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- ___ Date of Marriage
- ___ Date of Divorce
- ___ Copy of Divorce Judgment (or case caption if no orders yet issued)
- ___ Copy of Previous Orders Affecting Plan
- ___ Date of retirement or intended retirement
- ___ Both Parties' dates of birth (for the transmittal letter)
- ___ Both Parties' social security numbers (for the transmittal letter)
- ___ Both Parties postal mailing address.
- ___ Attorneys' contact information, including bar number, E-mail and fax number.
- ___ If I'm to contact parties directly: home phone, work phone, cell phone and E-mail address.
- ___ Name of Employer
- ___ Latest annual statement.
- ___ Signed pension authorization (see attached).
- ___ Special instructions or narrative of your concerns.
- ___ If retired, benefit statement showing how pension benefits were calculated on retirement.
- ___ If not retired, employee should obtain and provide a benefit estimate as if the nonemployee spouse were the option beneficiary.
- ___ **If not yet retired, decisions as required by the attached "Decision Sheet" should be made.**

NOTE: If not yet retired, no fee arrangement can be quoted before decisions are made. The undersigned will be glad to consult with counsel jointly at one of your offices or by telephonic conference to further explain the decisions to be made. Charge will be made at hourly rate of \$375.

*Note: Preference in order: E-mail (scanned to pdf or other); fax; mail.

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AUTHORIZATION RE RETIREMENT INFORMATION

Marriage of _____

To Nevada Public Employees' Retirement System (PERS):

The undersigned authorizes and directs all persons having records and information concerning his and/or pension and retirement benefits and the actuarial assumptions used in computing member benefits, to release such records and information to attorney, Barbara A. DiFranza, and/or to Actuary Donald W. Parkyn, and to other person(s), whose contact information is set forth below.

Dated: _____

Signature of Participant/Member

Print Participant/Member's Name & Social Security Number

[Optional] Below, print name and contact information of others to receive information:

DECISION SHEET - NEVADA PERS - BEFORE RETIREMENT

Thesis: A simple division order acceptable to Nevada PERS prior to Member's retirement will **never** achieve an equal division.

1. **Before retirement, if Member dies before retirement**, the "standard provision" provides nonmember with a time-rule share --a fraction of the benefit value compared to the situation if Member had lived) If Member **remarries and dies before retirement**, return of contributions if available--disappears. The Member's spouse at death gets the full value of the Member's retirement. Should Nonmember be protected by insurance.
 - a. Does nonmember get insurance protection e.g., Employer provided 2 x salary for the difference between those contributions and the actuarial value of the pension Nonmember would have received had Member lived to retirement and an Option 6 been chosen utilizing Nonmember's share of benefits? (Please describe the insurance protection, tell who is the employer, and provide a printout of the insurance plan booklet or policy.)
 - b. If private insurance will be used, describe it: supply a copy of the policy declarations page showing who owns it, who will pay the premiums and will the payment be tax deductible by the payor if Member spouse?
2. As to each type of insurance protection, who should pay the premium cost?
 - a. Nonmember **or**
 - b. Member, but, in exchange, if Nonmember dies **prior to retirement**, Nonmember's benefit share reverts to Member
3. Before retirement (or after) if Nonmember dies, shall Nonmember's share revert to the Member? If so shall the actuarial inequity created be remedied? And, if so, by which of the following:
 - a. Obtain an actuarial factor, e.g. 54% of community goes to Nonmember instead of 50% creating equal division. (Cost about \$100 from actuary).
 - b. If not, supply the name address, date of birth and social security number of a beneficiary who will receive the payments from the Member in a complex order.
4. Optional Form of Benefit. E.g. Option 3 or 50% option; Option 6 "customized"
 - a. At present a Member can have only one optionee. So, if no remarriage, then no harm for spouse to be Option 3 optionee.
 - b. If two contending spouses, should the test be optionee is spouse married the longest?
 - c. Should test be if this marriage's service comprised 50% or more of total service?
 - d. If Member remarries before retirement, Option 1 provides a free option 3 to the subsequent eligible spouse. Where Member is 5 years older than Nonmember (52 v 47), this saves about 10% of benefit,
 - i. However, the marital portion of the benefits generated this and thus there is a community property component owned by A/P.
 - ii. If nonmember does not get an Option, shall Nonmember obtain time rule share of the Option 1 benefits? (Will require the cooperation of future spouse in becoming subject to the court order. If W2 won't cooperate, then W1 gets option.)
5. If an Option is granted to the nonmember, then
 - a. Shall nonmember be allowed an Option 3? (50% option) Perhaps that is significantly more than Nonmember's percentage share. Member is probably entitled to withhold this and insist at most on Option 6 unless negotiation gives P something in exchange.

- b. Shall nonmember be allowed an Option 6 based on nonmember's share of benefits. Same result as "a" as far as Member is concerned except for subsidy of options issue (see below).
- i. Nevada PERS refuses to cooperate in allowing an **Option 6** order with benefit to be created with the Nonmember's portion that does not result in Member's portion being invaded. Attempts to provide fairly simple language has been rebuffed.
 - ii. Simply put, one subtracts nonmember formula percentage of allowance from the total unmodified allowance, and member retains the balance. The Nonmember's portion of unmodified has an Option 2 factor applied to it and the reduction is taken out of the nonmember's portion. (An Option 6 can be viewed as an Option 2 applied to a portion of the retirement allowance.)
 - iii. However, the cost of the option cannot be correctly allocated until retirement when the retirement factors employed by PERS at that time will be known.
 - iv. A supplemental order is needed to allow correct option to be taken at retirement with correct allocation of \$\$ and % amounts to be made at that time per a worksheet attached to the supplemental order.
 - v. A default order vs. Nevada PERS will be put into place. It will call for an Option 3 with proportional payment—unless an amendment is put in place (which the parties must cooperate in doing per the supplemental order.)
 - (1) Q. Why have default order be favorable to Nonmember?
 - (2) A. Because Member has notice of his own retirement and chance to get proper amending order done prior to retirement that will tell PERS exactly what to do.
- c. Shall an actuary be agreed to be retained at retirement to determine the subsidy value in any option granted to Nonmember and to increase Member's unmodified balance to allow Member to share equally in this subsidy? Due to the system's use of unisex tables, this only takes place when the member is male. (There's an overcharge for the options when the member is female.)
- d. Shall member be required to **provide basic health information to Nonmember prior to actual retirement** so that Nonmember can decide whether to make the election? If the female Member is in relatively good health for her age, a male would be advised to avoid the overcharge for the option costs; but knowing that the female Member suffers from significant adverse health conditions affecting mortality might change his mind.

* * *

You can ignore all of this and go with a simple order or you may want to seek a full or partial "cashout" of these benefits. But it won't provide an equal division of the community property interest.

Pre-R(retirement)? A.1____ Private life insurance and A/P pay or A.2____ Employment paid by P employment.

A.3 _____ In exch for A.2, if A/P dies before R, all goes to P.

On retirement: B.1____ Actuarial adjustment factor on R so that P gets all if A/P dies first

or B.2____ A/P's benefits go to successors.

C.1____ No Option to A/P C.2____ Option 6 to A/P or C.3 ____ A/P choice of Option.

C.4____ A/P pay for cost. C.5 ____ Parties split cost equally so P gets all if A/P dies first

C.5 ____ Parties split cost proportionally in P gets all if A/P dies first

D____ Actuary to determine value of option subsidy and in effect split it equally between parties

(Note: higher the Option the more the subsidy.) E____ Participant to disclose health prior to R.

An Explanation of Why A Simple PERS Order Cannot Be Equal

Under Nevada law, there is general agreement that a pension should be divided by a time rule formula [Gemma v. Gemma 105 Nev. 458 (1989)] which generally awards the nonmember (“Alternate Payee” or “A/P”) one half of the fraction of marital service divided by total service at retirement.

In private pension plans subject to federal law (“ERISA”), a monthly payment type of pension may be divided prior to retirement awarding the A/P’s share under a classic “separate interest QDRO.” The plan then takes that interest and increases or decreases the assigned monthly amount, depending on whether or not the A/P is older or younger than the Participant. For example, this case where 90% of the \$2000 per month pension was earned during the marriage, entitling A/P to 45%:

Participant \$1100 per month	A/P \$770 per month
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Why the reduction of \$130? This is to pay for the fact that A/P, who is about five years younger, is likely to receive the benefit for several years longer than the older Participant. In this case, if P dies or A/P dies, the other party’s benefit is unaffected. There is no “windfall” to P then if A/P dies.

Under Nevada PERS, on the other hand, the former spouse can receive no “separate interest” but rely on optional forms of benefit. Let’s look for comparison at what happens without any option being chosen, under an order acceptable to PERS:

		Member	A/P
A	Both Alive	\$1100	\$900
B	P the survivor	\$2000	0
C	A/P the survivor	0	0

Does something look unequal to you? Silence of court orders on what happens to A/P’s posthumous interest has resulted in a windfall to the P on the early death of the nonmember. In order to compensate A/P for this potential loss, one of two things must happen: (a) A/P’s benefit has to be increased from 50% of the marital share to some higher amount, e.g. 54% with the factor to be provided by an actuary. Alternatively, there must be an additional order to continue A/P’s share to A/P’s successor in the event of A/P’s early death. [Wolff v. Wolff, 112 Nev. 1355, 929 P.2d 916 (1996).]

Of great concern, however, is avoiding A/P’s loss of income on P’s death (row C). This can be done by the court’s authorizing election of an Option in A/P’s favor on retirement. However, P has to survive to retirement to make the benefit happen for A/P. If P is unmarried at death before retirement, the return of contributions (if any—some times this feature does not apply) to A/P is totally inadequate to compensate her for a lifetime of benefits. (See re Insurance above.)

Once retirement occurs, a method exists to allow the A/P to extend her benefits over her lifetime and that is the Options. Several problems arise here though.

First, what about subsequent spouses? If the Participant is under the Police and Firefighters' Retirement Fund, then the current spouse at retirement can take advantage of the no-cost Option providing a 50% continuance to the surviving spouse which saves about 10% of the entire benefit.¹

However, Nevada PERS allows only one option beneficiary. If Member should die, A/P married to Member for the bulk of his career will not be cheered to know that on death, a new spouse could walk away with all of a benefit that was earned during A/P's marriage. How to handle this?

Fairness dictates that, where multiple spouses compete for the option, the Participant should get to decide the matter, unless this marriage's service at retirement date comprised more than 50% of total service. But then, what rights should A/P have with respect to an option?

First, the A/P is entitled to an Option 6 which provides a level benefit to her, provided that she pays for this benefit which only she can get. Let's go back to our initial hypothetical:

D	Initial Unmodified Allowance	\$1100	\$900
E	Example of Actuarial Adjustment so on death of A/P, the P takes remainder	\$1028	\$972
F	A/P takes Option 6 & pays 15% for it. Payable while both alive	\$1028 {\$1038}	\$826 {\$816}
G	P dies; A/P survives		\$826
H	A/P dies; P only survives ("popup" occurs)	\$2000	

In addition, there is a subsidy in the options for the female A/P amounting to a \$20 a month savings. We can add half of that to P's benefit as is seen in the braces.

As an alternative to the actuarial adjustment in "E", the supplemental order can provide that A/P's share will be passed on to her heirs. However, this extends the distribution of this asset to another generation and will ultimately be the more expensive option for everyone including the heirs. Retirement benefits are meant for the retiring generation.

* * * The End ~ for Now * * *

¹ A good reason to hold off on divorce if retirement is pending for a safety participant.