

MAPERS



The Michigan Association of Public Employee Retirement Systems

Unlocking the Administrative Challenges of Domestic Relations Orders

MAPERS 2019 Spring Conference

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Historical Development

- Prior to 1985, Courts were not required to consider pensions as part of the marital estate.
- Accordingly, even if the Courts awarded a portion of a Participant's pension benefits to a former spouse, public employee retirement systems were not required to divide the benefits & most didn't.



Historical Development

In 1985, MI Legislature acted to clarify treatment of pensions in divorce cases.

- Vested pension rights accrued during marriage required to be part of marital estate.
- Unvested rights could be considered.
- Support orders to provide for Order of Income Withholding.
- Orders of Income Withholding binding on source of income (included pension plans).



Historical Development

- Orders in such actions are effective only against pension benefits when actually paid
- Confer no greater right in the plan
- DROs include court orders relating to alimony, child support, or marital property rights.
- DROs continue to be only means to divide pension benefits where divorce occurs after retirement.



Eligible Domestic Relations Order Act (EDRO)

- Public Act 46 of 1991 requires payment of public employee retirement system (“PERS”) assets to former (or separated spouse) under certain circumstances.
- Mandates that PERS comply with EDROs issued by state courts which comply with the EDRO Act provisions.



EDRO Requirements

- Order must state name, address and SS # of the Participant and Alternate Payee.
 - Note: Privacy laws have limited the disclosure of personal information such as social security numbers and dates of birth. Such information can be provided under separate attachment.
- State the amount or percentage of the benefit to be paid to the Alternate Payee.



EDRO Requirements

- State the retirement system to which it applies and that the retirement system shall make payment to the Alternate Payee as required in the EDRO Act.
- Does not require the System to provide a type or form of benefit not provided by the System or the Act.
- No increased benefit determined on the basis of actuarial value.



EDRO Requirements

- Order can not require payment of a benefit to an Alternate Payee (“AP”) that is required to be paid to another AP under a previous order.
- A domestic relations order must be filed **BEFORE** the Participant’s retirement allowance effective date to be considered an EDRO.



EDRO - Forms of Payment

BENEFIT SHALL BE PAID AS:

- An actuarial equivalent single life annuity equal to the AP's share, payable throughout the life of the AP.
- If an option benefit (J&S) is elected, then an actuarial equivalent reduced benefit payable throughout the lives of the P and the AP.
- A single life annuity equal to the AP's share payable throughout the life of the P.



Alternate Payee's Early Commencement of Benefits

- EDRO may provide for payment of benefit to AP beginning on or after the participant's earliest retirement date but before the P retires. If AP so elects, the AP is only entitled to the actuarial equivalent of AP's share of the P's benefit that would be payable when the P reaches age 60. If P retires before 60, the system shall recalculate the AP's benefit so that the recalculated benefit is actuarially equivalent based upon P's actual retirement date.



AP's Benefit Commencement

- An AP shall begin to receive the payment of a benefit effective the first day of the month immediately following the month in which the AP notifies the retirement system of his or her election to begin to receive payment of his or her interest in the benefit of a P.
- NOTE: Retirement System is under no obligation to notify AP of earliest retirement date other than at time of P's retirement.



Surviving Spouse Benefits

- EDRO may provide that a former spouse is considered the spouse of a Participant for purpose of receiving survivor benefits.
- If the benefit amount to be paid to a former spouse is less than the entire amount payable, the P's current surviving spouse or other beneficiary is entitled to receive the remaining portion of the benefit payable.



Surviving Spouse Benefits

Illustration:

“Payments to the Alternate Payee for that portion of the retirement allowance which is being divided in Paragraph ** will be made during the life of the Participant and the Alternate Payee shall be designated as the Participant’s surviving spouse for purposes of the Plan’s automatic 60% surviving spouse benefit for that portion of the retirement allowance which is being divided in Paragraph **. If the Alternate Payee predeceases the Participant, the Alternate Payee's interest in the Plan shall revert back to the Participant.”



Reversion Upon AP's Death

- If an Alternate Payee dies before receiving any payment of his or her interest in a benefit pursuant to an EDRO, that interest reverts to the Participant.



EDRO Determination Procedures

- Each retirement system shall establish a reasonable procedure to determine if a DRO is an EDRO under the Act.
- System shall promptly notify the P and AP named in a DRO that the System has received the DRO.
- Notice shall include a description of the procedure by which the System determines if the DRO is an EDRO under the Act.



EDRO Determination

- System shall, within a reasonable time after receiving a DRO, determine if it is an EDRO under the Act.
- System shall promptly notify the P and AP the DRO is or is not an EDRO acceptable to the System.





EDRO Determination

- Payments pursuant to the EDRO shall begin on the first day of the month following the month in which the DRO was determined to be an EDRO or the first day of the month following the month in which a benefit is payable under the EDRO, whichever is later.



EDRO Determination

- If the System determines that the DRO is not an EDRO under the Act, the System shall specify in the notice why the System determined that the DRO is not an EDRO under the Act.
- An amended domestic relations order may be filed with the System by a P, AP or Court under the Act.



DRO Administrative Policies & Procedures

- Board should formalize and adopt written policies, procedures and forms to assist in the administration and processing of domestic relations orders.
- The Board's DRO packet of information should be distributed to parties at the beginning of the process.

Policy Should Address:

- ✓ Sample DRO/EDRO
- ✓ Requests for Info
- ✓ Proposed Orders
- ✓ Costs/Payment
- ✓ Entered Orders
- ✓ Requests for estimates and/or calculations
- ✓ AP's Benefit Commencement
- ✓ Acknowledgement letter
- ✓ Legal Certification
- ✓ Actuarial Certification
- ✓ Sample Resolutions
- ✓ Compliance Checklist
- ✓ System Checklist





DRO Administrative Costs

- Despite the increased costs imposed by the enactment of domestic relations legislation, the Legislature has not provided funding to administer the legal mandates of the applicable legislation.
- The Board is vested with the fiduciary responsibility and authority for the general administration and management of the Retirement System.



DRO Administrative Costs

Sample Policy Language...

“The Board is of the opinion that costs for [legal services for review of the EDRO] and/or [the administrative and actuarial costs for providing estimates and calculations] are not the responsibility of the Retirement System, but are the responsibility of the party or parties to the domestic relations proceeding.”



Payment of DRO Administrative Costs

- Deposit vs System Billing
- Fixed Rate vs Actual
- Deduction From Benefits Payable
- Interest Charged for Non-Payment



Other Considerations

- A Judgment of Divorce does not qualify as a domestic relations order in most instances.
- Plan Design Features not addressed in the EDRO Act such as Annuity Withdrawal, Hybrid Plans, DC Plans, DROP Plans, etc.
- Application of EDROs and DROs to disability retirement benefits.



Other Considerations

- Some plans (i.e., Act 345 P & F, County plans, etc.), allow for the election of a reduced optional form of benefit to be voided and the Participant's benefit to pop-up to a straight life benefit upon order of the court.
- A divorce **after** retirement may render the AP ineligible for surviving spouse benefits which can not be resolved in a DRO.



Other Considerations

- Not all orders treat the “benefits accrued during the term of marriage” uniformly and care must be exercised in the calculation of the benefits awarded to the AP:
 - Coverture fractions vs Marital Share
 - Final pay plans
 - FAC Roll-ins and accrued payoffs, etc.



Other Considerations

- A purchase of service credit during the term of marriage is considered part of the accrued benefit unless specifically excluded.
- Retirement Systems are under no obligation to investigate the existence of orders even if they are aware that the Participant has divorced.

Illustration 1

FACTS

- Participant's age at divorce: 50
- Alternate Payee's age at divorce: 47
- Participant's monthly accrued benefit at date of divorce: \$2,000
- Participant's earliest retirement age: 55
- Participant's monthly accrued benefit payable over the Participant's lifetime at:
 - Age 55 \$2,400
 - Age 58 \$2,600
 - Age 60 \$2,800
 - Age 65 \$3,400

Alternate Payee's Benefit Commencement

- If EDRO provides that AP can elect to commence benefits at the P's earliest retirement date, benefits can commence as soon as P is eligible to retire with immediate benefits.
- If the Participant is still working, the AP's benefit is computed assuming Participant will retire at age 60.

Alternate Payee's Benefit Commencement

- If the P retires before age 60, the AP's benefit is re-computed and will increase.
- If the P retires after age 60, the AP's benefit is unchanged (it is not decreased), but P's monthly benefit recoupment amount starts to increase resulting in a decreased retirement benefit @ retirement.

Alternate Payee's Benefit Commencement

- If both parties have elected separate straight life benefits, once benefits commence, the P's and AP's benefits are treated as two separate retirement cases and either person's death does not affect the benefits of the other person.
- Participant may be able (or required) to elect optional forms of payment, if available, on P's share of benefit however, the AP may not.

Illustration 2

Accrued Marital Pension = \$2,000/Month
Alternate Payee Begins Receiving Benefits Before Participant Retires
Alternate Payee's Age at Commencement = 55

Participant's Retirement Age	Participant's Total Benefit at Retirement	Alternate Payee's Benefit	Recoupment for Early Payments To AP Paid by AP	Recoupment of Early Payments To AP Paid by P	Participant's Retirement Benefit
55	\$2,400	\$1000	\$ 0	\$ 0	\$1400
60	2,800	700	300	0	1800
65	3,400	700	300	500	1900
70	4,000	700	300	1500	1500

Illustration 3

Accrued Pension Subject to EDRO = \$3,000/Month
Participant & Alternate Payee Begin Receiving at Same Time

Retirement Age of:

Participant	60
Alternate Payee	60

Monthly Benefit Payable

<u>Benefit Type</u>	<u>While Both Alive</u>		<u>To Participant After Death of AP</u>	<u>To AP After Death of Participant</u>
	<u>Participant</u>	<u>AP</u>		
Straight Life	\$1,500	\$1,500	\$1,500	\$1,500
Joint & 50% Survivor -Regular	\$1,400	\$1,400	\$2,800	\$1,400
Joint & 50% Survivor -w/ Pop-Up	\$1,350	\$1,350	\$3,000	\$1,350

Illustration 4

Accrued Pension Subject to EDRO = \$3,000/Month
Participant & Alternate Payee Begin Receiving at Same Time
Retirement Age of:
Participant 60
Alternate Payee 55

Monthly Benefit Payable

<u>Benefit Type</u>	<u>While Both Alive</u>		<u>To Participant After Death of AP</u>	<u>To AP After Death of Participant</u>
	<u>Participant</u>	<u>AP</u>		
Individual Straight Life	\$1,500	\$1,350	\$1,500	\$1,350
Joint & 50% Survivor - Regular	\$1,350	\$1,350	\$2,700	\$1,350
Joint & 50% Survivor -w/ Pop-Up	\$1,330	\$1,330	\$3,000	\$1,330

Illustration 5

**Accrued Pension Subject to EDRO = \$3,000/Month
Participant & Alternate Payee Begin Receiving at Same Time**

Retirement Age of:

Participant	60
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Alternate Payee	65
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Monthly Benefit Payable

Benefit Type	While Both Alive		To Participant After Death of AP	To AP After Death of Participant
	Participant	AP		
Straight Life	\$1,500	\$1,600	\$1,500	\$1,600
Joint & 50% Survivor -Regular	\$1,440	\$1,440	\$2,880	\$1,440
Joint & 50% Survivor -w/ Pop-Up	\$1,420	\$1,420	\$3,000	\$1,420



Questions/Comments



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UNLOCKING THE ADMINISTRATIVE CHALLENGES OF DOMESTIC RELATIONS ORDERS

'TIL PENSION DO US PART

MAPERS SPRING CONFERENCE 2019

PRESENTED BY:

MICHAEL J. VANOVERBEKE

Retirement Systems are often presented with various orders arising out of domestic relations matters which seek to divide or distribute pension benefits. These presentation materials are presented to provide a brief overview of domestic relations issues to familiarize Trustees and Administrators with the general principles regarding the orders which require pension benefit payments to individuals other than the participant.

Historically (i.e., prior to 1985), Michigan law did not require the Courts to consider pensions as part of the marital estate. In 1985, the Michigan Legislature acted to clarify the treatment to be given pension rights in divorce cases. Significant aspects of the legislation directly impacted the administration of public pension plans; including:

1. Any rights in and to vested pension, annuity, or retirement benefits, or accumulated contributions in any pension, annuity or retirement system, payable to or on behalf of a party on account of service credit accrued by the party during marriage **shall** be considered part of the marital estate and subject to award by the Court.
2. Any rights or contingent rights in and to an unvested pension, annuity, or retirement benefits accrued during the marriage **may** be considered part of the marital estate and subject to award by the Court where just and equitable.
3. Each support order entered or modified by the Circuit Court shall provide for an order of income withholding.
4. An order of income withholding shall be binding upon any source of income (which includes the pension trust fund) 7 days after service by mail of a true copy of the order.

To ensure that retirement benefits are considered in each divorce and separate maintenance action, parties to such actions are required to include in their appropriate judgment a provision determining all rights that a spouse has in any pension. The Courts, therefore, have jurisdiction over public employee retirement systems for distribution in divorce cases. Orders made in such actions are effective only against the proceeds of the plans when they are actually paid and they confer no greater or different right in the plan. Such domestic relations orders (DROs) include a judgment or order of the court relating to alimony payments, child support, or marital property rights to a spouse of a participant under a judgment of separate maintenance, or to a former spouse, child or dependent of a participant. Such domestic relations orders do not require payment of any payment option not otherwise provided by the plan, nor permit distribution of benefits in any manner or pursuant to any procedure which is inconsistent with the provisions of the plan. In summary, DROs may only provide for benefit payments (or a portion thereof) which would normally be paid to the Participant to be paid to an Alternate Payee. DROs can not afford the former spouse other benefits which would be available under EDROs as discussed below (e.g. ability to elect benefits early or be designated for surviving spouse benefits, etc.). **DROs continue to be the only means by which parties may divide the pension benefits of those individuals that have retired prior to the date of divorce.**

ELIGIBLE DOMESTIC RELATIONS ORDER ACT

In 1991, the Michigan legislature enacted the Eligible Domestic Relations Orders Act, Public Act 46 of 1991 (MCL 38.1701 et seq.) ("Act 46"), to authorize the payment of public employee retirement system assets to certain individuals. The Eligible Domestic Relations Order Act mandates that all public employee retirement systems comply with Eligible Domestic Relations Orders (EDRO) issued by State Courts and establishes specific requirements for those systems created and covered by State laws.

SUMMARY ANALYSIS OF ELIGIBLE DOMESTIC RELATIONS ORDER ACT

Eligible Domestic Relations Order (EDRO) - A domestic relations order that is considered an Eligible Domestic Relations Order under the provisions of Act 46 and meets the following requirements:

1. The order must state the names and last known addresses of the participant and alternate payee.
2. The order must require that the Social Security numbers of the participant and alternate payee be sent to the retirement system in an attachment to the order which is not filed in the court.
3. The order must state the amount or percentage of the benefit to be paid to an alternate payee or the manner under which the retirement system is to determine the amount or percentage of the benefit to be paid to an alternate payee.
4. The domestic relations order states the retirement system to which it applies and that the retirement system shall make payments to the alternate payee as required under the Eligible Domestic Relations Order and Act 46.

5. The domestic relations order does not require the retirement system to provide a type or form of benefit not provided by the retirement system or a form of payment not provided by Act 46.
6. The domestic relations order does not require the retirement system to provide an increased benefit determined on the basis of actuarial value.
7. The order does not require the payment of a benefit to an alternate payee that is required to be paid to another alternate payee under previously filed eligible domestic relations order.
8. The domestic relations order **is filed before** the participant's retirement allowance effective date.

BENEFIT PAYMENTS

Except as otherwise provided in Act 46, the payment of a benefit to an alternate payee under an EDRO shall begin on the participant's retirement allowance effective date. The payment of a benefit under an EDRO and Act 46 shall be paid in one of the following forms as applicable:

1. A single life annuity that is equal to the actuarial equivalent of the alternate payee's share of the benefit payable **throughout the life of the alternate payee.**
2. If an optional form of benefit is elected, then a reduced benefit that is equal to the actuarial equivalent of the total benefit being divided under the EDRO payable throughout the lives of the participant and the alternate payee (i.e., **the plan's joint and survivor options**).
3. A single life annuity that is equal to the alternate payee's share of the benefit payable **throughout the life of the participant.**

POST RETIREMENT SUBSIDIES

An EDRO may provide that an alternate payee receive a share of any post retirement subsidies payable to a participant, which includes:

1. A supplemental annuity;
2. A supplemental payment to a participant;
3. A percentage increase to a benefit payable to a participant, and
4. Any other payment to a participant or increase to a benefit payable to a participant, excluding health benefits.

ALTERNATE PAYEE BENEFIT COMMENCEMENT ELECTION

EDRO may provide for payment of a benefit to an alternate payee beginning on or after the participant's earliest retirement date (i.e., on or after the date the participant is eligible to retire) but before the participant terminates employment. The benefit commences on the first of the month immediately following the month in which the alternate payee gives notification of her election to commence benefit payments. If an alternate payee so elects to receive his or her interest, the alternate payee is only entitled to the actuarial equivalent of the alternate payee's share of the participant's benefit that would be payable when the participant reaches age 60. If the participant retires before age 60, the retirement system shall recalculate the benefit payable to the alternative payee so that the recalculated benefit plus the benefit previously paid to the alternate payee are the actuarial equivalent of the alternate payee's share of the benefit payable to the participant.

SURVIVING SPOUSE BENEFIT

EDRO may provide that the former spouse is considered the spouse of the participant for purpose of receiving a benefit as a surviving spouse under the retirement system. If the percentage of the benefit or amount to be paid to a spouse is less than the entire amount payable by the retirement system, the surviving spouse or other beneficiary of the participant is entitled to receive the portion of the benefit not payable to a former spouse.

SAMPLE EDRO LANGUAGE

“() Payments to the Alternate Payee for that portion of the retirement allowance which is being divided in Paragraph ____ will be made during the life of the Participant and the Alternate Payee shall be designated as the Participant’s surviving spouse for purposes of the Plan’s automatic 60% surviving spouse benefit for that portion of the retirement allowance which is being divided in said Paragraph _____. If the Alternate Payee predeceases the Participant, the Alternate Payee's interest in the Plan shall revert back to the Participant.”

DEATH OF ALTERNATE PAYEE BEFORE BENEFIT COMMENCEMENT

If an alternate payee under this act dies before receiving any payment of his or her interest in a benefit pursuant to this act and an EDRO, that interest reverts to the participant.

PROCEDURES

Upon receipt of an Order or Judgment which purports to be an Eligible Domestic Relations Order, the Administrator shall notify all parties who are entitled to notice. The parties should be notified immediately upon the Administrator's receipt of the Order and at that time the Retirement System's legal counsel should be sent a copy of the notice together with a copy of the Order and any correspondence which the Retirement System receives.

A determination should be made as to the EDRO's compliance with Act 46 and Retirement System provisions and the parties notified as to whether the Order is an EDRO and whether it complies with the law. If it is determined that the Order is in compliance, it should be sent to the actuary for actuarial certification and then made a permanent part of the participant's file.

The above analysis is merely a summary. As trustees, you are well aware that the law as written and passed will in the future be further defined by case law or amendments. Further, the statute must be read in conjunction with other statutes.

Whether a domestic relations order is in fact an EDRO, is a legal question. It is important, therefore, that all Domestic Relations Orders submitted to the Retirement System be reviewed by legal counsel.

[SAMPLE]

EMPLOYEES RETIREMENT SYSTEM

POLICY RESOLUTION

Adopted:

Re: Statement of Administrative Policies and Procedures - Domestic Relations Matters

WHEREAS, the Board of Trustees of the Employees Retirement System is vested with the authority and fiduciary responsibility for the administration, management and operation of the Retirement System, and

WHEREAS, Public Act 46 of 1991, MCLA 38.1701 et seq. mandates that all public employee retirement systems must comply with Eligible Domestic Relations Orders issued by Michigan State Courts, and

WHEREAS, the Board of Trustees is desirous of restating its various policies and procedures with regards to the Retirement System's administration of all court orders, subpoenas and requests for information with regards to domestic relations proceedings, and

WHEREAS, the Board has discussed this matter with its legal counsel, therefore be it

RESOLVED, that the Board hereby adopts the following "Statement of Administrative Policies and Procedures Regarding Domestic Relations Matters":

I. SAMPLE EDRO

The Board of Trustees has approved the availability of a sample EDRO and a sample DRO for use by its members and beneficiaries. The samples are forms only and the parties and/or their attorneys must

conduct their own research and investigation of the plan provisions, the EDRO Act and all other applicable law to determine which type of order and or provisions are appropriate under the circumstances. Copies of the sample orders are available from the Retirement Board office [Form DRO -1A(Active Employee), Form DRO -1B(Current Retiree)].

II. REQUESTS FOR INFORMATION

The Board of Trustees respects an individual member's right to privacy and strictly construes the Freedom of Information Act as to the release of a member's retirement data to third parties. This respect for a member's right to privacy is not altered by the commencement or pendency of domestic relations proceedings. Requests by third parties for a member's personal retirement data must be accompanied by a signed waiver from the applicable member/retiree or a court entered order or subpoena. Attorney-issued subpoenas will be treated as a request under the Freedom of Information Act and requests for information which is of a personal nature will be denied unless accompanied by a signed waiver from the member/retiree. [Subpoena Response Sample Cover Letter - Form DRO-9].

III. PROPOSED ORDERS

The parties to a domestic relations proceeding (e.g. divorce) are encouraged to forward their proposed EDRO or other applicable order to the Board for review prior to entry of the order with the court. The Board, through its legal counsel, will review the proposed order for compliance with plan provisions and applicable law. Comments and/or required amendments or additions will be forwarded to the parties.

IV. COSTS

A. **Policy Statement:** The Retirement System is frequently presented with requests, court judgments and/or court orders which require the providing of estimates, calculations, legal review and/or comment with respect to proposed or actual court judgments or domestic relations orders, including proposed or actual Eligible Domestic Relations Orders pursuant to Public Act 46 of 1991 of the State of Michigan statutes (MCL 38.1701, et seq.). The EDRO Act requires the Retirement Board to establish a reasonable procedure to determine if a domestic relations order is an Eligible Domestic Relations Order under the EDRO Act. The Board of Trustees has adopted this procedure to implement the requirements of applicable law, which procedure necessarily includes the involvement of professional advisors due to the legal and actuarial issues inherently involved. Said estimates and calculations are made by the Board's actuary who submits billings for said services. Legal review and comment, which may include proposed amendments and/or consultation with the parties' attorneys, is performed by the Board's legal counsel who also submits billings for said services. Despite the increased costs to the Retirement System and the taxpayers of this municipality imposed by the enactment of domestic relations legislation, the Legislature has not provided funding to administer the legal mandates of the applicable legislation. The Board is vested with the fiduciary responsibility and authority for the general administration and management of the Retirement System. The Board is of the opinion that costs for **[legal services for review of the EDRO]** and **[the administrative and actuarial costs for providing estimates and calculations]** are not the responsibility of the Retirement System, but are the responsibility of the party or parties to the domestic relations proceeding.

B. Cost allocation. The parties are encouraged to address each party's responsibility for payment of actuarial and legal costs within the terms of their respective EDRO, court order and/or correspondence which requests and/or requires actuarial calculations or legal review. A Fee Payment Agreement [Form DRO-7] is available for use by the parties which upon completion should be forwarded to the Board. In the absence of a signed payment agreement or specific terms in the EDRO, the Board shall split (50/50) between the party or parties to the order, the applicable actuarial and legal costs incurred by the Retirement System. The party requesting an estimate or other actuarial calculations prior to entry of an order shall otherwise be responsible for all the corresponding costs.

C. Payment. Any domestic relations order or request for calculations submitted to the Retirement System shall be subject to reimbursement of the Retirement System's attorney fees, actuarial fees and administrative costs associated therewith. The parties or party shall forthwith tender such amounts as may be required upon billing by the Retirement System Administrator. In the event the respective costs are not paid by either or both parties to the domestic relations proceedings within three (3) months of the Board's billing, then the applicable costs, plus interest at the Plan's actuarially assumed rate retroactive to the date of the billing and calculated in the same manner as interest is credited to member contributions to the Plan, shall be deducted from the respective party's benefits at such time as benefits become payable by the Plan.

D. Upon receipt of an entered domestic relations order, the Board shall follow the procedures outlined in Section V. The actuarial and legal costs directly attributable for: (a.) legal review and opinion (i.e., that the Order complies with Plan provisions and applicable law); and (b.) actuarial review and certification (i.e., that the EDRO does not increase plan costs), are the responsibility of both parties. If the parties request or circumstances dictate (i.e. participant or alternate payee commencing benefits immediately) an immediate actuarial calculation of benefits, including estimates, said costs are also the responsibility of the parties.

E. Upon the participant's retirement, the Board will pay the normal actuarial costs for determining the amounts otherwise payable to the participant (i.e., the amount for calculation of the participant's straight life benefit and applicable options). Any additional actuarial costs for calculations required pursuant to the terms of the EDRO will be the responsibility of the parties.

V. ENTERED ORDERS

A. Upon receipt of a judgment or order purporting to be an Eligible Domestic Relations Order, the Board is required to acknowledge receipt of said judgment or order.

B. The Board will notify the parties who will be affected by such order (the plan participant, the alternate payee and legal counsel for said parties) and inform them that the Board will proceed with a determination as to whether the order is an effective Eligible Domestic Relations Order within 30 days after receipt of the order. An "Acknowledgment of Receipt of Judgment or Order Purporting to be an Eligible Domestic Relations Order" form letter will be completed by the Board and forwarded to the parties. [Form DRO-2]

C. The Retirement Administrator shall forward a copy of the order and other appropriate information to the Board's [legal counsel][actuary] for review as to whether the order complies with the Plan's provisions and applicable law. [Form DRO-3]

D. Upon review, legal counsel will prepare and forward correspondence and/or proposed resolutions as may be applicable for forwarding to the Board and/or parties. Legal counsel will forward its opinion to the Board as to compliance of the order with applicable law and Plan provisions. [Form DRO - 4] If the order does not meet the requirements of the Act or the Plan, the Board's legal counsel will promptly notify the parties of the deficiencies. Please note: the parties will be responsible for all legal and actuarial costs and must comply with the provisions of this policy regarding costs.

E. If legal counsel opines that the order is consistent with the Board-approved samples, then no actuarial certification (i.e. that the order does not increase plan costs) will be required. If legal counsel opines that the order complies with applicable law and Plan provisions, but is not consistent with the Board-approved samples, a copy of the order will also be forwarded to the Board's actuary for review and certification (i.e. that the EDRO does not increase plan costs). [Form DRO - 5]. Said review and certification will be forwarded to the Board. Please note: the parties will be responsible for all legal and actuarial costs and must comply with the provisions of this policy regarding costs as provided in Section IV.

F. Upon receipt of (a) the opinion of its legal counsel, and (b) review and calculation with certification from its actuary, the Board will adopt a resolution acknowledging receipt of an entered order which complies with plan provisions and applicable law. A copy of this resolution and the actuary's calculations will be forwarded to the parties and their attorneys. A copy of the approved order will be placed in the participant's Retirement System file.

G. The Retirement Administrator will thereafter request computation of any required payroll data and service credit and complete the EDRO Information form for inclusion in the participant's Retirement System file [Form DRO-5].

VI. REQUEST FOR BENEFIT ESTIMATES AND/OR CALCULATIONS

A. In cases where a member or retiree of the Retirement System or the spouse or alternate payee of a member or retiree seeks actuarial information concerning the retirement allowance of the member or retiree, such estimates may be obtained from the Retirement Administrator. In the event the Retirement Administrator does not have access to the requested information, the Board has no objection to the actuary providing the information provided:

1. The member, retiree or spouse of the member or retiree directly contacts the Board's actuary:

2. The Board and the Board's legal counsel, _____, shall be a copy recipient of all correspondence between the member, retiree or spouse of a member or retiree or their legal counsel and the Board's Actuary.

3. The Retirement System shall be reimbursed for all costs associated with the request by the party or parties requesting the actuarial calculation in compliance with Section IV. The Board's actuary shall obtain and forward to the Board a Fee Payment Agreement [Form DRO-6] signed by the party or parties requesting said calculation or estimate. In the absence of a signed payment agreement or specific terms in the EDRO, the Board shall split (50/50) the actuarial costs between the parties to the order.

VII. ALTERNATE PAYEE'S COMMENCEMENT OF BENEFITS

A. Upon receipt and approval of an EDRO or other appropriate order, the Board resolves to put a copy in the participant's file. The Board does not notify alternate payees of their eligibility to commence receipt of benefits until such time as the participant files application for retirement. If it is the intent of the alternate payee to commence receipt of benefits at the participant's earliest retirement date, the alternate payee must keep track of that date and make application to the retirement system as appropriate.

B. An alternate payee must make application not less than 30 and not more than 90 days prior to their intended benefit commencement date.

FURTHER RESOLVED, that a copy of this resolution shall be provided to the Board's actuary and legal counsel, and

FURTHER RESOLVED, that a copy of this resolution shall be provided to the parties and attorneys involved in domestic relations proceedings involving Retirement System benefits.

OTHER EDRO/DRO CONSIDERATIONS

- A Judgment of Divorce does not qualify as a domestic relations order in most instances.
- Plan Design Features not addressed in the EDRO Act such as Annuity Withdrawal, Hybrid Plans, DC Plans, DROP Plans, etc.
- Application of EDRO's and DROs to disability retirement benefits.
- Some plans (i.e., Act 345 Police & Fire, County plans, etc.), allow for the election of a reduced optional form of benefit to be voided and the Participant's benefit to pop-up to a straight life benefit upon order of the court.

- A divorce **after** retirement may render the Alternate Payee ineligible for surviving spouse benefits which can not be resolved in a DRO.
- A purchase of service credit during the term of marriage is considered part of the accrued benefit unless specifically excluded.
- Not all orders treat the “benefits accrued during the term of marriage” uniformly and care must be exercised in the calculation of the benefits awarded to the Alternate Payee (i.e., coverture fractions, final pay plans, etc.).
- Retirement Systems are under no obligation to investigate the existence of orders even if they are aware that the Participant has divorced.

EDRO EXAMPLES

Illustration 1

FACTS		
• Participant's age at divorce	50	
• Alternate Payee's age at divorce	47	
• Participant's monthly accrued benefit at date of divorce	\$2,000	
• Participant's earliest retirement age	55	
• Participant's monthly accrued benefit payable over the Participant's lifetime at:		
Age 55	\$2,400	
Age 58	\$2,600	
Age 60	\$2,800	
Age 65	\$3,400	

Case 1

EDRO provides that the Alternate Payee will receive a monthly benefit of 50% of the amount of the Participant's retirement allowance which has accrued as of the date of divorce commencing upon the Participant's retirement. The Participant retires at age 58.

The Alternate Payee will receive \$1,000 monthly for the Participant's lifetime. The Participant's lifetime benefit is reduced from \$2,600 to \$1,600 monthly. Note that in this

instance, the Alternate Payee's benefits are payable over the Participant's lifetime and accordingly, if the Participant predeceases the Alternate Payee, benefits to the Alternate Payee would cease. If the Alternate Payee predeceases the Participant, the Participant's benefit increases to \$2,600 monthly.

Case 2

EDRO provides the Alternate Payee will receive a monthly benefit of 50% of the amount of the Participant's retirement allowance which has accrued as of the date of divorce commencing upon the Participant's retirement which shall be payable over the Alternate Payee's lifetime. The Participant retires at age 58.

The Participant will receive a lifetime benefit of \$1,600 monthly (\$2,600 less the \$1,000 awarded to the Alternate Payee). The Alternate Payee will receive an actuarially computed lifetime benefit of \$950 monthly (\$950 monthly for the Alternate Payee's lifetime is actuarially equivalent to \$1,000 monthly for the Participant's lifetime). If the Participant predeceases the Alternate Payee, the Alternate Payee continues to receive \$950 monthly. If the Alternate Payee predeceases the Participant, the Participant continues to receive \$1,600 monthly.

Case 3

EDRO provides the Alternate Payee will receive \$1,000 monthly, for the life of the Alternate Payee, commencing when the Participant retires. The Participant retires at age 58.

The Alternate Payee will receive \$1,000 monthly for the Alternate Payee's lifetime. The Participant's lifetime benefit is actuarially reduced from \$2,600 to \$1,548 monthly. (\$1,000 over the Alternate Payee's lifetime is calculated by the actuary as being actuarially equivalent to \$1,052 over the Participant's lifetime.) If the Participant predeceases the Alternate Payee, the Alternate Payee continues to receive \$1,000 monthly. If the Alternate Payee predeceases the Participant, the Participant continues to receive \$1,548 monthly.

Alternate Payee Receives Benefits While Participant Still Working

- If an EDRO provides that the Alternate Payee can elect to commence benefits at the Participant's earliest retirement date, the benefits can commence as soon as Participant is eligible to retire with immediate benefits.
- If the Participant is still working, the Alternate Payee's benefit is computed assuming Participant will retire at age 60.
- If the Participant retires before age 60, the Alternate Payee's benefit is re-computed and will increase.
- If the Participant retires after age 60, the Alternate Payee's benefit is unchanged (it is not decreased), but Participant's monthly benefit recoupment amount starts to increase resulting in a decreased retirement benefit.

- If both parties have elected separate straight life benefits, once benefits commence, the Participant's and Alternate Payee's benefits are treated as two separate retirement cases and either person's death does not affect the benefits of the other person.
- Participant may be able to elect optional forms of payment, if available, on the Participant's share of the benefit. The Alternate Payee however, may not.

Illustration 2

Accrued Marital Pension = \$2,000/Month
Alternate Payee Begins Receiving Benefits Before Participant Retires
Alternate Payee's Age at Commencement = 55

Participant's Retirement Age	Participant's Total Benefit at Retirement	Alternate Payee's Benefit	Recoupment for Early Payments To AP Paid by AP	Recoupment of Early Payments To AP Paid by P	Participant's Retirement Benefit
55	\$2,400	\$1000	\$ 0	\$ 0	\$1400
60	2,800	700	300	0	1800
65	3,400	700	300	500	1900
70	4,000	700	300	1500	1500

Case 4

EDRO provides that the Alternate Payee will receive a monthly benefit of 50% of the amount of the Participant's retirement allowance which has accrued as of the date of divorce commencing upon the Participant's retirement which shall be payable over the Alternate Payee's lifetime. It also provides the option for the Alternate Payee to start receiving benefits at the Participant's earliest retirement date. The Alternate Payee chooses to start receiving benefits when the Participant is age 55. The Participant does not retire.

Based on the presumed (hypothetical) Participant's retirement at age 60, the Alternate Payee will receive \$700 monthly for the Alternate Payee's lifetime. The Alternate Payee's benefit is actuarially reduced from \$1,000 to \$700 monthly as a result of the election to draw 5 years earlier than the Participant's actual retirement and as a result of the benefit conversion to a benefit payable over the life of the Alternate Payee.

If the Participant actually does retire at age 60, the Participant's lifetime benefit is reduced from \$2,800 to \$1,800 monthly and the Alternate Payee continues to receive \$700 monthly.

Case 5

Same as Case 4 except that the Participant does not actually retire until age 65.

The Alternate Payee's benefit remains unchanged at \$700 monthly. There is no re-computation of the Alternate Payee's benefit under the EDRO Act if retirement is delayed

beyond age 60. The Participant's lifetime benefit is however actuarially reduced from \$3,400 to \$1,900 monthly to recoup the benefits assigned to the Alternate Payee under the EDRO, **AND** the additional 5 years of early benefit payments to the Alternate Payee.

Case 6

Same as Case 4 except that the Participant actually retires at age 58 (earlier than the assumed age 60).

The Alternate Payee's monthly benefit is actuarially adjusted and increased from \$700 to \$802 (because the Alternate Payee only commenced benefits 3 years earlier than the assumed 5). The Participant's lifetime benefit is reduced from \$2,600 to \$1,600.

Case 7

EDRO provides the Participant will elect the Plan's Optional 50% joint and survivor benefit at retirement for the portion of the Participant's benefits that were accrued at the date of divorce, naming the Alternate Payee as beneficiary. While both are alive, the EDRO specifies the Alternate Payee will receive 50% of the reduced joint and survivor benefit. The Participant retires at age 58.

The Participant's \$2,600 monthly benefit is split into the \$2,000 EDRO divisible benefit, which will be converted to a 50% joint and survivor benefit; and a \$600 remainder benefit payable to the Participant for life (although other options might be available for the \$600). Based on the plan's survivor benefit factor, the \$2,000 monthly accrued lifetime benefit is converted to a \$1,850 monthly 50% joint and survivor benefit. While both parties are alive, the Alternate Payee receives \$925 monthly (50% of \$1,850) and the Participant receives \$1,525 monthly (\$925 plus \$600). After the death of the Participant, the Alternate Payee receives \$925 monthly for life (50% of \$1,850). If the Alternate Payee predeceases the Participant, the Participant would receive \$2,450 (\$1,850 plus \$600) monthly for life.

Case 8

EDRO provides that the Alternate Payee shall be considered to be a current spouse for purposes of pre-retirement death benefit provisions of the plan to the extent of benefits accrued at the date of divorce. The plan provides a pre-retirement death benefit to a surviving spouse of 85% of the Participant's accrued retirement benefit. The Participant never remarries and dies at age 58 before retirement.

The Alternate Payee is eligible for a monthly lifetime survivor benefit of \$1,700 (85% of \$2,000). The balance of the normal \$2,210 monthly surviving spouse benefit (\$2,210 is 85% of \$2,600) is not paid to anyone.

Case 9

EDRO provides that the Alternate Payee will receive a monthly benefit of 50% of the amount of the Participant's retirement allowance which has accrued as of the date of divorce commencing upon the Participant's retirement which shall be payable over the Participant's

lifetime and that the Alternate Payee shall be considered to be the current spouse for purposes of an automatic (employer-financed) post-retirement death benefit to the extent of benefits accrued at the date of divorce. The plan provides a 60% post-retirement death benefit to the person married to the Participant both at the time of retirement and the time of death. The Participant never remarries and retires at age 58.

While both parties are alive, the Participant receives \$1,600 monthly and the Alternate Payee receives \$1,000 monthly. If the Participant predeceases the Alternate Payee, the Alternate Payee is eligible for a monthly lifetime survivor benefit of \$1,200 (60% of \$2,000). The balance of the normal \$1,560 monthly spouse benefit (\$1,560 is 60% of \$2,600) is not paid to anyone. If the Alternate Payee predeceases the Participant, the Participant's benefit increases to \$2,600 monthly.

Case 10

Same as Case 9 except that the Participant is survived by a current spouse (they were also married at the time of retirement).

Upon the death of the Participant, the Alternate Payee receives \$1,200 monthly for life and the current spouse receives \$360 (\$1,560 less \$1,200) for life.

Case 11

Participant Elects Joint and Survivor Benefit with Alternate Payee

An EDRO may provide for the Participant to select an optional joint and survivor form of benefit under the plan. The Alternate Payee's and Participant's benefits must commence at the same time for this type of benefit election. In this instance, the EDRO usually requires the election of a 50% joint and survivor form of payment on the portion of the benefits accrued during the marriage and for the Alternate Payee to be named as beneficiary.

- Balance of Participant's benefit is treated as a separate retirement case (i.e., different option, different beneficiary, etc.).
- While both are alive, usually each receives 50% of the reduced joint and survivor benefit (EDRO must specify this split).
- If the Participant dies first, the Alternate Payee receives the beneficiary's portion of the reduced joint and survivor benefit, which is usually a continuation of the same 50% benefit.
- If the Alternate Payee dies first, the Alternate Payee's share reverts to the Participant (in some plans, the benefit pops up to the full straight life amount).

Illustration 3

Accrued Pension Subject to EDRO = \$3,000/Month
Participant & Alternate Payee Begin Receiving at Same Time
Retirement Age of:
Participant 60
Alternate Payee 60

Monthly Benefit Payable

<u>Benefit Type</u>	<u>While Both Alive</u>		<u>To Participant After Death of AP</u>	<u>To AP After Death of Participant</u>
	<u>Participant</u>	<u>AP</u>		
Individual Straight Life	\$1,500	\$1,500	\$1,500	\$1,500
Joint & 50% Survivor -Regular	\$1,400	\$1,400	\$2,800	\$1,400
Joint & 50% Survivor -w/ Pop-Up	\$1,350	\$1,350	\$3,000	\$1,350

Illustration 4

Accrued Pension Subject to EDRO = \$3,000/Month
Participant & Alternate Payee Begin Receiving at Same Time
Retirement Age of:
Participant 60
Alternate Payee 55

Monthly Benefit Payable

<u>Benefit Type</u>	<u>While Both Alive</u>		<u>To Participant After Death of AP</u>	<u>To AP After Death of Participant</u>
	<u>Participant</u>	<u>AP</u>		
Individual Straight Life	\$1,500	\$1,350	\$1,500	\$1,350
Joint & 50% Survivor - Regular	\$1,350	\$1,350	\$2,700	\$1,350
Joint & 50% Survivor -w/ Pop-Up	\$1,330	\$1,330	\$3,000	\$1,330

Illustration 5

**Accrued Pension Subject to EDRO = \$3,000/Month
Participant & Alternate Payee Begin Receiving at Same Time**

Retirement Age of:

Participant	60
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Alternate Payee	65
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Monthly Benefit Payable

	<u>While Both Alive</u>		To Participant After Death of AP	To AP After Death of Participant
<u>Benefit Type</u>	<u>Participant</u>	<u>AP</u>		
Straight Life	\$1,500	\$1,600	\$1,500	\$1,600
Joint & 50% Survivor -Regular	\$1,440	\$1,440	\$2,880	\$1,440
Joint & 50% Survivor -w/ Pop-Up	\$1,420	\$1,420	\$3,000	\$1,420

DISCLAIMER

Please note that the above examples are provided for illustration purposes only. The actual benefits may be different depending on various factors (e.g., interest rates, mortality tables, ages, etc.). An actuary should be consulted when calculating benefits. Special thanks to Gabriel, Roeder, Smith & Company for allowing this office to use information provided in some of the above illustrations.

IMPORTANT NOTE: This summary is intended to be informational only and this session is intended to provide a general overview of the subject matter covered. This information should not be considered the rendering of legal, accounting, or other professional services and should not be used as a substitute for consultation with professional advisers.

DOMESTIC RELATIONS CASES

Hudson v. Hudson

Michigan Ct. of Appeals - January 7, 2016

2016 WL 90732

The parties entered into an Eligible Domestic Relations Order (EDRO) awarding each a share of the other's pension. Under the entered EDRO, one spouse had the option to receive a form of benefit that was not available under the other's pension plan. The parties questioned if one spouse's option to choose the form of payment, combined with other spouse's inability to select a similar option, is a violation of the judgment of divorce's intent. The court held that entry of the EDRO was consistent with the Judgment of Divorce which awarded each a share of the other's pension, "free and clear of any claims thereto, or interest therein". The court noted that the parties had an opportunity before entry of the Judgment of Divorce to explore the pension options available, and to address any apparent inequality in the Order.

Ruff v. Ruff

Michigan Ct. of Appeals – Decided July 24, 2014

2014 WL 3704903

The Participant retired and began receiving pension benefits when he was married to his first wife in 1989. The Participant and his first wife were divorced in 1993 and their divorce judgment provided that each party was "individually awarded his or her own interest that either party may have" in "any pension, annuity or retirement benefits. The divorce judgment was silent with respect to surviving spouse benefits. The Participant married his second wife in 1997 and executed a beneficiary election form awarding her "any death benefits" to which he was entitled. The form was otherwise silent with respect to surviving spouse benefits. The Participant passed away shortly thereafter and his second wife was denied surviving spouse benefits because she was not the spouse at the time of the Participant's retirement, as required by the Pension Fund provisions. The first wife was the Participant's spouse when he retired and she was awarded surviving spouse benefits. The second wife sued and the trial court agreed that the first wife had voluntarily and intentionally waived her right to surviving spouse benefits through the provisions of the judgment of divorce. The Court of Appeals disagreed, finding that the judgment of divorce "explicitly states that each party 'is awarded his or her own interest that either may have in *any*' pension benefit, including any 'contingent right' in unvested pension benefits." Accordingly, the Court of Appeals reversed the trial court, finding that the first wife was entitled to the surviving spouse benefits pursuant to the terms of the Pension Fund and that the language of the judgment of divorce did not establish a waiver.

Wolf v. Mahar

Michigan Ct. of Appeals – Decided November 18, 2014

308 Mich App 120

Each party was entitled to a pension and when they divorced, the parties agreed, in their respective Eligible Domestic Relations Order ("EDRO") and Qualified Domestic Relations Order ("QDRO"), to split both pensions so that each party would receive 50% of the marital portion of the other party's pension. Specifically, the alternate payee was "allowed to elect or begin receiving benefits at the participant's earliest retirement age" and the parties agreed to split any administrative or actuarial cost for reviewing and administering the EDRO/QDRO equally. Defendant elected to receive benefits as soon as Plaintiff was eligible (at age 60) even though Plaintiff had not yet retired and planned to continue working until age 65. Plaintiff was informed that her share of her pension would be reduced by the State's policy known as recoupment to account for the alternate payee's early receipt of benefits. Plaintiff thus made a motion for relief from the divorce judgment and argued that the recoupment policy was contrary to the pension provisions in the EDRO, and asked the court to set aside the earliest retirement age provisions.

The trial court found that the unambiguous language in the EDRO allowed Defendant to begin receiving benefits early and did not accept the parties' stipulation that "the issue of recoupment was not known to the parties" because the information was easily accessible on the State's website. The Court of Appeals disagreed and held that the trial court should have accepted the parties' stipulation because they were not aware of recoupment at the time the consent judgment

of divorce or EDRO was filed. The Court of Appeals went on to hold that a mutual mistake existed because the parties did not know about the recoupment policy but intended to “split equally” any costs of administering the EDRO. Accordingly, the Court remanded the case for reformation of the consent judgment and EDRO to account for the parties’ mutual mistake, and order that the parties share the cost of recoupment equally.

Caudry v. Caudry

Michigan Ct. of Appeals – Decided Jan. 30, 2014

2014 Mich. App. WL 354653

A Plan Participant and his former spouse divorced in 2001 and the judgment of divorce contained a provision awarding the former spouse a 50% share of the Participant’s pension upon his retirement from the Adrian Public School System. Shortly after the parties remarried in 2004, the Participant retired and received a \$52,000 early retirement buyout. At trial for their second divorce in 2011, the former spouse claimed that the entire \$52,000 buyout was an extension of the marital property from the first marriage. However, the Michigan Court of Appeals disagreed, noting that only the portion of the pension that actually accrued during the marriage must be considered part of the marital estate. The Court held that the early retirement buyout accrued during 29 years he worked for the School System prior to the second marriage. The portion of the Participant’s pension that accrued during the first marriage but before the second marriage constituted a separate asset that was not part of the second marital estate. Accordingly, the Court held that the accrual of the Participant’s pension during the first marriage was already adjudicated and that the early retirement buyout should not be treated as an extension of marital property from the first marriage.

Williams v. Williams

Michigan Ct. of Appeals – Decided March 28, 2013

2013 Mich. App. LEXIS 585

A plan participant was divorced and his former spouse was assigned a portion of the participant’s pension under a valid Qualified Domestic Relations Order (QDRO). The QDRO designated the former spouse as the surviving spouse for purposes of the Plan’s survivor benefits. The Plan Administrator accepted the QDRO and informed the parties that survivor benefits would not be payable to a subsequent spouse unless the terms of the QDRO were modified. The participant subsequently remarried without modifying the terms of the QDRO. Upon the participant’s death survivor benefits under the Plan were paid entirely to his former spouse pursuant to the provisions of the QDRO. The widow thereafter sought to amend the QDRO to provide her with a portion of the participant’s survivor benefits from the Plan. The Court of Appeals held that the QDRO could not be amended more than 13 years after its entry because it affected the former spouse’s substantial rights, and relief from any mistake in the terms of the QDRO was required to be corrected within one year from the entry of the QDRO.

Estate of Reed v. Reed

Michigan Court of Appeals – Decided June 23, 2011

293 Mich. App. 168

A default judgment of divorce was entered that awarded each party all rights in their respective pension plans free and clear from any claim by the other party. Mr. Reed subsequently died without having completed a change of beneficiary form with his employer’s 401(k) plan administrator. As a result, Mr. Reed’s former spouse was paid benefits in the amount of \$150,000 as the designated beneficiary under the plan. When Mr. Reed’s estate learned of the distribution, a lawsuit was initiated seeking to enforce the terms of the judgment of divorce and recover the distribution made to the former spouse. The former spouse contended that because the divorce judgment was entered by default, the waiver of her rights to Mr. Reed’s pension benefits was invalid. The Court held that the former spouse’s waiver of her rights to Mr. Reed’s pension benefits was valid and enforceable based on her course of conduct during the divorce proceedings. Specifically, the Court pointed out that she did not dispute the notice of the divorce proceedings and/or the proposed content of the default judgment of divorce; she did not respond to the divorce complaint or seek to have the judgment of divorce set aside. The former spouse was ordered to return all funds she received from the 401(k) plan to Mr. Reed’s estate.

Keebler v. Keebler

Michigan Court of Appeals – Decided July 21, 2011

2011 Mich. App. LEXIS 1361

The parties entered into a consent judgment of divorce which provided that all retirement benefits shall be divided equally pursuant to qualified domestic relations orders. An Eligible Domestic Relations Order (“EDRO”) was entered awarding the plaintiff a share of the defendant’s pension, including any automatic annual increases, and designating plaintiff as surviving spouse for any pre-retirement survivor benefits. The EDRO was explicitly incorporated into the judgment of divorce. The Court of Appeals held that the language of the judgment of divorce and the incorporation of the EDRO thereto demonstrated an intent between the parties for the defendant to receive similar rights to plaintiff’s pension. Accordingly the trial court was directed to enter a Qualified Domestic Relations Order in favor of defendant with provisions matching those of the EDRO.

Neville v. Neville

Michigan Court of Appeals – Decided February 16, 2012

2012 Mich. App. LEXIS 286

A default judgment of divorce, referencing a Qualified Domestic Relations Order (“QDRO”), awarded the Alternate Payee 50% of the present value of the Plan participant’s pension and designated her as “surviving spouse” for pre and post retirement benefit purposes. Several years later, the Plan participant requested that the trial court modify the terms of the QDRO. The Court of Appeals determined that a QDRO executed contemporaneously with the divorce judgment and required by the terms of the judgment must be treated as part of the property settlement in the divorce judgment. Accordingly, an amended QDRO could not change the parties’ substantive rights reflected in the judgment of divorce. Where the judgment of divorce did not limit the Alternate Payee’s survivorship benefit rights to a proportionate interest based on years of marriage, the amended QDRO also could not contain such a limitation. Furthermore, where the QDRO established the formula for determining the Alternate Payee’s share of the benefit, the trial court could not modify that formula.

In re Combs

U.S. Bankruptcy Court E.D. Michigan - Decided September 3, 2010 *435 B.R. 467*

A retiree’s former spouse sought relief from the retiree’s bankruptcy proceedings to pursue an action in state court for her share of the retiree’s pension benefits awarded under a consent judgment of divorce. The retiree contended that because an Eligible Domestic Relations Order (“EDRO”) had never been entered, his former spouse had never obtained a property interest in his pension. The Bankruptcy Court held that despite the fact that an EDRO had never been entered, under Michigan law the entry of the consent judgment of divorce transferred to the former spouse a property interest in the retiree’s pension. Accordingly, the former spouse was permitted to seek appropriate relief in state court.

Spaulding v. Brewer-Shapton

Michigan Court of Appeals - Decided February 10, 2011

2011 Mich. App. LEXIS 262

The parties entered into a consent judgment of divorce which provided in relevant part that a Qualified Domestic Relations Order (“QDRO”) would be entered with regard to pension rights and retirement benefits. The language of the consent judgment of divorce was ambiguous because it did not specifically provide which pension and retirement benefits were subject to division. The Court of Appeals held that the trial court erred in entering the QDROs without conducting an evidentiary hearing to determine the intent of the parties. When parties enter into a consent judgment of divorce, an evidentiary hearing is necessary to determine the parties’ intent because the facts underlying the consent judgment are never before the trial court.

CHAPTER 38. CIVIL SERVICE AND RETIREMENT

ELIGIBLE DOMESTIC RELATIONS ORDER ACT

Current through P.A. 1999, No. 60 of the 1999 Regular Session, 90th Legislature

38.1701. Short title

Sec. 1. This act shall be known and may be cited as the "eligible domestic relations order act".

38.1702. Definitions

Sec. 2. As used in this act:

(a) "Alternate payee" means a spouse of a participant under a judgment of separate maintenance, or a former spouse, child, or dependent of a participant, who is named in an eligible domestic relations order.

(b) "Benefit" means an annuity, a pension, a retirement allowance, or an optional benefit accrued or accruing to a participant under a retirement system or a postretirement subsidy payable to a participant under a retirement system.

(c) "Domestic relations order" means a judgment, decree, or order of a court made pursuant to the domestic relations law of this state and relating to the provision of alimony payments, child support, or marital property rights to a spouse of a participant under a judgment of separate maintenance, or to a former spouse, child, or dependent of a participant.

(d) "Earliest retirement date" means the earliest date on which a participant meets all of the requirements for retirement under a retirement system except for termination of employment.

(e) "Eligible domestic relations order" or "EDRO" means a domestic relations order that is considered an eligible domestic relations order under section 11 or that meets all of the following requirements:

(i) The domestic relations order states the name, last known address, and social security number of the participant.

(ii) The domestic relations order states the name, last known address, and social security number of the alternate payee.

(iii) The domestic relations order states the amount or percentage of the benefit to be paid to an alternate payee, or the manner under which the retirement system is to determine the amount or percentage of the benefit to be paid to an alternate payee.

(iv) The domestic relations order states that it applies to the retirement system and that the retirement system shall make payments to the alternate payee as required under the eligible domestic relations order and this act.

(v) The domestic relations order does not require the retirement system to provide a type or form of benefit not provided by the retirement system or a form of payment not provided by this act.

(vi) The domestic relations order does not require the retirement system to provide an increased benefit determined on the basis of actuarial value.

(vii) The domestic relations order does not require the payment of a benefit to an alternate payee that is required to be paid to another alternate payee under a previously filed eligible domestic relations order.

(viii) The domestic relations order is filed before the participant's retirement allowance effective date.

(f) "Participant" means a member, deferred member, vested former member, deceased former member, or retirant under the retirement system.

(g) "Postretirement subsidy" includes, but is not limited to, all of the following:

(i) A supplemental annuity.

(ii) A supplemental payment to a participant.

(iii) A percentage increase to a benefit payable to a participant.

(iv) Any other payment to a participant or increase to a benefit payable to a participant, excluding health benefits.

(h) "Retirement system" means a public employee retirement system created and established by this state or any political subdivision of this state.

38.1703. Alternate payees; filing EDRO, administration of payment of benefits

Sec. 3. Subject to the requirements of this act, an alternate payee is entitled to an actual interest in a share of a benefit that is or will become payable to a participant, if so provided in an EDRO filed with the retirement system. The retirement system shall administer the payment of a benefit pursuant to the EDRO and this section.

38.1704. Alternate payees; payment of benefit; date, forms of payment

Sec. 4. Except as otherwise provided in this act, the payment of a benefit to an alternate payee under an EDRO and this act shall begin on the retirement allowance effective date of the participant. The payment of a benefit under an EDRO and this act shall be paid in 1 of the following forms, as applicable:

(a) A single life annuity that is equal to the actuarial equivalent of the alternate payee's share of the benefit payable throughout the life of the alternate payee. If the participant is entitled to the payment of a benefit that is not reduced due to early retirement under the retirement system, the alternate payee's single life annuity shall be calculated using the participant's unreduced benefit. If the participant is only entitled to the payment of a benefit that is reduced due to early retirement under the retirement system, the alternate payee's single life annuity shall be calculated using the participant's reduced benefit.

(b) If a retirement system offers a participant an optional form of payment of a benefit at retirement, a reduced benefit that is equal to the actuarial equivalent of the total benefit being divided under the EDRO payable throughout the lives of the participant and the alternate payee. The reduced benefit shall be payable in the

manner provided under the optional form of payment under the retirement system. The EDRO shall specify the percentage or amount of the reduced benefit that is payable under this subdivision to the participant and to the alternate payee while both are alive. If the participant predeceases the alternate payee while a reduced benefit is being paid to the participant and the alternate payee under this subdivision, the survivor portion of the reduced benefit shall be payable to the alternate payee. If the alternate payee predeceases the participant while a reduced benefit is being paid to the participant and the alternate payee under this subdivision, the alternate payee's percentage or amount of the reduced benefit shall revert to and become payable to the participant.

(c) A single life annuity that is equal to the alternate payee's share of the benefit payable throughout the life of the participant.

38.1705. Alternate payees; payments before participant retires; date, calculation of benefit

Sec. 5. (1) An EDRO may provide for the payment of a benefit to an alternate payee beginning on or after the participant's earliest retirement date but before the participant terminates employment as provided in this section. An alternate payee shall begin to receive the payment of a benefit under this section effective the first day of the month immediately following the month in which the alternate payee notifies the retirement system of his or her election to begin to receive payment of his or her interest in the benefit of a participant.

(2) If an alternate payee elects to receive his or her interest in the benefit of a participant after the participant's earliest retirement date but before the participant's termination of employment, the alternate payee is only entitled to the actuarial equivalent of the alternate payee's share of the participant's benefit that would be payable when the participant reaches age 60. If the participant retires before age 60, the retirement system shall recalculate the benefit payable to the alternate payee so that the recalculated benefit payable to the alternate payee plus the benefit previously paid to the alternate payee are the actuarial equivalent of the alternate payee's share of the benefit payable to the participant. If the recalculated benefit is more than the benefit the alternate payee is receiving, the retirement system shall begin paying the recalculated benefit to the alternate payee effective the first day of the month immediately following the month in which the participant retires.

38.1706. Spouses under judgments of separate maintenance or former spouses; consideration as surviving spouses; payment of remainders to other surviving spouses or other beneficiaries

Sec. 6. An EDRO may provide that a spouse under a judgment of separate maintenance or a former spouse is considered the spouse of a participant for the purpose of receiving a benefit as a surviving spouse under the retirement system. The benefit payable to a spouse under a judgment of separate maintenance or a former spouse as a surviving spouse under this section shall be computed as provided in the EDRO and the retirement system. If the amount or percentage of the benefit to be paid to a spouse under a judgment of separate maintenance or a former spouse as the surviving spouse of the participant under this section is less than the entire amount payable under the retirement system, the surviving spouse or other beneficiary of the participant, as determined under the retirement system, is entitled to receive the portion of the benefit not payable to a spouse under a judgment of separate maintenance or a former spouse under this section.

38.1707. Death of alternate payee; reversion of interest

Sec. 7. If an alternate payee under this act dies before receiving any payment of his or her interest in a benefit pursuant to this act and an EDRO, that interest reverts to the participant.

38.1708. Rights of alternate payees to interest in share of benefit; creation, assignment, or recognition not prohibited

Sec. 8. The creation, assignment, or recognition of a right of an alternate payee to an actual interest in a share of a benefit that is or will become payable to a participant pursuant to an EDRO under this act is not a prohibited assignment under a retirement system.

38.1709. Domestic relations orders; EDRO determination procedures, notices to participants and alternate payees

Sec. 9. Each retirement system shall establish a reasonable procedure to determine if a domestic relations order is an EDRO under this act. The retirement system shall promptly notify the participant and alternate payee named in a domestic relations order that the retirement system has received the domestic relations order. The notice shall include a description of the procedure by which the retirement system determines if the domestic relations order is an EDRO under this act.

38.1710. Determination of domestic relations order as EDRO; notice of determination, payments, filing of amended orders

Sec. 10. The retirement system shall, within a reasonable period of time after receiving a domestic relations order, determine if the domestic relations order is an EDRO under this act. If the retirement system determines that the domestic relations order is an EDRO under this act, the retirement system shall promptly notify the participant and alternate payee named in the EDRO that the domestic relations order is an EDRO. The retirement system shall begin the payment of a benefit under this act pursuant to the EDRO and this act on the first day of the month following the month in which the domestic relations order was determined to be an EDRO or the first day of the month following the month in which a benefit is payable under the EDRO and this act, whichever is later. If the retirement system determines that the domestic relations order is not an EDRO under this act, the retirement system shall promptly notify the participant and alternate payee named in the domestic relations order that the domestic relations order is not an EDRO. The retirement system shall specify in the notice why the retirement system determined that the domestic relations order is not an EDRO under this act. A determination by the retirement system that a domestic relations order is not an EDRO under this act does not prohibit a participant, alternate payee, or court from filing an amended domestic relations order with the retirement system under this act.

38.1711. Pre-existing domestic relations orders; treatment as EDRO, filing of amended orders

Sec. 11. A domestic relations order filed with the retirement system before the effective date of this act is considered an EDRO under this act if the retirement system is making payments under the domestic relations order on the effective date of this act or to the extent a domestic relations order is consistent with the provisions of this act. This section does not prohibit a participant, alternate payee, or court from filing an amended domestic relations order under this act.