



GUIDELINES FOR DOMESTIC RELATIONS ORDERS

NOTE: *The information contained in this document is not intended as legal advice and does not replace individual consultation with an attorney. SERS cannot provide legal advice or representation to members or alternate payees. If you have specific questions regarding the equitable distribution of a SERS benefit, you should contact an attorney.*

Outlined below are the requirements needed to obtain an approved Domestic Relations Order ("DRO"). A copy of the sample DRO developed by the State Employees' Retirement System ("SERS") is also provided for your consideration in drafting an appropriate order. Preparing the parties' DRO in accordance with the format outlined in the sample DRO may expedite SERS' review and approval. It is strongly suggested that you submit the draft DRO for review before it is executed and filed with the court.¹ Before submitting a draft DRO to SERS for review, please make sure that both parties have agreed upon the terms of the draft. SERS will NOT choose provisions for the DRO or make assumptions regarding the parties' intentions.

Because SERS is a governmental retirement plan for governmental employees, the provisions of the Employee Retirement Income Security Act ("ERISA") and the Retirement Equity Act of 1984 regarding qualified domestic relations orders and spousal consent do not apply to SERS. **Unlike ERISA plans, this means that in the absence of an appropriate court order a member may take any action with regard to his or her SERS benefits without providing notice to or requesting consent from any person, including the member's spouse.**

Attachment of SERS retirement benefits for purposes of equitable distribution can only be accomplished through the terms of an Approved Domestic Relations Order ("ADRO"). There are several unique prerequisites that must be met before SERS can approve any DRO or amendment to an approved DRO.² In no case can the DRO alter SERS' benefit structure. The State Employees' Retirement Code, 71 Pa. C.S. §§ 5901 – 5956 ("Retirement Code"), provides a myriad of benefit options to SERS members. All DROs must utilize the benefit structure established by the State Employees' Retirement Code. Any alterations to the Retirement Code's benefit structure are outside the jurisdiction of the Courts of Common Pleas.³

At the member's request, SERS will provide the member's total credited service, final average salary, and total accumulated deductions credited to the member as well as the present

¹**N.B.:** SERS' review of a DRO will only encompass the DRO's compliance with SERS' requirements for approval. SERS will not offer advice on the desirability of a particular benefit option or plan of distribution and does not provide legal advice or representation to persons seeking a DRO. This information and SERS' sample DRO do not constitute legal advice and are not substitutes for consultation with an attorney.

²Requirements for SERS' approval of a DRO are set forth at 71 Pa. C.S. §§ 5102 (definitions of "alternate payee," "approved domestic relations order," "domestic relations order," "irrevocable beneficiary" and "irrevocable survivor annuitant"), 5705, 5953, 5953.1, 5953.2, 5953.3, and 5953.4. Upon request, SERS' Legal Office will provide information to attorneys seeking to draft DROs acceptable to the agency.

³See *Maloney v. Maloney*, 754 A.2d 36 (Pa. Cmwlth. 2000), *alloc. den.* 565 Pa. 678, 775 A.2d 810 (2001).

value of the member's retirement account as determined by SERS on the date of the request or the date of separation, if the parties have already separated. SERS can also provide an estimate of the benefits to which the member is entitled as of the date of the request or the date of separation, whichever is earlier. The member may also request a retirement benefit estimate projected to the end of the current calendar year. Any other actuarial calculations must be made by an outside actuarial consultant at the parties' expense and submitted to SERS for review and final approval. Upon request, SERS will provide outside actuaries with information regarding the actuarial factors used to formulate estimates. Benefit estimates cannot be released to anyone other than the member without the member's written authorization. An interactive estimate calculator is available on SERS' website at www.sers.state.pa.us. The calculator can be used to calculate multiple benefit estimates based on different retirement dates, amounts of service credit or final average salary figures.

If the member is receiving or will receive a disability retirement benefit based on an injury or disability that occurred during the marriage, the disability portion of the annuity is attachable through a DRO.⁴ Disability retirement benefit options are more limited than regular retirement benefits under the Retirement Code. Different issues must be taken into consideration in drafting a DRO dividing a disability retirement benefit. If your DRO involves a member of SERS who is receiving or anticipates receiving a disability retirement benefit, your lawyer should contact SERS' Legal Office to discuss the issues which must be addressed.

The division of benefits between the member and alternate payee must be clear and unambiguous within the four corners of the DRO. SERS will not approve any DRO that requires reference to property settlement agreements, trust documents, etc. to calculate benefit formulas or determine payout information.⁵ SERS has no power to compel a party's compliance with any of the terms of a DRO. Therefore, SERS cannot accept a DRO containing terms contingent on events other than the member's death or retirement, such as the sale of the marital home or the member's purchase of life insurance.

Generally, the following information should appear in the DRO:

- A. The portion of the retirement benefits attributable to the marriage. This statement must include the actual dates (month, day, year) of the measuring period if such dates are necessary to determine the benefit to be divided.
- B. The marital share of the retirement benefit, expressed as either a percentage or dollar amount. The dollar amount payable to the alternate payee cannot exceed the amount of the member's monthly retirement benefit. The parties should also specify whether the alternate payee's portion includes post-separation enhancements such as post-separation purchases of service rendered during the marriage.
- C. The benefit to be divided. The actual benefit option to be selected should be identified as it is described in the Retirement Code (Maximum Single Life Annuity, Option 1, etc.). If the option to be selected is not identified, the DRO

⁴See *Drake v. Drake*, 555 Pa. 481, 725 A.2d 717 (1999).

⁵Equitable distribution occurs only after a divorce decree is issued. *In re Estate of Bullotta*, 575 Pa. 587, 838 A.2d 594 (2003). Therefore, even if the member is retired and in pay status, SERS cannot pay benefits to an alternate payee pursuant to a DRO unless a final divorce decree has been issued.

must state that the member may select any benefit option available at retirement. A lack of specificity in the option description provision may render the DRO unenforceable due to vagueness and trigger further litigation as to how distribution should occur. If the alternate payee is to be the member's survivor annuitant, the terms of the DRO must require the member to so nominate the alternate payee.

- D. Whether the member may take a lump sum withdrawal of all or part of his or her member contributions and interest ("accumulated deductions") and how that withdrawal is to be divided between the parties. The DRO should be explicit with regard to the member's authorization to take a lump sum, the extent of the withdrawal, and the share, if any, payable to the alternate payee. If the DRO does not state that the member may elect to take a lump sum withdrawal, the member will not be permitted to do so.
- E. The address of the alternate payee must be included in the DRO. The alternate payee must maintain a current address on file with SERS at all times. This duty must be noted in the DRO.

Unlike ERISA plans, the rights of the alternate payee are entirely derivative of the member's rights. The alternate payee cannot name beneficiaries or receive a separate interest in the member's SERS benefit. Additionally, the DRO must require the Member to execute a release authorizing the alternate payee to access the information SERS maintains on the member, so that the member's compliance with the terms of the DRO may be monitored.⁶

Please note that the expression "present value" used by SERS is a statutory term which refers to the amount of money SERS will need to have at the time of the member's retirement (invested at an assumed rate of 4% compounded annually) in order to pay a member's retirement annuity for his or her expected lifetime. The term accurately describes the available Option 1 death benefit but does not represent an account balance that can be tapped to provide a lump sum payment to the alternate payee.

If the DRO provides that the alternate payee is entitled to a marital portion of a member's lump sum death benefit, the DRO must nominate the alternate payee as an irrevocable beneficiary.⁷ The SERS benefit structure does not provide automatic death or survivor benefits to anyone.

All benefits paid by SERS are subject to the terms of the Public Employee Pension Forfeiture Act, 43 P.S. § 1311 *et seq.* Under certain circumstances, the member's conviction for one of the crimes enumerated in that statute may cause the forfeiture of all benefits payable to the member and alternate payee. Special forfeiture provisions above and beyond the Public Employee Pension Forfeiture Act apply to members of the judiciary.

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⁶ 71 Pa. C.S. Section 5953.1(a)(7).

⁷ If the alternate payee is to receive an annuity for his or her lifetime in the event the member predeceases the alternate payee after retirement, the DRO must specify that the alternate payee will be nominated as an irrevocable survivor annuitant. Upon filing for retirement benefits, the member will be required to fill out the SERS retirement application necessary to elect such a benefit option. In certain instances, the member may be required to nominate the non-member spouse as beneficiary on a SERS beneficiary designation form, depending on the facts of the case.

SAMPLE DOMESTIC RELATIONS ORDER

COURT OF COMMON PLEAS OF _____ COUNTY, PENNSYLVANIA

_____	:	
Plaintiff	:	FAMILY DIVISION
v.	:	NO. _____
	:	
_____	:	
Defendant	:	IN DIVORCE
	:	

ORDER

AND NOW, this _____ day of _____, 20__, the attached Stipulation and Agreement dated _____ of the parties in this case is incorporated, but not merged, into this Order of Court.

J.

ATTEST:

COURT OF COMMON PLEAS OF _____ COUNTY, PENNSYLVANIA

_____	:	
Plaintiff	:	FAMILY DIVISION
v.	:	NO. _____
	:	
_____	:	
Defendant	:	IN DIVORCE
	:	

STIPULATION AND AGREEMENT
FOR THE ENTRY OF "DOMESTIC RELATIONS ORDER"

AND NOW, this ____ day of _____, 20__, the parties,
_____, Plaintiff, and _____, Defendant, having
been divorced by Decree dated _____ of the Court of Common Pleas of
County, entered at Docket Number _____, do hereby stipulate and
agree as follows:

1. The Plaintiff, _____, (hereinafter referred to
as "Member") is a member of the Commonwealth of Pennsylvania State Employees'
Retirement System (hereinafter referred to as "SERS").

2. SERS, as a creature of statute, is controlled by the State Employees'
Retirement Code, 71 Pa. C.S. §§ 5101-5956 ("Retirement Code").

3. Member's date of birth is _____. Member's Social Security Number shall be provided to SERS on a separate document submitted to SERS together with this Stipulation and Agreement but not filed with the Court.

4. The Defendant, _____, (hereinafter referred to as "Alternate Payee") is the former spouse of Member. Alternate Payee's date of birth is _____. Alternate Payee's Social Security Number shall be provided to SERS on a separate document submitted to SERS together with this Stipulation and Agreement but not filed with the Court.

5. Member's last known mailing address is:

6. Alternate Payee's current mailing address is:

It is the responsibility of Alternate Payee to keep a current mailing address on file with SERS at all times.

7. ***[This paragraph should define the portion of the retirement benefits to be assigned to the Alternate Payee. The following are merely suggestions.]***

[(a) The marital property component of Member's retirement benefit equals

(1) the Coverture Fraction multiplied by (2) Member's retirement benefit on the

effective date of Member's retirement calculated using the Retirement Code in effect on mm/dd/yy, the date of the parties' separation, and Member's final average salary as of the effective date of retirement.

(b) The Coverture Fraction is a fraction with a value less than or equal to one. The numerator is the amount of Member's service, as defined by SERS, for the period of time from mm/dd/yy (date of marriage), to mm/dd/yy (date of separation). The denominator is the total amount of Member's service, as defined by SERS, on the effective date of Member's retirement.

(c) _____ percent (_____%) of the marital property component of Member's retirement benefit is to be allocated to Alternate Payee as the equitable distribution portion of this marital asset.]

OR

[Alternate Payee's share of Member's retirement benefits is \$ _____ (dollar amount).]

OR

[Your method here]

8. Member's retirement benefit is defined as all monies paid to or on behalf of Member by SERS, including any lump sum withdrawals or scheduled or ad hoc increases, but excluding the disability portion of any disability annuities paid to Member by SERS as a result of a disability which occurs before Member's marriage to Alternate Payee or after the date of Member's and Alternate Payee's final separation. Member's retirement benefit does not include any deferred compensation benefits paid to Member by SERS or any enhancements to the Member's retirement benefit arising from post-separation monetary

contributions made by Member. The equitable distribution portion of the marital property component of Member's retirement benefit, as set forth in Paragraph Seven (7), shall be payable to Alternate Payee and shall commence as soon as administratively feasible on or about the date Member actually enters pay status and SERS approves a Domestic Relations Order incorporating this Stipulation and Agreement, whichever is later.

9. Member hereby nominates Alternate Payee as an irrevocable beneficiary to the extent of Alternate Payee's equitable distribution portion of Member's retirement benefit for any death benefits payable by SERS. This nomination shall become effective upon approval by the Secretary of the Retirement Board, or other authorized representative of the Secretary, of any Domestic Relations Order incorporating this Stipulation and Agreement. The balance of any death benefit remaining after the allocation of the equitable distribution portion payable to Alternate Payee and any other alternate payees named under other SERS-approved Domestic Relations Orders ("Balance") shall be paid to the beneficiaries named by Member on the last Nomination of Beneficiaries Form filed with the Retirement Board prior to Member's death.

If the last Nomination of Beneficiaries Form filed by Member prior to Member's death (a) predates any approved Domestic Relations Order incorporating this Stipulation and Agreement, and (b) names Alternate Payee as a beneficiary, then: (1) the terms of the Domestic Relations Order shall alone govern Alternate Payee's share of any death benefit, and (2) for purposes of paying the Balance via the last Nomination of Beneficiaries Form filed with the Retirement Board prior to Member's death, Alternate Payee shall be

treated as if Alternate Payee predeceased Member. No portion of the Balance shall be payable to Alternate Payee's estate.

In addition, Member shall execute and deliver to Alternate Payee an authorization, in a form acceptable to SERS, which will authorize SERS to release to Alternate Payee all relevant information concerning Member's retirement account.

10. The term and amounts of Member's retirement benefits payable to Alternate Payee after SERS approves a Domestic Relations Order incorporating this Stipulation and Agreement depends upon which option(s) Member selects at retirement. Member and Alternate Payee expressly agree that: [**CHOOSE EITHER (a) OR (b); DO NOT INCLUDE BOTH OPTIONS IN THE DRO**]

(a) Member may select any retirement option offered by SERS under the Retirement Code at the time Member files an Application for Retirement Allowance with SERS.

OR

(b) Member shall select the following retirement option(s) upon filing an Application for Retirement Allowance with SERS¹:

¹ Retirement options are found at 71 Pa. C.S. Section 5705. An option commonly used with the coverture fraction is the joint and equitable distribution annuity. If the parties decide to use a joint and equitable distribution annuity, insert the following language in Paragraph 10 and make an appropriate adjustment to Paragraph 12:

Special Option 4. --A joint and equitable distribution percent [or portion] (as defined in paragraph 7) annuity payable during the lifetime of the Member, with an equitable distribution percent [or portion] (as defined in paragraph 7) of such annuity payable thereafter, to the Member's survivor annuitant, if living at the Member's death, as set forth in 71 Pa.C.S. Section 5705(a)(4), or any succeeding statute.

The Member shall designate the Alternate Payee as an irrevocable survivor annuitant. The intent of this Special Option 4 selection is to maintain level payments to the Alternate Payee for the Alternate Payee's life in the event of Member's death after retirement. The Alternate Payee's portion of the Member's benefit will be deducted from the Member's monthly annuity payment and paid by SERS to the Alternate Payee during the Member's

[Insert description of retirement option here]

11. Alternate Payee may not exercise any right, privilege or option offered by SERS. SERS shall issue individual tax forms to Member and Alternate Payee for amounts paid to each.

12. In the event of the death of Alternate Payee prior to receipt of all of payments payable from SERS under a Domestic Relations Order incorporating this Stipulation and Agreement, any death benefit or retirement benefit payable to Alternate Payee by SERS shall: **[CHOOSE EITHER (a) OR (b); DO NOT INCLUDE BOTH OPTIONS IN THE DRO]**

(a) Be paid to Alternate Payee's Estate to the extent of Alternate Payee's equitable distribution portion of Member's retirement benefit as set forth in paragraphs 7 through 9.

OR

(footnote continued from previous page)

lifetime. If the Alternate Payee dies while the Member is receiving retirement benefits, the Alternate Payee's portion of the Member's annuity shall **[choose one: (revert to the Member) OR (be paid to the Alternate Payee's estate)]** for the remainder of the Member's lifetime. If the Member predeceases the Alternate Payee after retiring, the Alternate Payee will receive the Alternate Payee's equitable distribution portion of the Member's benefit in the form of a survivor annuity payable to the Alternate Payee for the duration of the Alternate Payee's life. In any event, all payments to any person or estate will stop when both the Member and Alternate Payee have died.

NOTE: If the parties choose this option but want the Member to have a choice of options for the Member's portion of the benefit, Paragraph 10 must contain a statement to that effect. For example, the parties may add the following sentence to the end of the first paragraph of the description of Special Option 4 above:

"Member may select any option offered by SERS under the Retirement Code at the time of retirement for the portion of the retirement benefit payable to Member."

If the DRO does not contain a statement such as the one quoted above, the Member will receive a Maximum Single Life Annuity with no withdrawal of accumulated deductions.

(b) Revert to Member.

13. In no event shall Alternate Payee have benefits or rights greater than those that are available to Member. Alternate Payee is not entitled to any benefit not otherwise provided by SERS. Alternate Payee is only entitled to the specific benefits offered by SERS as provided in this Stipulation and Agreement. All other rights, privileges and options offered by SERS not granted to Alternate Payee by this Stipulation and Agreement are preserved for Member. Member and Alternate Payee acknowledge that benefits paid pursuant to this Stipulation and Agreement are and shall remain subject to the Public Employee Pension Forfeiture Act, 43 P.S. §1311, *et seq.*

14. It is specifically intended and agreed by the parties hereto that any Domestic Relations Order incorporating this Stipulation and Agreement:

(a) Does not require SERS to provide any type of benefit, or any option, not otherwise provided under the Retirement Code;

(b) Does not require SERS to provide increased benefits (determined on the basis of actuarial value) unless increased benefits are paid to Member based upon cost of living adjustments or increases based on other than actuarial values.

15. The parties intend and agree that the terms of this Stipulation and Agreement shall be approved, adopted and entered as a Domestic Relations Order.

16. The Court of Common Pleas of _____ County, Pennsylvania, shall retain jurisdiction to amend any Domestic Relations Order incorporating this Stipulation and Agreement, but only for the purpose of establishing it or maintaining it as a Domestic Relations Order; provided, however, that such amendment shall not require SERS to provide any type or form of benefit, or any option not otherwise provided by SERS, and further provided that such amendment or right of the Court to so amend will not invalidate the parties' existing Domestic Relations Order.

17. Upon entry of a Domestic Relations Order incorporating this Stipulation and Agreement, a certified copy of the Domestic Relations Order and this Stipulation and Agreement and any attendant documents shall be served upon SERS immediately. Such Domestic Relations Order shall take effect immediately upon SERS approval and SERS approval of any attendant documents and then shall remain in effect until such time as a further Order of Court amends or vacates the Domestic Relations Order.

WHEREFORE, the parties, intending to be legally bound by the terms of this Stipulation and Agreement, do hereunto place their hands and seals.

_____[SEAL]
Plaintiff/Member

Attorney for Plaintiff/Member

_____[SEAL]
Defendant/Alternate Payee

Attorney for Defendant/Alternate Payee

Authorization for Release of Account Information to Alternate Payee

I, _____, authorize the Pennsylvania State
(Print Name of Member)
Employees' Retirement System ("SERS") to release to _____ any
(Print Name of Alternate Payee)
and all information that he/she may request regarding my SERS benefits or retirement account.

This authorization is granted under the terms of the Approved Domestic Relations Order entered
by the _____ County Court of Common Pleas on _____
(County) (Date)
at Docket Number _____ which names _____ as
(Alternate Payee)
Alternate Payee.

A photocopy or faxed copy of this Authorization shall have the same force and effect as
the original.

Date

Member's Signature

Member's Printed Name

Member's Social Security Number

