

PROPOSED DIVORCE DECREE CLAUSES FOR PERS DIVISIONS

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that [FORMER SPOUSE] is awarded an interest in [MEMBER]'s pension and retirement interests with the State of Nevada Public Employees Retirement System (PERS), accrued through employment, as follows:

1. The name of the Member is [NAME], Social Security Number 123-45-6789, last known address [ADDRESS], Las Vegas, NV 89108; the name of the Alternate Payee is [NAME], Social Security Number 987-65-4321, last known address [ADDRESS], Las Vegas, NV 89108. Alternate Payee is [STATE RELATION] to the Member and is recognized by a Domestic Relations court as having a right to receive a portion of the allowance or benefit of a member or retired employee from the system.

Use the following paragraph if ALL credits accrued by the Member accrued during the marriage.

2. The benefit to be payable to the Alternate Payee shall be calculated by means of a formula as follows: All service credits accrued by Member through and including [DATE OF DIVORCE OR TERMINATION OF SERVICE], as the numerator, and all service credits accrued as the denominator, multiplied by one-half. Any withdrawals from the retirement system shall be divided between the Member and the Alternate Payee in accordance with the same formula.

Use the following paragraph if there was any pre-marital service in PERS, or if there may be any post-marital service.

- [ALT] 2. The benefit to be payable to the Alternate Payee shall be calculated by means of a formula as follows: All service credits accrued by Member from [STARTING DATE] through and including [ENDING DATE] as the numerator, and all service credits accrued as the denominator, multiplied by one-half. Any withdrawals from the retirement system shall be divided between the Member and the Alternate Payee in accordance with the same formula.

Use the below paragraph if following the view that the spousal share is fixed at the Member's first eligibility for retirement as in the California cases.

3. "Service credits accrued" as used in above formula shall mean all service credits accrued as of the moment of the Member's first eligibility for retirement.

Use the paragraph below if trying to comply with a literal reading of the Fondi decision requiring both immediate distribution to the former spouse at the Member's first eligibility for retirement, AND an ultimate distribution to the former spouse based upon the benefits "ultimately received" by the Member.

- [ALT] 3. "Service credits accrued" as used in above formula shall mean all service credits accrued as of the moment of first eligibility for retirement, for the calculation to be performed at first eligibility for retirement; and shall mean the total service credits ever received as of the moment the Member actually retires.
4. The retirement system is specifically directed to pay the benefits as determined herein directly to the Alternate Payee at the first date such payments are allowed by statute following the Member's first eligibility for retirement without any early retirement penalty; the retirement system is not required by this order to provide an allowance or benefit not otherwise provided under the statutes governing PERS.
5. This order does not require the retirement system to make payments to an Alternate Payee prior to the retirement of a Member or the distribution to or withdrawal of contributions by a Member, unless the statutes or rules governing PERS allow such a distribution.

The below paragraph requires direct payments by the Member until actual retirement and the commencement of payments from the retirement system directly to the former spouse.

6. Upon the first day of the first month after the Member's attainment of eligibility for retirement without early retirement penalty, and continuing on the first day of each month until payments from the retirement system to the Alternate Payee commence, the Member shall make direct payments of the sum required by the above formula directly to the Alternate Payee.

The following paragraph attempts to secure COLA (Cost Of Living Adjustments) to the pension share payable to the former spouse, in accordance with the schedule of COLA increases that WOULD have accrued if the Member had retired on the date of first eligibility.

7. Alternate Payee shall be entitled to cost of living adjustments to the benefits payable to Alternate Payee as set out above in accordance with the statutory schedule of such adjustments (NRS 286.5756) that would have applied if Member had retired at the date of first eligibility for retirement without early retirement penalty. When Member actually retires, PERS shall calculate and pay said benefits to Alternate Payee to the extent permissible by law. Until PERS makes such payments, and to whatever extent PERS does not do so, Member shall make such payments directly to Alternate Payee. Alternate Payee shall also share, in accordance with the division of benefits set out above, in any other post-retirement increases added over time to the benefits payable.

The following paragraph secures to the former spouse a portion of the maximum possible monthly benefit, but provides NO protection at all in the event the Member dies prior to the former spouse. If that happens, the former spouse's payments end. Note that for police and fire fighters ONLY, this permits the Member to have a second spouse be a beneficiary of a 50% survivorship interest, without loss to the monthly payments to the former spouse, so long as the Member is married to second spouse on BOTH the date of retirement and the date of death.

8. The Member is required to elect a form of benefit paying the maximum possible monthly annuity.

The following paragraph provides no survivorship interest whatsoever to the former spouse, and permits the Member to name a second spouse as the Member's beneficiary, but it requires the monthly benefit to the former spouse to be the maximum possible sum that might be payable. Use this paragraph if the former spouse does not care about a survivorship interest, but wants to make sure that the monthly payments are in the maximum possible sum.

- [ALT] 8. The Member is permitted to elect any form of benefit available under the plan, but the sum payable monthly to the Alternate Payee shall be calculated as if Member elected the form of benefit paying the maximum possible monthly annuity, against which the formula set out above shall be applied.

The below paragraph secures to the former spouse a survivorship interest equal to what the former spouse WOULD receive if there was NO survivorship interest and the former spouse was receiving a share of the maximum monthly retirement payable to the Member.

- [ALT] 8. The Member is required to elect a form of benefit that would pay to the Alternate Payee (in the event of the Member's death prior to that of the Alternate Payee), a sum equal to the amount that would be paid to Alternate Payee under Option One (the unreduced benefit) under the formula set out above. This Order shall be considered by the retirement system to be a deemed election of whatever form of benefit shall accomplish that result.

The following paragraph is an attempt to secure to the former spouse a survivorship interest equal only to the former spouse's interest in the monthly retirement as reduced for purchase of the survivorship interest.

- [ALT] 8. The Member is required to elect a form of benefit that would pay to the Alternate Payee (in the event of the Member's death prior to that of the Alternate Payee), a sum equal to the amount that would be paid to Alternate Payee under Option 6 (actuarially reduced benefit paid for the lifetime of the retired employee), with the "specific sum" payable to the Alternate Payee to be calculated as follows: the system shall determine the Alternate Payee's percentage under the formula set forth above once the Member actually retires; the system will then figure the monthly sum payable if the Alternate Payee obtains a survivorship interest sufficient to secure to Alternate Payee the sum payable under that formula; finally, the monthly annuity, reduced for the survivorship benefit, shall be divided in accordance with the formula set out above.

The following paragraph is an attempt to require the retirement system to calculate the actual cost of securing just the interest of the former spouse in the REDUCED (for the survivorship) benefits, AND require the system to allocate the entire cost of that interest to the former spouse.

- [ALT] 8. The Member is required to elect a form of benefit that would pay to the Alternate Payee (in the event of the Member's death prior to that of the Alternate Payee), a sum equal to the amount that would be paid to

Alternate Payee under Option 6 (actuarially reduced benefit paid for the lifetime of the retired employee), with the "specific sum" payable to the Alternate Payee to be calculated as follows: the system shall determine the Alternate Payee's percentage under the formula set forth above once the Member actually retires; the system will then figure the monthly sum payable if the Alternate Payee obtains a survivorship interest sufficient to secure to him the sum payable under that formula; the difference between the sum payable to the Member if option One (unmodified) had been selected, and the sum to be paid with the Alternate Payee's interest secured shall then be deducted entirely from the Alternate Payee's portion of the benefits payable. In other words, the Alternate Payee's interest should be secured in such a way that the Member's death will not have the effect of raising or lowering the benefit payable to the Alternate Payee, and the entire premium for that protection should come from the sums payable to the Alternate Payee. This Order shall be considered by the retirement system to be a deemed election of whatever form of benefit shall accomplish that result.

The following paragraph permits PERS to release such information as is required for the system to comply with the court order; it satisfies the non-disclosure/privacy requirements that the system otherwise follows.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Member has waived any privacy or other rights as may be required for Alternate Payee to obtain information relating to Member's date of retirement, final grade and step, and pay, present or past retired pay, or other such information as may be required to enforce the award made herein, or required to revise this order so as to make it enforceable. PERS is hereby authorized to provide specific information to Alternate Payee from the retirement file of Member for purposes of issues related to this Decree/Order.

The following paragraph provides that if a member dies before the Alternate Payee begins receiving benefits and a refund of the contribution account is payable, the Alternate Payee will be eligible to receive the specified share of the refund (NOTE: this only applies if the Member dies before retirement without a spouse or eligible survivors under NRS 286.671-286.6791).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that if Member dies prior to retirement, and a refund of the contribution account is payable, Alternate Payee shall be paid a portion thereof, in accordance with the above formula, to the degree allowed by law.

The following paragraph is intended to permanently transfer an Alternate Payee's benefit under *Wolf v. Wolf*. However, you can bargain with opposing counsel for reversion of the benefit back to the member.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that if Alternate Payee should predecease Member, Alternate Payee's portion of the retirement benefits will continue to be paid to Alternate Payee's estate.

The following paragraphs are not REQUIRED to divide PERS pensions, but they might be useful to practitioners dealing with common problems in these cases.

The below paragraph is a proposed means of coping with the lack under current law of a pre-retirement survivor annuity.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that [MEMBER] shall obtain a policy of life insurance on [MEMBER]'s life with [FORMER SPOUSE] as beneficiary and owner (or transfer an existing policy to such status) in a minimum amount of [APPROXIMATE PRESENT VALUE OF SPOUSAL INTEREST] and maintain such policy until the date on which [FORMER

SPOUSE]'s interest in the retirement benefits set out above are fully secured by the putting into place of survivorship benefits fully protecting [FORMER SPOUSE]'s right to collect the sum specified above irrespective of [MEMBER]'s continued survival.

Alternate clause intended to allow court to award a pre-retirement survivor annuity to replace insurance benefit, if such ever becomes available. This includes the insurance language, which can be included or excluded depending upon the negotiation or order in individual cases.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the court intends to award to [FORMER SPOUSE] such a pre-retirement survivor annuity as may in the future be available in relation to [MEMBER]'s retirement benefits through the state retirement system (PERS), the court acknowledging that at the moment there is no such benefit available. The court expressly reserves jurisdiction to enter such future orders as may be necessary to carry this intention into effect. Until such time as [FORMER SPOUSE]'s interest as set out above is secured by the establishment of such a pre-retirement survivor annuity, [MEMBER] shall obtain and maintain a policy of life insurance on [MEMBER]'s life with [FORMER SPOUSE] as beneficiary and owner (or transfer an existing policy to such status) in a minimum amount of [APPROXIMATE PRESENT VALUE OF SPOUSAL INTEREST] and maintain such policy until the date on which [FORMER SPOUSE]'s interest in the retirement benefits set out above are fully secured by the putting into place of survivorship benefits fully protecting [FORMER SPOUSE]'s right to collect the sum specified above irrespective of [MEMBER]'s continued survival.

The following paragraph attempts to reserve to the court jurisdiction to allow the Member to provide a survivorship interest to a later spouse of all EXCEPT the survivorship interest granted in this decree to the spouse of the current marriage. Note that it presumes that the spouse is receiving a survivorship interest under Option 6, or under some option other than

Option 1, since it presumes that there will be SOME survivorship interest to divide, and that less than 100% of the survivorship interest is being awarded to the spouse in the present case.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this decree does not provide any capacity for the Member to designate a subsequent spouse as beneficiary of a portion of the survivorship interest in the Plan up to all survivorship interests less those awarded to the Alternate Payee. The court intends to permit the Member to make such an allocation of remaining survivorship, but is unable to exercise that intent due to the limitations of the current law. The court expressly reserves jurisdiction to enter such future orders as may be necessary to carry this intention into effect, by modification of this Decree as required to do so, should the law allow.

The following paragraph is an anti-fraud clause designed to allow the court to treat the spousal share AS the spousal share, even if the entire retirement is merged into another form of benefit.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that if [MEMBER] takes any steps to merge the retirement divided herein with another retirement program of any kind, or takes any action that prevents, decreases, or limits the collection by the [FORMER SPOUSE] of the sums to be paid hereunder, [MEMBER] shall make payments to [FORMER SPOUSE] directly in an amount sufficient to neutralize, as to [FORMER SPOUSE], the effects of the action taken by [MEMBER].

The below paragraph reserves jurisdiction to the court to correct anything that goes wrong with the attempted division of the retirement benefits.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Court shall retain jurisdiction to enter such further orders as are necessary to enforce the award to [FORMER

SPOUSE] of the PERS retirement benefits awarded herein, in accordance with the provisions of Nevada case and statutory law, including the recharacterization thereof as a division of Civil Service or other retirement benefits, or to make an award of alimony in the event that [MEMBER] fails to comply with the provisions contained above requiring said payments to [FORMER SPOUSE] by any means, including the filing of bankruptcy, or if government or other regulations or other restrictions interfere with payments to [FORMER SPOUSE] as set forth herein, or if [MEMBER] fails to comply with the provisions contained above requiring said payments to [FORMER SPOUSE].

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