

1 Attorney
Address
2 Telephone

3 Attorneys for

4 CAUTION:

5 THE DISPOSITION OF RETIREMENT BENEFITS IN DOMESTIC RELATIONS
6 PROCEEDINGS INVOLVES COMPLEX MARITAL RIGHTS AND TAX ISSUES. THE
7 FOLLOWING IS A MODEL ORDER WHICH DEMONSTRATES SEVERAL METHODS
8 OF SPLITTING RETIREMENT BENEFITS PROVIDED TO MEMBERS OF THE
MENDOCINO COUNTY EMPLOYEES RETIREMENT ASSOCIATION. OTHER
METHODS OF SPLITTING SUCH BENEFITS ARE AVAILABLE AND THIS MODEL
ORDER MAY BE INAPPROPRIATE FOR YOU.

9 THIS MODEL IS PROVIDED AS A COURTESY ONLY, AS NEITHER MCERA, NOR
10 ITS AGENTS OR CONSULTANTS ARE AUTHORIZED TO GIVE LEGAL ADVICE TO
11 THE PARTIES, AND THEY MAKE NO REPRESENTATION AS TO ITS SUFFICIENCY
12 UNDER APPLICABLE FEDERAL OR STATE LAW OR AS TO ITS LEGAL
13 CONSEQUENCES.

14 THIS MODEL REFLECTS CURRENT CALIFORNIA COMMUNITY PROPERTY LAW
15 AND MAY NEED TO BE REVISED TO ACCOMMODATE ANOTHER STATE'S
16 DOMESTIC RELATIONS LAWS.

17 SUPERIOR COURT OF CALIFORNIA
18 COUNTY OF MENDOCINO

19 In Re Marriage of) No.
20)
21) [Model – adapt as needed]
22) **STIPULATED DOMESTIC RELATIONS**
23) **ORDER RE DIVISION OF FUTURE**
24) **BENEFITS FROM MENDOCINO**
25) **COUNTY EMPLOYEES RETIREMENT**
26) **ASSOCIATION**
27)
28)
Claimant: MENDOCINO COUNTY)
EMPLOYEES RETIREMENT)
ASSOCIATION)

29 Petitioner, _____ ("Member") ("Nonmember Former Spouse"),
30 Respondent, _____ ("Member") ("Nonmember Former Spouse")

1 Spouse"), and Claimant MENDOCINO County Employees Retirement Association
2 ("MCERA" or "Claimant") stipulate as follows:

3 **RECITALS**

4 A. Member and Nonmember Former Spouse were married to each other on
5 _____ and separated on _____. This court
6 entered a Judgment of Dissolution of Marriage in this action on _____.

7 B. This court has personal jurisdiction over both Member and Nonmember
8 Former Spouse, and jurisdiction over the subject matter of this Order and this
9 dissolution of marriage action.

10 C. MCERA was properly joined as a party to this dissolution of marriage
11 action pursuant to section 2060 et seq. of the California Family Code.

12 D. This Order is acceptable under the County Employees Retirement Law of
13 1937, which is set forth at section 31450 et seq. of the California Government Code, as
14 adopted by the County of MENDOCINO (hereafter "1937 Act as adopted"). This Order
15 is entered into pursuant to the California Family Code.

16 **STIPULATION**

17 **1. Determination that Benefits Have Community Property Element**

18 Member and Nonmember Former Spouse have determined that they have
19 acquired a community interest in Member's retirement benefits attributable to periods of
20 service with the County of MENDOCINO [or district.] from the date of marriage [INSERT
21 DATE OF MARRIAGE] to the date of separation [INSERT DATE OF SEPARATION].
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2. Calculation of Nonmember Former Spouse's Interest

The court awards to Nonmember Former Spouse an interest in Member's retirement benefits calculated as follows:

$$\begin{array}{rcccl}
 \text{Retirement} & & \text{Member's credited service in MCERA} & & \\
 \text{Benefits} & \times & \begin{array}{c} \text{from date of marriage} \\ \text{to date of separation} \end{array} & \times & 50\% = \\
 & & \text{Member's total credited service in MCERA,} & & \text{Nonmember} \\
 & & \text{potentially excluding any purchased or} & & \text{Former} \\
 & & \text{converted years of service that may be} & & \text{Spouse's} \\
 & & \text{provided to Member upon retirement} & & \text{MCERA Interest}
 \end{array}$$

For purposes of this Order, the term "retirement benefits" shall include any refund of Member's accumulated retirement benefits, any service retirement benefits, any disability retirement benefits, and any pre-retirement death benefits or post-retirement refund (as provided in paragraph 5 of this Order). The portion of Member's retirement benefits which is awarded to Nonmember Former Spouse pursuant to the terms of this paragraph shall be referred to in this Order as Nonmember Former Spouse's "MCERA Interest." All retirement benefits attributable to Member's service with the County of MENDOCINO [or district] not awarded to Nonmember Former Spouse pursuant to this Order shall be Member's separate property.

3. Form of Retirement Benefit

[Select one of the following]

[Most money to Nonmember Former Spouse during lifetimes of Member and any surviving spouse of Member, but no guarantee of lifetime benefit for Nonmember Former Spouse]

At the time Member retires, Member may elect any retirement option, and is not required by the 37 Act as adopted to name Nonmember Former Spouse as the beneficiary or as a beneficiary. However, if Member does not name Nonmember Former Spouse as the beneficiary, or as a beneficiary at least to the extent of

1 Nonmember Former Spouse's MCERA Interest, and elects an option that results in a
2 lower payment to Member than if the Unmodified option were selected, any reduction in
3 the retirement benefit shall be chargeable to Member's portion of the payment and shall
4 not serve to reduce the amount awarded to Nonmember Former Spouse. If Member
5 elects an option under which a surviving spouse takes the benefit instead of a named
6 beneficiary, and such a surviving spouse in fact qualifies, MCERA shall pay
7 Nonmember Former Spouse the MCERA Interest as applied to the surviving spouse's
8 benefit.

9 **[OR]**

10 [Nonmember Former Spouse to receive lifetime benefit]

11 At the time Member Retires, Member shall elect a retirement option which would
12 provide Nonmember Former Spouse with a lifetime benefit. If Member selects an option
13 that is limited to one beneficiary, Member shall name Nonmember Former Spouse as
14 the beneficiary. If Member selects an option that permits multiple beneficiaries, Member
15 shall name Nonmember Former Spouse as a beneficiary at least to the extent of
16 Nonmember Former Spouse's MCERA Interest, but the other named beneficiary or
17 beneficiaries for the remaining benefits shall be Member's choice.
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19 **4. Payment of Benefits to Nonmember Former Spouse**

20 a. MCERA shall pay directly to Nonmember Former Spouse the MCERA
21 interest when Member retires, at the same time and in the same manner as Member is
22 paid.

23 b. If, at any time prior to the Member's effective date of retirement, the
24 provisions of the 1937 Act as adopted include optional Article 8.4 of the 1937 Act (Gov.
25 Code, § 31685 et seq., allowing split accounts), so that Nonmember Former Spouse

1 may receive the MCERA Interest prior to Member's retirement, then, under the
2 provisions of this court's reservation of jurisdiction, Nonmember Former Spouse may
3 return to this Court to seek an amendment to this Domestic Relations Order to provide a
4 split account as permitted by such statutes.

5 **5. Benefits Payable at Member's Death**

6 **a. Before retirement**

7 If Member dies before retirement, MCERA shall pay directly to
8 Nonmember Former Spouse the MCERA Interest as applied to any death benefit
9 payable as a result of Member's death, whether lump sum or monthly.

10 **b. After retirement**

11 If Member dies after retirement, and a refund of remaining contributions
12 and interest is payable by MCERA, MCERA shall pay directly to Nonmember Former
13 Spouse the MCERA Interest as applied to that refund.

14 **6. Other Benefits**

15 **a. Benefits payable at Nonmember Former Spouse's death**

16 If Nonmember Former Spouse predeceases Member, the interest of
17 Nonmember Former Spouse shall be payable to the estate of the Nonmember Former
18 Spouse for the duration of payments to the member or qualifying spouse, or to such
19 beneficiary or beneficiaries as may be permitted by the 1937 Act as adopted.

20 **b. Cost of living increases**

21 Any cost-of-living or other similar increases granted by MCERA shall be
22 applied to Nonmember Former Spouse MCERA Interest in the same proportion as
23 Member's interest.
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1 **7. Reservation of Rights by MCERA**

2 MCERA shall retain all rights it has under the 1937 Act as adopted to terminate
3 payments to Member or Nonmember Former Spouse prior to Member's death, and
4 MCERA reserves all rights it has under the 1937 Act as adopted. However, either
5 Member or Nonmember Former Spouse may challenge any termination of benefits as
6 provided by the 1937 Act as adopted, including through such administrative remedies
7 as are provided therein.

8 **8. Tax Information and Current Mailing Addresses**

9 a. The parties' tax information shall be set forth in the Statement of
10 Confidential Information in the Attachment to this Order, and the copy of this Order
11 served on MCERA shall not be enforceable against MCERA unless the Statement is
12 completed to the satisfaction of MCERA.

13 b. Both Member and Nonmember Former Spouse shall keep MCERA
14 advised at all times of their current mailing addresses.

15 c. Notices of changes of address shall be deemed given to MCERA only if
16 the notice is sent by certified mail, return receipt requested, to the then current address
17 of MCERA.
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19 **9. Payment by Each Party of Respective Tax Obligation**

20 Both Member and Nonmember Former Spouse shall pay, and shall indemnify
21 and hold the other party free and harmless from, any and all federal and state income
22 taxes, penalties, interest, and/or any other charges, if any, related to his or her receipt of
23 benefits. Each party shall make information available to the other, and Member hereby
24 authorizes MCERA to release such information to Nonmember Former Spouse, so that
25 each party may determine the taxable and non-taxable portions of any benefit paid by
26

1 virtue of this Order. In addition, Member and Nonmember Former Spouse shall execute
2 and deliver to MCERA, on request of MCERA, any and all documents necessary,
3 including appropriate withholding documents, as may be required by MCERA.

4 **11. Reservation of Jurisdiction**

5 a. The court shall, in this pending proceeding for dissolution of marriage,
6 expressly reserve jurisdiction over the disposition of the retirement benefits earned by
7 virtue of Member's employment with the County of MENDOCINO [or district]. This court
8 shall reserve jurisdiction to make all necessary and appropriate orders regarding the
9 benefits pursuant to then-existing applicable law.

10 b. Member, Nonmember Former Spouse or MCERA shall have the right to
11 petition this court for exercise of its jurisdiction at any time.

12 c. Member shall act as constructive trustee of any benefits assigned to
13 Nonmember Former Spouse under this Order which may be paid to or received by
14 Member. Member, as trustee, shall promptly pay or transmit any such benefits to the
15 Nonmember Former Spouse at the Nonmember Former Spouse's last known address.
16 Nonmember Former Spouse shall act as constructive trustee of any benefits assigned
17 to Member under this Order which may be paid to or received by Nonmember Former
18 Spouse. Nonmember Former Spouse, as trustee, shall promptly pay or transmit any
19 such benefits to Member at Member's last known address.

20 **12. Execution**

21 Each party shall execute and deliver any and all documents, papers and things
22 as the other party may require to give full effect to this Order.

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24 Dated: _____, _____
25 _____, Petitioner

In re Marriage of _____ No. _____

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Dated: _____, Respondent

Dated: _____
MENDOCINO County Employees
Retirement Association
By: _____

APPROVED AS TO FORM AND CONTENT:

[type name]
Attorney for Petitioner

[type name]
Attorney for Respondent

[type name]
Attorneys for Claimant

ORDER

The foregoing having been read and considered, and for good cause shown,
IT IS SO ORDERED.

Dated: _____
JUDGE OF THE SUPERIOR COURT

Revised: February 3, 2022

Attachment to
**DOMESTIC RELATIONS ORDER RE MENDOCINO COUNTY
EMPLOYEES RETIREMENT ASSOCIATION BENEFITS**

STATEMENT OF CONFIDENTIAL INFORMATION

COMPLETE AFTER FILING ORIGINAL WITH COURT

This separate Statement of Confidential Information sets forth the Social Security numbers of the member and nonmember former spouse whose community property interest in the MENDOCINO County Employees Retirement Association is being divided by this Domestic Relations Order. This information is required by MCERA for tax reporting purposes.

The copy of the Order served on MCERA must include a completed copy of this attachment or the Order will not be enforceable against MCERA.

1. Member Information:

Name:

Address, Telephone Number, and Other Contact Information:

Date of Birth:

Social Security Number:

2. Nonmember Former Spouse Information:

Name:

Address, Telephone Number, and Other Contact Information:

Date of Birth:

Social Security Number: