

Disclaimer- Shared Account

CAUTION- WARNING:

You are hereby advised and put on notice that you should seek competent legal counsel if you are involved in or foresee being involved in a nullity, legal separation, or dissolution of marriage or registered domestic partnership before you use or otherwise rely on the following sample Domestic Relations Order. The disposition of retirement benefits in domestic relations proceedings involves complex marital rights and domestic partnership rights and tax issues. The Merced County Employees' Retirement Association (MCERA), its employees, agents, representatives, and consultants are not authorized to give legal advice and, therefore, make no representation or assurances as to the model Domestic Relations Order sufficiency under applicable federal or state law or as to its legal consequences under your particular factual situation or circumstances. You should obtain the advice of your own legal counsel to create an appropriate court Order, Domestic Relations Order and or Stipulation for Division of Retirement Benefits for you. This model form is but one of many that are acceptable to MCERA to allow the retirement system to administer benefits to the parties. You are cautioned and warned that you should not interpret this model and sample as the only acceptable form for your use. You should seek the advice of competent legal counsel at this time and before use of any sample form provided by MCERA.

(Name of Counsel)
(Address of Counsel)
(City, State)
(Phone Number)
ATTORNEY FOR (Petitioner/Respondent)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MERCED

In Re the Marriage of _____

Case No. _____

Petitioner: _____
and _____
Respondent: _____

**MODEL DOMESTIC
RELATIONS ORDER A**
Active Member Dissolution Prior
to Retirement

Petitioner, _____ and Respondent, _____, and
the Merced County Employees' Retirement Association (MCERA) hereby stipulate as
follows:

RECITALS

1. The Merced County Employees Retirement Association, hereafter MCERA is organized under the County Employment Retirement Law of 1937: (37 Act) set forth at Section 31450 et seq. of the Government Code. MCERA 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 it in the instant cause should not be referred to as a "Qualified Domestic Relations Order," nor should it require MCERA to comply with any provisions of ERISA or REA, or any other provisions of law applicable to Qualified Domestic Relations Orders generally.

Member has earned certain retirement benefits administered by MCERA pursuant to employment with the County of Merced which are the community property of the member and non-member. Member and Non-Member intend, by this stipulation and order, to divide and allocate these benefits between them.

Member and Non Member were married to each other on _____
They separated on _____. The Court entered a Judgment of Dissolution of Marriage, Domestic Partnership or other dividing the member's retirement benefits on _____.

2. This Court has personal jurisdiction over both Member and Non Member and Jurisdiction over the subject matter of this Order and the dissolution of marriage action.

3. MCERA was properly joined as a party to the Member and Non Member's dissolution of marriage action pursuant to sections 2060 through 2065 of Family Code.

IDENTIFICATION OF PARTIES AND STATISTICAL INFORMATION

1. Member's Name (INSERT NAME), for purposes of making any benefit payment provided by the terms of this Order or providing any notice required by the terms of this Order, Member's name, current mailing address, telephone number, Social Security number and date of birth as follows:

- A. DATE OF BIRTH
- B. xxx xxx – LAST FOUR OF SOCIAL SECURITY NUMBER
- C. ADDRESS

(INSERT NAME) hereinafter referred to as "Member."

2. Nonmember's Name: (INSERT NAME), 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 name, current mailing address, telephone number, Social Security number and date of birth as follows:

- A. DATE OF BIRTH
- B. xxx xxx – LAST FOUR OF SOCIAL SECURITY NUMBER
- C. ADDRESS

(INSERT NAME) hereinafter referred to as "Nonmember."

STIPULATION

This Order is acceptable under the County Employees' Retirement Law of 1937 (the '37 Act), which is set forth at section 31450 et seq., of the Government Code.

1. This Order is entered pursuant to Family Code.
2. (INSERT NAME) ("Member") and (INSERT NAME) ("Nonmember") have acquired a community interest in the Member's monthly retirement benefits and death benefits attributable to periods of service in MCERA from the Date of Marriage/Domestic Partnership up to the Date of Separation.
3. MCERA is ordered to pay directly to Nonmember upon the retirement of Member a percentage of the retirement allowance otherwise payable to Member calculated by the formula as follows:

$$\frac{\text{No of Months of MCERA service between marriage date \& separation date}}{\text{No. of months of MCERA service at retirement of member}} \times 50\% \times \text{Member's Retirement Allowance} = \text{Non-Member's allocated monthly benefit}$$

4. Purchases or Redeposits. When there are purchases or redeposits, the numerator of the fraction described in Paragraph 3 will include the corresponding credited service to the extent attributable to the period between the date of marriage and the date of separation, regardless of when the purchase or redeposit payments were made (**Note: If the parties desire to stipulate to a different agreement then this language must be changed to reflect said intent in order**).

5. To the extent Member receives a disability retirement benefit, the community property interest in the Member's disability retirement benefit shall not exceed the amount that would otherwise be payable as a service retirement allowance subject to paragraph 3. Any amount in excess of the service allowance amount is and remains Member's sole and separate property. (**Note: If the parties desire to stipulate to a different agreement such as Nonmember's will receive her community share from the disability retirement allowance then this language must be changed to reflect said intent in order.**)

6. Commencement of Benefits of the Nonmembers: Payment to Nonmember shall be made at the same time that such benefits are actually paid to Member in accordance with *In re Marriage of Jensen* (1991) 255 Cal.App.3d1137. MCERA will make direct payment of each party's share of said retirement benefit, by separate electronic fund transfer, to Member and Nonmember respectively. But should Member receive a disability retirement benefit then Nonmember payment shall commence upon the latter of (1) the date Member would have reached earliest retirement date under the Plan which the courts finds would be _____ as of the date of this order, or (2) the date of Member's actual retirement for service. (**Note: If the parties desire to stipulate to a different agreement such as Nonmember's will receive her community share on the date his/her disability retirement begins then this language must be changed to reflect said intent in order.)**

7. Death of Nonmember: If Nonmember dies before Member, any retirement benefits which would have been paid by MCERA to Nonmember, if Nonmember were still alive will be paid instead to Nonmember's estate, pursuant to *Powers v. Powers* (1990) 218Cal.App.3d 626. Nonmember may designate a beneficiary to receive such benefits, pursuant to Government Code section 31458.4.

8. Death of Member Before Retirement/Unmarried: From the date of this order, and until the time Member retires, Member shall designate Nonmember as his/her beneficiary to receive a portion of any lump sum death benefit which MCERA may become obligated to pay if Member dies before retirement. Said beneficiary designation shall allow Nonmember to receive a portion of any such death benefit, equal to Nonmember's percentage interest in Member's retirement benefit as of the date of Member's death, calculated pursuant to the "time rule" formula in paragraph 3. Member may designate a co-beneficiary, of Member's choosing, to receive the remainder of any lump sum death benefit, which MCERA becomes obligated to pay, after subtraction of Nonmember's share.

8 (a). Death of Member/Married: If, at the time of Member's death before retirement, the Member leaves a "surviving spouse" who is eligible to elect, and does elect, a monthly survivor's allowance (continuance) pursuant to the terms of the Plan, Nonmember will be entitled to a pro-rata portion of such survivor's allowance (continuance), pursuant to *In re Marriage of Carnall* (1989) 216 Cal.App.3d 1010. If Member dies and does not leave a surviving spouse, but leaves one or more surviving minor children who are eligible to elect, and do elect, a monthly surviving allowance (continuance) under the terms and conditions of the Plan, Nonmember will be entitled to a pro-rata portion of such survivor's allowance (continuance). If any lump sum benefit is paid to a surviving spouse or surviving minor children pursuant to the terms and conditions of the Plan, Nonmember shall be entitled to a pro-rata portion of such lump sum benefit, calculated pursuant to the formula in paragraph 3 above.

9. Death of Member After Retirement/Retirement Option Selection: At the time of Member's Retirement, Member shall elect a benefit election based upon *(Optional Language No. 1)* Nonmember's lifetime. Member must choose a retirement option that provides a lifetime benefit to non member. If Nonmember is to receive a lifetime benefit and Member wishes to leave a monthly allowance (continuance) to a beneficiary (including a surviving spouse) of his/her share Member shall elect "Optional Settlement Four" pursuant to Government Code section 31764 with MCERA, and shall nominate Nonmember as one of the beneficiaries. The actuarial cost for the calculation is the responsibility of the member unless otherwise agreed in writing to be divided equally.

(Optional Language No. 1A) Pursuant to any option that reduces Member's benefit because member must nominate Non Member as a beneficiary to receive a survivor's monthly benefit (continuance) Member's unmodified retirement allowance will be reduced and Member will bear all the cost to the reduction in benefit.

(Optional Language No 1B) Pursuant to any option that reduces Member's benefit because member must nominate Non Member as a beneficiary to receive a survivor's monthly benefit (continuance) Member's unmodified retirement allowance will not be reduced and Nonmember shall bear the cost of this retirement benefit election by a reduction in benefit. The amount of payment shall be the benefit to which member is entitled, on the unmodified option, multiplied by the Nonmember's percentage share, as defined in paragraph 3, reduced by the reduction in the benefits payable attributable to the benefit election under any option that reduces member's benefit (only for the portion which is payable to Non Member).

Under any option settlement that provides a lifetime benefit to Non Member, the right of Nonmember to receive a continuance allowance, after the death of member exists only for the lifetime of the Nonmember, and after the death of Nonmember, no further payment will be made to the estate or beneficiary of Nonmember. If Nonmember dies before the Member retires, Member may elect any optional settlement.

(Optional Language No. 2) Member's lifetime and/or surviving beneficiary's lifetime. Both parties agree that member may choose any retirement option even those that will not offer non member a lifetime benefit. If Member is married to an eligible surviving spouse¹ on member's date of retirement, and elects the "Unmodified Option" under the Plan, and names such spouse as beneficiary for the surviving spousal continuance under this option or member elects an option that allows for a survivor's monthly continuance Nonmember shall receive non-member's community property interest in any surviving continuance, pursuant to the calculation described in paragraph 3. Nonmember's community share shall terminate upon the death of the surviving spouse (or beneficiary) pursuant to *In re Marriage of Carnall* (1989) 216 Cal.App.3d 1010. Nonmember recognizes that the right to any portion of the survivor's allowance shall be based on the lifetime of the eligible surviving spouse (or beneficiary). **(Note: If the parties desire to stipulate to a different agreement such as Nonmember's community share shall terminate upon Member's death, then this language must be changed to reflect said intent in order.)**

¹ Generally, an eligible spouse is a spouse to whom the member has been married one year prior to retirement. The nonmember is not an eligible spouse pursuant to *In re Marriage of Cramer* (1993) 20 Cal.App.4th 73.

10. If member elects to withdraw his or her accumulated contributions and MCERA has been properly joined pursuant to Family Code Section 2060, then no refund shall be permitted without the written consent of the non member or court order.

11. Member and Nonmember shall be responsible for filling a Designation of beneficiary form with the MCERA administrator.

12. In the event MCERA 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 MCERA 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.

13. If Member withdraws his/her accumulated contributions, Nonmember shall be entitled to receive, at the time Member receives his/her accumulated contributions, Nonmember's community property share of the accumulated contributions.

14. In the event that MCERA does not approve the form of this Order, then each party shall cooperate and do all things reasonably necessary to devise a form of Order acceptable to MCERA.

15. Nothing contained in this Order shall be construed to require MCERA:

- (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.

16. Member and Nonmember are ordered to keep their date of birth, current address, phone number and Social Security number of file with MCERA. Any changes made to current address and phone number will be made in writing to:

Merced County Employees' Retirement Association
3199 M St Merced, CA 95348

17. Member, Nonmember, the MCERA Administrator, and the Court intend that this Order meet all requirements of a domestic relations order under the '37 Act and the Regulations of MCERA and other laws of the State of California, and the Court shall reserve jurisdiction to modify this Order and to resolve any disputes that may arise among the parties and the Administrator concerning benefit payments or any other aspect of this Order. 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. Any future fees, taxes, and/or penalties will be assessed against the parties who then have an interest payable from MCERA.

17. 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 MCERA to provide any form or amount of benefits not otherwise provided by MCERA.

IT IS SO STIPULATED:

Dated	(Name) Petitioner
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Dated	(Name) Attorney for Petitioner
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Dated	(Name) Respondent
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Dated	(Name) Attorney for Respondent
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Dated

(Name)

Attorney for Merced County Employees
Retirement Association

ORDER

The parties having stipulated thereto and good cause appearing therefore.

IT IS SO ORDERED

Dated

JUDGE OF THE TRIAL COURT