



San Bernardino County Employees'
Retirement Association

Dissolution of Marriage Guidelines

Dissolution of Marriage Guidelines

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Vital Information

Please refer to The Compass - San Bernardino County Employees' Retirement Association's (SBCERA) Retirement Plan Booklet. It describes SBCERA's benefit programs and includes instructions on how to estimate your SBCERA retirement benefit.

Once you have reviewed the information in The Compass, we are happy to answer any questions you may have. We suggest that you contact SBCERA for assistance early in the process. Our staff can provide you and your attorneys with information regarding your retirement benefits.

Joinder is Mandatory

The San Bernardino County Employees' Retirement Association must be joined as a party to the proceedings in order for SBCERA to comply with a Domestic Relations Order (DRO).

The Court is prohibited from imposing a DRO on SBCERA to pay benefits with a total value that would exceed the value the Member would have received if the DRO had not been issued.

SBCERA's Counsel should review the draft DRO before its submission to the Court.

SBCERA is **not** subject to ERISA, or any other provisions of law applicable to Qualified Domestic Relations Orders (QDROs).

SBCERA does **not** administer the San Bernardino County's 457 Deferred Compensation Plan or 401(k) plan. Contact the County Employee Benefits and Services Division Office for Deferred Compensation or 401(k) information.

SBCERA is **not** subject to the provisions of Article 8.4 of the County Employees' Retirement Law of 1937 (which begins at Section 31685 of the California Government Code). Article 8.4 which provides for the division of the community property interests has **not** been adopted in San Bernardino County.

Authority

These Guidelines provide for the division of the community property interest of SBCERA members in accordance with the provisions of a court order setting forth the terms and conditions of the dissolution of a member's marriage issued pursuant to the Family Code and applicable case law.

Subpoenas

In accordance with Government Code section 31532, SBCERA will **not** honor any subpoena for information regarding a member, unless the subpoena is signed by a judge of a court of competent jurisdiction. Please note, pursuant to Government Code section 31532, SBCERA cannot honor a subpoena signed by an attorney or a party in pro per.

Guidelines are Not Mandatory

Members and Nonmembers are not mandated to use the proposed orders in these Guidelines. These Guidelines are intended to provide the parties with reasonable flexibility, while facilitating the drafting of DROs which can be uniformly implemented by the SBCERA Administrator.

Actuarial Charges May Be Incurred

Please note that if a Member/Nonmember requests the use of Optional Settlement 4, actuarial fees incurred will be charged to the requestor by SBCERA.

Contact Information:

For additional information, please contact a Retirement Representative at:

San Bernardino County Employees' Retirement Association
348 W. Hospitality Lane, Suite 100
San Bernardino, CA 92408
Telephone: (909) 885-7980 or toll free at (877) 722-3721
WEBPAGE: www.sbcera.org

SAN BERNARDINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

MODEL DOMESTIC RELATIONS **ORDER A**

Applicable to a Dissolution of Marriage
for an Active Member **Prior** to Retirement

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

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

The San Bernardino County Employees' Retirement Association, 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.

[Name of Counsel]
[Address of Counsel]
[City, State]
[Phone Number]
ATTORNEY FOR [Petitioner/Respondent]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

In Re the Marriage of

Case No. _____

Petitioner: _____

**MODEL DOMESTIC
RELATIONS ORDER A**

and

Active Member
Dissolution Prior
To Retirement

Respondent: _____

Petitioner, _____, and Respondent, _____, and
the San Bernardino County Employees' Retirement Association (SBCERA")
hereby stipulate as follows:

RECITALS

1. Petitioner and Respondent were married to each other on _____.
They separated on _____, and this Court entered a judgment of
dissolution in the action on _____.
2. This Court has personal jurisdiction over both Petitioner and Respondent
and jurisdiction over the subject matter of this Order and the dissolution of
marriage action.
3. SBCERA was properly joined as a party to the Petitioner and
Respondent's dissolution of marriage action 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) 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 name, 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:

[INSERT NAME] hereinafter referred to as "Member."

2. Nonmember's Name. [INSERT NAME], (Respondent or Petitioner) 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 are as follows:

- a. DATE OF BIRTH: Provided Under Separate Cover.
- b. SOCIAL SECURITY NUMBER: Provided Under Separate Cover.
- 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. SBCERA 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 case should not be referred to as a "Qualified Domestic Relations Order," nor should it require SBCERA to comply with any provisions of ERISA or REA, or any other provisions of law applicable to Qualified Domestic Relations Orders generally.

1. This Order is entered pursuant to the 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 SBCERA from the Date of Marriage up to the Date of Separation.

3. Pursuant to section 2610 of the Family Code, the Court allocates and awards to the Nonmember 50% of the monthly benefits and death benefits attributable to the Member's service in SBCERA during the period from the Date of Marriage up to the Date of Separation as the Nonmember's sole and separate property. All monthly benefits and death benefits attributable to the Member's service in SBCERA which are not awarded to Nonmember pursuant to this Order shall be the Member's sole and separate property.

4. Calculation of Nonmember's Interest: SBCERA is ordered to pay directly to Non-member, upon the retirement of Member, and throughout the time Member is receiving a monthly retirement benefit from SBCERA, 50% of the monthly retirement benefits attributable to the Member's retirement service in SBCERA during the period of time from the Date of Marriage up to the Date of Separation as the Nonmember's sole and separate property and 50% of any one-time death benefits attributable to the Member's service in SBCERA during the period of time from the Date of Marriage up to the Date of Separation as the Nonmember's sole and separate property. All retirement benefits which are not awarded to the Nonmember pursuant to this Order shall be the Member's sole and separate property.

5. Commencement of Benefits to the Nonmember: Payments to Non-member 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.3d 1137. SBCERA will make direct payment of each party's share of said retirement benefit, by separate check, warrant, or electronic fund transfer, to Member and Nonmember respectively. But should Member receive a disability retirement benefit then Nonmember shall be entitled to a portion of Member's disability retirement equal to the amount Member would have received as a service retirement, subject to division under Paragraph 4 above. Payment to Nonmember shall commence upon the latter of (1) the date Member would have reached earliest retirement date under the Plan which the court finds would be _____ as of the date of this order, or (2) the date of Member's actual retirement for service.

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

7. Death of Member Before Retirement: 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 SBCERA 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 4, above. Member may designate a co-beneficiary, of

Member's choosing, to receive the remainder of any lump sum death benefit which SBCERA becomes obligated to pay, after subtraction of Nonmember's share. 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 survivor's 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 4, above.

8. Death of Member After Retirement/Retirement Option Selection: At the time of Member's Retirement, Member shall elect a benefit election based upon Member's marital status at retirement as follows:

If the Member is married to a qualifying spouse at member's date of retirement, Member shall elect the "Unmodified Option" under the Plan, and name such qualifying spouse as beneficiary for the surviving spouse continuance under such option. It is the intention of the parties that Nonmember shall receive Nonmember's community property interest, if any, in any surviving spouse continuance, pursuant to the calculation described above in Paragraph 4 above, which may be payable to Member's surviving spouse pursuant to *In re Marriage of Carnall* (1989) 216 Cal.App.3d 1010, and any future qualified spouse who may qualify after Member's retirement.

[ALTERNATIVE NO. 1] If at the time the Member retires, the Member has no qualifying spouse, he/she shall elect "Optional Settlement 2" pursuant to Government Code section 31762 with SBCERA, and shall nominate Nonmember as his/her sole beneficiary. Pursuant to this option, if Member predeceases Nonmember, Nonmember will receive, for the remainder of his/her lifetime, a continuance of the retirement benefit received by the Member. Under this optional settlement, 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 need not elect an Optional Settlement.

[ALTERNATIVE NO. 2] If at the time the Member retires, the Member has no qualifying spouse, he/she shall elect "Optional Settlement 3" pursuant to Government Code section 31763 with SBCERA, and shall nominate Nonmember as his/her sole beneficiary. Pursuant to this option, if Member predeceases Nonmember, Nonmember will receive, for the remainder of his/her lifetime, a continuance allowance equal to 50% of the total retirement benefit. Under this

optional settlement, 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 need not elect an Optional Settlement

[ALTERNATIVE NO. 3] If at the time the Member retires, the Member has no qualifying spouse, he/she shall elect "Optional Settlement 4" pursuant to Government Code section 31764 with SBCERA, and shall nominate Nonmember as his/her sole beneficiary.

[[Optional Language 3a] Pursuant to this Option Member's unmodified retirement allowance is reduced to _____ during Member's lifetime and if Member predeceases Nonmember, Nonmember will receive, for the remainder of his/her lifetime, a continuance of the retirement allowance equal to _____, as discussed above in paragraph 4, an amount approved by the Board of Retirement, upon advice of the actuary.)

[[Optional Language 3b] Pursuant to this Option Member's unmodified retirement allowance as calculated in Paragraph 4 will not be reduced and Nonmember shall bear the cost of this retirement benefit election by a reduction in benefit to _____, which amount Nonmember will receive, for the remainder of his/her lifetime, an amount approved by the Board of Retirement, upon advice of the actuary.)

Under this optional settlement, 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 need not elect an Optional Settlement.

9. Member and Nonmember shall be responsive for filing a Designation of Beneficiary form with the SBCERA Administrator.

10. In the event SBCERA 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 SBCERA 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. 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. To assure that Nonmember Spouse receives the full value of benefits guaranteed pursuant to CFC § 2610, should Member seek a refund of

contributions and earnings Nonmember spouse must consent to in writing thereto.

12. Member and Nonmember shall sign all forms, letters and other documents as required to effect the distribution(s) described herein and the intent of this Order.

13. In the event that SBCERA 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 SBCERA.

14. Nothing contained in this Order shall be construed to require SBCERA:

- (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.

15. 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 SBCERA to provide any form or amount of benefits not otherwise provided by SBCERA.

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

San Bernardino County Employees' Retirement Association
348 W. Hospitality Lane
San Bernardino, CA 92408

17. Member, Nonmember, the SBCERA Administrator, and the Court intend that this Order meet all requirements of a domestic relations order under the '37 Act and the Regulations of SBCERA 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 SBCERA.

IT IS SO STIPULATED:

Dated: _____

[Name]
Petitioner

Dated: _____

[Name]
Attorney for Petitioner

Dated: _____

[Name]
Respondent

Dated: _____

[Name]
Attorney for Respondent

Dated: _____

[Name]
Attorney for San Bernardino
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

SAN BERNARDINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

MODEL DOMESTIC RELATIONS **ORDER B**

Applicable to a Dissolution of Marriage
After Member Retired

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

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

The San Bernardino County Employees' Retirement Association, 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.

[Name of Counsel]
[Address of Counsel]
[City, State]
[Phone Number]
ATTORNEY FOR [Petitioner/Respondent]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

In Re the Marriage of

Case No. _____

Petitioner: _____

**MODEL DOMESTIC
RELATIONS ORDER B**

Dissolution After
Member Retired

and

Respondent: _____

Petitioner, _____, and Respondent, _____, and
the San Bernardino County Employees' Retirement Association ("SBCERA")
hereby stipulate as follows:

RECITALS

1. Petitioner and Respondent were married to each other on _____. They separated on _____, and this Court entered a judgment of dissolution in the action on _____.
2. This Court has personal jurisdiction over both Petitioner and Respondent and jurisdiction over the subject matter of this Order and the dissolution of marriage action.
3. SBCERA was properly joined as a party to the Petitioner and Respondent's dissolution of marriage action 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) 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 name, 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:

[INSERT NAME] hereinafter referred to as "Member."

2. Nonmember Spouse's Name. [INSERT NAME], (Respondent or Petitioner) 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 are as follows:

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

[INSERT NAME] hereinafter referred to as "Nonmember Spouse."

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. SBCERA 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 case should not be referred to as a "Qualified Domestic Relations Order," nor should it require SBCERA to comply with any provisions of ERISA or REA, or any other provisions of law applicable to Qualified Domestic Relations Orders generally.

1. This Order is entered pursuant to the Family Code.
2. "[INSERT NAME], "Member" and [INSERT NAME], "Nonmember" have acquired a community interest in the Member's monthly retirement benefits attributable to periods of service in SBCERA from the Date of Marriage up to the Date of Separation.

3. Member is currently receiving SBCERA retirement benefits, under the settlement option set forth in Government Code section [#]. Upon dissolution of marriage, Nonmember ceases to qualify for unmodified survivor benefits pursuant to section 31760.1 of the Government Code or for death benefits under Government Code sections 31765, 31765.1, or 31786.

4. Calculation of Nonmember's Interest: SBCERA is ordered to pay directly to Nonmember an interest in any and all of the Member's retirement benefits calculated by the "time rule" *In re Marriage of Brown* (1976) 15 Cal.3d 838, and *In re Marriage of Judd* (1977) 68 Cal.App.3d 515, as follows:

Number of months of SBCERA service between [date of marriage] and [date of separation] (divided by) number of months of service in SBCERA system at time of retirement of Member (multiplied by) 50% (multiplied by) retirement allowance payable to Member.

Nonmember's community property share of member's retirement benefits shall terminate upon the death of Member.

5. Commencement of Benefits to the Nonmember: Payments 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.3d 1137. SBCERA will make direct payment of each party's share of said retirement benefit, by separate check, warrant, or electronic fund transfer, to Member and Nonmember respectively.

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

7. Death of Member After Retirement: If any return of accumulated contributions becomes payable as the result of the death of Member, the Nonmember is entitled to the community property share of the accumulated contributions as calculated in paragraph 4 above. Member is hereby ordered to name Nonmember as beneficiary for the community property share of the accumulated contributions.

8. Member and Nonmember shall be responsive for filing a Designation of Beneficiary form with the SBCERA Administrator.

9. In the event SBCERA 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 SBCERA 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.

10. Member and Nonmember shall sign all forms, letters and other documents as required to effect the distribution(s) described herein and the intent of this Order.

11. In the event that SBCERA 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 SBCERA.

12. Nothing contained in this Order shall be construed to require SBCERA:

- (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.

13. 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 SBCERA to provide any form or amount of benefits not otherwise provided by SBCERA.

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

San Bernardino County Employees' Retirement Association
348 W. Hospitality Lane
San Bernardino, CA 92408

15. Member, Nonmember, the SBCERA Administrator, and the Court intend that this Order meet all requirements of a domestic relations order under the '37 Act and the Regulations of SBCERA 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 SBCERA.

IT IS SO STIPULATED:

Dated: _____

[Name]
Petitioner

Dated: _____

[Name]
Attorney for Petitioner

Dated: _____

[Name]
Respondent

Dated: _____

[Name]
Attorney for Respondent

Dated: _____

[Name]
Attorney for San Bernardino
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

SAN BERNARDINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

MODEL DOMESTIC RELATIONS **ORDER C**

Applicable to a Dissolution of Marriage
Disability Retirement - **Eligible** for **Service** Retirement

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

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

The San Bernardino County Employees' Retirement Association, 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.

[Name of Counsel]
[Address of Counsel]
[City, State]
[Phone Number]
ATTORNEY FOR [Petitioner/Respondent]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

In Re the Marriage of

Case No. _____

Petitioner: _____

**MODEL DOMESTIC
RELATIONS ORDER C**

Dissolution - Disability
Retirement - Eligible
for Service Retirement

and

Respondent: _____

Petitioner, _____, and Respondent, _____, and
the San Bernardino County Employees' Retirement Association ("SBCERA")
hereby stipulate as follows:

RECITALS

1. Petitioner and Respondent were married to each other on _____.
They separated on _____, and this Court entered a judgment of
dissolution in the action on _____.
2. This Court has personal jurisdiction over both Petitioner and Respondent
and jurisdiction over the subject matter of this Order and the dissolution of
marriage action.
3. SBCERA was properly joined as a party to the Petitioner and
Respondent's dissolution of marriage action 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) 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 name, 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:

[INSERT NAME] hereinafter referred to as "Member."

2. Nonmember's Name. [INSERT NAME], (Respondent or Petitioner) 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 are as follows:

- a. DATE OF BIRTH: Provided Under Separate Cover.
- b. SOCIAL SECURITY NUMBER: Provided Under Separate Cover.
- 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. SBCERA 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 case should not be referred to as a "Qualified Domestic Relations Order," nor should it require SBCERA to comply with any provisions of ERISA or REA, or any other provisions of law applicable to Qualified Domestic Relations Orders generally.

- 1. This Order is entered pursuant to the Family Code.
- 2. [INSERT NAME] ("Member") and [INSERT NAME] ("Nonmember") have acquired a community interest in the Member's monthly retirement benefits attributable to periods of service in SBCERA from the Date of Marriage up to the Date of Separation.
- 3. Member is currently receiving SBCERA disability retirement benefits, under the settlement option set forth in Government Code section [#]. Upon dissolution of marriage, Nonmember ceases to qualify for unmodified survivor benefits pursuant to section 31760.1 of the Government Code or for death benefits under Government Code sections 31765, 31765.1, or 31786.

4. Calculation of Nonmember's Interest: Member is currently receiving SBCERA disability retirement benefits and is also eligible to receive service retirement benefits. Pursuant to *Marriage of Higginbotham* (1988) 203 Cal.App.3d 222, the disability benefits are a community property asset, except for that portion which is attributable to service before marriage and that portion, which by virtue of its disability status exceeds the amount of the longevity benefit. SBCERA is ordered to pay directly to Nonmember an interest in the community property portion of Member's disability retirement benefits calculated by the "time rule" *In re Marriage of Brown* (1976) 15 Cal.3d 838, and *In re Marriage of Judd* (1977) 68 Cal.App.3d 515. Nonmember's community property share of member's retirement benefits shall terminate upon the death of Member.

5. Commencement of Benefits to the Nonmember: Member is receiving a disability retirement benefit and is eligible to receive a service retirement. Nonmember shall be entitled to a portion of Member's disability retirement equal to the amount Member would have received as a service retirement, subject to division under Paragraph 4 above. Payments to Non-member 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.3d 1137. SBCERA will make direct payment of each party's share of said retirement benefit, by separate check, warrant, or electronic fund transfer, to Member and Nonmember respectively.

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

7. Death of Member After Retirement: If any return of accumulated contributions becomes payable as the result of the death of Member, the Nonmember is entitled to the community property share of the accumulated contributions as calculated in paragraph 4 above. Member is hereby ordered to name Nonmember as beneficiary for the community property share of the accumulated contributions.

8. Member and Nonmember shall be responsive for filing a Designation of Beneficiary form with the SBCERA Administrator.

9. In the event SBCERA 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 SBCERA 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.

10. Member and Nonmember shall sign all forms, letters and other documents as required to effect the distribution(s) described herein and the intent of this Order.

11. In the event that SBCERA 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 SBCERA.

12. Nothing contained in this Order shall be construed to require SBCERA:

- (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.

13. 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 SBCERA to provide any form or amount of benefits not otherwise provided by SBCERA.

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

San Bernardino County Employees' Retirement Association
348 W. Hospitality Lane
San Bernardino, CA 92408

15. Member, Nonmember, the SBCERA Administrator, and the Court intend that this Order meet all requirements of a domestic relations order under the '37 Act and the Regulations of SBCERA 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 SBCERA.

IT IS SO STIPULATED:

Dated: _____

[Name]
Petitioner

Dated: _____

[Name]
Attorney for Petitioner

Dated: _____

[Name]
Respondent

Dated: _____

[Name]
Attorney for Respondent

Dated: _____

[Name]
Attorney for San Bernardino
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

SAN BERNARDINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

MODEL DOMESTIC RELATIONS **ORDER D**

Applicable to a Dissolution of Marriage
Disability Retirement - **Not** Eligible for Service Retirement

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

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

The San Bernardino County Employees' Retirement Association, 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.

[Name of Counsel]
[Address of Counsel]
[City, State]
[Phone Number]
ATTORNEY FOR [Petitioner/Respondent]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

In Re the Marriage of

Case No. _____

Petitioner: _____

and

Respondent: _____

MODEL ORDER D
Dissolution - Disability
Retirement - Not Currently
Eligible for Service
Retirement

Petitioner, _____, and Respondent, _____, and the San Bernardino County Employees' Retirement Association (SBCERA") hereby stipulate as follows:

RECITALS

1. Petitioner and Respondent were married to each other on _____. They separated on _____, and this Court entered a judgment of dissolution in the action on _____.
2. This Court has personal jurisdiction over both Petitioner and Respondent and jurisdiction over the subject matter of this Order and the dissolution of marriage action.
3. SBCERA was properly joined as a party to the Petitioner and Respondent's dissolution of marriage action 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) 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 name, 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:

[INSERT NAME] hereinafter referred to as "Member."

2. Nonmember's Name. [INSERT NAME], (Respondent or Petitioner) 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 are as follows:

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

[INSERT NAME] hereinafter referred to as "Nonmember Spouse."

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. SBCERA 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 case should not be referred to as a "Qualified Domestic Relations Order," nor should it require SBCERA to comply with any provisions of ERISA or REA, or any other provisions of law applicable to Qualified Domestic Relations Orders generally.

1. This Order is entered pursuant to the 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 SBCERA from the Date of Marriage up to the Date of Separation.

3. Member is currently receiving SBCERA disability retirement benefits, under the settlement option set forth in Government Code section [#]. Upon dissolution of marriage, Nonmember ceases to qualify for unmodified survivor benefits pursuant to section 31760.1 of the Government Code or for death benefits under Government Code sections 31765, 31765.1, or 31786.

4. Calculation of Nonmember's Interest: Member is currently receiving SBCERA disability retirement benefits, but is not yet eligible to receive service retirement benefits. Pursuant to *Marriage of Higginbotham* (1988) 203 Cal.App.3d 222, when Member is eligible to receive service retirement benefits, the disability benefits become a community property asset, except for that portion which is attributable to service before marriage and that portion, which by virtue of its disability status exceeds the amount of the longevity benefit. SBCERA is ordered, when Member is eligible to for service retirement benefits, to pay directly to Nonmember an interest in the community property portion of Member's disability retirement benefits calculated by the "time rule" *In re Marriage of Brown* (1976) 15 Cal.3d 838, and *In re Marriage of Judd* (1977) 68 Cal.App.3d 515. Nonmember's community property share of member's retirement benefits shall terminate upon the death of Member.

5. Commencement of Benefits to the Nonmember: Payments 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.3d 1137. SBCERA will make direct payment of each party's share of said retirement benefit, by separate check, warrant, or electronic fund transfer, to Member and Nonmember, respectively. Member is receiving a disability retirement benefit and is not yet eligible to receive a service retirement. Nonmember shall be entitled to a portion of Member's disability retirement equal to the amount Member would have received as a service retirement, subject to division under Paragraph 4 above. Payment to Nonmember shall commence upon the date Member would have reached earliest retirement date under the Plan which the court finds would be _____ as of the date of this order.

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

7. Death of Member After Retirement: If any return of accumulated contributions becomes payable as the result of the death of Member, the Nonmember is entitled to the community property share of the accumulated contributions as calculated in paragraph 4 above. Member is hereby ordered to name Nonmember as beneficiary for the community property share of the accumulated contributions.

8. Member and Nonmember shall be responsive for filing a Designation of Beneficiary form with the SBCERA Administrator.

9. In the event SBCERA 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 SBCERA 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.

10. Member and Nonmember shall sign all forms, letters and other documents as required to effect the distribution(s) described herein and the intent of this Order.

11. In the event that SBCERA 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 SBCERA.

12. Nothing contained in this Order shall be construed to require SBCERA:

- (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.

13. 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 SBCERA to provide any form or amount of benefits not otherwise provided by SBCERA.

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

San Bernardino County Employees' Retirement Association
348 W. Hospitality Lane
San Bernardino, CA 92408

15. Member, Nonmember, the SBCERA Administrator, and the Court intend that this Order meet all requirements of a domestic relations order under the '37 Act and the Regulations of SBCERA 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 SBCERA.

IT IS SO STIPULATED:

Dated: _____

[Name]
Petitioner

Dated: _____

[Name]
Attorney for Petitioner

Dated: _____

[Name]
Respondent

Dated: _____

[Name]
Attorney for Respondent

Dated: _____

[Name]
Attorney for San Bernardino
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