

**SAMPLE
PROVIDED FOR INFORMATIONAL PURPOSES ONLY
AND NOT INTENDED TO BE LEGAL ADVICE**

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

No. FD-__ - _____

Code No. _____

DOMESTIC RELATIONS ORDER

Filed on Behalf of Plaintiff

Counsel of Record for this Party:

_____,
Plaintiff,

v.

_____,
Defendant.

**SAMPLE
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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

_____)	
	Plaintiff,)	
)	No. FD-__-_____
)	
v.)	
)	
)	
_____)	
	Defendant.)	

DOMESTIC RELATIONS ORDER

AND NOW, this ____ day of _____, 20__, Plaintiff, _____, and Defendant, _____, having been divorced by Decree dated _____ of the Court of Common Pleas of Allegheny County, entered [or pending] at the above caption and docket number, do hereby stipulate and agree as follows:

1. _____, _____ [Plaintiff or Defendant], hereinafter referred to as "Participant," is or was employed by Allegheny County and is a participant in the pension plan known as the Allegheny County Employees' Retirement System ("ACERS").

2. _____, _____ [Plaintiff or Defendant], hereinafter referred to as "Alternate Payee," is the former spouse of Participant who raised claims for the equitable distribution of marital property. Alternate Payee's date of birth and Social Security Number shall be provided to the ACERS on a separate addendum together with a certified copy of this Domestic Relations Order.

3. The ACERS was created by statute and the specific benefits available to Participant and Alternate Payee are governed by the applicable provisions of the Second Class County Code, published at 16 P.S. §§ 4701–4716 (“Retirement Law”).

4. Participant’s current and last known mailing address is:

_____ [Street Address]

_____ [City, State, Zip Code].

5. Alternate Payee’s current and last known mailing address is:

_____ [Street Address]

_____ [City, State, Zip Code].

It is the responsibility of the Alternate Payee to keep a current mailing address on file with the Retirement Board at all times.

6. No part of the Participant’s benefit has been previously assigned to another Alternate Payee.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

A. A portion of Participant’s interest in the ACERS is marital property subject to distribution by this Court.

B. The marital property portion of Participant’s retirement benefit equals: (1) the Coverture Fraction multiplied by (2) Participant’s retirement benefit on the effective date of Participant’s retirement, using the date of the parties’ separation, and Participant’s final average monthly salary at the time of retirement.

CALCULATION OF ALTERNATE PAYEE’S PORTION

C. The Coverture Fraction is a fraction with a value less than or equal to one. The numerator is the amount of Participant’s service, as determined by the ACERS, for the period of time from mm/dd/yyyy (date of marriage) to mm/dd/yyyy (date of separation). The denominator is the total amount of Participant’s service, as determined by the ACERS, on the effective date of Participant’s retirement.

Insert one of the following paragraphs

1. _____ percent (___%) of the marital property portion (Coverture Fraction) of the Participant’s retirement benefit is to be allocated to the Alternate Payee as his/her equitable distribution portion of this marital asset on the effective date of Participant’s retirement. [For Deferred Distribution.]

- OR -

1. The Alternate Payee is awarded _____ percent (___%) of the monthly benefit on the effective date of the Participant’s retirement. [For Deferred Distribution.]

- OR -

1. It is directed that the Retirement Board pay \$ ____ [Specific Dollar Amount] each month beginning on the effective date of the Participant’s retirement [or on specified date, if a later date] to the Alternate Payee in accord with this Domestic Relations Order. [For Immediate Distribution.]

TERM OF PAYMENT TO ALTERNATE PAYEE

D. The term of monthly payments to the Alternate Payee is for the duration of the period of time in which Participant is in pay status and receiving a monthly retirement benefit, [or for another defined period of time]. Payment to the Alternate Payee will cease at the death of the Participant.ⁱ

PARTICIPANT’S CONTRIBUTIONS

E. If Participant’s contributions to the ACERS are to be refunded to Participant or distributed to Participant’s named beneficiary, then _____ percent (___%) of the marital property component (Coverture fraction) of the Participant’s contributions with interest is to be allocated to the Alternate Payee.ⁱⁱ

LIMITATIONS

F. Alternate Payee acknowledges that the Alternate Payee’s share of the Participant’s benefit is derivative of the Participant’s right to receive benefits pursuant to the Retirement Law and does not constitute a separate account, subaccount, or benefit.

G. Alternate Payee is not entitled to any benefit not otherwise provided by the Retirement Law and has no right to name another alternate payee or successor payee.

H. Alternate Payee and Participant acknowledge that benefits paid pursuant to this Order are and shall remain subject to the Public Employee Pension Forfeiture Act, 43 P.S. §§ 1311-1314.

DEATH OF ALTERNATE PAYEE

I. If Alternate Payee dies before Participant, payments to the Alternate Payee shall cease. In the event of Alternate Payee's death before s/he begins to receive a benefit pursuant to this Order, no benefit is payable to, or on behalf of, Alternate Payee.

CONSTRUCTION OF ORDER/JURISDICTION

J. It is intended that this Order shall qualify as a Domestic Relations Order pursuant to Pennsylvania statute and case law, and it is understood that the ACERS is a governmental plan as defined by the Employee Retirement Income Security Act ("ERISA") at 29 U.S.C. § 1002(32), and is therefore exempt from ERISA's provisions pursuant to 29 U.S.C. § 1003(b)(1).

K. It is intended and agreed by the Parties hereto that any Domestic Relations Order does not require the ACERS to provide increased benefits or any type of benefit not otherwise provided under the Retirement Law.

L. This Court shall retain jurisdiction to amend this Order and to enforce the intent of the parties, but only for the purpose of establishing or maintaining it as a Domestic Relations Order, provided that no such amendment shall require the ACERS to provide any type or form of benefit or any option not otherwise authorized and permitted by law.

EFFECTIVE DATE AND DURATION OF ORDER

M. Upon entry of a Domestic Relations Order, a certified copy of the Order and any attendant documents shall be served on the ACERS immediately. The DRO shall take effect immediately upon ACERS approval and ACERS approval of any attendant documents and then shall remain in effect until such time as a further Order of Court amends or vacates the DRO.

BY THE COURT:

_____, J.

Consented to:

Plaintiff/Participant

CERTIFIED FROM THE RECORD

[Attorney]

Defendant/Alternate Payee

[Attorney]

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ⁱ Payments to the Alternate Payee may not be extended beyond the life of the Participant under the benefit structure set forth in the statute. This remains true even if the Participant elects the Survivorship Option because that option may not be exercised in favor of an ex-spouse. 16 P.S. § 4712(e), (f).

ⁱⁱ A Participant may not withdraw contributions prior to the termination of employment with the County. A refund or distribution of employee contributions may occur if: (a) Participant separates from County employment before obtaining vested status; (b) Participant elects to withdraw the contributions after separating from County employment even though eligible for a deferred vested retirement benefit (note that a Participant’s withdrawal of contributions eliminates any monthly retirement benefit); or (c) Participant dies before he/she begins to receive a retirement benefit or while in pay status but before the total amount of retirement payments is equal to or greater than the total amount of contributions with interest. Sample paragraph E is recommended unless the Parties have agreed that there will be no distribution to the Alternate Payee from a refund of contributions.