

**SOUTH CAROLINA RETIREMENT SYSTEMS
GUIDELINES FOR DRAFTING
QUALIFIED DOMESTIC RELATIONS ORDERS**

I. INTRODUCTION

A. Model Order

The South Carolina Retirement Systems (Retirement Systems) has prepared the following guidelines and model order to assist members of the bar in drafting domestic relations orders that apportion benefits and funds administered by the Retirement Systems. The Retirement Systems approves Qualified Domestic Relations Orders (QDROs) for four qualified governmental pension plans: the South Carolina Retirement System (SCRS), the South Carolina Police Officers Retirement System (PORS), the Retirement System for Members of the General Assembly (GARS), and the Retirement System for Judges and Solicitors (JSRS).¹ This is a model qualified domestic relations order which can be used to draft a marital property order which complies with Title 9, Chapter 18 of the Code of Laws of South Carolina (S.C. Code §§ 9-18-10 et seq.) The model order provides for the payment of all or part of the retirement benefits of a member of SCRS, PORS, GARS or JSRS² to a former spouse. The Retirement Systems strongly recommends that practitioners review Chapter 18 prior to drafting a domestic relations order apportioning retirement monies.

The model order contains language that the Retirement Systems has approved for domestic relations orders. It may be modified or revised as needed. If you modify the sample order, the changes must meet the Retirement Systems' criteria before it will be accepted by the Retirement Systems as a Qualified Domestic Relations Order.

B. SCRS, PORS, JSRS, and GARS are Defined Benefit Plans, Not Defined Contribution Plans

SCRS, PORS, GARS and JSRS are defined benefit plans, not defined contribution plans (e.g. a 401(k) plan). A defined benefit plan promises to pay each Participant

¹ The Retirement Systems also administers the South Carolina Optional Retirement Plan, a defined contribution plan. A participant in this plan can choose a vendor and those vendors are responsible for reviewing and approving QDROs related to the South Carolina Optional Retirement Plan. Since a Participant can change vendors yearly, the Participant may have accounts with more than one vendor. It is, therefore, important for the Alternate Payee to obtain information from the Participant regarding all of his/her vendors. The Retirement Systems does not have this information.

² JSRS has some unique provision not available in the other systems which may require some modifications to the model order.

a specific benefit at retirement based on a formula that takes into account the member's years of service, average final compensation, and a benefit multiplier. The retirement annuity paid under a defined benefit plan is based solely on the formula and is not determined by the contributions made by the member to his or her account. A defined contribution plan, by contrast, pays a member based on the balance in the Participant's account. Because SCRS, PORS, GARS and JSRS retirement benefits are determined by a formula rather than a member's contributions, an account statement of an employee's account balance does not represent the "value" of a Participant's interest in the retirement account. The employee's account balance is employee contributions, plus interest. Drafters are encouraged not to submit orders that treat Retirement Systems' Plans (other than the ORP) like accounts in a defined contribution plan.

C. SCRS, PORS, GARS, and JSRS are Not ERISA Plans

The Retirement Systems' Plans are governmental plans and are not governed by the provisions of the Employee Retirement Income Security Act of 1974 (ERISA) or most of the provisions of the Internal Revenue Code (IRC) that govern the division of qualified plan assets.

Unlike participants in ERISA plans, a Participant of the Retirement Systems' Plans may take any action with regard to his retirement benefit without notice or consent required from anyone, including his spouse. Also, unlike ERISA plans, the rights of the Alternate Payee are entirely derivative of the Participant's rights. Alternate Payees may not elect beneficiaries, choose benefits, etc. Further, unlike ERISA plans, the Retirement Systems cannot implement or guarantee the implementation of any "irrevocable designation of death benefits or selection of retirement option." Such designation remains the choice of the Participant.

D. Death of Alternate Payee

After the death of the Alternate Payee, no further payment is made to the Alternate Payee. If payment to the Alternate Payee did not start prior to the Alternate Payee's death, no payment to the Alternate Payee is ever made pursuant to the QDRO. Also, no payment is ever made to any beneficiary, heir or estate of the Alternate Payee. If the Alternate Payee dies before the Participant, the Alternate Payee's portion of the Participant's benefit will cease and the Participant's monthly retirement allowance is adjusted to the full benefit amount to which the Participant would have been entitled to absent the Order.

E. The Retirement Systems Does Not Maintain Separate Accounts for Participants and Former Spouses.

As noted above, SCRS, PORS, GARS and JSRS are defined benefit plans and retirement benefits are calculated according to a formula at the time of retirement. The Retirement Systems does not maintain separate accounts for Participants and former spouses. Unlike a 401(k) plan, the member's Retirement Systems account balance cannot simply be divided at the time of the divorce and invested separately by the Participant and the former spouse. In defined benefit plans, the retirement

plan makes all investment decisions and is responsible for ensuring there are adequate funds to pay the guaranteed formula benefits when Participants retire. The Participants do not have input into investment of funds during their employment and do not bear any investment risk.

Under State law, the former spouse is only entitled to payment from the Retirement Systems when an approved domestic relations order is in place and the Participant's benefit becomes payable. S.C. Code Ann. § 9-18-20. Thus, the former spouse cannot start receiving benefits until the Participant enters a pay status and starts receiving his/her benefits.

Once the account enters a pay status, a separate payroll account is established for the former spouse, but there is no separate account balance maintained for the former spouse. Furthermore, the Retirement Systems cannot transfer the Participant's account balance to the former spouse at the time of divorce. Please note that the benefit selection by the Participant determines the type of payment the former spouse receives. For example, if the Participant selects a lifetime monthly benefit, the payment to the former spouse is also a monthly payment. If the Participant terminates employment and selects a one-time lump sum refund of his/her account balance, the former spouse also will receive a one-time lump sum payment.

NOTE: With either a lump sum refund or lifetime monthly payment, the amount paid to the former spouse cannot exceed the amount that otherwise would be paid to the Participant.

II. REVIEW PROCEDURE

A. Obtain Pre-Approval from the Retirement Systems

Proposed orders should be submitted to the Retirement Systems at the address below for pre-approval prior to being presented to a Judge for signature. This allows the Retirement Systems to review proposed orders and make any corrections or suggestions.

B. Copy of Signed Order to the Retirement Systems

Once a Judge has signed the order, a copy of the order that has been certified by the County Clerk of Court must be sent to the Retirement Systems at the following address:

Legal Department
South Carolina Retirement Systems
Post Office Box 11960
Columbia, South Carolina 29211-1960

C. Approval from the Retirement Systems

An Alternate Payee may receive a portion of a Participant's retirement benefits **only** by a court order that is approved by the Retirement Systems and complies with the Retirement Systems' requirements. In order to implement the terms of the order, it must be consistent with the Retirement Systems' rules and regulations.

When the Retirement Systems receives the certified copy of the order, it will be reviewed to determine whether it meets the Retirement Systems' criteria for acceptance. This review is required even if the model order is used or an order has been pre-approved. Once a determination has been made, the Retirement Systems will notify both parties and their attorneys in writing.

If the order is not acceptable, the parties must return to court to obtain an amended order. The amended order must undergo the same review procedure as the original order. If the Retirement Systems determines an order is not acceptable and does not subsequently receive an amended order that meets the criteria, the Retirement Systems will pay the Participant's benefits as they become due only to the Participant or his duly designated beneficiary(ies).

Final Approval and implementation of the order cannot occur until a certified, filed copy of the order is received. Without a valid QDRO, the Retirement Systems cannot make any payments to the former spouse.

III. BENEFITS TO BE DIVIDED IN A QDRO

A. Types of Benefits Paid by the Retirement Systems

Section IV describes the three most frequently used methods of dividing benefits. Sample language which can be used in the model order for each of those methods is found in Sections V, VI, and VII. The sample language and examples are **for illustrative purposes only** and do not indicate recommendations by the Retirement Systems of any particular method. The parties to a QDRO must conduct their own analysis based upon their individual needs and then make their own determination regarding which method is appropriate under their circumstances.

An Alternate Payee may only receive a portion of the Participant's retirement benefits when the benefit becomes payable. Benefits become payable as follows: (1) a monthly benefit upon retirement (service credit/age based retirement or disability retirement); (2) a lump-sum refund of employee contributions, plus interest, at termination from employment with a request for withdrawal of funds; (3) a monthly benefit or lump-sum refund of employee contributions, plus interest, on death before retirement; and (4) a lump-sum refund of any remaining employee contributions, plus interest, upon death after retirement if the Participant has not chosen a survivor benefit.

B. Benefits Paid At Retirement

1. Service Credit or Age Based Retirement

At retirement, the Participant receives a monthly annuity benefit. This monthly benefit for SCRS and PORS is based on the Participant's Average Final Compensation (AFC)³ multiplied by years of service at retirement multiplied by 1.82% for SCRS and 2.14% for PORS. The Participant can choose a lifetime monthly annuity for only the Participant over his lifetime or an annuity for the Participant over his lifetime with a survivor option for the life of his chosen beneficiary(ies). The amount of the monthly annuity the Participant receives will be reduced if the Participant chooses a survivor option.

2. Disability Retirement

Section 9-18-20(A) allows disability retirement benefits to be divided in a QDRO. Disability retirement benefits will be treated like any other retirement benefits, unless the QDRO expressly provides otherwise.

If the parties decide to treat disability retirement benefits differently than age/service credit retirement, a separate paragraph should be drafted for disability retirement in the QDRO.

3. Benefits under the Teachers and Employee Retention Incentive Program (TERI Program). **TERI benefits are only available to SCRS employees.**

An SCRS Participant may enroll in the TERI program. By applying for TERI, the Participant retires, but continues working in his position for a period of up to five years. During the TERI period, the Participant's monthly retirement benefit (plus cost-of-living adjustments) accrue in a separate account until the end of the TERI period when the fund is paid in a lump sum to the Participant. No interest is paid on the TERI account, and no distributions are made to the Participant until the end of the TERI period. Unless the QDRO specifically provides otherwise, TERI benefits will accrue to the Alternate Payee in the same manner as any other monthly retirement benefits and will be paid at the end of the TERI period.

If the parties decide to treat TERI retirement benefits differently than other age/service credit retirement, a separate paragraph should be drafted for TERI retirement benefits in the QDRO.

³ Average Final Compensation is the sum of the highest earnable compensation in 12 consecutive quarters (plus annual leave at retirement of up to 45 days) divided by 3.

C. Benefit Paid At Termination and Withdrawal

If a Participant terminates employment, he can leave his contributions with the Plan or he can receive a lump sum refund at any time after 90 days. If the Participant has at least five years of service credit⁴ and leaves his contributions with the Retirement Systems, he/she can apply for a monthly annuity when he retires and receive a monthly retirement benefit. The Alternate Payee will receive a lump sum in the event the Participant terminates and withdraws his account balance (employee contributions and interest). The distribution to the Alternate Payee that becomes available upon the Participant's termination/withdrawal from the Plan is not available to the Alternate Payee until the Participant actually applies for a withdrawal. The Participant's termination of employment alone is not sufficient.

D. Benefits Paid At Death Before Retirement

If an active Participant dies before retirement with fifteen (15) or more years of service credit, the designated beneficiary(ies) are eligible for either a lump sum refund of the Participant's account balance (employee contributions and interest) OR lifetime monthly benefits. The Participant's designated beneficiary(ies) are required to select the type of payment at the Participant's death. If the Participant dies before retirement with less than fifteen (15) years of service credit, the only benefit option available is a lump sum refund of the Participant's contributions plus interest. Because the beneficiary(ies) may be able to choose between a monthly benefit and a lump sum payment, the Death Before Retirement section must include both a monthly benefit payment and a lump sum payment.

E. Benefits Paid in the Event of Death After Retirement

If the Participant dies after retirement, and if a retirement option other than an optional form death benefit (i.e. a monthly survivor benefit option) is selected,⁵ the Alternate Payee will be entitled to a portion of any remaining Participant's account balance (employee contributions, plus interest). If the Participant has selected a survivor option, the remaining account balance is not refunded by the Retirement Systems and, therefore, no death after retirement benefit is available.

The Retirement Systems cannot implement or guarantee the implementation of any irrevocable designation of death benefits or selection of retirement option. Such designation or selection remains at the discretion of the Participant.

⁴ For those who became members after Jan. 1, 2001, the 5 years of service credit must be "earned."

⁵ A "death benefit" does not include any optional form death benefit. S.C. Code § 9-18-10(4); see also S.C. Code § 9-18-10(10) ("retirement benefit does not include any optional form death benefit"). An optional form death benefit is a survivor option. S.C. Code § 9-18-10(8).

IV. METHODS OF DIVIDING BENEFITS

The Retirement Systems commonly sees three basic methods of dividing benefits: fixed percentage method, service factor formula method, and fixed dollar method. Parties are also free to develop their own methodology for dividing benefits, but the methodology must address each of the payment situations (retirement, termination/withdrawal, death before retirement, and death after retirement) and the Alternate Payee can only receive a portion of any amount distributed to the Participant. The method selected by the parties must be one which the Retirement Systems can calculate and administer.

No matter which of the methods you choose for an active or inactive participant, the QDRO must address retirement, termination/withdrawal, death before retirement, and death after retirement since payment in each of these situations is different.

If the Participant has already retired, the QDRO does not need to address termination/withdrawal or death before retirement, since these sections would not apply to someone who has already retired.

A. Fixed Percentage Method

This is the most common method of dividing the retirement benefits if the Participant and Alternate Payee were married at the time the Participant began working for a covered employer. The Alternate Payee receives a fixed percentage of the Participant's benefit determined as of a specified date such as separation, filing, or divorce. (See V for sample language.)

B. Service Factor Formula Method

This method is generally used when the Participant began work with a covered employer before the date of marriage. The Alternate Payee receives a percentage of the Participant's benefits based on the years of service during the marriage compared with years of service at separation, filing or divorce or compared with years of service retirement, termination, or death. There are two methods for calculating the service factor formula which are included in Section VI. (See Section VI for sample language.)

C. Fixed Dollar Method

The parties determine a specific dollar amount of the Participant's benefit that the Alternate Payee will receive. (See Section VII for sample language.)

D. Terms Used Throughout The Samples

1. **PERCENTAGES IN SAMPLE LANGUAGE.** In each sample, you must provide a marital percentage the Alternate Payee is to receive. Generally the percentage is 50% and the sample language is written using 50%, but the parties may agree, or the court may order, a different percentage.

2. **DATES IN SAMPLE LANGUAGE.** Many of the samples require a date. That date is generally the date of separation, filing, or divorce, based on agreement of the parties or order of the court. The guidelines generally use date of separation, but language in the order should reflect the date agreed upon by the parties or ordered by the court.
3. **INTEREST IN SAMPLE LANGUAGE.** Many of the examples include the language “plus interest.” It is up to the parties or the Court whether or not interest should be part of the award to the Alternate Payee.

V. FIXED PERCENTAGE METHOD: SAMPLE LANGUAGE AND EXAMPLES

A. RETIREMENT

SAMPLE 1: Retirement. Upon Participant’s retirement (including disability retirement and TERE⁶ participation), the Alternate Payee will receive 50% of the **maximum monthly benefit** the Participant would have received if he had retired on DATE. Any TERE benefits are paid at the end of the TERE period.

OR

SAMPLE 2: Retirement. Upon Participant’s retirement (including disability retirement and TERE participation), the Alternate Payee will receive 50% of the **monthly benefit** the Participant would have received if he had retired on DATE. Any TERE benefits are paid at the end of the TERE period.

Explanation of the Difference Between the Two Sample Languages for Retirement:

The difference in these two samples is the wording “maximum monthly benefit” and “monthly benefit”. If the QDRO refers to the “maximum monthly benefit” the Alternate Payee’s share will be based on the amount of the lifetime monthly benefit without a survivor option even if the Participant chooses a survivor option. If the QDRO refers to “monthly benefit”, the Alternate Payee’s share will be based on the monthly benefit the Participant actually receives. The monthly benefit amount will be less than the maximum monthly benefit if the Participant chooses a survivor option.

The examples below explain the effect of the difference in the wording.

⁶ Teachers and Employee Retention Incentive program

Examples:

FACTS:

1. The Participant began working for a covered employer after the parties married.
2. The parties separated on March 1, 2005.
3. The maximum monthly benefit on March 1, 2005: \$2,000 per month.
4. Reduced Benefit with Survivor Option on March 1, 2005: \$1,500 per month.

EXAMPLE OF SAMPLE 1: Using "Maximum Monthly Benefit" Language

Regardless of which retirement option is selected by the Participant, when the Participant retires, the Alternate Payee will receive 50% X \$2,000 maximum monthly benefit on March 1, 2005 = **\$1,000 per month**.

EXAMPLE OF SAMPLE 2: Using "Monthly Benefit" Language

If the Participant chooses the maximum benefit option, the Alternate Payee will receive \$1,000 per month just like in Example of Sample 1.

If the Participant chooses a survivor option, when the Participant retires, the Alternate Payee will receive 50% X \$1,500 survivor option monthly benefit on March 1, 2005 = **\$750 per month**.

B. TERMINATION/WITHDRAWAL

Termination/Withdrawal. If the Participant terminates employment and withdraws his retirement contributions, the Alternate Payee will receive 50% of the Participant account balance as of DATE, plus interest.

C. DEATH BEFORE RETIREMENT

SAMPLE 1: Death Before Retirement. In accordance with the rules and regulations of the Retirement Systems, if the Participant dies prior to retirement:

(a) if a monthly benefit is selected by the named beneficiary(ies), the Alternate Payee would be entitled to receive 50% of Participant account balance as of DATE, plus interest. The Alternate Payee will receive _____%⁷ of the beneficiary's(ies)' monthly benefit until the balance is paid in full.

(b) If a lump sum is selected, the Alternate Payee would be entitled to 50% of the Participant account balance as of DATE, plus interest.

OR

SAMPLE 2: Death Before Retirement. In accordance with the rules and regulations of the Retirement Systems, if the Participant dies prior to retirement:

(a) If a monthly benefit is selected by the named beneficiary(ies), the Alternate Payee will receive 50% of the monthly benefit that the Participant would have

⁷ This percentage is not the marital share percentage and may or may not be 50% even if the marital share is 50%.

received if he had retired on DATE or ___%⁸ of the beneficiary's(ies') monthly benefit, whichever is less.

(b) If a lump sum is selected, the Alternate Payee would be entitled to 50% of Participant account balance as of DATE, plus interest.

Explanation of the Difference Between the Two Sample Languages:

SAMPLE 1 allows the Alternate Payee to receive a portion of the beneficiary's(ies') monthly benefit until the Alternate Payee recovers 50% of Participant account balance, plus interest as of the date selected by the parties or court (generally date of separation, filing or divorce).

SAMPLE 2 - If the beneficiary(ies) chooses a monthly benefit, Sample 2 allows the Alternate Payee to receive a portion of the beneficiary's(ies') monthly benefit based on the amount the Alternate Payee would have received if the Participant had retired on the date selected by the parties or court (generally date of separation, filing or divorce).

Examples:

FACTS:

1. The Participant began working for a covered employer after the parties married and had at least 15 years of service at the date of death.
2. The parties separated on March 1, 2000.
3. The maximum monthly benefit at separation: \$2,000 per month
4. The Participant dies on March 1, 2005
5. The Participant's beneficiary's(ies') monthly benefit at death: \$2,500 per month
6. The Participant's account balance at separation: \$30,000
7. 50% awarded to Alternate Payee at the date of separation

EXAMPLE OF SAMPLE 1:

If the beneficiary(ies) chooses a monthly benefit, the Alternate Payee will receive ___% of the beneficiary's(ies') monthly benefit until the Alternate Payee receives \$15,000 (50% of \$30,000), plus interest.

If the beneficiary(ies) chooses a lump sum payment, the Alternate Payee will receive a lump sum payment of \$15,000 (50% of \$30,000), plus interest.

EXAMPLE OF SAMPLE 2:

If beneficiary(ies) chooses a monthly benefit, the Alternate Payee will receive \$1,000 per month (\$2,000 X 50%) of the beneficiary's(ies') monthly benefit until the death of the Alternate Payee or beneficiary(ies), whichever occurs first.

If the beneficiary(ies) chooses a lump sum payment, the Alternate Payee will receive a lump sum payment of \$15,000, plus interest.

⁸ This percentage is not the marital share percentage and may or may not be 50% even if the marital share is 50%.

D. DEATH AFTER RETIREMENT

Death After Retirement. In accordance with the rules and regulations of the Retirement Systems, if the Participant dies after retirement, and if an option other than an optional form death benefit⁹ is selected, the Alternate Payee will receive 50% of Participant account balance as of DATE, plus interest, less any amounts already received by Alternate Payee under this Order.

VI. SERVICE FACTOR FORMULA: SAMPLE LANGUAGE AND EXAMPLES

A. RETIREMENT

SAMPLE 1: Retirement. Upon Participant's retirement (including disability retirement and TERI participation), the Alternate Payee will receive 50% of the Participant's maximum monthly benefit as of DATE multiplied by years of service during the marriage divided by the years of service as of DATE. Years of service during marriage were ___ years, ___ months, ___ days. Any TERI benefits are paid at the end of the TERI period.

OR

SAMPLE 2: Retirement. Upon Participant's retirement (including disability retirement and TERI participation), the Alternate Payee will receive 50% of the Participant's maximum monthly benefit, using the Average Final Compensation at DATE and the years of service at retirement, multiplied by the service factor fraction. The service factor fraction is years of service during marriage divided by years of service at retirement. Years of service during marriage were ___ years, ___ months, ___ days. Any TERI benefits are paid at the end of the TERI period.

Explanation of the Difference Between the Two Sample Languages:

Both SAMPLE 1 and SAMPLE 2 produce the same result. SAMPLE 2 is the method used in the Retirement Systems' previous guidelines. SAMPLE 1 simplifies the math formula by using the benefit as of the date of separation, filing, or divorce.

Examples:

FACTS:

1. The Participant began working for a covered employer 5 years before the marriage.
2. The parties were married for 10 years.
3. At the date of separation the Participant had 15 years of service.
4. The AFC on the date of separation was \$30,000.
5. The Participant retired with 28 years of service.

⁹ The optional form death benefit is a survivor benefit option.

6. The Court has awarded the Alternate Payee 50% as of the date of separation.

EXAMPLE OF SAMPLE 1:

$$\begin{aligned}\text{Alternate Payee's Share} &= 50\% \times (\text{Participant's maximum monthly benefit at separation}) \times \\ &\quad (\text{years of service in marriage} / \text{years of service at separation}) \\ &= 50\% \times (\$30,000 \text{ AFC at separation} \times 15 \text{ years of service at} \\ &\quad \text{separation} \times 1.82\% \text{ SCRS multiplier}^{10} / 12 \text{ months}) \times 10/15 \\ &= 50\% \times (\$30,000 \times 15 \times 1.82\% / 12) \times 10/15 \\ &= 50\% \times 682.5 \times .66667 \\ &= \$227.50 \text{ per month}\end{aligned}$$

EXAMPLE OF SAMPLE 2:

$$\begin{aligned}\text{Alternate Payee's Share} &= 50\% \times (\text{Participant's maximum monthly benefit, using the Average} \\ &\quad \text{Final Compensation at separation and the years of service at} \\ &\quad \text{retirement}) \times \text{Service Factor Fraction} \\ &= 50\% \times (\$30,000 \text{ AFC} \times 28 \text{ years of service at retirement} \times 1.82\% \\ &\quad \text{SCRS multiplier} / 12 \text{ months}) \times (10 \text{ years of service in marriage} / 28 \\ &\quad \text{years of service at retirement}) \\ &= 50\% \times (\$30,000 \times 1.82\% \times 28 / 12) \times 10/28 \\ &= 50\% \times 1,274 \times .35714 \\ &= \$227.50 \text{ per month}\end{aligned}$$

B. TERMINATION/WITHDRAWAL

SAMPLE 1: Termination/Withdrawal. If the Participant terminates employment and withdraws his retirement contributions, the Alternate Payee will receive 50% of the Participant account balance at DATE, plus interest, multiplied by years of service during marriage, divided by years of service at DATE.

OR

SAMPLE 2: Termination/Withdrawal. If the Participant terminates employment and withdraws his retirement contributions, the Alternate Payee will receive 50% of the Participant account balance at withdrawal multiplied by years of service during marriage, divided by years of service at withdrawal.

Explanation of the Difference Between the Two Sample Languages:

SAMPLE 1 calculates the Alternate Payee's share based on account balance at the date of marital separation, filing, or divorce using years of service at the date of separation, filing or divorce as the denominator.

¹⁰ The multiplier for PORS is 2.14%

SAMPLE 2 calculates the Alternate Payee's share based on account balance on the date of withdrawal using years of service at withdrawal as the denominator in the service factor.

Examples:

FACTS:

1. The Participant began working for a covered employer 5 years before the marriage.
2. The parties were married for 10 years.
3. At the date of separation the Participant had 15 years of service.
4. Participant's account balance on the date of separation, plus interest, was \$30,000.
5. Participant terminates and withdraws his account balance after 20 years of service.
6. Account balance on the date of withdrawal was \$60,000.
7. The Court has awarded the Alternate Payee 50% at date of separation.

EXAMPLE OF SAMPLE 1:

$$\begin{aligned} \text{Marital Share} &= 50\% \times (\$30,000 \text{ Participant's account balance on date of separation, plus} \\ &\text{interest}) \times (10 \text{ years of service during marriage} / 15 \text{ years of service on date} \\ &\text{of separation}) \\ &= 50\% \times \$30,000 \times 10/15 \\ &= \$10,000 \end{aligned}$$

EXAMPLE OF SAMPLE 2:

$$\begin{aligned} \text{Marital Share} &= 50\% \times (\$60,000 \text{ Participant's account balance plus interest at withdrawal}) \\ &\times (10 \text{ years of service during marriage} / 20 \text{ years of service at withdrawal}) \\ &= 50\% \times \$60,000 \times 10/20 \\ &= \$15,000 \end{aligned}$$

NOTE: The sample language that will produce the greater share paid to the Alternate Payee will be different based on the specific fact situation.

C. DEATH BEFORE RETIREMENT

SAMPLE 1: Death Before Retirement. In accordance with the rules and regulations of the Retirement Systems, if the Participant dies prior to retirement:

(a) if a monthly benefit is selected by the beneficiary(ies), the Alternate Payee would be entitled to receive 50% of account balance as of DATE, plus interest, multiplied by the years of service during marriage divided by years of service as of DATE. The Alternate Payee will receive _____% of the beneficiary's(ies)' monthly benefit until this amount is paid in full.

(b) If a lump sum is selected, the Alternate Payee will receive 50% of account balance as of DATE, plus interest, multiplied by years of service during marriage divided by years of service as of DATE.

OR

SAMPLE 2: Death Before Retirement. In accordance with the rules and regulations of the Retirement Systems, if the Participant dies prior to retirement:

(a) if a monthly benefit is selected by the beneficiary(ies), the Alternate Payee would be entitled to receive 50% of Participant account balance at death multiplied by years of service during marriage divided by years of service at death. The Alternate Payee will be paid ___% of the beneficiary's(ies') monthly benefit until the amount is paid in full.

(b) If a lump sum is selected, the Alternate Payee will receive 50% of Participant account balance multiplied by the years of service during marriage, divided by years of service at death.

OR

SAMPLE 3: Death Before Retirement. In accordance with the rules and regulations of the Retirement Systems, if the Participant dies prior to retirement:

(a) if a monthly benefit is selected by the named beneficiary(ies), the Alternate Payee would be entitled to receive 50% of the beneficiary's(ies') monthly benefit multiplied by the years of service during marriage divided by the years of service at death.

(b) If a lump sum is selected, the Alternate Payee will receive 50% of Participant account balance as of DATE, plus interest, multiplied by years of service during marriage divided by years of service as of DATE.

Explanation of the Difference Between the Two Sample Languages:

SAMPLE 1 determines the Alternate Payee's share based on account balance on the date of marital separation, filing or divorce using years of service at separation, filing, or divorce as the denominator.

SAMPLE 2 determines the Alternate Payee's share based on account balance on the date of death using years of service at death as the denominator in the service factor.

SAMPLE 3 provides the Alternate Payee with a portion of the monthly benefit of the beneficiary(ies). That monthly benefit will end once the beneficiary(ies) or the Alternate Payee dies.

Examples:

FACTS:

1. The Participant began working for a covered employer 5 years before the marriage.
2. The parties were married for 10 years.
3. At the date of separation the Participant had 15 years of service.
4. Participant's account balance on the date of separation, plus interest, was \$30,000.
5. Participant dies after 20 years of service.
6. Account balance on the date of death was \$60,000.
7. The Court has awarded the Alternate Payee 50% at date of separation.
8. Beneficiary's(ies') monthly benefit is \$1,000

EXAMPLE OF SAMPLE 1:

$$\begin{aligned}\text{Alternate Payee's share} &= 50\% \times (\$30,000 \text{ Participant's account balance on date of} \\ &\text{separation, plus interest}) \times (10 \text{ years of service during marriage} / 15 \\ &\text{years of service at date of separation}) \\ &= 50\% \times \$30,000 \times 10/15 \\ &= \$10,000\end{aligned}$$

If the beneficiary(ies) chooses a monthly benefit, the parties must agree on a percentage of the beneficiary's(ies') monthly benefit that the Alternate Payee will receive until the \$10,000 is paid in full.

If the beneficiary(ies) chooses a lump sum, the Alternate Payee will receive a lump sum payment of \$10,000.

EXAMPLE OF SAMPLE 2:

$$\begin{aligned}\text{Alternate Payee's share} &= 50\% \times (\$60,000 \text{ Participant's account balance plus interest at date of} \\ &\text{death}) \times (10 \text{ years of service during marriage} / 20 \text{ years of service at} \\ &\text{date of death}) \\ &= 50\% \times \$60,000 \times 10/20 \\ &= \$15,000\end{aligned}$$

If the beneficiary(ies) chooses a monthly benefit, the parties must agree on a percentage of the beneficiary's(ies') monthly benefit that the Alternate Payee will receive until the \$15,000 is paid in full.

If the beneficiary(ies) chooses a lump sum, the Alternate Payee will receive a lump sum payment of \$15,000.

EXAMPLE OF SAMPLE 3:

If the beneficiary(ies) chooses a monthly benefit, Alternate Payee's share would be:

$$\begin{aligned}\text{Alternate Payee's Share} &= 50\% \times \$1,000 \text{ beneficiary's(ies') monthly benefit} \times (10 \text{ years of} \\ &\text{service during marriage} / 20 \text{ years of service at death}) \\ &= 50\% \times \$1000 \times 10/20 \\ &= \$250 \text{ per month}\end{aligned}$$

If the beneficiary(ies) chooses a lump sum amount, the Alternate Payee's share would be:

$$\begin{aligned}\text{Alternate Payee's share} &= 50\% \times (\$30,000 \text{ Participant's account balance on date of} \\ &\text{separation, plus interest}) \times (10 \text{ years of service during marriage} / 15 \\ &\text{years of service at date of separation}) \\ &= 50\% \times \$30,000 \times 10/15 \\ &= \$10,000\end{aligned}$$

D. DEATH AFTER RETIREMENT

SAMPLE 1: In accordance with the rules and regulations of the Retirement Systems, if the Participant dies after retirement, and if an option other than an optional form death benefit is selected, the Alternate Payee will be entitled to 50% of account balance as of DATE, plus interest, multiplied by years of service during marriage divided by years of service as of DATE, less any amounts already received under this order.

OR

SAMPLE 2: Death After Retirement. In accordance with the rules and regulations of the Retirement Systems, if the Participant dies after retirement, and if an option other than an optional form death benefit is selected, the Alternate Payee will be entitled to 50% of any remaining account balance multiplied by years of service during marriage divided by years of service at retirement.

VII. FIXED DOLLAR AMOUNT: SAMPLE LANGUAGE AND EXAMPLES

A. RETIREMENT

Retirement. Upon Participant's retirement (including disability retirement and TERI participation), the Alternate Payee will receive \$____ per month. If this amount is more than the Participant's monthly benefit, the Alternate Payee will receive the Participant's monthly benefit amount. Any TERI benefits are paid at the end of the TERI period.

OR

Upon Participant's retirement (including disability retirement and TERI participation), the Alternate Payee will receive \$____ per month (or ____% of the Participant's monthly benefit)¹¹ until a total of \$____, plus interest, has been paid. If a dollar amount monthly benefit is to be paid and that dollar amount is more than the Participant's monthly benefit, the Alternate Payee will receive 100% of the Participant's monthly benefit until the total is paid in full. Any TERI benefits are paid at the end of the TERI period. Interest will begin to accrue on DATE.¹²

B. TERMINATION/WITHDRAWAL

If the Participant terminates employment and withdraws his retirement account balance, the Alternate Payee would be entitled to \$____, plus interest. Interest will begin to accrue on DATE.

¹¹ You choose a dollar amount or a percentage, but not both.

¹² You choose a date generally based on the date used to calculate the lump sum amount.

C. DEATH BEFORE RETIREMENT

Death Before Retirement. In accordance with the rules and regulations of the Retirement Systems, if the Participant dies prior to retirement:

(a) if a monthly benefit is selected by the named beneficiary(ies), the Alternate Payee would be entitled to receive \$____, plus interest. The Alternate Payee will receive \$____ per month until the balance is paid in full.

(b) If a lump sum is selected, the Alternate Payee would be entitled to \$____, plus interest. Interest will begin to accrue on DATE.

D. DEATH AFTER RETIREMENT

Death After Retirement. In accordance with the rules and regulations of the Retirement Systems, if the Participant dies after retirement, and if an option other than an optional form death benefit is selected, the Alternate Payee will be entitled to \$____, plus interest, less any amounts already received by Alternate Payee under this Order. Interest will begin to accrue on DATE.

VIII. Other QDRO Information

A. Interest on Alternate Payee's Portion

If the parties intend for the Alternate Payee to receive interest on his/her portion of the Participant's account balance after the date of separation, divorce, or filing, the domestic relations order must so state. The Retirement Systems will credit interest on the Alternate Payee's portion of the Participant's account at the same rate and in the same manner as interest accrues on the Participant's portion of the account until the distribution occurs. Interest will accrue on the Alternate Payee's portion from the separation/divorce date up to the date of retirement (or refund of contributions). Under current law, interest is credited to each Participant's account annually at fiscal year end (June 30). Interest is compounded annually at the rate of 4% and the amount applied is based on the total account balance as of the previous fiscal year end.

B. The Order **cannot** do any of the following¹³:

1. Require the Retirement Systems to do anything that it is not permitted by law to do;
2. Require the Retirement Systems to provide any type of benefit or option not otherwise provided under the Plan;
3. Require the Retirement Systems to provide a greater benefit than is provided under the Plan;

¹³ See generally S.C. Code § 9-18-20.

4. Pay benefits to an Alternate Payee prior to Participant's retirement or request for a refund;
5. Require the Retirement Systems to pay out the retirement funds before the account goes into pay status;
6. Require the Retirement Systems to transfer or rollover funds from one member's account to another;
7. Require the Participant to choose a particular payment plan or option;
8. Require the Retirement Systems to maintain separate accounts for the Participant and Alternate Payee;
9. Allow the Alternate Payee to choose a retirement option or designate a beneficiary for his portion of Participant's account balance; or
10. Allow the Alternate Payee to assign his/her rights to the Participant's retirement funds to another.

C. Cost-of-Living Adjustments (COLAs)

The order must specifically state whether or not the Alternate Payee is to receive a portion of any cost-of-living adjustments (COLAs) as provided by law. If the Alternate Payee is receiving a fixed dollar amount, the cost-of-living adjustments will only be used to increase monthly payments to reach the fixed dollar amount. The fixed dollar amount will not be increased.

IX. REQUESTS FOR ACCOUNT INFORMATION

The Retirement Systems will provide specific account information pursuant to a subpoena or a release signed by the Participant. The most common request is for a QDRO benefit estimate as of the date of separation, filing, or divorce. The QDRO benefit estimate will provide a monthly benefit estimate, average final compensation, years of service, and account balance as of the date requested. This estimate can be requested directly from the customer call center (803) 737-6800 by the Participant, in a letter signed by the Participant, or through a subpoena. **This estimate is NOT binding on the System and will be a projection of the Participant's "unreduced" retirement benefit based on age.**

The Retirement Systems operates on a quarterly system and when you request information, the Retirement Systems will compute the information to the closest quarter ending date (September 30, December 31, March 31, or June 30). Also, note that if the Participant has an outstanding service purchase installment loan on the date the request for information is processed, the Participant's benefit estimate and account

statement will reflect a pro-rated service credit and account balance as of the information request date.

The Retirement Systems will not provide benefit estimates based on projected or assumed service credit and salary changes. The Retirement Systems will not compute a present value of the Participant's account. The determination of present value is a subjective process based on various assumptions. If you want to obtain a valuation, consult with a CPA or qualified private actuary. It is neither required nor needed by the Retirement Systems to be included in an acceptable order dividing retirement funds.

Finally, if the Participant has not retired, the Participant's account balance will consist of his contributions plus interest. The System currently pays 4% interest compounded annually based on the account balance as of the previous fiscal year end. The Participant's account balance does not include the Employer's contributions and the Retirement Systems cannot provide information indicating how much the Employer has contributed on the Participant's behalf. Participants are not entitled to withdraw or receive a lump sum payment of Employer contributions. The only way to access these funds is through a monthly benefit.

If you are requesting information regarding Participant's account pursuant to a subpoena (we must receive an original subpoena, not a copy or fax, before the information can be released) or a properly signed release, please submit a written request to the Legal Division (see II above for the address) with the following information:

1. Participant's name and Social Security number;
2. What information you are requesting;
3. The period of time you are interested in (example: from the date of the marriage Sept. 15, 1982, through the date of separation January 6, 1993);
4. A telephone number in case there are questions about your request;
5. An address to which the information should be sent; and
6. The member's signature, if it is at the member's request.

PLEASE SUBMIT THE REQUEST SEVERAL WEEKS BEFORE IT IS NEEDED FOR TRIAL OR SETTLEMENT. Gathering the information requested and performing the necessary computations takes a considerable amount of time.

NOTE: The Retirement Systems' records are confidential. Therefore, the Retirement Systems cannot release information regarding a Participant's account to the Alternate Payee or his/her attorney without written authorization from the Participant or through a subpoena.

X. CONCLUSION

This information is provided to help you understand the South Carolina Retirement Systems, its plans and procedures. These guidelines and model order are specific to

the South Carolina Retirement Systems and should not be used to draft orders relating to other retirement plans. These materials contain general information and are subject to change at any time.

Should you have any questions, please contact the legal department at (803) 737-6811 or (803) 737-6898.