

DISSOLUTION OF MARRIAGE GUIDELINES



INFORMATION ON DOMESTIC RELATIONS ORDERS - SEPARATE INTEREST APPROACH

To assist with any questions that you may have regarding the division of retirement benefits upon the divorce or legal separation of an active or deferred member, please review the enclosed publication titled "SCERS Dissolution of Marriage Guidelines (Pursuant to Article 8.4)." As indicated on the cover page of this document, the guidance and model language therein are appropriate for members who are not retired or have not yet received benefit payments from the Sacramento County Employees' Retirement System (SCERS).

As the parties to the marriage proceed with the dissolution and/or the division of community property interests, please be aware that the reference enclosure is strictly informational. Members who terminate their marriage may elect to follow model language offered by SCERS or develop their own domestic relations order (DRO). In either case, the parties to the marriage must provide a draft of the proposed DRO and allow our office to review it prior to seeking court approval of any agreement affecting SCERS.

In closing, DROs affecting SCERS require advance review and "approval to form." Given these conditions, members and spouses often find our model language informative and time-saving. Ultimately, however, the terms of any order are dictated by the parties to the marriage and, if applicable, their legal representatives.

If you have any questions regarding this memo or the referenced enclosure, please call or write to our office using the contact information below.

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PURSUANT TO ARTICLE 8.4 (MEMBER NOT YET RETIRED)

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DISSOLUTION OF MARRIAGE GUIDELINES

NOTICE

As a general rule, SCERS benefits are only payable to Members, their survivors and beneficiaries. However, the law recognizes an exception to this general rule in cases involving the dissolution of a Member's marriage.

When a dissolution of marriage action is filed, the Member and/or other parties to the action should notify SCERS in writing of the pending action, giving: the date of marriage, and date of separation; and, spouses' name, date of birth, Social Security number and current mailing address (telephone number is optional).

SCERS is required to maintain confidentiality of individual records of Members pursuant to Section 31532. Thus, before specific account information can be provided to anyone other than our Member, SCERS must be served with an order from a court of competent jurisdiction or a written statement from our Member authorizing release of such information.

Shortly after we have received proper authorization, SCERS will provide all parties with:

- A valuation of the Member's account. The valuation will specify the approximate community property interest that the former spouse can either withdraw upon issuance of the final decree or receive as a monthly retirement allowance for life when eligible.

If you have additional questions, please contact SCERS.

AUTHORITY

These Guidelines are based on 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 provides for the division of the community property interests of SCERS 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 Section 2610 of the Family Code.

Article 8.4 was made operative in Sacramento County by Resolution No. 2000-0566 adopted by majority vote of the Board of Supervisors on May 23, 2000.

SCERS is not subject to the Employees' Retirement and Income Security Act (ERISA).

SCERS does not administer Sacramento County's IRC Section 457 Deferred Compensation Plan. You must contact the County Deferred Compensation Office at (916) 874-2020 or MyBenefits@saccounty.gov for Deferred Compensation Information.

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SCERS POLICY

Community Property:

Effective May 23, 2000, the Retirement Administrator shall accept orders pertaining to the division of the community property interest in a Member's account only if such orders are issued (1) by a court of competent jurisdiction, (2) in conformance with the provisions of Family Code § 2610 and (3) in conformance with the provision of Article 8.4 of the 1937 Act [County Employees' Retirement Law of 1937], commencing at GC§31685. The Retirement Administrator shall return orders, which are not in conformance with these criteria to the parties for revision.

Rights:

A Nonmember who, pursuant to an order of the court, elects to establish a separate account, as authorized by Article 8.4 of the 1937 Act, may exercise the rights of a Member, except that (a) a Nonmember is not eligible to apply for or receive a disability retirement allowance, (b) a Nonmember's pre-retirement death benefits shall consist of return of the contributions and interest in the Nonmember's account and (c) a Nonmember is not eligible to participate in the election of trustees.

Election of Optional Allowances:

A Nonmember may retire pursuant to the provisions of Article 8.4 and elect optional allowances pursuant to Article 11.

Actuarial Equivalency:

The Retirement Administrator is responsible for ascertaining that the combined benefits payable to the Member and Nonmember are the actuarial equivalent of the value of the benefit to which the Member would have been eligible had no division of the community property interest occurred, per GC§31685.95.

Approval:

All applications for Nonmember benefits submitted pursuant to this Article shall be subject to review and approval by the Board. The Retirement Administrator shall place such applications on the Consent Calendar for the Board's ratification of staff's actions.

GUIDELINES ARE NOT MANDATORY

Members and Nonmembers are not mandated to use the provisions in these Guidelines. These Guidelines are intended to provide the parties with reasonable flexibility, while facilitating the drafting of DRO's which can be uniformly implemented by the Retirement Administrator.

CONFIDENTIALITY

Each party to the DRO gains sole control over her or his separate account. However, the Retirement Administrator is authorized to advise (1) the Member, if the Nonmember withdraws or dies; and (2) the Nonmember, if the Member retires or dies before the Nonmember. Unless specified otherwise in the DRO, neither party has a right to any other information regarding the other party's actions relative to their separate account and such actions shall be deemed confidential.

SCENARIOS

For Members who are not retired, a following table describes the impact of various events upon your individual accounts. For Members who are retired at the time of the final decree, the court will order a split of the Member's benefit in the Domestic Relations Order.

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JOINDER IS MANDATORY

Once a DRO is drafted, SCERS Counsel should review the draft before it is submitted to the Court.

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

The SCERS Counsel will review the draft to assure its applicability to SCERS plan design and SCERS ability to administer it.

The Sacramento County Employee's Retirement System must be joined as a party to the proceedings in order for SCERS to comply with the DRO. See the attached excerpts from the California Family Code for further information.

DIVIDING YOUR RETIREMENT ACCOUNT

The law allows the court to provide for the division of our Member's SCERS retirement account at the time of dissolution.

A sample Domestic Relations Order (DRO) is included at the end of these Guidelines.

- **If the Member is not already retired, refer to Domestic Relations Order "A".**
Model DRO "A" splits the account proportionally and allows each party to make your own independent decision on how to handle your account.
- **If the Member is already retired, do not refer to DRO "A".**
Instead, notify SCERS of your need for assistance.

DISSOLUTION OF MARRIAGE GUIDELINES

IMPACT OF MODEL DOMESTIC RELATIONS ORDER "A"		
Scenario	Member's Account	Nonmember's Account
Member is Vested (5 years of accumulated service credit)	<ul style="list-style-type: none"> • Service Credit, Contributions & Interest are divided in accordance with the DRO • Member may name beneficiary • Member remains vested 	<ul style="list-style-type: none"> • Separate Account is established, with Service Credit, Contributions & Interest credited in accordance with the DRO • Nonmember may name beneficiary • Nonmember may maintain the Separate Account or request a refund
Member is Not Vested (Less than 5 years of accumulated service credit)	<ul style="list-style-type: none"> • Service Credit, Contributions & Interest are divided in accordance with the DRO • Member may name beneficiary • Member will become vested based on combined service credit in both accounts 	<ul style="list-style-type: none"> • Separate Account is established, with Service Credit, Contributions & Interest credited in accordance with the DRO • SCERS must refund the balance in the Separate Account to the Nonmember
Nonmember is Paid a Refund	<ul style="list-style-type: none"> • SCERS must notify the Member • Member has five years to elect to repurchase the service credits which were transferred to Nonmember 	<ul style="list-style-type: none"> • Refund is irrevocable • All rights to future SCERS benefits cease • Redeposit is prohibited
Purchase of Service Credit for Extra Help & Public Service Credit	<ul style="list-style-type: none"> • Eligible to purchase community property share, if specified in the DRO • If DRO is silent, Member may purchase full service credit • If Nonmember receives refund or dies, Member may repurchase Nonmember's service credit 	<ul style="list-style-type: none"> • Eligible to purchase community property share, if specified in the DRO • If DRO is silent, Nonmember may not purchase any service credit
Redeposit, if Account Withdrawn prior to the DRO	<ul style="list-style-type: none"> • If the Member is eligible to Redeposit Contributions, then Same as "Purchase of Service Credit" 	<ul style="list-style-type: none"> • If the Member is eligible to Redeposit Contributions, then the Nonmember's options are the same as "Purchase of Service Credit"
Redeposit, if Account Withdrawn after DRO	<ul style="list-style-type: none"> • If eligible to Redeposit Contributions, then Same as "Purchase of Service Credit" • Member has five years after notice to elect to repurchase the service credits transferred to Nonmember 	<ul style="list-style-type: none"> • If the Nonmember has taken a refund, the Nonmember may not redeposit the withdrawn contributions

DISSOLUTION OF MARRIAGE GUIDELINES

IMPACT OF MODEL DOMESTIC RELATIONS ORDER "A"

Scenario	Member's Account	Nonmember's Account
Nonmember is not Paid a Refund	<ul style="list-style-type: none"> After account is divided pursuant to the DRO, the Member is no longer entitled to the contributions, interest and service credit which were transferred to Nonmember's Account 	<ul style="list-style-type: none"> May name a beneficiary Interest is credited semi-annually The Nonmember may receive a service retirement allowance or death benefit when eligible
Eligibility for Service Retirement	<ul style="list-style-type: none"> Age as defined in law Service credit requirement is met by adding service-credit-earned before-account-division to service-credit-earned-after-account-division 	<ul style="list-style-type: none"> The Nonmember is eligible to retire at earlier of: (1) Member's eligibility because of age & years of service, or (2) nonmember is age 50 and Member has 10 years of service (prior to split)
Member Retires before Nonmember	<ul style="list-style-type: none"> Member's benefit based on age factor, final average compensation and combined service credit balance of credit remaining after account division plus credit earned or purchased after account division Member may select any optional allowance 	<ul style="list-style-type: none"> The Nonmember will be notified of the Member's retirement The Nonmember may elect: (a) to defer retirement to a later age, with the member's final average compensation frozen; or (b) to begin receiving monthly benefit based on the Member's final average compensation, Nonmember's age factor, and the Nonmember's combined service credit balance of credit after account division plus credit purchased after account division Nonmember may select any optional allowance
Member Dies before Retirement	<ul style="list-style-type: none"> Benefits paid in accordance with SCERS provisions for the payment of death benefits Beneficiary as named by member 	<ul style="list-style-type: none"> Nonmember is notified of Member's death Same as "Member Retires Before Nonmember".
Nonmember Dies before Retirement	<ul style="list-style-type: none"> Member is notified of Nonmember's death & Member's eligibility to repurchase or redeposit , if applicable Member is eligible to repurchase Nonmember's service credit or redeposit contributions; including purchase of service credit which the DRO reserved for the Nonmember, but only if Nonmember had not done so 	<ul style="list-style-type: none"> Beneficiary named by Nonmember receives Nonmember's account balance

DISSOLUTION OF MARRIAGE GUIDELINES

IMPACT OF MODEL DOMESTIC RELATIONS ORDER "A"

Scenario	Member's Account	Nonmember's Account
Member Granted a Disability Retirement before Nonmember Retires	<ul style="list-style-type: none"> • Combined Member & Nonmember benefit may not exceed the amount which would be paid to the Member if the dissolution of marriage had not occurred 	<ul style="list-style-type: none"> • Nonmember is not eligible for a disability retirement. However, when eligible for service retirement, the Court will be asked to divide the payments
Member Granted a Disability Retirement after Nonmember Retires	<ul style="list-style-type: none"> • Same as "member Granted a Disability Retirement Before Nonmember Retires" 	<ul style="list-style-type: none"> • Same as "Member's Account" • The Nonmember's benefit may be reduced by the new Court order
Vested Member Terminates	<ul style="list-style-type: none"> • Member may elect a refund; retirement, if eligible; or deferred retirement • If inter-system reciprocity is established, final average compensation will not be frozen • If reciprocity is not established, final average compensation is frozen at Member's termination 	<ul style="list-style-type: none"> • Same as "Member's Account"
Nonvested Member Terminates	<ul style="list-style-type: none"> • Member may elect a refund; or, if going to a reciprocal system, a deferred retirement 	<ul style="list-style-type: none"> • Nonmember must receive a refund of the balance of the Nonmember's account

1 Sacramento County Employee's Retirement System

2 Model Domestic Relations Order A

3
4 Applicable to Dissolution of Marriage **Prior** to Retirement

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7 **CAUTION: YOU ARE HEREBY ADVISED TO SEEK COMPETENT LEGAL COUNSEL.**

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

11 The Sacramento County Employees' Retirement System, its agents and consultants are not
12 authorized to give legal advice and, therefore, make no representation as to the model's sufficiency
13 under applicable federal or state law or as to legal consequences.

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20 Revised: May 23, 2000

IT IS HEREBY ORDERED BY THE COURT THAT:

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2 1. This Order is entered pursuant to the Family Code.

3 2. **[Respondent or Petitioner]** (“Member”) and **[Respondent or Petitioner]**
4 (“Nonmember”) have acquired a community interest in the Member’s monthly retirement benefits
5 attributable to periods of service in SCERS from the Date of Marriage up to the Date of Separation.

6 3. Pursuant to section 31685 of the Government Code, the Court allocates and awards
7 to the Nonmember 50% of the accumulated retirement contributions and service credit attributable
8 to the Member’s service in SCERS during the period from the Date of Marriage up to the Date of
9 separation (“SCERS Interest”) as the Nonmember’s sole and separate property. All accumulated
10 retirement contributions and service credit attributable to the Member’s service in SCERS which
11 are not awarded to the Nonmember pursuant to this Order shall be the Member’s sole and separate
12 property.
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14 4. Pursuant to section 31685 of the Government Code, the Retirement Administrator
15 of SCERS (“Administrator”) shall divide the Member’s accumulated retirement contributions and
16 service credit in accordance with Paragraph 3 of this Order and establish a separate and distinct
17 account for the SCERS interest awarded to the Nonmember as soon as administratively practicable
18 after the Administrator determines that this Order is acceptable under the 1937 Act and the
19 Regulations of SCERS.
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21 5. In light of section 31685.5(b) of the Government Code and notwithstanding any
22 other provision of this Order, if the Member does not have five years of accumulated service
23 credit as of the date of dissolution or legal separation, the Nonmember shall receive a refund of the
24 accumulated retirement contributions and any interest that has been credited to such contributions
25 which have been transferred to the Nonmember’s account as soon as administratively practicable
26 following the date an account was established for the Nonmember pursuant to Paragraph 4 of this
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1 Order.

2 6. From and after the date that the Administrator has divided the Member's
3 accumulated retirement contributions and service credit pursuant to Paragraph 4 of this Order, the
4 Nonmember shall be entitled to all applicable rights permitted under section 31685(c) of the
5 Government Code, including:

6 (a) The right to a retirement allowance; subject to the provisions of sections
7 31685(d), 31685.5, 31685.6, 31685.7, 31685.8, 31685.9, 31685.95 and 31685.96 of the
8 Government Code.

9 (b) The right to a refund of accumulated retirement contributions, subject to the
10 provisions of section 31685.2 of the Government Code.

11 (c) The right to redeposit accumulated contributions that are eligible for
12 redeposit by the Member, subject to the provisions of section 31685.3 of the Government Code.

13 (d) The right to purchase service credit that is eligible for purchase by the
14 Member, subject to the provisions of section 31685.4 of the Government Code.

15 (e) The right to designate a beneficiary to receive his or her accumulated
16 contributions and any interest that has been credited to such contributions where death occurs prior
17 to retirement.

18 (f) The right to designate a beneficiary for any portion of the Nonmember's
19 SCERS Interest which is payable at the time of his or her death.

20 7. If the Nonmember fails to designate a beneficiary pursuant to Paragraph 6(e) or 6(f)
21 of this Order or the designated beneficiary does not survive the Nonmember, any portion of the
22 Nonmember's SCERS Interest which is payable at the time of his or her death shall be paid in
23 accordance with section 31458.2 of the Government Code.

24 8. The Nonmember's SCERS Interest will be increased by all applicable interest,
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1 cost-of living or other similar increases, but only to the extent permitted under the 1937 Act and
2 the Policies of SCERS.

3 9. The Member and the Nonmember shall be responsible for, and pay, any taxes due
4 in connection with his or her receipt of distributions from SCERS.

5 10. The Member and Nonmember shall be responsible for filing a Designation of
6 Beneficiary form with the Administrator.

7 11. Member's Name. For the purpose of making any benefit payments provided by the
8 terms of this Order or providing any notice required by the terms of this Order, Member's name,
9 current mailing address, telephone number, Social Security number and date of birth are as follows:
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11 Name: _____

12 Address: _____

13 Telephone No. _____

14 Date of Birth: _____

15 Social Security #: N/A – Will follow under separate cover.

16
17 12. Nonmember's Name. For the purpose of making any benefit payments provided by
18 the terms of this Order or providing any notice required by the terms of this Order, Nonmember's
19 name, current mailing address, telephone number, Social Security Number and date of birth are as
20 follows:

21 Name: _____

22 Address: _____

23 Telephone No. _____

24 Date of Birth: _____

25 Social Security #: N/A – Will follow under separate cover.

26
27 13. Notice of change of address or telephone number shall be made in writing to
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1 SCERS addressed as follows, or as the Administrator may specify in a written notice to Member
2 And Nonmember:

3 Sacramento County Employees' Retirement System
4 980 9th Street, Suite 1900
5 Sacramento, California 95814

6 14. The Member and the Nonmember shall sign all forms, letters and other documents
7 as required to effect the distribution(s) described herein and the intent of this Order.
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9 15. The Nonmember, the Nonmember's agents and attorneys are authorized to receive
10 any and all information concerning the Member's benefits until such time as the Nonmember has
11 received the Nonmember's SCERS Interest.

12 16. Notwithstanding any other provision of this Order, the Order shall not be construed
13 as to require SCERS:

14 (a) To provide any form of benefit or any option not otherwise provided under
15 the 1937 Act and the Regulations of SCERS;

16 (b) To provide increased benefits (as determined based on actuarial value) not
17 available to the Member;

18 (c) To provide benefits to the Nonmember which are required to be paid to
19 another Nonmember under another Order previously entered by a Court of competent jurisdiction
20 and acceptable under the 1937 Act;

21 (d) To provide payment to the Nonmember of benefits forfeited by the Member;
22 or
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24 (e) To change the benefit election of the Member once the Member has retired.
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26 17. It is further ORDERED that the Member shall act as constructive trustee of any
27 benefits assigned to the Nonmember under this Order which may be paid to or received by the
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1 Member. The Member, as trustee, shall promptly pay or transmit any such benefits to the
2 Nonmember at the Nonmember's last known address. It is also ORDERED that the Nonmember
3 shall act as constructive trustee of any benefits assigned to the Member under this Order which
4 may be paid to or received by the Nonmember. The Nonmember, as trustee, shall promptly pay or
5 transmit any such benefits to the Member at the Member's last known address.

6 18. This Order shall be administered and interpreted in conformity with the 1937 Act
7 and the Regulations and Policies of SCERS and other applicable law. If the 1937 Act and/or the
8 Regulations of SCERS are amended, then Member and the Nonmember shall immediately take the
9 steps necessary to amend this Order to comply with any such amendments, changes and/or
10 modifications; or, if permissible under any such change, amendment, or modification to the 1937
11 Act and the Regulations of SCERS, the Administrator may treat this Order as acceptable. The
12 Member and the Nonmember shall be responsible for any of the costs and/or expenses associated
13 with such amendment.
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15 19. The Member, the Nonmember, the Administrator, and the Court intend that this
16 Order meet all requirements of a domestic relations order under the 1937 Act and the Regulations
17 of SCERS and other laws of the State of California, and the Court shall reserve jurisdiction to
18 modify this Order and to resolve any disputes that may arise among the parties and the
19 Administrator concerning benefit payments or any other aspect of this Order. If any portion of this
20 Order is rendered invalid or otherwise unenforceable, the Court reserves jurisdiction to make an
21 appropriate adjustment to effectuate the intent of the parties. Any future fees, taxes, and/or
22 penalties will be assessed against the parties who then have an interest payable from SCERS.
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24 **IT IS SO STIPULATED:**

25 Dated: _____

26 _____
27 [NAME]
28 Petitioner

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Dated: _____

[NAME]
Attorney for Petitioner

Dated: _____

[NAME]
Respondent

Dated: _____

[NAME]
Attorney for Respondent

Dated: _____

[NAME]
Attorney for SACRAMENTO COUNTY
EMPLOYEES' RETIREMENT SYSTEM

ORDER

The parties having stipulated thereto and good cause appearing therefore.

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT

**California Government Code –
County Employee’s Retirement Law
of 1937**

Article 8.4 – Community Property

§ 31685. Separation of Member and Nonmember accounts; Nonmember’s rights

(a) Upon the legal separation or dissolution of marriage of a Member, after Joining the retirement system as a party to the proceeding pursuant to Chapter 6 (commencing with Section 2060)...of the Family Code, the court shall include in the judgement or a court order the date on which the parties separated.

(b) If the court orders the division of the community property interest in the system pursuant to Section 2610 of the Family Code, the accumulated contributions and service during the marriage shall be divided into two separate and distinct accounts in the name of the Member and Nonmember, respectively. Any service credit or accumulated contributions that are not explicitly awarded by the judgement or court order shall be deemed the exclusive property of the Member.

(c) Upon receipt of the court order separating the account of the Member and the Nonmember pursuant to this section, the Board shall determine the rights of the Nonmember, taking into consideration the court order and the account of the Member. These rights may include the following:

- (1) The right to a retirement allowance.
- (2) The right to a refund of accumulated retirement contributions.
- (3) The right to redeposit accumulated contributions that are eligible for redeposit by the Member.
- (4) The right to purchase service credit that is eligible for purchase by the Member.
- (5) The right to designate a beneficiary to receive his or her accumulated contributions payable at the time of the Nonmember’s death.
- (6) The right to designate a beneficiary for an unpaid allowance payable at the time of the Nonmember’s death.

(d) In the capacity of Nonmember, the Nonmember shall not be entitled to any disability retirement allowance.

§31685.1. Nonmember

“Nonmember”, as used in this article, means the spouse or former spouse, or child or other dependent as ordered by the court, of a Member, who as a result of petitioning

the court for the division of community property, has been awarded a distinct and separate account reflecting specific credited services and accumulated contributions.

§31685.2. Nonmember right to refund; waiver of all rights

- (a) The Nonmember who is awarded a separate account shall have the right to a refund of the accumulated contributions and interest credited in the separate account of the Nonmember.
- (b) The Nonmember shall file an application on a form provided by the system to obtain the refund.
- (c) The refund shall be effective when the system deposits in the United States mail an initial warrant drawn in favor of the Nonmember and addressed to the latest address for the Nonmember on file with the system.
- (d) The Nonmember is deemed to have permanently waived all rights in the system and all rights to any future retirement benefits pertaining to the service credit accumulated contributions, or both, when the refund become effective.
- (e) The Nonmember may not cancel a refund once it has become effective.
- (f) The Nonmember shall have no right to elect to redeposit the refunded accumulated contributions from the Nonmember’s account after the refund is effective, and shall have no right to redeposit or to purchase service credit after the refund becomes effective.
- (g) If at the time of the marriage dissolution or legal separation, the Member does not have the necessary minimum credited service to elect deferred retirement, the Nonmember shall receive a refund of the accumulated contributions and credited interest placed in the Nonmember’s account.
- (h) If the nonmember receives a refund under this section, the Member may elect to redeposit accumulated contributions and interest refunded to the Nonmember and to receive credit for the service time that had been forfeited by the Nonmember. The election shall be made within five years of receipt of

notice from the board of eligibility to redeposit the contributions. The board shall establish the manner of payment and the time period within which the redeposit of contributions may be made. The interest rate established by the board shall be the same as that charged to Members on all other redeposits.

§31685.3. *Redeposit of accumulated contributions previously refunded*

- (a) The Nonmember who is awarded a separate account may redeposit accumulated contributions and interest previously refunded to the Member in accordance with the determination of the court required by Section 31685.
- (b) The Nonmember may redeposit only those accumulated contributions and interest that were previously refunded to the Member and that the court has determined to be the community property interest of the Nonmember in the accumulated contributions.
- (c) If the Nonmember elects to redeposit, he or she shall repay the accumulated contributions and interest.
- (d) An election to redeposit shall be considered an election to repay all accumulated contributions and interest previously refunded that the Nonmember is entitled to redeposit.
- (e) The right of the Nonmember to redeposit is subject to the regulations of the board.
- (f) The Member has no right to the court-determined Nonmember share of any previously refunded accumulated contributions and interest whether or not the Nonmember elects to redeposit until the effective date of any refund requested by the Nonmember pursuant to Section 31685.2, or the Nonmember dies before redeposit is completed. However, any right to redeposit previously refunded accumulated contributions and interest not explicitly awarded to the Nonmember by the judgement or court order shall be deemed the exclusive property of the Member.
- (g) Any redeposit by the Nonmember shall be made by lump sum before retirement.

§31685.4. *Service credit*

- (a) The Nonmember shall have the right to purchase service credit pursuant to the determination of the court required by Section 31685.
- (b) The Nonmember may purchase only that service credit that the court has determined to be the community property share of the Nonmember spouse.
- (c) If the Nonmember elects to purchase service credit, he or she shall pay, prior to retirement, the contributions and interest pursuant to the regulations of the board.

- (d) The Nonmember shall have no right to purchase the service credit after the effective date of a refund of the accumulated contributions in the separate account of the Nonmember.
- (e) The Member has no right to the court-determined Nonmember share of the service credit whether or not the Nonmember elects to purchase the service credit until the effective date of any refund requested by the Nonmember pursuant to Section 31685.2, or the Nonmember dies before the service credit is purchased. However, any service credit eligible for purchase that is not explicitly awarded to the Nonmember by the judgement or court order shall be deemed the exclusive property of the Member.

§31685.5. *Nonmember's retirement*

A Nonmember shall be retired upon his or her written application to the board if all of the following conditions are met:

- (a) The Member or Nonmember has attained the minimum age prescribed by the applicable service retirement formula of the Member.
- (b) On the date of retirement, the member had sufficient credited service to retire for service, notwithstanding any service credit awarded to the Nonmember.

§31685.6. *Effective date of retirement*

Retirement shall be effective and the retirement allowance shall begin to accrue as of the date designated in the Nonmember's application as the effective date of retirement, or the day following the date of court order dividing the community property of the Member and Nonmember, if later. In no event shall the retirement become effective or the retirement allowance begin to accrue earlier than the first day of the month in which the Nonmember's application is received at an office of the board or by an employee of the system designated by the board.

§31685.7. *Final compensation*

- (a) If the Nonmember retires before the Member retires, "final compensation" means the highest average annual compensation earnable by the Member during the three consecutive years, or one year where applicable, prior to the date the Nonmember retires. The Nonmember may designate an earlier period to be used where the time period of the Nonmember's marriage to the Member and membership correspond.

FAMILY CODE
Division 1. Preliminary Provisions and Definitions
Part 2. Definitions

§80. “Employee pension benefit plan”

“Employee pension benefit plan” includes public and private retirement, pension, profit sharing, stock bonus, thrift, and similar plans of deferred compensation, whether of the defined contribution or defined benefit type.

(Enacted Stats. 1992, Ch. 162, Sec. 10 (AB 2650), operative Jan. 1, 1994)

Division 2. General Provisions
Part1. Jurisdiction

§200. Jurisdiction in superior court

The superior court has jurisdiction in proceedings under this code.

(Enacted Stats. 1992, Ch. 162, Sec 10 (AB 2650), operative Jan. 1, 1994.)

Division 6. Nullity, Dissolution, and Legal Separation
Part 1. General Provisions
Chapter 2. Jurisdiction

§2010. Authority of court

In a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, the court has jurisdiction to inquire into and render any judgement and make such orders as are appropriate concerning the following:

- (a) The status of the marriage.
- (b) The custody and support of minor children of the marriage and children for whom support is authorized under Part 2 (commencing with Section 3900) of Division 9.
- (c) The support of either party.
- (d) The settlement of the property rights of the parties.
- (e) The award of attorney’s fees and costs.

(Enacted Stats. 1992, Ch. 162, Sec 10 (AB 2650), operative Jan. 1, 1994.)

Chapter 3. Procedural Provision

§2021. Joinder of interested person and employee pension benefit plan as parties

(a) Subject to subdivision (b), the court may order that a person who claims an interest in the proceeding be joined as a party to the proceeding in accordance with rules adopted by the Judicial council Pursuant to Section 211.

(b) An employee pension benefit plan may be joined as a party only in accordance with Chapter 6 (commencing with Section 2060).

(Enacted Stats. 1992, Ch 162, Sec. 10 (AB 2650), operative Jan. 1, 1994.)

Chapter 6. Employee Pension Benefit Plan as Party
Article 1. Joinder of Plan.

§2060. Application and order for Joinder of plan

(a) Upon written application by a party, the clerk shall enter an order joining as a party to the proceeding any employee pension benefit plan in which either party to the proceeding claims an interest that is or may be subject to disposition by the court.

(b) An order or judgement in the proceeding is not enforceable against an employee pension benefit plan unless the plan has been joined as a party to the proceeding.

(Enacted Stats. 1992, Ch. 162, Sec. 10 (AB 2650), operative Jan. 1, 1994.)

Article 2. Proceedings After Joinder

§2070. Provisions governing proceeding in which plan has been joined

(a) This article governs a proceeding in which an employee pension benefit plan has been joined as a party.

(b) To the extent not in conflict with this article and except as otherwise provided by rules adopted by the Judicial Council pursuant to Section 211, all provisions of law applicable to civil actions generally apply, regardless of nomenclature, to the portion of the proceeding as to which an employee pension benefit plan has been joined as a party if those provisions would otherwise apply to the proceeding without reference to this article.

(Enacted Stats. 1992, Ch. 162, Sec. 10 (AB 2650), operative Jan. 1, 1994).

§2071. Notice to plan of proposed property settlement; response by plan

Either party or their representatives may notify the employee pension benefit plan of any proposed property settlement as it concerns the plan before any hearing at which the proposed property settlement will be a matter before the court. If so notified, the plan may stipulate to the proposed settlement or advise the representative that it will contest the proposed settlement.

(Enacted Stats. 1992, Ch. 162, Sec. 10 (AB 2650), operative Jan. 1, 1994).

§2072. Appearance by plan at hearing

The employee pension benefit plan is not required to, but any, appear at any hearing in the proceeding. For purposes of the Code of Civil Procedure, the plan shall be considered a party appearing at the trial with respect to any hearing at which the interest of the parties in the plan is an issue before the court.

(Enacted Stats. 1992, Ch. 162, Sec. 10 (AB 2650), operative Jan. 1, 1994).

§2073. Order affecting plan made at hearing not attended by plan

(a) Subject to subdivisions (b) and (c), the provisions of an order entered at or as a result of a hearing not attended by the employee pension benefit plan (whether or not the plan received notice of the hearing) which affect the plan or which affect any interest either the petitioner or respondent may have or claim under the plan, do not become effective until 30 days after the order has been served upon the plan.

(b) The plan may waive all or any portion of the 30-day period under subdivision (a).

(c) If within the 30-day period, the plan files in the proceeding a motion to set aside or modify those provisions of the order affecting it, those provisions do not become effective until the court has resolved the motion.

(Enacted Stats. 1992, Ch. 162, Sec. 10 (AB 2650), operative Jan. 1, 1994).

§2074. Motion to set aside or modify order

(a) At any hearing on a motion to set aside or modify an order pursuant to Section 2073, any party may present further evidence on any issue relating to the rights of the parties under the employee pension benefit plan or the extent of the parties' community or quasi-community property interest in the plan.

(b) Any statement of decision issued by the court with respect to the order which is the subject of the motion shall take account of the evidence referred to in subdivision (a).

(c) If the provisions of the order affecting the employee pension benefit plan are modified or set aside, the court, on motion by either party, may set aside or modify other provisions of the order related to or affected by the provisions affecting the plan.

(Enacted Stats. 1992, Ch. 162, Sec. 10 (AB 2650), operative Jan. 1, 1994).

Division 7. Division of Property

Part 5. Retirement Plan Benefits

§2610. Division of Retirement Plan Benefits

(a) Except as provided in subdivision (b), the court shall make whatever orders are necessary or appropriate to ensure that each party receives the party's full community property share in any retirement plan, whether public or private, including all survivor and death benefits, including, but not limited to, any of the following:

- (1) Order the disposition of any retirement benefits payable upon or after the death of either party in a manner consistent with Section 2550.
- (2) Order a party to elect a survivor benefit annuity or other similar election for the benefit of the other party, as specified by the court, in any case in which a retirement plan provides for such an election, provided that no court shall order a retirement plan to provide increased benefits determined on the basis of actuarial value.
- (3) Upon the agreement of the Nonemployee spouse, order the division of accumulated community property contributions and service credit as provided in the following or similar enactments:
 - (A) Article 1.2 (commencing with Section 21215) of Chapter 9 of Part 3 of Division 5 of Title 2 of the Government Code.
 - (B) Chapter 12 (commencing with Section 22650) of Part 13 of the Education Code.
 - (C) Article 8.4 (commencing with Section 31685) of Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code.**
 - (D) Article 2.5 (commencing with Section 75050) of Chapter 11 of Title 8 of the Government Code.
 - (E) Chapter 15 (commencing with Section 27400) of Part 14 of the Education Code.
- (4) Order a retirement plan to make payments directly to a Nonmember party of his or her community property interest in retirement benefits.

(a) A court shall not make any order that requires a retirement plan to do either of the following:

- (1) Make payments in any manner that will result in an increase in the amount of benefits provided by the plan.
- (2) Make the payment of benefits to any party at any time before the Member retires, except as provided in paragraph (3) of subdivision (a), unless the plan so provides.

(b) This section shall not be applied retroactively to payments made by a retirement plan to any person who retired or died prior to January 1, 1987, or to payments made to any person who retired or died prior to June 1, 1988, for plans subject to paragraph (3) of subdivision (a).