephone number shall be made in writing to OCERS addressed as follows, or as the Administrator may specify in a written response to Member and Nonmember:

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
P.O. Box 1229
Santa Ana, CA 92702

- 16. Intent: Member, Nonmember, the OCERS Administrator, and the Court intend that this Order meet all requirements of a domestic relations order under the CERL and the Regulations of OCERS and other laws of the State of California. Any fees, taxes, and/or penalties will be assessed against the parties and not against OCERS.

IT IS SO STIPULATED:

Dated: _____	_____
	[Name] Petitioner
Dated: _____	_____
	[Name] Attorney for Petitioner
Dated: _____	_____
	[Name] Respondent
Dated: _____	_____
	[Name] Attorney for Respondent

ORDER

The parties having stipulated and good cause appearing, therefore:

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT